

REQUEST FOR PROPOSALS
FOR
LIQUOR SERVICES
RFP#19-005
AT
EXPO NEW MEXICO

STATE OF NEW MEXICO
NEW MEXICO STATE FAIR

PREPARED BY:

NEW MEXICO STATE FAIR
ISSUE DATE: October 15, 2019

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REQUEST FOR PROPOSALS

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I. INTRODUCTION

A. Purpose of this Request for Proposals

The State of New Mexico, New Mexico State Fair Commission, ("Fair"), is inviting responsible offerors to submit competitive sealed proposals for a non-exclusive contract for dispensing and selling alcoholic beverages, non-alcoholic beverages at the venues listed in this Request for Proposals ("RFP"). As further described below, after taking into consideration the evaluation factors set forth in the Request for Proposals, at the end of the evaluation process the responsible offeror whose proposal is found to be the most advantageous to the Fair will be selected for contract award. At that point, it is anticipated the Fair will enter into an agreement with the selected offeror who shall perform in the capacity of Liquor Contractor for the term of the contract.

B. Summary of Scope of Work and Term

The scope of work shall consist of providing a non-exclusive concession service for serving alcoholic beverages, and non-alcoholic beverages at select locations during the Annual Event and at select Interim Events held at Expo New Mexico. A detailed scope of work, which is subject to regulatory oversight, may be found in Appendix "B," titled "Contract Terms and Conditions".

This Agreement shall not become effective until signed by the general manager of the Fair. This Agreement shall terminate, without notice, on December 31, 2020. The Fair reserves the option of renewing the contract for three additional one-year periods, at the same terms and conditions contained herein, subject to written concurrence by the Contractor and the Fair.

C. Procurement Manager

Any questions which arise prior to the submission of proposals may be directed in writing or by telephone to:

New Mexico State Fair
P.O. Box 8546
Albuquerque, NM 87198-8546
Attn: Antoinette Kulinna
(505) 222-9754
antoinette.kulinna@state.nm.us
FAX: (505) 266-7784

All deliveries via express carrier should be addressed as follows:

Antoinette Kulinna
New Mexico State Fair
Administration Building, Gate 3
300 block San Pedro Blvd., N.E.
Albuquerque, New Mexico 87108

Any inquiries or requests regarding this procurement should be submitted to the procurement manager in writing. Other employees of the Fair do not have the authority to respond on behalf of the Fair. However, nothing stated by the Procurement Manager orally or in writing shall operate to amend this RFP unless such statements are reduced to a written amendment in accordance with GSD Rule 1.4.1 NMAC. NO ORAL OR WRITTEN QUESTIONS CONCERNING THIS RFP SHALL BE DIRECTLY ADDRESSED BY OFFERORS OR POTENTIAL OFFERORS TO ANY OTHER MEMBER OF THE FAIR UNTIL CONTRACT HAS BEEN AWARDED AND THE PROTEST PERIOD HAS EXPIRED. AN OFFEROR'S FAILURE TO COMPLY WITH THIS RESTRICTION MAY RESULT IN DISQUALIFICATION OF THE OFFEROR.

D. Definition of Terminology

"Annual Event" means the Annual State Fair Event traditionally held during the month of September at Expo New Mexico in Albuquerque, New Mexico. The beginning date and the number of days allocated for the Annual Event is subject to change at the discretion of the Fair/Expo.

"Concessionaire or Contractor" means successful offeror awarded the contract.

"Expo New Mexico" or **"Expo"** is the facility that houses the properties owned by the State of New Mexico, New Mexico State Fair Commission.

"Fairgrounds" means the 236 acres owned and operated by the New Mexico State Fair which is shown on Appendix "K".

"Gross Receipts" means total revenue from all operations at Expo by concessionaire less actual New Mexico Gross Receipts Tax paid, unless otherwise defined.

"Interim Event(s)" means any event held at Expo New Mexico other than the Annual Event.

"New Mexico State Fair Commission" or **"Fair"** is the agency under whose jurisdiction this Request of Proposals is released.

"Offeror" is any person or legal entity that chooses to submit a proposal in response to this Request for Proposals.

"Request for Proposal" or **"RFP"** means all documents, attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Proposal" means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material aspects of a request for proposals include, but are not limited to, quality, quantity, or delivery requirements.

The terms "must," "shall," "will," and "require" identify a mandatory item or factor. Failure to comply with a mandatory item or factor will result in the rejection of the offeror's proposal.

The terms "can," "may," "should," "preferably," or "prefers" identify a desirable or discretionary item or factor.

E. Background Information

The New Mexico State Fair Commission is an agency of the State of New Mexico. Its mission is to preserve and enhance the agricultural, multi-cultural heritage, and historic legacy of New Mexico.

The 2018 Annual Event had an attendance of approximately 504,000. The 2020 eleven-day Annual Event will be held September 10th through September 20th.

During the Annual Event, the Fair features livestock, horse, agricultural, and art exhibits, concessions, villages emphasizing cultural heritage, a carnival and live horseracing. A variety of free entertainment is available on the streets and stages. The Fair is also host to a series of PRCA sanctioned rodeo performances in Tingley Coliseum with entertainment provided by a variety of major stars.

The New Mexico State Fair is evolving, and while still offering all the traditional elements which offer a rich experience that appeals to families, we incorporated new initiatives to appeal to a wider audience, including millennial and young professionals who don't necessarily have children. Some of those offerings include a bike valet, expanded beer gardens, a craft brew produced using local products by a very popular New Mexico brewery, happy hours and wine tastings featuring local wines and home grown food items, and a diverse the concert lineup.

Expo New Mexico, which is situated on a 236 acre site in the heart of Albuquerque, is open year-round and is the site of many other events: equestrian, livestock, dog, cat, car, arts and crafts shows, home and builders' shows, concerts, circuses, live and simulcast horse racing, a casino featuring slot machines, rodeos and many others.

Our Fair is and will remain a historic and cultural beacon for the generations to come, and we continue to nurture and grow a year-round business model for our agency that ensures its self-sustainability far into the future. Please visit the EXPO New Mexico Website at www.ExpoNM.com for more information regarding the Fair, interim events, and the Flea Market.

F. History of Concession Gross Sales and Revenue to Fair

The liquor concessions 2017 and 2018 gross sales are as follows:

Current concessionaire revenue to Fair for calendar years 2017 and 2018:

Year	Annual Event	Interim Events	Grand Total
2017			
Alcohol	\$ 362,359.75	\$ 295,261.54	\$ 657,621.29
2018			
Alcohol	\$ 396,618.13	\$ 223,441.03	\$ 620,059.16

II. SCOPE OF SERVICES AND CONCESSION SPACES

A. Non-Exclusive Right.

Concessionaire's right to operate the above-described business on the Fair's premises is a non-exclusive right. The possibility exists that some events, at which alcoholic beverages will be served, will be excluded from this Agreement and will be operated under separate agreements and separate insurance coverage with other vendors and other dispensers.

B. Renovations.

The Fair may at any time be in the process of major renovations that might affect facilities throughout the fairgrounds including any or all concessions spaces within this agreement.

C. Concession services and locations.

1. Tingley Coliseum.

This facility is currently configured with four (4) concession stands where alcoholic beverages are dispensed, with the option to include a fifth (5th) location. Occasionally, mobile units for dispensing alcoholic beverages will be required to be set up in the building at various locations for certain specific events. Tingley Coliseum has a maximum capacity of approximately 11,200 with floor seating and 9,200 without floor seating. In addition to the Annual Event, numerous shows/concerts are held in Tingley Coliseum on a year round basis.

During the Annual Event, Concessionaire will be required to serve alcoholic and non-alcoholic beverages from open to close of show times or at times designated by the Fair. The Fair may request that Concessionaire provide beverage wait service to certain seat locations during the Annual Event and/or Interim Events selected by the Fair. Concessionaire will not have a concession for the service of alcoholic beverages at any Interim Event unless the Fair requires service at that event by Concessionaire. Hours of service and number of concessions locations needed will be determined by the Fair and will be tailored to the needs of each event.

The Fair may allow other entities to provide concession services for certain Interim Events including the sale of alcoholic beverages. A map of Tingley Coliseum is attached as Appendix "H".

2. Villa Hispana.

This facility is a bar with no food service and is currently used during the Annual Event, and made available for Interim Events. Hours of operation are subject to change and will be determined by Fair. See Appendix "I" for a diagram of the Cantina. The Concessionaire will not have a concession for the service of alcoholic beverages at any Interim Event unless the Fair requires service at that event by Concessionaire. Hours of service and number of concessions locations needed will be determined by the Fair and will be tailored to the needs of each event. The Fair may allow other entities to provide concession services for certain Interim Events including the sale of alcoholic beverages.

3. Manuel Lujan Building.

This facility is currently configured with one (1) liquor beverage concession stand located in Lujan A. At certain events, liquor will be required at temporary locations in each facility upon request of the event promoter. Lujan is the site of such events as arts and crafts shows, home builders shows, dog and gun shows, etc. A map of Lujan is attached hereto as Appendix “J”. Concessionaire will not have a concession for the service of alcoholic beverages at any Interim Event unless the Fair requires service at that event by Concessionaire. Hours of service and number of concessions locations needed will be determined by the Fair and will be tailored to the needs of each event. The Fair may allow other entities to provide concession services for certain Interim Events including the sale of alcoholic beverages.

4. Tingley Coliseum Hospitality Suite.

This is a large room located on the second floor, north end, of Tingley Coliseum which is equipped with a wet bar. Concessionaire will be required to provide a bartender prior, during and after each performance at Tingley Coliseum during the Annual Event. For Interim Events, the room is used by performing artists or as a catered VIP lounge. Concessionaire will be required to provide a bartender and liquor service for clients of Tingley and will be reimbursed by said clients for such services.

5. Other buildings, special events, temporary venues, festivals stands.

From time to time, certain events may require temporary alcohol and non-alcohol beverage sales locations. Concessionaire may be required by Fair to provide such services. Concessionaire will not have a concession for the service of alcoholic beverages at any Interim Event unless the Fair requires service at that event by Concessionaire. Hours of service and number of concessions locations needed will be determined by the Fair and will be tailored to the needs of each event. The Fair may allow other entities to provide concession services for certain Interim Events including the sale of alcoholic beverages.

6. Alcohol-Free Days.

It is possible that the Fair will designate alcohol-free day(s) during the Annual Event. The number of days so designated is at the discretion of the Fair.

7. Venue Configuration.

All venue configuration and hours of operation are subject to change during the term of the agreement.

8. Licenses and Permits.

Concessionaire will be responsible for obtaining all necessary licenses, permits and approvals for its concession operations at Expo New Mexico. Concessionaire must meet all requirements set forth by all applicable agencies to lease the Fair’s governmental liquor license to provide concession services. Concessionaire shall pay all of its wholesaler debt within thirty (30) days, or as required by wholesaler, of invoicing. The Fair has the right to inspect records including wholesaler billings and public records residing at the New Mexico Department of Public Safety, Special Investigations

Division.

9. **Office Hours.**

Concessionaire will be required to maintain on-site office hours from open to close of show times or at times designated by the Fair during the Annual Event and Interim Events.

10. **Fire and Safety Standards.**

Concessionaire will be required to comply with all current Fire and Safety standards of the New Mexico State Fair, attached hereto as Exhibit "D," "Fire and Safety Standards," of Appendix "B," "Contract Terms and Conditions." These Fire and Safety Standards are subject to change and it is Concessionaire's responsibility to be familiar with the most current version.

III. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

A. Sequence of Events

The Procurement Manager will make every effort to adhere to the following schedule. However, departure therefrom shall not invalidate a procurement where Fair management determines the departure not material.

	ACTION	RESPONSIBILITY	DATE (if known)
1.	Issue of RFP	Fair	10/15/19
2.	Pre-proposal conference (if any)	Fair, Potential Offerors	10/22/19 10:00AM
3.	Distribution List Response	Potential Offerors	Date shown on Acknowledgement of Receipt Form
4.	Deadline to submit additional questions	Potential Offerors	10/30/19 2:00 PM
5.	Response to written questions/RFP amendments	Fair	11/4/2019
6.	Submission of proposal	Offeror	11/14/2019 2:00 PM
7.	Proposal evaluation	Evaluation Committee	
8.	Selection of Finalists	Evaluation Committee	
9.	Best and Final Offers from finalists	Offeror	
10.	Oral presentation by finalists (if any)	Offeror	
11.	Contract finalization	Fair, Offeror	3 business days
12.	Contract award	Fair Management	
13.	Protest deadline	Offeror	15 calendar days after knowledge of facts or occurrences giving rise to the protest

B. Explanation of Events

The following paragraphs describe the activities listed in the sequence of events shown in Section III, Paragraph A.

1. Issue of RFP

This RFP is being issued by the Fair.

Additional copies of the RFP can be obtained from the Procurement Manager.

2. Pre-Proposal Conference

A pre-proposal conference and site tour will be held on October 22, 2019 at 10:00 AM at the African American Performing Arts Center located on the New Mexico State Fairgrounds. A public log will be kept of the names of potential offerors that attended the pre-proposal conference. **Attendance at the pre-proposal conference is not a prerequisite for submission of a proposal.**

3. Distribution List Response Due

Potential offerors should hand deliver or return by facsimile or by registered or certified mail the "Acknowledgement of Receipt Form" that accompanies this document (see Appendix "A") to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by the date stated on the form.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.

Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and in such case, the potential offeror's organization name shall not appear on the distribution list.

4. Deadline to Submit Additional Written Questions.

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until 2:00 p.m. local time on Wednesday, October 30, 2019. All written questions must be addressed to the Procurement Manager (See Section I, Paragraph C.)

5. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed to all potential offerors whose organization name appears on the procurement distribution list. An "Acknowledgement of Receipt Form" will accompany the distribution package. The form should be signed by the offeror's representative, dated, and hand-delivered, or returned by facsimile or by registered or certified mail by the date indicated thereon. Failure to return this form shall constitute a presumption of receipt and withdrawal from the procurement process. Therefore, the offeror's organization name shall be deleted from the procurement distribution list.

Additional written requests for clarification of distributed answers and/or amendments should be received by the Procurement Manager no later than five (5) days after the answers and/or amendments were issued.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 PM MOUNTAIN STANDARD TIME ON THURSDAY, NOVEMBER 14, 2019. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal at the Expo New Mexico receptionist desk by the receptionist on duty in the administration building upon their arrival. Proposals must be addressed to the Procurement Manager and delivered to the receptionist on duty at the address listed in Section I, Paragraph C. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the "Liquor Services" RFP 19-005. Proposals submitted by facsimile will not be accepted.

NO EXCEPTIONS TO THIS DEADLINE WILL BE ALLOWED. For the purpose of determining the timeliness of a proposal, cell phone time in the reception area of the administration building of the New Mexico State Fairgrounds will be used to sign in any and all competitive proposals and will be deemed to be the "Official Time."

A public log will be kept of the names of all offeror organizations that submitted proposals. Pursuant to NMSA 1978 § 13-1-116, the contents of any proposal shall not be disclosed to competing offerors prior to contract award.

7. Evaluation of Proposals

The evaluation of proposals will be performed by an Evaluation Committee selected by the management of Expo New Mexico. This process will take place following the due date specified in Paragraph III.6. During this time, the Procurement Manager may, at her option, initiate discussions with offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the offerors.

8. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist offerors. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations, if any, will be determined at this time.

9. Best and Final Offers from Finalists

Finalist offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers. Best and final offers may be clarified and amended in writing at the finalist offeror's oral presentation.

10. Oral Presentation by Finalists

Finalist offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each offeror presentation.

11. & 12. Contract Award & Finalization

After review of the Evaluation Committee Report, a contract will be sent for execution to the offeror deemed by the evaluation committee as most advantageous to the Fair. The Offeror will return the signed contract to the Fair, and the signed contract will then be submitted to Fair management for consideration and possible award. Please be advised that no contract with the Fair is legal and binding until approved by and executed by the general manager.

The contract will be awarded to the responsible offeror or offerors whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

In the event that mutually agreeable terms cannot be reached within the time specified, the Fair reserves the right to finalize a contract with the next most advantageous offeror without undertaking a new procurement process.

13. Protest Deadline

Any protest by an offeror must be timely and in conformance with NMSA 1978 §13-1-172 and applicable procurement regulations and must be filed no later than 15 calendar days after knowledge of the facts or occurrences giving rise to the protest. Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence. Protests must be written and must include the name and address of the protestor and the request for proposals title. The protest must provide any other information requested by the Procurement Manager. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Procurement Manager. The protest must be delivered to the Procurement Manager.

C. General Requirements

This procurement will be conducted in accordance with the State Purchasing Agent's procurement regulations, GSD Rule 1.4.1 NMAC. (Available on the internet at www.state.nm.us/spd)

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. Incurring Cost

Any cost incurred by the offeror in the preparation, transmittal or presentation of any proposal or material submitted in response to this Request for Proposals will be borne solely by the offeror. In addition, the New Mexico State Fair Commission will not be responsible for any costs or expenses incurred by the offeror in making its oral presentation.

3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the Fair. The Fair will make contract payments to only the prime contractor.

4. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime Contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

5. Amended Proposals

An offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Fair's personnel will not merge, collate, or assemble proposal materials.

6. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The offeror must submit a written withdrawal request signed by the offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final offer, if one is submitted.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in

order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an offeror has made a written Request for Confidentiality, the procurement officer shall examine the offeror's Request for Confidentiality and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates the State of New Mexico or the Fair to the eventual rental, lease, purchase, etc., of any product, equipment or services offered until a valid written contract is approved by Fair management and other appropriate authorities.

10. Termination

The New Mexico State Fair Commission reserves the right to cancel this Request for Proposals at any time for any reason, and to reject any or all proposals, in whole or in part, submitted in response to this Request for Proposals.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to Concessionaire. The Fair's decision as to whether sufficient appropriations and authorizations are available shall be accepted by the Concessionaire as final.

12. Legal Review

The Fair requires that all offerors agree to be bound by the General Requirements contained in this RFP. Offerors are encouraged to seek legal counsel for a review of this document. Any offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any agreement with offerors that may result shall be governed by the laws of the State of New Mexico. Venue shall lie in Bernalillo County, State of New Mexico.

14. Basis for Proposal

Only information supplied by the New Mexico State Fair in writing through the

Procurement Manager or in this Request for Proposals should be relied upon in preparation of offeror proposals.

15. Contract Terms and Conditions

The contract between the Fair and a contractor will follow the format specified by the Fair and contain the terms and conditions set forth in Appendix "B," "Contract Terms and Conditions." However, the Fair reserves the right to negotiate with a successful offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful offeror's proposal will be incorporated into the contract.

Should an offeror object to any of the Fair's terms and conditions, as contained in this Section or in Appendix "B," that offeror must propose specific alternative language that would be acceptable to the Fair. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Fair and will result in disqualification of the offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the Fair.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Fair and the selected offeror and shall not be deemed an opportunity to amend the offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Procurement Manager will reject the proposal of any Offeror who is not a responsible offeror or fails to submit a responsive offer as defined in Sections NMSA 1978 §§ 13-1-83 and 13-1-85.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities.

20. Change in Contractor Representatives

The Fair reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Fair, meeting its needs adequately.

21. Notice

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal misdemeanor penalties for its violation. In addition, the New Mexico criminal

statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

22. Ownership of Proposals

All documents submitted in response to this Request for Proposals become the property of the State of New Mexico, New Mexico State Fair Commission.

23. Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section III.B.5, Response to Written Questions / RFP Amendments).

24. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Fair, the Version maintained by the Fair shall govern.

25. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

A. New Mexico Business Preference

B. New Mexico Resident Veterans Business Preference

In addition to a copy of the certification, the Offeror should sign and complete the Resident Veterans Preference Certificate form, as provided in this RFP.

An agency shall not award to an offeror both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply when the expenditures for this RFP include federal funds.

IV. RESPONSE FORMAT AND ORGANIZATION

A. Number of Responses

Offerors shall submit only one proposal.

B. Number of Copies

Offerors shall deliver six (6) signed, identical sealed copies of their proposal to the location specified in Section I, Paragraph C on or before the closing date and time for receipt of proposals.

C. Proposal Format

All proposals must be typewritten or computer generated on standard 8 1/2 by 11 inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder. Pages must be numbered sequentially. Proposal must be readily separable from the binder in order to facilitate copying by the Fair, should extra copies be necessary. Ring binders, presentation folders, and report folders are acceptable; comb binders, strip binders and other binders of a similar nature are NOT acceptable.

1. Proposal organization

The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

- a. Letter of Transmittal (Appendix "D")
- b. Table of Contents
- c. Response to Mandatory Specifications
- d. Response to Other Specifications
- e. Offeror's Additional Terms and Conditions
- f. Other Supporting Material

Within each section of their proposal, offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. **All discussion of proposed costs, rates or expenses must occur only in the section with the cost response form.**

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

2. Letter of Transmittal

The proposal must be accompanied by a letter of transmittal. The letter of transmittal must:

- a. Identify the name and address of the submitting organization;
- b. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the offeror to contractually obligate the organization;
- c. Identify the name, title, telephone and fax numbers, and e-mail address of person authorized to negotiate the contract on behalf of the organization;
- d. Identify the names, titles, telephone and fax numbers, and e-mail address of persons to be contacted for clarification.
- e. **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section III, Paragraph C.1, the Procurement Code Regulations GSD Rule 1.4.1 NMAC.
- f. Be signed by the person authorized to contractually obligate the organization.
- g. Acknowledge receipt of any and all amendments to this RFP.

Offeror should use the form found in Appendix “D” in response to this specification.

V. SPECIFICATIONS

A. Mandatory Specifications

No points will be awarded for meeting the Mandatory Specifications, but failure to meet them will result in rejection of the Offeror's proposal.

1. Contract Terms and Conditions

Offeror should use the form found in Appendix "E" in response to this specification.

Offerors must respond to the requirements found in Appendix "B," "Contract Terms and Conditions." Specifically state whether or not offeror is prepared to meet each of the requirements set forth in paragraphs 1 through 58, on an item by item basis in the order in which they appear. It is not necessary to re-type each paragraph. An offeror may state that he/she is prepared to meet each of the requirements by referencing the specific paragraph numbers to which the offeror is agreeing. If the offeror is not prepared to meet certain requirements, state the paragraph number(s) to which you are referring at this point and state your objections with specificity.

2. Qualifications and Experience

Offeror must meet the following minimum qualifications and must complete the "Qualifications and Experience Form" which is attached as Appendix "F".

- a. Offeror must have been engaged in restaurant with alcoholic beverage service, catering and/or concession operations with alcoholic beverage service serving large crowds similar to those at Expo for the past three (3) years and must have generated gross revenues of at least \$500,000 in that business for each of the past three (3) years.
- b. Offeror must demonstrate financial resources and stability, which in the opinion of the Fair, are adequate to assure full and proper performance of the contract.

3. Liquor License

The Fair presently holds a governmental liquor license. Please prepare a cost proposal (Appendix "C") based on the use of the Fair's governmental license.

4. Campaign Contribution Disclosure Form

Offeror must complete and sign the Appendix "G", Campaign Contribution Form. This form must be submitted with the offeror's proposal whether an applicable contribution has been made or not.

5. Credit with Liquor Purveyors

Offeror must submit with its proposal proof of its ability to obtain credit with Liquor Purveyors. At a minimum, the Offeror must submit a letter from liquor purveyors certifying that if a contract is awarded as a result of this RFP, the purveyors will extend credit to Offeror.

B. Other Specifications

1. Proposed Menu

Include complete menus and portion sizes for the alcoholic beverage and non-alcoholic beverage concession operations at all applicable locations identified in Section II, Paragraph C. State the anticipated charges to the patron for purchasing concession items and portion sizes where possible. The sizes, prices, quantity and brands of all alcoholic beverages sold must be approved by Fair.

2. Concessionaire Personnel

Concessionaire shall provide a sufficient amount of attendants and personnel to service the public with respect to its business operation. All attendants and personnel required by law to have a certified Alcohol Server Permit issued by the Alcohol Beverage Control Division of the Regulation and Licensing Department of New Mexico shall have a current valid Permit at all times while serving alcoholic beverages under this Agreement. Copies of all employees' server permits must be provided to the Fair upon request. Personnel shall wear identification badges and be clean and neat in appearance. Personnel will be required to wear uniforms. Uniforms will be provided by Concessionaire at no cost to Fair.

- a. Describe proposed staffing, including quantity and individual duties.
- b. Uniforms must be collared and have permanent logo on them. Describe uniforms, providing drawings or photographs.

3. User Identification Program

Concessionaire will be responsible, on a year round basis, for providing wristbands or other identifying items required by the Alcohol Beverage Control Division to identify consumers of alcohol who are of legal age. Offeror must propose an identification program which will be subject to the Fair's approval.

4. Temporary Booths/ Mobile Units

In its proposal, Offeror should describe in detail the types of temporary booths/mobile units proposed. Attach drawings or photographs.

5. Inventory Control Plan

In its proposal offeror must submit an inventory control plan to monitor sales at all locations for Interim Events as well as the Annual Event. Inventory is subject to audit by Fair personnel. The Inventory control plan must be in place within thirty (30) days of contract approval.

6. Sponsorship

Concessionaire shall provide a written sponsorship proposal to the Fair for a minimum of \$15,000.00 each year of the Agreement in the form of cash or in-kind product. Sponsor benefits will be based upon the overall Sponsorship Value. In kind products may range from staff T-shirts, catering or VIP services during the Annual Event. The in-kind products payment shall be allowed only when products are approved by Fair in writing in advance.

7. Percentage of Gross Receipts

Offeror must propose a separate percentage of Gross Receipts it will pay to the Fair in each of the following categories:

- a. The sale of non-alcoholic beverage items. This category includes the hawking of non-alcoholic beverages and applies to both the **Annual Event and Interim Events**. Propose a fixed percentage for this type of service.
- b. The sale of alcoholic beverages during **Interim Events**. Propose a fixed percentage for this type of service.
- c. The sale of alcoholic beverages during the **Annual Event**. Propose a fixed percentage for this type of service.

(Offeror should use the form found in Appendix “C” in response to this specification)

VI. EVALUATION

A. Evaluation Point Summary

The following is a summary of evaluation factors with a point value assigned to each. These weighted factors will be used in the evaluation of individual offeror proposals. Only finalist offerors will receive points for oral presentations (if any).

SPECIFICATION	AVAILABLE
1. Proposed Menu	75
2. Proposed Personnel and Uniforms	50
3. User Identification Program	25
4. Temporary Booths/Mobile Units	50
5. Inventory Control Plan	100
6. Sponsorship Program	100
7. Qualifications and Experience	250
8. Gross Receipts	
a) Sale of non-alcoholic beverages	100
b) Sale of alcoholic beverages during interim events	250
c) Sale of alcoholic beverages during annual event	250
SUB-TOTAL	1250
9. Oral Presentation (if any)	100
TOTAL	1350
10. New Mexico Preference- Resident Vendor Points	
11. New Mexico Preference – Resident Veterans Points	

B. Evaluation Criteria

Points will be awarded on the basis of the following weighted evaluation criteria:

1. Proposed product mix and menu pricing: Points will be awarded based on the desirability, appropriateness, and product mix of menu items proposed. Size of portions and prices will be also be considered.
2. Proposed staff and appearance of proposed uniforms. Points will be awarded based on the desirability and practicality of the uniforms described and illustrated by Offeror.
3. User Identification Program. Points will be awarded on the perceived effectiveness and efficiency of proposed user identification program.
4. Temporary Booths/Mobile Units. Points will be awarded based on the desirability, design, functionality and appearance of proposed booth and/or finishes provided with proposal.
5. Inventory Control Plan. Points will be awarded based on the perceived integrity and efficiency of the inventory control plan provided with proposal.
6. Sponsorship. Points will be awarded according to the following formula.

$$\frac{\text{This Offeror's Dollar Amount}}{\text{Highest Offeror's Dollar Amount}} \times 100 = \text{Award Points}$$

7. Qualifications and Experience. Points will be awarded based on the Offeror's overall qualifications, services available, and experience.
8. Percentage of Gross Receipts. Points will be awarded on proposed percentage of Gross Receipts Offeror will pay to Fair. Points will be awarded according to the following formula.

- a) Sale of **non-alcoholic beverage items for Annual and Interim Events** with table service or counter service provided (includes hawking of non-alcoholic beverages) will be evaluated using the following formula: **Offeror may propose no less than 25%.**

$$\frac{\text{This Offeror's Percentage}}{\text{Highest Offeror's Percentage}} \times 100 = \text{Award Points}$$

- b) Sale of **alcoholic beverages during Interim Events** will be evaluated using the following formulas. **Offeror may propose no less than 25%.**

$$\frac{\text{This Offeror's Percentage}}{\text{Highest Offeror's Percentage}} \times 250 = \text{Award Points}$$

- c) Sale of **alcoholic beverage during the Annual Event** will be evaluated using the following formula: **Offeror may propose no less than 35%.**

$$\frac{\text{This Offeror's Percentage}}{\text{Highest Offeror's Percentage}} \times 250 = \text{Award Points}$$

10. Oral Presentations: Finalists may be invited to make oral presentations. If invited, the Offeror's will present their proposals.

11. New Mexico Preferences: Percentages will be determined based upon the point based system outlined in NMSA 1978, § 13-1-21 (as amended)

A. New Mexico Business Preference

If the Offeror has provided its Preference Certificate, the Preference Points for a New Mexico Business is 5%.

B. New Mexico Resident Veterans Business Preference

If the Offeror has provided its Preference Certificate **and** the Resident Veterans Certification Form, the Preference Point are one of the following:

- 10% for less than \$1M (prior year revenue)
- 8% for more than \$1M but less than \$5M (prior year revenue)
- 7% for more than \$5M (prior year revenue)

C. Evaluation Process

1. All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the offeror for clarification of the response as specified in Section III, Paragraph B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section III, Paragraph C.18.
4. Responsive proposals will be evaluated on the factors in Section V which have been assigned a point value. The responsible offerors with the highest scores will be selected as finalist offerors based upon the proposals submitted. Finalist offerors who are asked to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from the oral presentations, if any, will be added to the previously assigned points to attain final scores. The responsible offeror whose proposal is most advantageous to the Fair, taking into consideration the evaluation factors in Section V, will be recommended for contract award to the New Mexico State Fair management as specified in Section III, Paragraph B.11. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX "A"
REQUEST FOR PROPOSALS
NEW MEXICO STATE FAIR
LIQUOR SERVICES

ACKNOWLEDGEMENT OF RECEIPT FORM NUMBER ONE

In acknowledgement of receipt of this Request for Proposals, the undersigned agrees that he/she has received a complete copy, consisting of a cover page, a table of contents, seventy-three (73) pages of text that include Appendices A through K.

This acknowledgement of receipt should be signed and returned to Antoinette Kulinna no later than 2:00 PM MST on October 22, 2019. Only potential offerors who elect to return this form will receive copies of all offerors' written questions and the Fair's written responses to those questions as well as RFP amendments, if any are issued. Response by fax is acceptable for this form, but not for proposals.

FIRM: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE _____ FAX _____

NO: _____ NO: _____

REPRESENTED _____

BY: _____

(Please print)

TITLE _____

E-MAIL ADDRESS: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to this request for proposals.

Firm **DOES OR DOES NOT** (circle one) intend to respond to this request for proposals.

APPENDIX "B"
CONTRACT TERMS AND CONDITIONS
STATE OF NEW MEXICO
NEW MEXICO STATE FAIR COMMISSION
CONCESSION SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the **State of New Mexico, New Mexico State Fair**, hereinafter referred to as the "Fair" and _____, hereinafter referred to as the "Contractor".

1. Definitions.

"Annual Event" means the Annual State Fair Event traditionally held during the month of September at Expo New Mexico in Albuquerque, New Mexico. The beginning date and the number of days allocated for the Annual Event is subject to change at the discretion of the Fair.

"Concessionaire or Contractor" means successful offeror awarded the contract.

"Expo New Mexico" or "Expo" is the facility that houses the properties owned by the State of New Mexico, New Mexico State Fair Commission.

"Gross Receipts" means total revenue from operation after removal of New Mexico Gross Receipts Tax, unless otherwise defined.

"Interim Event(s)" means any event held at Expo New Mexico other than the Annual Event.

"Request for Proposal" or "RFP" means all documents, attached or incorporated by reference, used for soliciting proposals.

The terms "must," "shall," "will," and "require" identify a mandatory item or factor. Failure to comply with a mandatory item or factor will result in the rejection of the Offeror's proposal.

The terms "can," "may," "should," "preferably," or "prefers" identify a desirable or discretionary item or factor.

2. Scope of Work.

Concessionaire shall provide a non-exclusive concession service for serving alcoholic beverages, and non-alcoholic beverages at certain locations during the Annual Event and at certain locations during Interim Events held at Expo New Mexico. Concessionaire will be allowed to sell soft drinks and bottled water at all bar locations as a matter of convenience to customers. The Concessionaire has the duty to perform this Agreement in a manner consistent with its terms and conditions. Hours of service and number of concessions locations needed will be determined by the Fair and will be tailored to the needs of each event. The Fair may allow other entities to provide concession services for certain

Interim Events including the sale of alcoholic beverages. The Concessionaire will not have a concession for the service of alcoholic beverages at any Interim Event unless the Fair requires service at that event by Concessionaire. Hours of service and number of concessions locations needed will be determined by the Fair and will be tailored to the needs of each event.

Major locations for the Annual Event and Interim Events and the requirements and restrictions for each area are as follows:

- A. **Tingley Coliseum ("Tingley").** During the Annual Event and Interim Events, Concessionaire will be required to serve alcoholic and non-alcoholic beverages from open to close of show times or at times designated by the Fair. The Fair may request the Concessionaire to provide beverage wait service to certain seat locations and may also request Concessionaire to provide non-exclusive alcoholic and/or non-alcoholic beverage hawking services inside the arena during both Interim Events and Annual Events selected by the Fair.
 - B. **Villa Hispana.** Concessionaire shall serve alcoholic beverages in the Venue during the Annual Event and during Interim Events when requested by Fair.
 - C. **Manuel Lujan Building.** Concessionaire shall serve alcohol and non-alcoholic beverages in the Lujan Exhibit Hall during Interim Events as requested by and determined by Fair.
 - D. **Tingley Coliseum Hospitality Suite.** The Concessionaire will be required to provide a bartender prior to, during and after each performance at Tingley during the run of the Annual Event. For Interim Events, the room is used by performing artists or as a catered VIP lounge. Concessionaire will be required to provide a bartender and liquor service for clients of Tingley and will be reimbursed by said clients for such services.
 - E. **Other Locations and licensing requirements.** Concessionaire is required to sell non-alcoholic and alcoholic beverages at such events and in such locations as requested by Fair. If Concessionaire is requested to sell alcoholic beverages, Concessionaire is required to do so in accordance with the terms and conditions contained in this Agreement. Concessionaire will be responsible to obtain all necessary licenses, permits and approvals for its concessions at Expo New Mexico.
 - F. **Office Hours.** Concessionaire will be required to maintain on-site office hours from open to close of show times or at times designated by the Fair, during Interim Events and the Annual Event.
3. **Dispensation of Alcoholic Beverages.**
- A. The Fair will retain rights to determine which brands of products are dispensed, including, beer, wine, and spirits. Concessionaire must maintain representative brands.
 - B. The Concessionaire is required to sell alcoholic beverages at such events and in such locations as requested by Fair, including closing the sale of alcoholic beverages at certain times during certain events.
 - C. The Fair may authorize any person or entity to sell or serve alcoholic beverages at Interim Events or the Annual Event. In such a case that person

or entity will be responsible for obtaining all licenses and permits and insurance. If necessary the Concessionaire will place that portion of its licensed premises at Expo New Mexico (the fairgrounds) in voluntary temporary suspension if required by the Alcohol Beverage Control Division.

- D. It is possible that the Fair will designate alcohol-free day(s) during the Annual Event. The number of days so designated is at the discretion of the Fair and shall not alter the compensation requirements of this Agreement.
- E. Concessionaire shall provide a sufficient amount of attendants and personnel to service the public with respect to its business operation. All attendants and personnel required by law to have a certified Alcohol Server Permit issued by the Alcohol Beverage Control Division of the Regulation and Licensing Department of New Mexico shall have a current valid Permit at all times while serving alcoholic beverages under this Agreement. Copies of all employees' server permits must be provided to the Fair upon request. Personnel shall wear identification badges and be clean and neat in appearance. Personnel will be required to wear approved uniforms.

4. Non-Exclusive Performance.

Concessionaire's right to operate the above-described business on the Fair's premises is a non-exclusive right. The possibility exists that some events, at which alcoholic beverages will be served, will be excluded from this Agreement and will be operated under separate agreements and separate insurance coverage with other vendors and other dispensers.

5. Types of Beverages Served.

- A. Concessionaire will assure that a sufficient supply of beverage products to fully stock its business during Interim Events and the Annual Event at Expo New Mexico. Each menu shall conform to all laws concerning truth-in-advertising, and Concessionaire shall not misrepresent to its customers the quality or grade of products sold, the point of origin, size, weight, or portion of beverage, or utilize false or deceptive merchandising terms or advertising. The Fair reserves the right to inspect and sample Concessionaire's beverage items or to conduct other tests to determine whether the goods being sold or distributed meet quality standards.
- B. The Fair reserves the right to make changes in the types of beverages served by Concessionaire and to reduce or add to the number of beverage items sold by Concessionaire. This menu shall be subject to approval by the Contract Administrator. If Concessionaire wishes to change menu prices, delete items from, or add items to its menu, Concessionaire shall submit the new menu and prices (if applicable) to the Contract Administrator for prior written approval. Concessionaire shall not offer for sale any beverage or engage in any activity not specifically provided for under the terms of the Agreement, unless otherwise authorized in writing by the Contract Administrator. Concessionaire shall sell beverages only in accordance with the terms of the Agreement. All items listed on the proposed and approved menu must be available for sale at all time.

6. Facilities and Services provided by the Fair.

- A. In addition to the concession locations described in paragraph 2, “Scope of Work,” above, the Fair will provide office space during interim events and the Annual Event, and beer keg storage space. Such locations and square footage will be determined by Fair.
- B. Fair shall provide no services to Concessionaire, except as otherwise noted in this Agreement, to assist it in its concession operation unless Concessionaire reimburses Fair for the cost of said services, including utility service charges. Further, Concessionaire must make arrangements for its telephone service, storage of equipment, and must perform normal maintenance of any and all equipment or materials provided by Fair to be used by Concessionaire in its operations.
- C. The Fair agrees to provide the equipment listed in the attached Exhibit “B”, “Equipment Owned by Fair.” Said equipment is for Contractor’s use during the term of this Agreement. Contractor will be required to assume all costs associated with transportation and care of said equipment while in the possession of the Contractor. This equipment must be returned upon termination of the Agreement to a location as directed by the Fair. This equipment must be returned in the same working condition as it was received by Contractor. Any and all costs associated from damage or use of said equipment during the time that the equipment is in Contractor’s possession will be the sole responsibility of the Contractor.

7. User Identification Program.

Concessionaire will be responsible on, a year-round basis, for implementing an identification program and providing wristbands to identify consumers of alcohol who are of legal age. The identification program is subject to the Fair's approval and must comply with provisions of the Liquor Control Act and the New Mexico Liquor Regulations.

8. Sampling.

The Possibility exists that the Fair will permit other vendors or sponsors to provide free samples of products to patrons of the Fair at any location on the fairgrounds, at any time. These products may be in direct competition with Concessionaire’s products. Samples given to the public by Concessionaire must have the prior written consent of Fair.

9. Rules and Regulations

The Concessionaire will be required to abide by rules and regulations listed in Exhibit “C”, which are subject to change by the Fair during the term of this Agreement. Further, the Concessionaire will be required to abide by the State Fire Marshal’s regulations, which is attached to this contract as Exhibit “D” or any other regulations enforced by the State Fire Marshal’s office. The Fair reserves the right to establish and enforce whatever policy appears necessary for the regulation of concessions. It is the Concessionaire’s responsibility to make sure that all rules and regulations in which they are following are current.

10. Consideration.

- A. In consideration of this Agreement, Concessionaire agrees to pay Fair_____ percent (%) of Gross Receipts from the sales of non-alcoholic beverages. This category includes the hawking of non-alcoholic beverages. All payments to Fair with regard to non-alcoholic beverage sales will be based on cash register tape/reports reconciliation. This applies to the Annual Event and Interim Events.
- B. In consideration of this Agreement, Concessionaire agrees to pay Fair _____ percent (%) of Gross Receipts from the sales of alcoholic beverages during the Annual Event. All payments to Fair with regard to alcoholic beverage sales will be based upon cash register tape /reports reconciliation.
- C. In consideration of this Agreement, Concessionaire agrees to pay Fair _____ (%) of Gross Receipts from the sales of alcoholic beverages during the Interim Events. All payments to Fair with regard to alcoholic beverage sales will be based upon cash register tape/reports reconciliation.
- D. Interim Event Payments: Payments must be received within 48 hours of each event.
- E. Annual Event Payments- Payments must be received daily for each day of the Fair.
- F. Past Due Interest Rate. If payments and fees are not received when due, the Concessionaire shall pay an interest charge of one and one-half percent (1-1/2%) per month (eighteen percent annually) on the past due amount for each month or partial month that any payment due is not paid ("Past Due Interest Rate").

11. Sponsorship.

Concessionaire shall provide a Sponsorship to the Fair in the amount of \$ (insert amount from proposal) cash / in-kind each year of the Agreement. In consideration of the sponsorship support provided by Sponsor, Fair shall provide Sponsor with the following during the Annual Event.

(Data shall be inserted based on value of the Sponsorship)

Fair reserves all rights to solicit sponsors for naming rights for bars for Interim Events and the Annual Event and retain all revenue derived therefrom. Fair retains rights to all locations on the Fairgrounds.

12. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL SIGNED BY THE GENERAL MANAGER OF THE FAIR. This Agreement shall terminate on December 31, 2020 unless terminated pursuant to paragraph 13 (Termination), or paragraph 50

(Appropriations). The Fair reserves the option of renewing the contract for a maximum of three additional one year periods, or any combination of years and/or months not to exceed a total of four years, subject to written concurrence by the Contractor and Fair.

13. Termination.

A. Grounds. The Fair may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Fair's uncured, material breach of this Agreement.

B. Notice; Fair Opportunity to Cure.

1. Except as otherwise provided in Paragraph (13)(B)(3), the Fair shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Fair written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Fair's material breaches of this Agreement upon which the termination is based and (ii) state what the Fair must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Fair does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Fair does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Fair; (ii) if the Contractor is in material breach of this Agreement; (iii) if the Contractor engages in Conduct Harmful to Fair, as described in Paragraph 14; or (iv) if the Agreement is terminated pursuant to Paragraph 50 (Appropriations).

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Fair's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE FAIR'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

D. Termination Management. Immediately upon receipt by either the Fair or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Fair; 2) comply with all directives issued by the Fair in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Fair shall direct for the protection, preservation, retention or transfer of all property titled to the Fair and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the

Contractor with contract funds shall become property of the Fair upon termination and shall be submitted to the Fair as soon as practicable.

14. Conduct Harmful to Fair.

A. In the event the Contractor engages in conduct, whether or not during working hours, which endangers the health or safety of the public, contestants, or other persons on the Fair's grounds, or tends to injure the property or reputation of the Fair, Fair shall have the right to immediately terminate Contractor's services.

B. Contractor assumes the full responsibility for the character, acts, and conduct of all persons under its employ and direction. Fair reserves the right to remove any person deemed by Fair detrimental to the Fair or the operations of its business.

15. Contract Administrator.

The Contract Administrator for this Agreement will be the Fair's **Concession Manager**. This individual is designated to administer the Agreement on behalf of the Fair. The Fair's Contract Administrator may be changed only by means of writing by the Fair's general manager.

16. Insurance.

A. The Concessionaire shall procure and maintain policies of insurance of commercial general liability insurance and vehicle liability insurance for all vehicles used in its operation at the Fair, as further described below. All such policies of insurance shall have liability limits in amounts not less than five million dollars (\$5,000,000.00) single limit liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for premises (if applicable), operations, and the Concessionaire's contractual liability to the Fair hereunder. Contractual liability coverage shall specifically insure the Indemnification provision of this Agreement. The insurance policies shall contain "products" and "completed operations" coverage (if applicable) and shall not be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to Fair premises, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. In addition, Contractor must provide to the Fair a certificate of insurance naming the **New Mexico State Fair** as an additional insured. A copy of the insurance policy and all riders or amendments naming the **New Mexico State Fair** as an additional insured, must be available upon request of the Fair.

B. Increased Limits. If, during the term of this Agreement, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, §§ 41-4-1 through 41-4-27) to an amount greater than \$5,000,000, the Fair may require Concessionaire to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

C. Contractor's insurance carrier must be admitted to do business in the State of New Mexico and be listed in the AM Best rating guide with a general policy holder's rating of B+ or higher and a financial category of VII or higher (B+VII). A non-admitted carrier approved by the New Mexico Department of Insurance will be considered if it has

an AM Best rating of B+VII or higher.

D. Insofar as the above-described insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, Fair shall be included as an additional insured, provided such liability insurance coverage shall also extend to damage, destruction and injury to Fair-owned or Fair-licensed property and Fair personnel, and caused by or resulting from work, acts, operations or omissions of Contractor. Fair shall have no liability for any premiums charged for such coverage, and inclusion of Fair as an additional insured is not intended to, and shall not, make Fair a partner or joint venturer with Contractor in its operations at Expo New Mexico.

E. Liquor Liability Insurance. Concessionaire shall obtain Liquor Liability Insurance policies such as an Alcoholic Beverages Purveyor's Insurance policy or the equivalent thereof, in the amount of two million dollars (\$2,000,000) for each occurrence and six million dollars (\$6,000,000) in the aggregate.

17. Security Deposit

Within thirty (30) days after the execution of this Agreement, Concessionaire shall provide the Contract Administrator a Surety Bond ("Bond") in the amount of \$100,000.00. A \$100,000.00 Bond shall be in place for each year of the Agreement. The Bond will be held by the Fair as security for the full and faithful performance of all the terms, covenants and conditions to be performed by the Concessionaire under this Agreement and the following:

- A. The Concessionaire shall be ready for operation effective date of contract;
- B. payment of any amounts due to the Fair under the terms of the RFP or the Agreement;
- C. payment of any damage or loss of Fair's property;
- D. payment of removal and storage expense incurred by the Fair if the Concessionaire does not promptly remove his property from the premises within fifteen (15) days after the contract is terminated; and
- E. payment of costs incurred by the Fair at the time the contract is terminated if the Concessionaire fails to leave premises in satisfactory condition.

The Bond shall be released upon the termination of this Agreement, provided the Concessionaire has fully performed. The Bond shall be made payable on demand to the New Mexico State Fair.

The Bond shall be issued exclusively to the Fair as obligee by a surety company licensed to conduct business in the State of New Mexico and which is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in the Federal Register by the U.S. Treasury Department or its successor agency.

Documents evidencing this security deposit shall provide that the same shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of this Agreement as herein provided. If payments required by Concessionaire under the terms of this Agreement are not made in accordance with the

payment provisions set forth in this Agreement, Fair shall have the right to forfeit, take, and use so much of such security deposit as may be necessary to make such payment in full and to exercise any other legal remedies to which it may be entitled. If Concessionaire fails to keep the Bond current, the Fair may terminate the Agreement pursuant to paragraph 14, "Termination" or the Fair may charge a fee of \$500.00 per day of non-compliance.

18. Reporting Requirements.

- A. Concessionaire shall operate an approved electronic cash register or POS system at each point of sale and the registers' display must be visible to the public. The register shall be obtained at the Concessionaire's own expense. The register provided must meet the specifications as set forth in Exhibit "A" attached to this document. At any time, Fair reserves the right to elect to require Concessionaire use Fair owned POS and processing system. Concessionaire shall register all business transactions as an entry into the cash register or POS system and shall submit required tape/report readings to the Fair representative. Concessionaire hereby grants to the Fair authorization to audit cash register and journal tapes. Failure to comply with this requirement will result in a fine. Repeated violation can result in contract termination.
- B. Concessionaire will submit a gross sales record with supporting documentation to Fair no later than twenty four (24) hours after each event and for each day of the Annual Event for all transactions resulting from its business on the Fairgrounds.
- C. Fair retains the right to audit Concessionaire's business at any time during hours of operation on the Fairgrounds. Auditors will make spot audits that will involve recording one or more cash register records, including cash, paid out receipts, money drops, over rings, etc. Cash register tapes/reports must be available on request for review by the auditor. Concessionaire must comply with any adjustments that are required as a result of an audit/evaluation conducted by the auditor.
- D. Failure to Record. In the event Concessionaire fails to create and/or preserve part or all of the Gross Receipt records required in this Agreement, Concessionaire shall pay Fair the percentage payment on an estimated amount of Gross Receipts for the time period for which such records were not created or preserved, plus eighteen percent (18%) thereon. The estimate of Gross Receipts shall be made by the Fair and shall be based on historical sales of the Concessionaire beverage concessions at the Fair correlated with type of events and tickets sold for the time period involved and/or sales of beverage retail businesses situated in similar circumstances as Concessionaire. Failure of Concessionaire to create and/or preserve such records shall be a material breach of this Agreement by Concessionaire.
- E. Fair shall have the right at any time within three (3) years after termination

of the Agreement to have the books and records of Concessionaire audited during reasonable hours by a certified public accountant including, but not limited to, an audit by the Fair's or a private certified public accountant; and, in the event that such audit shows Concessionaire's Gross Receipts as reported by said certified statement to be more than one percent (1%) in error, detrimental to Fair, Concessionaire shall reimburse Fair for the expense to Fair of such audit; otherwise, Fair shall bear the entire cost of such audit. Any additional moneys found due by such audit shall be paid to Fair within thirty (30) days and shall bear interest at the Past Due Interest Rate from the date such payment was due until paid; and if Concessionaire has overpaid such moneys, Concessionaire shall deduct such excess from the payment next falling due, if any, or be paid such excess by Fair if no payments owing remain. Concessionaire shall not be entitled to charge Fair any interest on such overpayments.

19. New Mexico Environmental Department.

- A. All temporary food service establishments shall comply with the food service regulations of the New Mexico Environment Department. The Environment Department representative may augment such requirements when needed to assure the service of safe food and may prohibit the sale of certain potentially hazardous foods. The representative may modify specific requirements for physical facilities when, in his/her opinion, no health hazard will result.
- B. Concessionaire shall submit permit applications and required fees to the Environment Department, 5500 San Antonio Drive, N.E., Albuquerque, New Mexico 87109.
- C. Concessionaire shall not sell or distribute any food product until a valid food service permit is issued by the New Mexico Environment Department. Any food service operation requiring inspection by a representative of the Environment Department must be set up and ready for inspection at least one-half hour prior to the start of an event.

20. Exclusive Grants by Fair.

- A. The Fair may already have, or may in the future, enter into agreements with suppliers of certain products, which grants to that supplier the exclusive right to have their product sold and advertised at Expo New Mexico. Contractor agrees to be bound by any such agreement the Fair may grant. All advertising and promotional activities connected with the Fair must be reviewed and approved by the Fair. In no case may the Contractor engage in conduct that conflicts with Fair's exclusive contracts.
- B. Fair currently has an exclusive contract with a supplier for all carbonated beverages, bottled water, isotonic sports drinks, and energy drinks, sold or dispensed on the Fair's grounds. Concessionaires approved to sell or dispense carbonated beverages, bottled water, isotonic sports drinks, and energy drinks are required to purchase the products from Swire Coca-Cola, USA. Selling, dispensing, or advertising any other brands are prohibited. This includes all signage, cups, fountain taps, posters, etc.

21. Acceptance of Facilities.

The Concessionaire has inspected the facility and accepts the Facility in its present condition.

22. No Other Obligation of Fair.

- A. Concessionaire acknowledges that Fair has made no representations or warranties concerning the suitability of the facilities for Concessionaire's use or for any other use, and that except as expressly provided in the Agreement, Fair shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Premises or any improvements, furnishings, fixtures, trade fixtures or equipment constructed, installed, or used on or in the facilities.
- B. Concessionaire hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of constructing Concessionaire improvements to the facilities, and the costs of furnishings, fixtures, trade fixtures, signs, inventory and equipment needed to operate from the Fair's premises hereunder, that it has done its own projections of the volume of business it expects to generate in operating from the Fair's premises hereunder, that it is relying on its own business judgment concerning its prospects for operating on the Premises under this Agreement on a profitable basis, and that Fair has not made any representations or warranties with respect to such matters.

23. Alterations and Improvements Vest with Fair.

All alterations, concession improvements and fixtures, other than removable trade fixtures, movable equipment and other personal property shall become part of the realty and title shall vest with Fair upon completion of the installation or construction of such alterations and/or improvements. Movable equipment means only such equipment that has not been installed, attached, or affixed to walls, ceilings, floors or been made a part of any utility infrastructure.

24. Use of Fair's Communications Contractor.

- A. All plans involving computer systems, cabling, trenching, telephones, sound systems, lighting systems, closed circuit television, radios or other wireless devices must be approved in advance of installation by the Fair.
- B. The Concessionaire may elect to use the Fair's communications Contractor as a subcontractor, if it so desires, but the Concessionaire will be responsible for all subcontracting expenses.
- C. Should the Concessionaire elect to choose another subcontractor, all work must be approved by Fair.
- D. The Concessionaire will be assessed a fee by the Fair of \$120.00 plus New Mexico gross receipts tax per line for telephone installation. These charges are in addition to any telephone service charges. Only the Fair's communications Contractor is permitted to install wire telephones on the Expo New Mexico premises.

25. Property Lien.

The Fair shall have a lien against all property of Concessionaire situated at Expo New Mexico, for unpaid payments, fees or for damages sustained by Fair. Concessionaire grants to Fair the right to retain and to appropriate such property without process of law to satisfy claims against Concessionaire. All temporary buildings, frames, booths, furnishings, equipment, etc., belonging to Concessionaire must be removed from Expo's grounds immediately after the termination of the Agreement except for capital improvements which belong to the Fair.

26. End of Term

At the termination of the Agreement, Concessionaire shall surrender the concession locations in the same condition as it was in upon delivery of possession thereto under this Agreement, reasonable wear and tear excepted, and shall deliver all keys and combinations to locks to Fair. Before surrendering said premises, Concessionaire shall remove all its personal property, temporary buildings, frames, booths, furnishings, equipment, etc., and shall repair any damage caused thereby. Such property is exclusive of capital improvements, which belong to the Fair. Concessionaire's obligation to perform this provision shall survive the end of the term of the Agreement. An inspection of the concession locations will be scheduled at a time designated by Fair. If Concessionaire fails to remove its property upon the expiration of this Agreement, the said property shall be deemed abandoned and shall become the property of the Fair. Fair may have such property removed from the premises at the expense of the Concessionaire.

27. Other Concessionaires and Future Concession Sites.

Concessionaire's privileges and rights under this Agreement shall not include any additional rights to retail food and beverage space at the Fair; however, Concessionaire shall not be prohibited because of entering into this Agreement from submitting a bid or proposal for such future space as the Fair may issue a request for bids or request for proposals from time to time. Concessionaire further agrees that the Fair has and will have other Concessionaires who shall have the right to sell food and beverages, including the same type of food and beverages sold by Concessionaire.

28. Taxes, Licenses and Debts.

The Concessionaire shall promptly pay all taxes and other exactions assessed or assessable and pay all license fees and permit fees applicable to the Concessionaire's operation, and acquire and keep current all licenses, municipal, state, or federal, required as the result of the Concessionaire's operations at the Fair pursuant to this Agreement, and shall not allow any of said taxes, excises or fees to become delinquent.

29. Appropriate Licensing.

Concessionaire will be responsible for obtaining all necessary licenses, permits and approvals for its concession operations at Expo New Mexico. Concessionaire must have its own dispenser liquor license, but will be required to lease the Fair's governmental liquor license to provide concession services. Concessionaire will be required to pay all their wholesaler debt within thirty (30) days, or as required by wholesalers, of invoicing. Fair has the right to inspect records including wholesaler billings and public records

residing at the New Mexico Department of Public Safety, Special Investigations Division. Concessionaire must comply with all applicable laws and regulations to maintain the Fair's liquor license in good standing.

30. Concessionaire's Property.

Concessionaire acknowledges that in conjunction with the Agreement, materials, items, and other tangible property may be brought into Expo. Such property is the sole responsibility of Concessionaire and as such, Concessionaire has the sole and exclusive responsibility for the care and safety of all such property brought into Expo. Fair does not make any warranties or promises as to the care, maintenance or security of any such property. Any damage to said property caused by rain, hail, wind, fire, or any other natural phenomena shall be covered by Concessionaire's insurance policy. Additionally, Fair is not responsible for any damage, direct or incidental, caused by the negligent or intentional acts of a third party.

31. Parking Rights.

Fair retains all parking rights. Designation of parking areas, entry gates and fees shall be at the discretion of Fair.

32. Regulation Compliance.

- A. All alcohol sales generated by Concessionaire at Expo will be made in total compliance with the provisions of the Liquor Control Act and the New Mexico Liquor Regulations. Further, all of Concessionaire's employees who are involved in the dispensation of alcoholic beverages at Expo will successfully complete an alcohol server education training program approved by the Director of the Alcohol Beverage Control Division of the State of New Mexico and have in their possession a certificate issued by the Alcohol Beverage Control Division showing the same, prior to the commencement of employment as a server of alcoholic beverages and at no cost to Fair. Concessionaire is responsible for preventing sales of alcohol to minors and intoxicated persons and will fully cooperate with the appropriate officials to control the access of alcohol on the Expo grounds.
- B. Concessionaire agrees to comply with all applicable federal and state statutes, laws, ordinances, regulations and licensing procedures, including but not limited to all safety, tax, employment laws and regulations, State Building and Fire Codes, Americans with Disabilities Act laws, Food Service Act, Food Service and Processor Regulations, and established regulations and procedures of the Fair. Concessionaire agrees to allow representatives of the Fair and other state agencies or departments access to all areas and activities described herein for the purpose of conducting audit or safety inspections.
- C. Concessionaire shall comply with all applicable federal and state statutes, laws, ordinances, regulations and licensing procedures, etc., and abide by all applicable Fair rules, regulations, policies and procedures, written or otherwise and is responsible for all associated costs and expenses including walls required to enclose bars.

D. Concessionaire shall meet all such requirements on a continuous basis and be qualified for each annual renewal of its liquor license. Failure to provide alcoholic beverages as required by this Agreement shall constitute a material breach of this Agreement.

E. Concessionaire or its representatives shall not act in any way which would jeopardize the Fair's governmental liquor license.

33. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Fair, the Department of Finance and Administration and the State Auditor. The Fair shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Fair to recover excessive or illegal payments.

34. Product of Service: Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Fair not later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

35. Photography and Publicity Rights.

Concessionaire recognizes that marketing of the Fair and its grounds requires use of photography and video. Concessionaire hereby expressly grants to the Fair the irrevocable, assignable right and license to take, use, and publish Concessionaire's images, images of Concessionaire's employees, or property without the need for any other approval. Concessionaire also releases the Fair, its agents or assigns, from all claims related to the licenses that have been granted in this release.

36. Penalties for violation of law.

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

37. Incorporation by Reference and Precedence.

A. This Agreement is derived from (1) the Request for Proposals, written clarifications to the Request for Proposals, and the Fair's responses to questions; (2) the Contractor's Best and Final Offer, and (3) the Contractor's response to the Request for Proposals.

B. In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) Amendments to the Agreement in reverse chronological order; (2) the Agreement, including the Scope of Work; (3) the Contractor's Best and Final Offer; (4)

the Request for Proposals, including attachments thereto, and (5) written responses to questions and written clarifications, and (6) the Contractor's response to the Request for Proposals.

38. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the Fair. The Fair, as a state agency, is subject to the Inspection of Public Records Act.

39. Status of Contractor.

Contractor acknowledges that its agents and employees are not employees of the State of New Mexico as a result of this Agreement. Fair and Contractor are independent contracting parties, and nothing contained in this Agreement shall be deemed to create a partnership, joint venture, or agency relationship between them, nor does it grant either party any authority to assume or create any obligation on behalf of or in the name of the other. Neither party shall have any control or right of control in regard to the other party's employees, agents or independent contractors. Contractor agrees that Fair shall not be liable for any salaries or sums of money due to Contractor's employees, agents or contractors (collectively Contractor's personnel) or those persons with whom Contractor contracts, or any expenses or debts incurred by Contractor, except as specifically set forth in this Agreement.

40. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Fair. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement. Subcontracting consists of:

- i. Allowing another person or company to display or sell from the assigned space.
- ii. Exhibiting, selling or distributing literature or product for any other entity other than the assigned Concessionaire.

41. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Fair.

42. Corporate Structure.

If the controlling interest in Contractor's company is sold, transferred, or assigned (by merger or otherwise) to a third party, or the current principals of Contractor, for any reason, cease to be active in the management and operation of Contractor's company at any time during the term of this Agreement, Contractor shall notify Fair of the change and Fair reserves the right to terminate this Agreement as provided in paragraph 14, "Termination".

43. Limited Liability.

Contractor agrees that Fair shall not be liable to Contractor for lost profit or other

financial loss to Contractor of any type or description, including any special, indirect, reliance, incidental or consequential damages, which may be caused directly or indirectly from 1) performance of this agreement, 2) termination of this agreement for any reasons specified herein, 3) for any time delays, inadequacies of services of Fair or any use of its facilities, including the contracted space or by any deficiency or defect therein, or 4) Acts of God. Contractor agrees that it will continue to pay all charges and other sums due to Fair regardless of any such claim, loss, damage or expense until this Agreement is terminated in accordance with these terms.

44. Force Majeure.

A “Force Majeure Event” is defined as an event or effect that can be neither anticipated nor controlled which renders performance of the terms of this Agreement impossible, impracticable, or unsafe. If a Force Majeure Event occurs, the parties’ respective obligations hereunder will be excused fully, without any additional obligation, and each of the parties shall bear its own costs incurred in connection with this Agreement.

45. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Fair and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Fair and the Risk Management Division of the New Mexico General Services Department by certified mail.

46. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

47. Workers' Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers'

compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by Fair.

48. Conflict of Interest.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance or services required under this Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-17 NMSA 1978, regarding contracting with a public officer, state employee, or former state employee have been followed. Contractor agrees to complete the "Campaign Contribution Disclosure Form" attached to this Agreement.

49. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

50. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and funds generated by the New Mexico State Fair for the performance of this Agreement. If sufficient funds are not available, this Agreement shall terminate immediately upon written notice being given by the Fair to the Contractor. The Fair's decision as to whether sufficient funds are available shall be accepted by the Contractor and shall be final. If the Fair proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or agree to the reduced funding, within ten (30) days of receipt of the proposed amendment.

51. Release.

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Fair, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

52. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

53. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior

Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

55. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

56. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

57. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Fair:

New Mexico State Fair
Attn: Antoinette Kulinna
Po Box 8546
Albuquerque, NM 87198

To the Contractor:

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

58. Signature Binding.

If either of the parties is other than a natural person, the individual(s) signing this Agreement on behalf of the parties do hereby represent and warrant that the undersigned parties have the right and authority to execute this Agreement on behalf of the Contractor and the New Mexico State Fair, and to fully perform the obligations contained herein. A signature sent via facsimile or electronically shall have the same legal effect as if the original has been signed in person.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature by the parties below.

CONTRACTOR

XXXXXXXXXXXXXXXXXX Date: _____

NEW MEXICO STATE FAIR

Approved as to form and legal sufficiency:

Legal Counsel Date: _____

Chief Financial Officer Date: _____

General Manager Date: _____

Exhibit “A”
LIQUOR SERVICES
CASH REGISTER SPECIFICATIONS

REPORTING PROCEDURES

All Concessionaires shall use an approved electronic cash register or POS System method for reporting purposes.

Each cash register system shall have the following features:

1. a digital display;
2. a non-re-settable cumulative grand total;
3. a minimum 30 day, battery powered memory protection system;
4. an “X” and “Z” counter reading;
5. consecutive transaction numbers;
6. current grand total;
7. current printed date on detail tape; and
8. a key protector.

Each POS system shall have the following features:

1. Full POS terminal to include tablet, receipt printer, software with full reporting, cash drawer and credit card reader.

Concessionaire shall register all business transactions as an entry into the cash register. Cash drawers must be closed following each sale. Continuously open cash drawers or use of a cash box or apron is prohibited.

The information documented on the “Z” tape shall be used to prepare the reporting forms and determine settlement. If more than one register is in use, a separate tape must be submitted from each cash register. Each Concessionaire is responsible for keeping the proper receipts and void slips, locating missing voids and making certain the proper dates are shown on all “Z” readings. All documentation must be complete and ready at time of collection. A coordinator from the Concession Office will collect the required documentation as required by Fair.

Fair retains the right to audit Concessionaire’s business at any time. Auditors will be making spot audits that involve recording one or more cash register records, including cash, paid out receipts, money drops, over rings and other situations that occur when revenue is produced.

Cash register tapes must be available on request for review by the auditor. Concessionaires must comply with any adjustments that are required as a result of an audit/evaluation conducted by the auditor. Concessionaires will be notified in writing when a spot audit turns up a discrepancy in the sales record. Major discrepancies and/or continued problems will lead to business being shut down until discrepancy is corrected.

In the event that the Concession Manager determines a violation of reporting procedures has occurred, in addition to paragraph 14 of the Agreement, “Reporting Requirements” and paragraph 24 of Exhibit “B”, “Penalties”, of the Agreement, penalties will be assessed according to the following schedule:

First violation: \$250.00 fine
Second violation: \$500.00 fine
Third violation: \$1000.00 or may result in contract termination and
eviction, and/or may affect future participation privileges.

All violations will be documented and become a permanent record of file. Violations do not have to be of the same nature for this step structure to apply. It will be the responsibility of the Concessionaire to make their employees aware of the severity of reporting procedure violations.

Exhibit "B"
LIQUOR SERVICES
EQUIPMENT LIST

TINGLEY BARS

1.	2-keg unit
2.	3-keg unit

LUJAN

3.	front counter ice box
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Exhibit “C”
RULES AND REGULATIONS

1. Accessibility to Concessions Sites by Fair.

- A. Concessionaire shall not do or permit to be done anything that might interfere with the effectiveness or accessibility of utility, heating, ventilating, or air conditioning systems or portions thereof on the Fairgrounds, nor do or permit to be done anything that may interfere with free access and passage in the concession stands or the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties. Further, Concessionaire shall not do or permit to be done anything that might interfere with the effectiveness or accessibility of elevators including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto.
- B. The Fair shall have the right to enter the concession stand/booth at all times to inspect or to exhibit the same to prospective concessionaires or lessees and to make such repairs, additions, alterations or improvements as Fair may deem desirable. Fair shall be allowed to take all material in, to and upon the Fair-owned concession stand/booth without the same constituting an eviction of Concessionaire in whole or in part and the payments or fees due the Fair shall in no way abate while said work is in progress by reason of loss or interruption of Concessionaire's business or otherwise and Concessionaire shall have no claim for damages. If Concessionaire shall not be personally present to permit an entry into the concession stand/booth when for any reason an entry therein shall be permissible, Fair may enter the same by a key or by the use of force without rendering Fair liable therefore and without in any manner affecting the obligations of this Agreement. The provisions of this paragraph shall in no way be construed to impose upon Fair any obligation whatsoever for the maintenance or repair of the building or any part thereof except as otherwise herein specifically provided.
- C. Concessionaire must agree to provide the Fair with a key or combination to each of its booths or a master key that will fit all booths. Such keys will be available to a restricted number of Fair personnel. Concessionaire shall not place any additional lock of any kind upon any window or interior or exterior door in the premises, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is provided to the Fair. Upon the expiration or sooner termination of this Agreement, Concessionaire shall surrender to the Fair any and all keys furnished to or otherwise procured by Concessionaire. If any keys furnished to Concessionaire by Fair are lost, Concessionaire shall pay the Fair, on demand, the cost for replacement thereof.

2. Assigned Space.

No items shall be displayed or sold except within the boundaries of the Concessionaire's assigned spaces unless the Concessionaire has the prior written approval of the Fair.

3. Damage to Buildings.

With the exception of Concessionaire's assigned booth space, Concessionaire occupying permanent buildings shall not cause or permit any nails or other things to be driven into any portion of the buildings, nor cause or permit any signs to be affixed unless approved by the Fair. Concessionaire shall not cause or permit any changes, alterations, repairs, painting or staining of or to any part of the buildings; nor cause or permit to be done anything that will damage or change the finish or appearance of the buildings. Concessionaire is entirely responsible for the space allotted to it and agrees to reimburse the Fair for any damage caused by Concessionaire, reasonable wear and tear and damage from causes beyond Concessionaire's control excepted.

4. Signage.

Any decoration or signage affixed to Fair property must be approved in writing by Fair.

5. Credentials and Parking.

- A. Credentials for use by Concessionaire during the term of the Agreement shall be issued by Fair. Concessionaire is responsible for picking up permits prior to the event date. If credentials are found in the possession of someone other than a legitimate attendant or

employee, said credentials shall be declared invalid and must be immediately surrendered to the Fair.

- B. The Fair will provide at no cost to the Concessionaire (description of passes to be provided). Additional parking passes will be available at the prevailing price. Currently, the cost of a year round pass is \$192.00 and each monthly pass costs \$16.00. Parking per day is \$5.00 for general parking. Concessionaire's employees will be required to park in a location or locations as designated by Fair. Failure by Concessionaire to park in designated locations may result in towing the offending vehicle and/or revocation of any or all parking privileges.

6. Concessionaire Personnel and Facilities.

Concessionaire shall provide a sufficient amount of attendants and personnel to service the public with respect to its business operation. Personnel shall wear uniforms with tucked-in, collared shirts with a permanent logo affixed, and identification badges. Uniforms will be provided by Concessionaire at no cost to Fair. Badges will be provided by Fair at no cost to Concessionaire. Personnel shall be clean and neat in appearance. Concessionaire assumes the full responsibility for the character acts and conduct of all persons under its employ or direction. All equipment used by the Concessionaire must be placed in an enclosed area. Further, all items and facilities to be used by Concessionaire in connection with the performance of duties described in an Agreement are subject to the approval of the Fair. If the Fair disapproves of any items being utilized by the Concessionaire or discovers personnel not wearing a uniform or badge, written notice will be delivered by Fair to Concessionaire, and Concessionaire shall correct any and all items described in said written notice within two (2) hours of the delivery of notice.

7. Beverage Container Restrictions.

Bottled or canned drinks must be served in disposable paper, foam or plastic cups, when requested by Fair. Concessionaire will be responsible for purchasing such cups at its own expense. Empty containers must be stored within the contracted area and removed from the Fairgrounds after each day of operation.

8. Vending Machines.

Under the terms of this Agreement, no amusement or vending machines or such other machines operated by coins, tokens, or credit cards shall be installed or maintained by the Concessionaire on the Fairgrounds, except change making machines. This prohibition includes, but is not limited to, sales by vending machine of 1) all food and beverage; 2) tobacco products; 3) newspapers; 4) postage stamps; 5) electronic game devices; 6) electronic video games; 7) entertainment devices; 8) pay televisions and 9) telephones. No automated teller machines shall be provided by Concessionaire.

9. Sale of Other Items.

The Sale of any items not specifically described in this Agreement, or that are not approved in writing by the Fair, are strictly prohibited.

10. Concessionaire's Activities.

- A. Concessionaire agrees that nothing shall be on or kept in the facilities or concession stands and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Fair's premises that might be unsafe or hazardous to any person or property. Further, Concessionaire shall not do or permit to be done any act or thing upon the Fair's premises that will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carried by the Fair, covering the Fair's premises, or which, in the opinion of the Fair, may constitute a hazardous conditions that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure by Concessionaire to comply with the provisions of this section, after receipt of notice in writing from the Fair, any fire insurance rate on the Fair's premises or on the buildings in which the same is located, shall at any time be higher than it normally would be, then the Concessionaire shall pay the Fair, on demand, that part of all fire insurance premiums paid by the Fair that have been charged because of such violation or failure of Concessionaire; provided that nothing herein shall preclude Concessionaire from bringing, keeping, or using on or about

the Fair's premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

- B. In the Event Concessionaire discovers or creates a hazardous or potentially hazardous condition in the Concessionaire's sales locations or on the Fairgrounds, Concessionaire shall give immediate verbal notice to the Fair. Such hazardous condition shall be corrected as soon as possible by Concessionaire if the hazardous condition is in or around the Concessionaire's sales location. If the hazardous condition is outside the Concessionaire's sales locations, Fair shall correct such condition as soon as possible. Regardless of the location of the hazardous condition, Concessionaire shall close to the public that part of the facility impacted by such condition until it is safe for public use.

11. Structural, Electrical or System Overloading.

Concessionaire agrees that nothing shall be done or kept on the Fair's premises and no improvements, changes, alterations, additions, maintenance, or repairs shall be made to the premises that might impair the structural soundness of the building, result in an overload of utility, plumbing or HVAC systems serving the Fair or interfere with electric, electronic or other equipment at the Fair. In the event of violations hereof, Concessionaire agrees to immediately remedy the violation at Concessionaire's expense.

12. Noise, Odors, Vibrations and Annoyance.

Concessionaire shall conduct its operations in an orderly and proper manner so as not to commit any nuisance or annoy, disturb or be offensive to others on the Fairgrounds, and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

13. Handling of Grease.

Grease depositories are not available on the Fairgrounds. Food service operators cooking with grease must provide their own grease mats and storage containers. Grease is not to be disposed of in garbage receptacles or drain outlets.

14. Fuel Restrictions.

Propane fryers or propane gas cooking appliances shall not be allowed inside any permanent facility unless approved in writing by the Fair. The use of propane outdoors shall meet building code requirements. Propane tanks shall be located on the outside of portable booth structures. Open flame grills or smokers, if used, are to be placed on the outside of the temporary structure. Charcoal used as a natural fuel must be completely extinguished before disposing of used charcoal.

15. Janitorial Services and Refuse Removal.

Concessionaire shall provide all janitorial services for its concession locations at the Concessionaire's sole expense. The facilities shall be kept clean and neat at all times. Areas within the facilities used by the patrons of the Fair shall be kept clean and free of obstacles on a continuous basis during all hours of operation. Concessionaire shall also dispose of food, beverages, and their containers as well as eating utensils and all other trash left by customers of Concessionaire and users of the concession stands both in the concession stand as well as in the immediate vicinity of the concession stand. Concessionaire shall furnish its own garbage bags and containers. Refuse for garbage collection shall be placed into Fair's trash compactors at designated locations. Accumulation of boxes, cartons, barrels or other similar items in any public area of the Fairgrounds will not be allowed. Concessionaire shall remove refuse and shall transport all trash and refuse from the facilities in carts, vehicles or conveyances that are covered, leak proof and equipped with wheels that will not damage floors.

16. Posting of Prices.

Concessionaire shall post prices for all products offered on professionally painted signs to be approved in writing by Fair. Such signs shall be displayed in a conspicuous place. No increase or decrease in price shall be allowed without first obtaining written approval from the Fair.

17. Prices Comparable to Off-Fairground Prices.

Concessionaire covenants that it shall serve only high quality food and beverages that shall be comparable in quality and price to food and beverages served in "like facilities" and comparability of prices shall be determined solely by Fair but generally in accordance with the following guidelines: Prices for food and beverage items sold by Concessionaire from the Fair's premises would be compared with similar operators offering a similar menu in the City of Albuquerque. Prices within ten percent (10%) of similar menu items of similar portions and presentation shall be deemed to be reasonable under this Agreement.

18. Price and Quality Surveys.

At any time during the Term of this Agreement, Fair may, at its sole option, cause to be made by an independent food services consultant a survey of prices and quality of food and beverage services at comparable food service facilities in the City of Albuquerque. If said survey concludes that any prices being charged by Concessionaire for food and beverage offerings on the Fair's premises are excessive or that any food and beverage being offered by Concessionaire are of unsatisfactory quality, Fair shall then have the right to require Concessionaire to reduce any excessive prices, improve quality, or increase size of portions in order that the prices and quality of food and beverages offered from the Fair's premises will be competitive with similar prices and quality then in effect at such comparable food service facilities. No later than thirty (30) days after receipt of written notice from Fair, Concessionaire shall lower prices, improve quality, or increase portion sizes as directed by Fair. Failure on the part of the Concessionaire to correct, rectify or modify its prices, quality or quantity schedule upon such written notice from Fair shall be cause for termination of this Agreement by Fair.

19. Customer Complaints.

In the event any customer submits a written complaint to the Fair (and forwarded to Concessionaire) or Concessionaire about Concessionaire's operations at the Fair, Concessionaire shall promptly respond within fifteen (15) days in writing to such complaint and make a good faith effort to explain, resolve and/or rectify the response thereto to the Fair.

20. Ice Supplies.

Ice making machines are permitted within the Concessionaire's enclosed assigned space only. All ice storage units must be located at the Fair's discretion.

21. Maintenance of Heating and Air Conditioning.

Concessionaire must at all times, maintain, repair or replace, if necessary, any equipment in the concession stand/booth.

22. Additional Rules and Regulations.

Fair may amend or add new rules and regulations for the use and care of the concession stand/booth and the common areas and facilities without the consent of Concessionaire.

23. Removal Damages.

In the event Concessionaire removes its trade fixtures and movable equipment and other personal property, Concessionaire shall repair any damage caused by such removal. Removal shall be at Concessionaire's expense.

24. Penalties.

Failure to comply with any of the rules, regulations, or requirements set forth within this Agreement will result in the issuance of a fine.

First violation: \$250.00 fine

Second violation: \$500.00 fine

Third violation: \$1000.00 or may result in contract termination and eviction, and/or may affect future participation privileges.

Abuses such as those identified in the following table can affect the contract renewal status of a Concessionaire or further continuance of the Agreement.

- a. Health Citations
- b. Improper Cash Register Controls
- c. Failure to comply with insurance/bond requirements
- d. Failure to pay percentages on time
- e. Failure to obey fire codes
- f. Failure to wear uniforms
- g. Failure to wear badges
- h. Unauthorized menu/price changes
- i. Failure to maintain proper housekeeping measures
- j. Failure to provide keys to booths
- k. Illegal hawking (Tingley Coliseum only)
- l. Allowing unauthorized personnel in booths
- m. Improper handling of Grease or Grey Water
- n. Golf Cart Policy
- o. Failure to provide invoices of all food and beverages upon request
- p. Failure to provide starting balances (bank) upon request.
- q. Failure to abide by Alcohol Beverage Control Division of the Regulation and Licensing Department of New Mexico
- r. Failure to provide adequate personnel and services
- s. Failure to provide Gross Sales receipts/reports or payment within designated time
- t. Allowing unauthorized entrance by Concessionaire and/or employees to any event

Exhibit “D”

FIRE AND SAFETY STANDARDS

All portable structures and/or buildings are to be constructed, arranged, equipped, maintained and operated so as to avoid undue danger to the lives and safety of its occupants and Fair patrons and must meet applicable State Building and Fire Codes. Structures must be of fire resistant construction. All decorations and booth material must be flame resistant.

Fire Prevention

All concession and exhibit booths must have a fire/life safety inspection and prior approval by all of the following “Authorities Having Jurisdiction”, New Mexico State Fair, New Mexico Construction Industry Division, New Mexico Environmental Department, New Mexico State Fire Marshal’s Office or designee and the New Mexico LPG Bureau.

1. Smoking is prohibited in any building, concession or exhibit booth or space, tent or area deemed as a non-smoking area. Approved “No Smoking” signs shall be conspicuously posted.
2. No furnishings, decorations, displays, or other subjects shall be placed to obstruct exits or any means of egress. If the authority having jurisdiction determines a vendor is impeding the traffic flow of egress the vendor may be relocated.
3. An approved exit sign shall be posted to identify a means of egress. A vendor booth may be required to post an approved exit sign to identify a means of egress.
4. All tents and portable structures that have an occupant load of more than 50 occupants are required to have illuminated exit lighting and battery operated emergency lighting installed. In addition, these facilities must have as a minimum of (2) means of egress from the facility and the exits must be clearly marked.
5. Fire lanes/access emergency response around or near concession or exhibit booths or locations will be free and clear and remain unobstructed at all times. This includes no parking any vehicle within these areas unless it is of security, fire, or medical emergency by those personnel.
6. All concession and exhibit booths or locations must have a minimum of one (1) 10lb. ABC type fire extinguisher maintained and serviced as required per NFPA #10 standard for Portable Fire Extinguishers. All cooking areas that have grease-laden vapors are required to install a type K fire extinguisher in addition to the ABC type fire extinguisher that is also required. Vendor is responsible for the purchase, care, and maintenance of all fire extinguishers. This includes an annual service inspection by a licensed vendor. All fire extinguishers must be in plain view, unobstructed, and mounted to a fixed structure no higher than five feet off the finished floor.
7. All concessionaires and exhibitors and employees are required to be familiar with the use and operation of fire extinguisher(s), emergency evacuation and emergency procedures.
8. All emergency phone numbers will be posted in an accessible location within each booth.
9. All combustible waste materials accumulation is prohibitive, such as boxes, papers, and other combustible materials creating a fire hazard and shall not be stored behind any portable tent or portable structure or obstruct means of egress.
10. All tents, canopy, umbrellas, membrane structures and other type of materials being used as temporary membranes must have the appropriate UL or FM listing or nationally recognized standard for fire resistive ratings and shall have a permanently affixed label bearing the identification of size and fabric or material type in accordance with IFC 2003 Chapter 24.
11. Any flame-resistant treatment will not be approved until a certificate executed by an approved testing laboratory, certifying that the tent, canopy, umbrella, or membrane structure and its appurtenances, sidewalls, drops and tarpaulins, floor coverings, bunting, combustible decorative materials and effects, including sawdust when used on floors or passageways, shall be composed of flame-resistant material or shall be treated with a flame retardant in an approved manner and meet the requirements for flame resistance as determined in accordance with NFPA 701 and IFC 2003 Chapter 24, and that such flame

resistance is effective for the period specified by the permit is filed with the fire code official.

Certificate shall include:

- a. Name and address of owner of tent, canopy, umbrella or membrane structure.
 - b. Date fabric was last treated with flame-resistant solution.
 - c. Trade name or kind of chemical used in treatment.
 - d. Name of person or firm treating the material.
 - e. Name of testing agency and test standard by which the fabric was tested.
12. Combustible materials such as hay, straw, shavings or similar materials shall not be located within any tent, canopy or membrane structure containing an assembly occupancy, except the materials necessary for the daily feeding and care of animals. Sawdust and shavings utilized for a public performance or exhibit shall not be prohibited provided the sawdust and shavings are kept damp. Combustible materials shall not be permitted under stands or seats at any time. The areas within and adjacent to the tent or membrane structure shall be maintained clear of all combustible materials or vegetation that could create a fire hazard within 20 feet from the structure. Combustible trash shall be removed at least once a day from the structure during the period the structure is occupied by the public.

Open Out-door Fires

1. All open outdoor fires must have an approval or permit by the Authority having Jurisdiction. This permit or approval notice must be displayed near the open fire area.
2. A fire extinguisher or a garden hose connected to a domestic water supply must be readily available at all times.
3. Open fires will be located not less than 50 ft from any structure or building.
4. Any authority having jurisdiction may prohibit any or all-open fires when atmospheric conditions or circumstances make such fires a serious fire hazard.
5. All barbeque fireplaces shall be equipped and maintained with a spark arrestor as required and cooking units shall be maintained in good condition and working order at all times. If repairs are needed the appliance shall be placed out of service and removed until repaired and in good working order.
6. Fuel for open fires will be stored or located a minimum of 50 ft from the fire area.
7. A competent person must constantly attend open fires until the fire is extinguished. All fires are to be extinguished at the end of the business day at which the authority having jurisdiction will be notified.

Electrical Fire Safety

1. All new, existing, permanent or temporary electrical wiring must be installed, maintained and operated in accordance with NFPA #70, the National Electrical Code.
2. Only approved electrical extension cords that are UL listed and are in compliance with NFPA #70 that meet a minimum 14 gauge rating with three prong plugs (grounding wire). Extension cords will be one length from the device to the outlet. Cords will not run along pedestrian travel or egress, this includes taping the cord to the floor. There will be no electrical hookups made unless existing hardwire is within 6 feet (maximum permitted length of an extension cord) of the device. Extension cords are prohibited to be suspended, supported or anchored from trees. Any riser supporting extension cords are to be grounded. No household electrical extension cords (2 wire extension cords) are allowed to be used in concession and exhibit booths or locations.
3. All electrical connections for concession and exhibit booths or locations must be connected by a Fair licensed electrician and inspected by a representative from the Fair or from NM Construction Industries Division.
4. Portable generators must have an inspection by the State Construction Industries Division prior to operation anywhere on the fairgrounds and approved by Fair officials prior to event. Refueling any power generator shall be conducted on down time hours and not

during the event. Any portable generator must be a minimum of 20 feet away from any permanent building and protected from the public.

5. Any lighting shall be equipped with protective covers.
6. Vendors inside any building will be allowed the use of electricity within the limits as specified in the Electrical Service section of this manual.

Commercial Cooking

1. Kitchens equipped with a hood exhaust system and fire suppression system must maintain said systems and cooking equipment used for heating and cooking food and which produce grease-laden vapors, fumes, smoke, or odors shall be properly placed under hood exhaust system and comply with The International Fire Code 2003. Such appliances include but are not limited to deep fat fryers; upright broilers; griddles; broilers; steam-jacketed kettles; hot-top ranges; charbroilers; ovens; steam tables and warmers; barbecues; rotisseries; pizza ovens; nut roasters; and similar appliances. The installation must be in compliance with the 2006 Uniform Mechanical Code, UL 300, NFPA #17A Wet Chemical Cooking Equipment standard and The International Fire Code 2003. Dry Chemical cooking suppression system will no longer be accepted due to the incapability of maintaining or servicing the systems by a licensed vendor.
2. The installed fire suppression system must be inspected every six months and must have a current inspection tag/sticker displayed.
3. Hoods, grease removal devices, fans, ducts and other appliances shall be cleaned and maintained to prevent the accumulation of grease or oily sludge.
4. Deep fat fryers shall be equipped with a separate high limit control in addition to the adjustable operating control (thermostat) to shut off the fuel when the unit temperature reaches manufacture recommendations. Any tampering of deep fat fryers limit control and operating control (thermostat) will not be tolerated and result in immediate removal of the unit.
5. Portable buildings and tents without a fire suppression system shall have:
 - 5/8 sheet rock type X behind cooking appliances covering the area starting at the point of cooking and a minimum of 4 feet high including 3 feet beyond the appliances on either side.
 - shall maintain a clearance space of 12 to 24 inches between appliance and sheet rock...minimum space required shall be determined at time of inspection by the State Fire Marshal's Office.
6. All portable buildings and tents must be equipped with a fire rated floor.
7. Class K fire extinguishers are required in all food concession booths conducting any type of grease cooking. The concessionaire or exhibitor is responsible for the purchase, care and maintenance of a class K fire extinguisher.
8. Outdoor cooking that produces sparks or grease-laden vapors shall not be performed within 20 feet (6096 mm) from a tent, canopy or membrane structure.

Combustible Waste and Refuse

No concessionaire or exhibitor shall allow combustible waste materials to accumulate, such as boxes, papers, and other combustible materials creating a fire hazard and shall not be stored behind any portable tent or portable structure or obstructing the means of egress.

The inspection and permit process will be strictly enforced. THERE WILL BE NO EXCEPTIONS.

All inspections will be conducted by the New Mexico State Fire Inspector(s) or a designated representative by other designated agencies. If there are questions on fire prevention issues, please call the State Fire Marshal's Office at 1-800-244-6702.

PROPANE STANDARDS

The use of liquefied petroleum gas is not allowed inside permanent facilities without Fire Marshal or LP Gas Bureau approval.

1. All containers must be located outside the booth, the building, or the enclosure.
2. All containers must be secured in a position so that vapor only will be present at the vapor service valve. The secured container's device, such as a chain, must be able to support the weight of the container plus the container's contents.
3. All containers must be approved LP gas containers.
4. Any DOT cylinder for LP gas must be marked with the re-qualification dates (s) if the container is more than twelve (12) years old.
5. All containers must be leak-free.
6. Any LP gas container showing excessive rust, corrosion, pitting, or denting shall not be used. The bottom of each container shall be checked for these conditions.
7. All portable DOT cylinders must have a fixed "warning" label that includes information on the potential hazards of LP gas to include identification of the cylinder "Propane".
8. Outlets for all unused containers shall be capped or plugged. The vapor service valve must be sealed when the container is not in use.
9. When a container's water capacity is greater than 239 pounds (120 gallons), an LP gas permit must be obtained before using such container.
10. A leak test shall be performed each day before the food booth is opened for business, any time a cylinder is exchanged, and any time the LP gas system is modified. Soap (without ammonia) mixed with water can be used for detection of leaks. The entire LP gas system must be free of leaks.
11. The only hoses that shall be used are those approved for use with LP gas. The hose end couplings must be installed as recommended by the hose manufacturer. (Unacceptable: an automotive screw-type clamp installed on the end of the hose.) All hoses must be leak-free. All hoses must be kept out of the way of foot and vehicular traffic.
12. All appliances used in food booths must have an accessible shut-off valve near the appliance that can be easily closed in case of an emergency. Only appliances that are leak-free and approved for the use of LP gas shall be used.
13. All corn roasters (or similar type of appliance) must have a burner and pilot 100% safety valve installed.

Filling of Containers

1. The filling of LP gas containers (Cylinders) on site shall be done in a designated area separate from the general public or at times when the visitation of the public is not present.
2. Nylon jackets, cigarette lighters, strikers, and/or matches are not allowed in the filling area.

Negligent acts and omissions can result in fire legal liability.

APPENDIX "C" **COST PROPOSAL FORM**

FIRM: _____

PHONE NO: _____ FAX NO: _____

EMAIL: _____

REPRESENTED BY: _____ TITLE _____
(Please print)

SIGNATURE: _____ DATE: _____

The offeror must complete this "Cost Proposal Form" without deviation from the required format. Do not re-type the form or alter the form in any manner.

The Offeror listed above submits the following costs to provide alcoholic beverage, non-alcoholic beverage concession services to the New Mexico State Fair as outlined in the request for proposals

Proposed percentages of Gross Receipts Offeror will pay to Fair:

_____ %	From the sale of non-alcoholic beverage items for Annual and Interim Events with table service or counter service provided. This category will include the hawking of non-alcoholic beverage items. Propose a fixed percentage for this type of service. Offeror may propose no less than 25%.
_____ %	From the sale of alcoholic beverages during the Annual Event . Propose a fixed percentage for this type of service. Offeror may propose no less than 35%.
_____ %	From the sale of alcoholic beverages during Interim Events . Propose a fixed percentage for this type of service. Offeror may propose no less than 25%.

APPENDIX "D"
Response Form to Letter of Transmittal

In response to Section III. C. 2. of the RFP, you must submit a Letter of Transmittal that includes the following information.

YOU MAY COMPLETE AND SUBMIT THIS FORM AS YOUR LETTER OF TRANSMITTAL.

A. Provide the name and address of your company or organization:

Company

Name: _____

Address: _____

City, State, Zip: _____

B. Provide the name, title and contact information of the person authorized to obligate the organization to a contract:

Name: _____

Title: _____

Telephone

Number: _____

Email _____

C. Provide the name, title and contact information of the person authorized to negotiate the contract on behalf of the organization:

Name: _____

Title: _____

Telephone

Number: _____

Email: _____

D. Provide the name, title and contact information of persons to be contacted for clarification or information about your proposal:

Name: _____

Title: _____

Telephone

Number: _____

Email: _____

Name: _____

Title: _____

Telephone

Number: _____

Email: _____

- E.** Indicate your acceptance of the Conditions Governing the Procurement (see Section II, Paragraph C.1.) by circling one of the responses following this statement:

“This procurement will be conducted in accordance with the State Purchasing Agent’s Procurement Regulations, GSD Rule 1.4.1 NMAC.”

YES, I ACCEPT

NO, I DO NOT ACCEPT

- F.** The person authorized to obligate the organization to a contract must sign the Letter of Transmittal or, if this Appendix is submitted as your Letter of Transmittal, must sign this form.

Name and signature of the person authorized to obligate the organization to a contract:

Printed Name: _____

Signature: _____

Date: _____

- G.** Acknowledge that you have received any and all Amendments to this RFP by circling one of the responses to the following statement:

I HAVE

I HAVE NOT

RECEIVED ANY AND ALL AMENDMENTS TO THIS RFP.

IF YOU DO NOT SUBMIT THIS FORM AS YOUR LETTER OF TRANSMITTAL, MAKE SURE TO SUBMIT A SEPARATE LETTER OF TRANSMITTAL THAT INCLUDES ALL THE ABOVE INFORMATION.

APPENDIX "E"
Mandatory Response Form
To Mandatory Specification
"Contract Terms and Conditions"

This Appendix "E" contains Parts A, B, and C. Part A must be completed. Parts B and C must be completed, if they apply. All three parts must be returned.

FIRM: _____
PHONE NO: _____ FAX NO: _____
REPRESENTED BY: _____ TITLE _____
(Please print)
SIGNATURE: _____ DATE: _____

PART A:

The offeror listed above is prepared to meet each of the requirements set forth in paragraphs 1 through 58 found in "Appendix "B", "Contract Terms and Conditions".

Circle one: **YES** **NO**

PART B:

If no, complete the following:

The offeror listed above is prepared to meet each of the requirements set forth in the following paragraphs (Circle each paragraph number with which the Offeror agrees.)

1.	2.	3.	4.	5.	6.	7.	8.
9.	10.	11.	12.	13.	14.	15.	16.
17.	18.	19.	20.	21.	22.	23.	24.
25.	26.	27.	28.	29.	30.	31.	32.
33.	34.	35.	36.	37.	38.	39.	40.
41.	42.	43.	44.	45.	46.	47.	48.
49.	50.	51.	52.	53.	54.	55.	56.
57.	58.						

(Appendix "E" continued on next page)

The offeror listed above objects to the following paragraphs(s). (Circle each paragraph number with which the Offeror disagrees.)

- | | | | | | | | |
|-----|-----|-----|-----|-----|-----|-----|-----|
| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. |
| 9. | 10. | 11. | 12. | 13. | 14. | 15. | 16. |
| 17. | 18. | 19. | 20. | 21. | 22. | 23. | 24. |
| 25. | 26. | 27. | 28. | 29. | 30. | 31. | 32. |
| 33. | 34. | 35. | 36. | 37. | 38. | 39. | 40. |
| 41. | 42. | 43. | 44. | 45. | 46. | 47. | 48. |
| 49. | 50. | 51. | 52. | 53. | 54. | 55. | 56. |
| 57. | 58. | | | | | | |

PART C:

FIRM: _____

SIGNATURE: _____

DATE: _____

If you objected to any of the paragraph(s) in Appendix "B", "Contract Terms and Conditions", complete the following for each paragraph with which you disagreed. (Make additional copies, if necessary.)

Specifically, I object to paragraph number _____ for the following reason(s):

I propose the following alternative language for paragraph number _____:

APPENDIX "F"
QUALIFICATION AND EXPERIENCE FORM
SUBMIT THIS FORM WITH YOUR PROPOSAL

General Information

The offeror hereby certifies that all statements and all answers to questions herein are true to the best of its knowledge and belief. All information requested in this form shall be furnished by the proposer and shall be submitted with the proposal. Statements must be complete, accurate, and in the form requested. Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains. By signing this form, the offeror grants the Fair permission to obtain offeror's credit report.

Name, address and telephone number of Offeror exactly as it should appear in the Concession Agreement.

Name: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone No.:() _____ Email Address: _____

Business Structure

Offeror intends to operate the Concession Agreement as a:

___ Corporation ___ Partnership ___ Joint Venture ___ Sole Proprietorship
___ Other _____

A. Corporate Statement (if a corporation, answer the following)

Date of Incorporation: _____ State of Incorporation: _____

Is the Corporation authorized to do business in New Mexico?

___ Yes – As of what date? _____

___ No

Furnish the following information on the principal officers of the corporation, and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____

B. Partnership Statement (if a partnership, answer the following)

Date of Organization: _____

___ General Partnership ___ Limited Partnership ___ Other: _____

Has the partnership done business in New Mexico?

_____ Yes _____ No

Furnish the following information on each general partner and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____

C. Joint Venture (if a Joint Venture, answer the following)

Date of Organization: _____

Detail of joint venture: _____

Has the joint venture done business in New Mexico?

___ Yes, When? _____

___ No

When and where (which state) was joint venture incorporated?

Furnish the following information on each joint venturer, identifying the key joint venturer, and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____

D. Sole Proprietorship (if a Sole Proprietorship, answer the following)

Proprietor's Full Name: _____

Company Name: _____

Company Address: _____

Telephone Number: _____ Email Address: _____

How long in business under this company name? _____

Statement of Qualifications and Experience

For each question that requires a separate attachment sheet, restate the paragraph number, and restate the corresponding question.

1. Years of experience the Offeror has in the food and liquor retail business. If operation is to be managed by a joint venturer or partner, indicate the experience of each party. (***Attach answer to this form***).
2. Describe the nature of your business experience in the ownership/operation/management of the food and liquor business and state the number of persons you currently employ in such operations. State the size of facilities you have owned, managed or operated, including volume of sales, number of employees, size of premises (restaurant or bar in square feet and/or number of serving spaces), and state the year or years in which you owned, managed or operated each such retail food and liquor business. (***Attach answer to this form***).
3. Submit list of locations (facilities, city and state) where you have operated applicable businesses within the last three (3) consecutive years, giving dates of operation for each location and the annual gross revenues for each operation. (***Attach answer to this form.***) If number of facilities exceed five in number, no more than five facilities need be listed.
4. Give names, addresses, and telephone numbers of landlords, if any, for all operations listed in paragraph "3" above. (***Attach answer to this form.***) The Fair may contact landlords.
5. Franchise Operators – Provide information on franchise and statement authorizing franchise to operate at the site to which this proposal applies.
6. State whether Concessionaire owns the necessary equipment to provide concession services and, if not, the arrangements offeror would make in order to provide this equipment. List all equipment, including any utility requirements, that offeror feels will be necessary for this operation.
7. Give names, location, and date of all retail operating contracts, if any, that have been terminated or suspended within the last three (3) years, for any reason, either voluntarily or involuntarily, prior to the expiration of the contractual term. List any judgments terminating, or any pending lawsuits or unresolved disputes for the termination of retail concessions operated by you within the past five (5) years. State whether offeror has ever filed bankruptcy or reorganization under the Bankruptcy Code. (***Attach answer, if necessary, to this form***)
8. Give names, location, and date of any individual, officer, director, shareholder, partner, agent, spouse or family member responsible for managing or directing your firm, if any, that have been convicted of a felony and describe in detail when, where, the nature of the conviction, and the sentence which was imposed. (***Attach answer, if necessary, to this form***)
9. Is any civil or criminal litigation currently pending against the named business organization, its owners, officers or employees? Yes___ No___ If yes, explain.

Give name, title and experience of key personnel of Offeror (*If additional space is needed, attach answer to this form.*) Provide an organizational chart of those people in your business who will be involved in your operation at the Fair.

NAME YEAR	TITLE	EXPERIENCE IN

Give name, address and telephone number of at least two (2) references, other than the Fair, as to your technical business capability.

NAME NUMBER	ADDRESS	TELEPHONE

Financing

1. List the following information for all principals: Social security number(s), federal identification and state identification.
2. All Offerors must provide financial statements of your organization as follows:
 - Provide complete income tax returns or audited financial statements, for the two most current years, including notes thereto, certified by corporate official as to accuracy, or income tax return of owners to substantial qualifying years.
 - Provide current year financial statements (unaudited financials are acceptable for current year).
3. All Offeror's must specify how they are going to finance the venture, debt financing and equity financing.
 - Provide details and documents including contact person(s) regarding long-term receivables and payables, including current status.
 - Provide information on Real estate declared as assets (provide legal description).
4. Does any person named above , or any other individual directly involved in the named business organization have a contractual, financial or other interest in any other exhibit, concession, ride, show, attraction or department at the New Mexico State Fair? If yes, please explain.
5. Does any officer, commission member, member of management staff or employee of the New Mexico State Fair have a contractual, financial or other interest in the named business organization? Yes___ No___? If yes, please explain.

Give names, addresses and telephone numbers of at least two (2) bank/financial institution references.

NAME YEARS	TITLE	EXPERIENCE IN
---------------	-------	---------------

_____	_____	_____
_____	_____	_____

The undersigned hereby attests to the truth, sufficiency, completeness and accuracy of all statements, answers, and representations made in this form, including all supplementary statistics, references, and information attached here (individual, partner, joint venturer, authorized officer of corporation.)

Name: _____ Title: _____ Date: _____

Name: _____ Title: _____ Date: _____

APPENDIX “G”

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official’s employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT HE/SHE/IT, HIS/HER/ITS FAMILY MEMBER, OR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“**Applicable public official**” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“**Campaign Contribution**” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“**Family member**” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“**Pendency of the procurement process**” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“**Person**” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Title (Position)

Date

—OR—

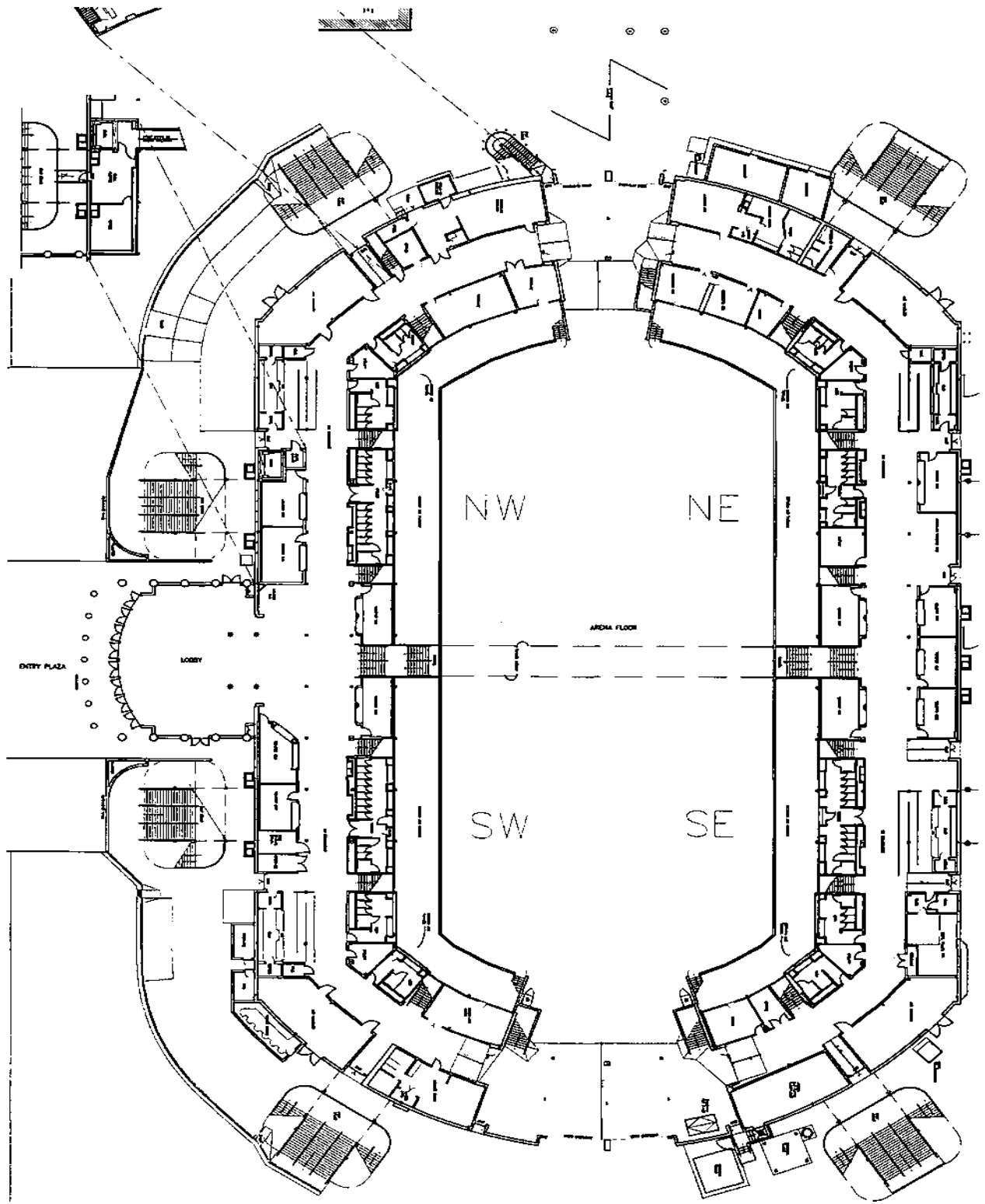
NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Title (Position)

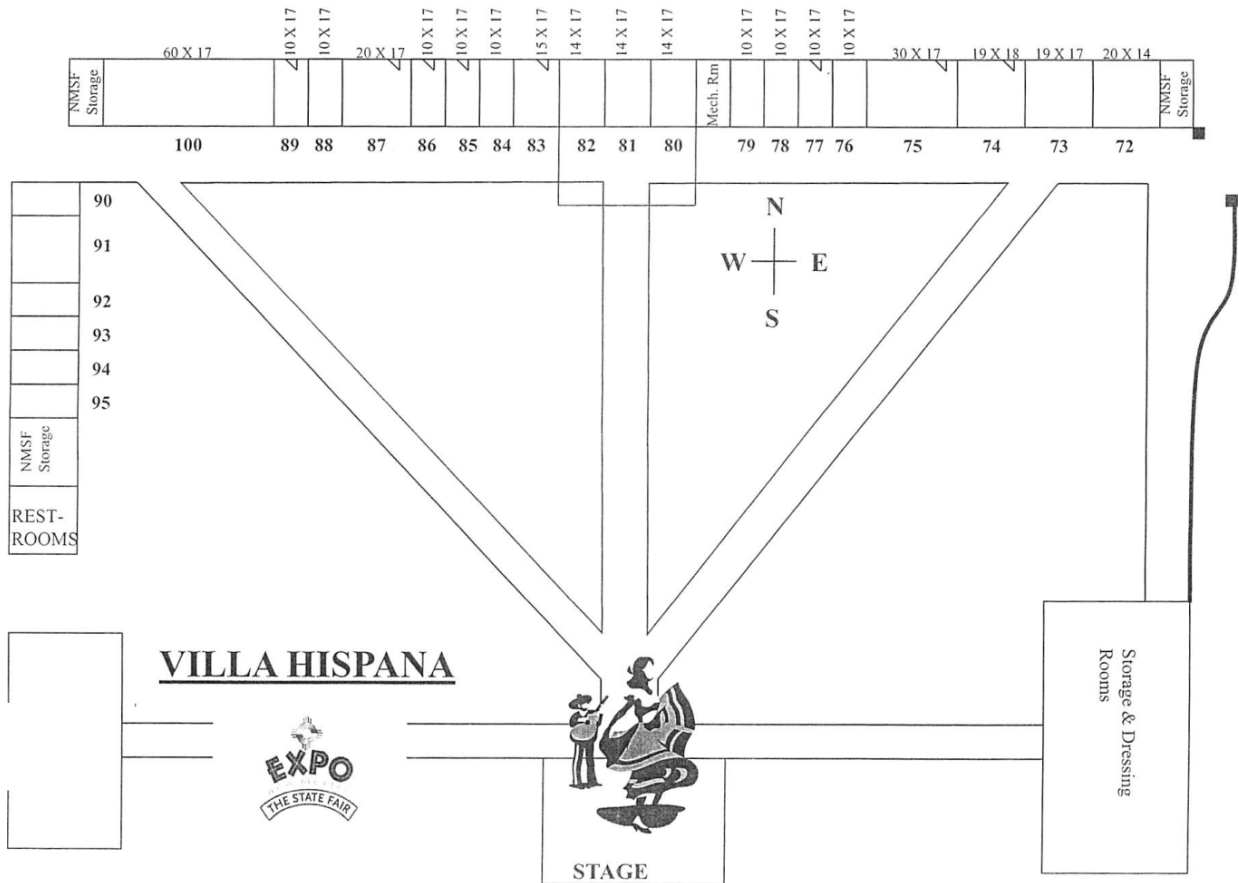
Date

APPENDIX "H"
TINGLEY COLISEUM

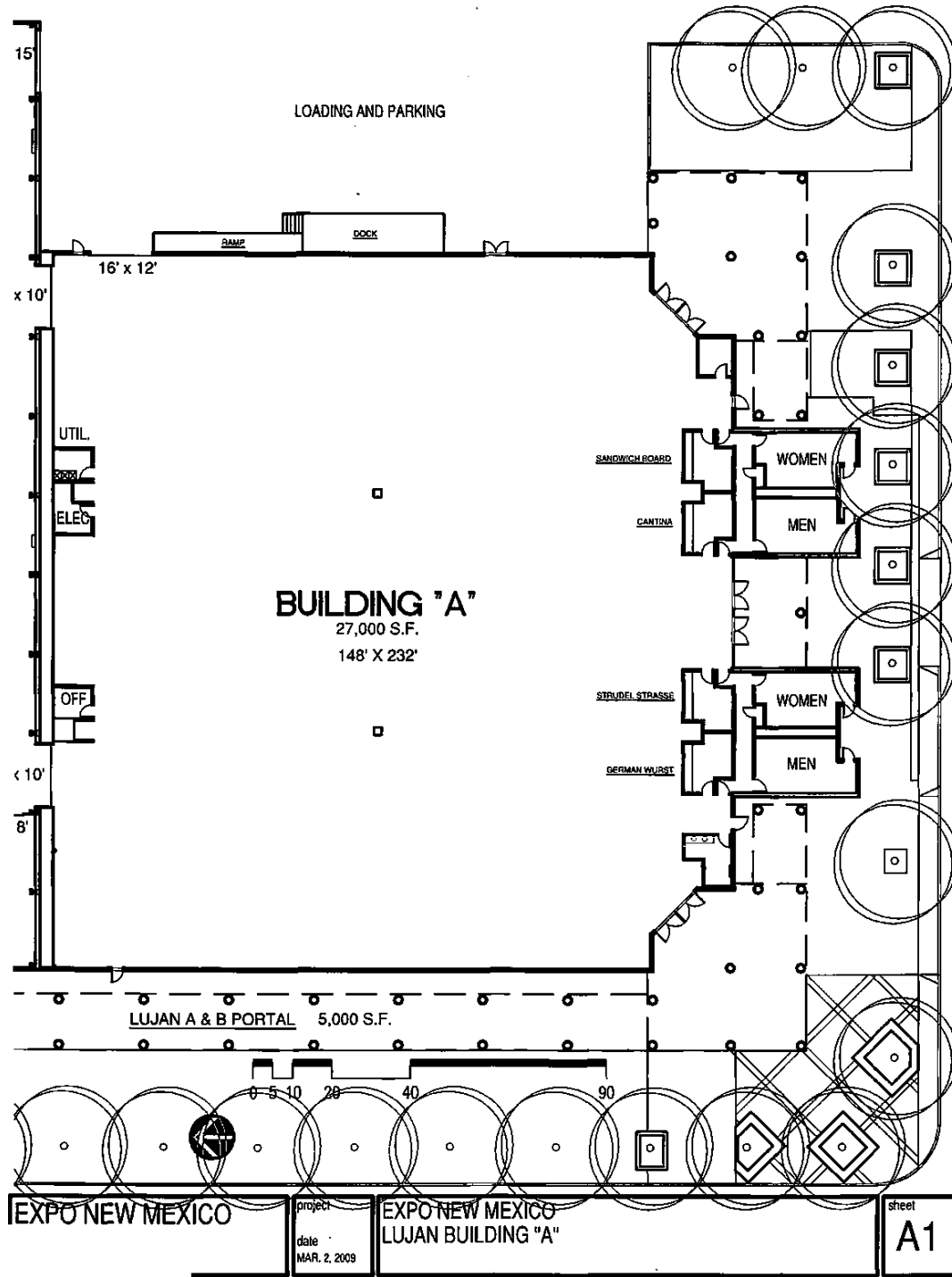


APPENDIX "I"

VILLA HISPANA CONCESSION SITE



APPENDIX "J" **LUJAN CONCESSION SITE**



APPENDIX "K"

MAP OF FAIRGROUNDS

