

REQUEST FOR PROPOSALS
FOR
CARNIVAL AND RELATED CONCESSIONS

AT
EXPO NEW MEXICO

RFP # 23-005

STATE OF NEW MEXICO
NEW MEXICO STATE FAIR

PREPARED BY:

NEW MEXICO STATE FAIR
ISSUE DATE: APRIL 26, 2023

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I. INTRODUCTION

A. Purpose of this Request for Proposals

The State of New Mexico, New Mexico State Fair, ("Fair"), is inviting responsible offerors to submit competitive sealed proposals to provide a carnival and related concessions during the New Mexico State Fair. 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 Carnival Contractor for the term of the contract.

B. Summary of Scope of Work and Term

The scope of work shall consist of providing and operating a carnival to include the latest and most popular midway rides, shows, games as well as food and beverage concessions during the New Mexico State Fair. 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 November 30, 2027. The Fair reserves the option of renewing the contract for a maximum of one additional four-year period, or any combination of years and/or months not to exceed four years, at the same terms and conditions contained herein, subject to written concurrence by the Contractor and the Fair. The total term of the contract shall not exceed eight years including all extensions and renewals.

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@expo.nm.gov
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

1. "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.
2. "Attractions" means all super spectacular, major, standard, and children's amusement ride equipment, shows, games of skill and concessions.
3. "Concession(s)" means all games of skill, food and/or beverage outlets.
4. "Contractor" means successful offeror awarded the contract.
5. "Expo New Mexico" or "Expo" is the facility that houses the properties owned by the State of New Mexico, New Mexico State Fair.
6. "Gross receipts" means total revenue from ALL operations at the Fair by Contractor less actual New Mexico Gross Receipts due and payable, unless otherwise defined.
7. "Kids' Zone" means the area of the midway in which rides are designated for children.
8. "New Mexico State Fair" or "Fair" is the agency under whose jurisdiction this Request of Proposals is released.
9. "Offeror" is any person or legal entity that chooses to submit a proposal in response to this Request for Proposals.
10. "Request for Proposal" or "RFP" means all documents, attached or incorporated by reference, used for soliciting proposals.
11. "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. Disclosures made in Appendix "G", "Contractor Status Report", may be considered.
12. "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.
13. "Rides/Shows" means all super spectacular, major, standard and children's amusement ride equipment, shows, and the like.
14. "Support Equipment" means all electrical generation and distribution equipment, ticket sale boxes, light towers, water distribution equipment, patron comfort furnishing, and the like.
15. 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.

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

E. Background Information

The New Mexico State Fair 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 2022 Annual Event had an attendance of approximately 475,000. The 2023 eleven-day Annual Event will be held September 7th through September 17th.

During the Annual Event, the Fair features livestock, 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.

Current admission to the Annual Event is \$15.00 for adults, \$8.00 for seniors and \$8.00 for children. (Children 5 and under admitted free) Exhibits are open daily 10:00 AM to 9:00 PM Sunday through Thursday, and 10:00 AM to 10:00 PM Friday and Saturday. Times and prices are subject to change.

Gross carnival ticket/wristband sales, less gross receipts tax, were approximately \$2,200,000 in 2022. The Fair retained 45% gross sales from ticket and wristband sales this year.

In 2022, the midway contained 43 rides, as well as concessions and games.

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 remains 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.

II. 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. These dates are subject to change based on the number of responses and as needed.

	ACTION	RESPONSIBILITY	DATE (if known)
1.	Issue of RFP	Fair	4/26/2023
2.	Pre-proposal conference	Fair, Potential Offerors	5/11/2023 2:00 PM
3.	Distribution List Response	Potential Offerors	5/11/2023 2:00 PM
4.	Deadline to submit additional questions	Potential Offerors	5/16/2023 2:00 PM
5.	Response to written questions/RFP amendments	Fair	5/18/2023
6.	Submission of proposal	Offeror	5/26/2023 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 II, 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 will be held on May 11, 2023 at 2:00 PM 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, email, 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 written questions as to the intent or clarity of this RFP until 2:00 p.m. local time on Tuesday, May 16, 2023. 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, emailed 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 Friday, May 26, 2023.

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 "Carnival and related concessions" RFP. 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 which 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 Section II.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

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 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 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 the Contractor. The Fair's decision as to whether sufficient appropriations and authorizations are available shall be accepted by the Contractor 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.

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.

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 a business both a resident business preference and a resident veteran business preference.

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

III. 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) Completed Cost Response Form (Appendix "C")
- f) Completed Judgments Form (Appendix "F")
- g) Completed Contractor Status Form (Appendix "G")
- h) Campaign Contribution Form (Appendix "I")
- i) Offeror's Additional Terms and Conditions
- j) 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 II, 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.

IV. 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 37, 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. Insurance

Offeror must have and show proof thereof in its proposal, the insurance requirements stated in paragraph 10 of Appendix "B". Successful Offeror must also furnish a Certificate of Insurance naming the State of New Mexico, New Mexico State Fair as "Additional Insured" within five (5) business days after award of contract.

3. Judgments

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

- a) Describe in detail whether or not Offeror has any pending claims, suits or judgments against it for any reason during the past seven (7) years beginning with January 1, 2016 through January 1, 2023.
- b) If yes, please provide the cause of action, the date of the incident giving rise to the claim, suit or judgment; the circumstances as alleged against the Offeror; the Offeror's response to the allegations; and the disposition of the claim, suit, or judgment.
- c) Describe in detail whether or not injuries to patrons have occurred arising out of Offeror's carnival operations.
- d) Also indicate whether or not Offeror has ever filed bankruptcy or reorganization under the Bankruptcy Code.

4. Financial Information

- a. Financial Statements. State the fair market value of your business assets identifying those that are held as collateral, are restricted by debt or otherwise used as collateral, of your business and provide complete financial statements of your Firm's past two (2) fiscal years as prepared by a certified public accountant. If requested by Fair, Offeror will be required to permit the Fair to obtain a current credit report of both the offering entity and its principle owners. Note: Financial information submitted in response to this section will be kept confidential if so, marked in accordance with Section II.C.8.
- b. Financial References. Proposals must include a minimum of four (4) verifiable

financial references such as banking/credit organizations, ride manufacturers and major suppliers, and one (1) insurance agency reference. Provide name of contact person and written authorization for financial check for each.

5. Employee Background Checks

Offeror shall be required, at its own expense, to conduct criminal background checks on each employee working on Fair premises. Offeror shall submit to Fair prior to the start of each Annual Event, a copy of a current criminal background check for each employee Offeror proposes to work on Fair premises. Offeror shall not permit any individual charged with or convicted of any sexual offense or any violent felony to work on Fair premises. A statement of concurrence is required.

6. Campaign Contribution Disclosure Form

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

B. Other Specifications

1. Operation

- a. Equipment List. Offeror shall submit with its proposal a complete equipment list of ride/shows, itemized by name of manufacturer, serial number, year of manufacture and riding capacity per hour as rated by the manufacturer's stated standards; names and addresses of the current owners of such equipment; and a complete list and description of concessions, game booths and trailers, and games of skill to be presented at the Annual Event. Offeror shall also outline all Support Equipment that it proposes to provide.
- b. Carnival Premises Layout. Offeror shall submit with its proposal a scaled conceptual theme, artist rendering, and visual layout, based on the dimensions and map of our space included in Appendix "H". List utility requirements necessary for the entire midway.
- c. Ride Maintenance. Offeror shall provide documentation of maintenance schedule and repairs made on all existing rides brought onto Fair premises for the two (2) previous calendar years.
- d. Quantity of Personnel. Offeror must demonstrate that it has or will be able to obtain the quantity of personnel including, but not limited to, janitorial help, needed to serve the public. Any employee performing services under this RFP and subsequent contract must be a citizen of the United States or must possess a valid permit to work in the United States.
- e. Uniforms. Describe uniforms to be worn by personnel, including subcontractors. Include sketches or photos of the proposed uniforms.
- f. Creativity and Innovation. The Fair desires a carnival operation that is entertaining, imaginative, and innovative and one that looks to the future with ideas to constantly update the look and functioning of the midway. The carnival contractor must also provide a professional atmosphere and patron-oriented environment. Describe in detail the entertaining, creative and innovative aspects of the offeror's operation that will meet or exceed these goals.

- g. Proposed Menus. A menu must be submitted for each concession facility proposed and must be detailed in its scope and offer specialization (e.g., Italian food; hamburgers, hot dogs, French fries; Mexican food; dessert type food; deli food; drinks, etc.). Specify the anticipated charges to the patron for purchasing each concession item.
 - h. Customer Complaints. Describe Offeror's customer complaint policy and procedures.
 - i. Improved Quality. The quality of the carnival is expected to improve, or at a minimum, stay the same. Please describe your plans to effectuate this goal.
2. Qualifications and Competence
- a. Offeror Experience. List in detail Offeror's experience in providing carnival services of the type described in this RFP. Proposal must include a complete list of all fair and still-date engagements played by Offeror during all of 2017, 2018, 2019, 2020, 2021, 2022 plus the 2023 schedule. Provide name of contact person for each.
 - b. Letters of Recommendation. Offeror must provide letters of recommendation from those organizations, for which the Offeror has provided carnival services during the past five (5) years. If those organizations exceed three (3) in number, no more than three (3) recommendations need be submitted.
 - c. Organizational Chart and Resumes. Provide a detailed organizational chart of your firm listing the areas of responsibility of persons listed on the chart. Provide a detailed resume of each officer and person in a managerial capacity who will provide carnival services described in this RFP.
 - d. Ownership/Management Relationship. Specify whether your firm's owner, president, or chief executive officer or officers will be present during carnival operations and, if not, your firm's procedures for delegating authority to responsible supervisory personnel.
3. Safety and Sanitation
- a. Safety Procedures. Explain current safety policies and procedures that affect employees and the public, including any independent ride inspection, copies of employee safety training procedures with proof of training meetings, seminars, use of safety employees and in-house safety department.
 - b. Final Clean-Up. Describe Offeror's final clean-up plans to ensure safe removal of all materials, including residue from fuels, hydraulic fluids and other materials used on the premises.
 - c. Accident History and Loss Control Records.
 - i. List any prior accidents, safety violations, or significant incidents involving the Offeror's and the Offeror's subcontractor's Attractions during all of 2017, 2018, 2019, 2020, 2021 and 2022 through the issue date of this RFP. If others have owned or operated the Attractions during this period, details of such circumstances must be provided.
 - ii. Provide certified loss control records for all claims and settlements against the principal, subsidiary corporations, and all related business entities owned by any shareholder or director and used in the carnival, amusement park, or public attraction type of venture for all of 2017, 2018, 2019, 2020, 2021 and 2022 through the issue date of this RFP.

- iii. Provide certified loss control records for all of 2017, 2018, 2019, 2020, 2021 and 2022 through the issue date of this RFP for all rides proposed for the Annual Event sub-contracted, not owned by, Offeror.
 - iv. If Offeror is selected as a finalist, you may be required to submit an updated accident report up to the date of oral presentation.
- d. Crisis Management. Describe Offeror's crisis response and management plan, how employees respond to an emergency, and how management assists the State Fair Management in investigation, deals with the press, follows up on occurrences, and initiates preventative measures to ensure no future reoccurrences.
 - e. Drug screening. Contractor will be required to have a drug screening and testing program for employees. Describe your current drug testing policies and practices.
 - f. Coordinating services. Describe Offeror's philosophy, policies and practices related to coordinating with Fair for services necessary for overall safety and customer service (i.e., trash and litter control, first aid services, safety inspectors, etc.)
 - g. ADA compliance. Describe Offeror's existing program or plans for compliance with current and incoming ADA standards.
 - h. Ride certification. State the NAARSO level of certification Offeror's independent safety inspector(s) have attained.
 - i. Cable covers. Contractor will be required to provide suitable hose and electrical cable covers, such as "Yellow Jackets", or alternative. Specifically state the type of hose and electrical cable covers or alternative means (ie, saw cutting with asphalt backfill) of safely securing cables to be installed by Contractor.

4. Advertising and Marketing Strategy.

Provide a brief description of how Offeror would promote and market the activities conducted on the State Fairgrounds that contribute to carnival revenues. See paragraph 3.D of Appendix "B". Describe proposed discount promotion plans. Specify any other resources financial or otherwise, if any, the Offeror would be willing to allocate to advertising and marketing.

5. Accounting Procedure.

Specify in detail the arrangements which will be made in order to ensure the financial reporting integrity of Offeror's operation. This includes ride ticket handling, disposal, and control, inventory control systems, etc. Provide examples of reports that would be generated.

6. General Improvements.

Offeror will propose to pay to the Fair a sum for each year of the Agreement to be used for general improvements or assets as described in Paragraph 3.C. of Appendix "B".

7. Cost to Fair Patrons.

In addition to the proposed menu prices of food and beverage concessions, which are specified in Section IV(B)(1)(g) on page 20 of the RFP, Offeror must specify the cost to the patron for each game, the cost of the number of coupons/credits proposed for each ride and show, and the coupon/credits denomination it proposes.

8. Revenue to Fair.

Money offers will be evaluated based on the Contractor paying the Fair a certain percentage of gross receipts from the operation of rides and shows and the Contractor paying the Fair a Linear footage fee, as described in 3B, for all concession space, and such offers must contain a stated guarantee of at least \$700,000.00 payable to the Fair, regardless of the offered percentage and footage fee.

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

V. EVALUATION

A. Value 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	POINTS AVAILABLE
1. Operation	200
2. Qualifications and Competence	100
3. Safety and Sanitation	200
4. Advertising and Marketing Strategy	25
5. Accounting Procedure	75
6. General Improvements	100
7. Cost to Fair Patrons	50
8. Revenue to Fair	350
SUB-TOTAL	1100
9. Oral Presentation (if any)	100
TOTAL	1200

B. Evaluation Criteria

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

1. OPERATION: Points will be awarded based upon an evaluation of the following:

- a) Equipment list. Points will be awarded based on the age, type, number and desirability of attractions.
- b) Carnival premises layout. Points will be awarded based on the desirability, appearance, creativity, and practicality of layout.
- c) Ride Maintenance. Points will be awarded based on thoroughness and sufficiency of detail in provided documentation of maintenance schedule and repairs.
- d) Quantity of personnel. Points will be awarded based on the evaluation committee's perception of whether or not the Offeror will be able to provide sufficient personnel.

- e) Uniforms. At a minimum, during the Annual Event, all personnel who provide service to the public will be required to wear matching pants and shirts tucked in at the waist. Points will be awarded based on the desirability and practicality of the uniforms described and illustrated by Offeror.
- f) Creativity and Innovation. Points will be awarded based on the desirability to the Fair of the creative and innovative aspects of the carnival described by the Offeror.
- g) Proposed Menus. Points will be awarded based on the desirability and mix of menu items proposed. Prices of items will be considered.
- h) Customer Complaints. Points will be awarded based on the desirability to the Fair of the method by which complaints are handled by Offeror.
- i) Improved Quality. Points will be awarded based on the desirability to the Fair of plans to improve quality of the carnival over length of term of Agreement.

2. **QUALIFICATIONS AND COMPETENCE:** Points will be awarded based on the Offeror's experience in the carnival business, letters of recommendation, resumes and ownership/management relationship. List key personnel, including concessions manager, food and beverage manager, marketing manager, financial/ticket manager, human resources manager, and operations or lot manager. 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 and may use these investigations in its scoring.

3. **SAFETY:** Points will be awarded based on the extent of the Offeror's and its subcontractor(s)' safety procedures, accident history, and an examination of the Offeror's and its subcontractor(s)' loss control records. The Offeror's response to all of Section IV(B)(3) will be taken into consideration. Points will also be awarded based on the NAARSO level of the contractor's safety inspector. The Fair may seek the advice of an outside safety consultant with regard to the evaluation of this specification.

4. **ADVERTISING AND MARKETING STRATEGY:** Points will be awarded based on the overall desirability to the Fair of the promotion and marketing activities proposed. Dollar value will be considered.

5. **ACCOUNTING PROCEDURE:** Points will be awarded based on the integrity and efficiency of the system.

6. **GENERAL IMPROVEMENTS:** Points will be awarded based on price and overall desirability to the Fair.

7. **COST TO FAIR PATRONS:** Points will be awarded on the overall perception of the balance and sensibility of the pricing structure for rides, shows, games, and concession items.

8. REVENUE TO FAIR: Points will be awarded on proposed percentage of Gross Receipts Offeror will pay to Fair. Points will be awarded on an annualized basis according to the following formula.

Gross Receipts will be evaluated using the following formula:

$$\frac{\text{This Offeror's Percentage}}{\text{Highest Offeror's Percentage}} \times 62.50 = \text{Award Points}$$

(per year for a maximum of 250 possible points)

Concession Space Linear Footage Fee will be evaluated using the following formula:

$$\frac{\text{This Offeror's Fee}}{\text{Highest Offeror's Fee}} \times 25.00 = \text{Award Points}$$

(per year for a maximum of 100 possible points)

Any Offeror's footage fee per linear foot below \$150.00 will receive zero (0) points.

In submitting a proposal for Evaluation Criteria number 8, the Offeror must complete the "Cost Proposal Form" found in Appendix "C" without deviation from the required format. Do not re-type the form or alter the form in any manner. Do not re-state these values in any other location in your proposal.

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 II, Paragraph B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, 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 II, 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
CARNIVAL AND RELATED CONCESSIONS
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, sixty-four (64) pages of text that include Appendices "A" through "T".

This acknowledgement of receipt should be signed and returned to Antoinette Kulinna no later than 2:00 PM MST on May 11, 2023. 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
CARNIVAL CONCESSION 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/Expo.

"Attractions" means all super spectacular, major, standard, and children's amusement ride equipment, shows, games of skill and concessions, and as further defined below.

"Carnival Operations" where the context allows includes the Rides/Shows, Concessions, Games, Support Equipment and the operation of those items by Contractor during the Annual Event.

"Concession(s)" means all games of skill, food and/or beverage outlets.

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

"Gross Receipts" means total revenue from all operations at the Fair by Contractor less actual New Mexico Gross Receipts paid, unless otherwise defined.

"Kids' Zone" means the area of the midway in which rides are designated for children.

"Support Equipment" means all electrical generation and distribution equipment, ticket sale boxes, light towers, water distribution equipment, patron comfort furnishing, and the like.

The terms "must," "shall," "will," and "require" identify a mandatory item or factor.

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

2. Scope of Work – General Operation Requirements and Information.

A. Dates and Hours of Operation

- i. Contractor shall provide a carnival as contemplated by this Agreement starting with the 2023 Annual Event, which shall run from September 7th until September 17th. The Carnival shall be in operation from 12:00 noon until 12:00 midnight each day of the Annual Event, weather permitting. No deviations from

these times shall be allowed unless by agreement with the Fair. Contractor may start move-in/set-up during the week prior to Opening Day of the Annual Event. Deviations may be made on this timing with prior approval from the Fair.

- ii. All Carnival Operations shall be in place and ready to open and operate by 6:00 p.m. on the day before Opening Day having been inspected and approved for safe operation. Fifty percent (50%) of all Attractions shall be available for inspection forty-eight (48) hours before Opening Day. The remaining fifty percent (50%) of all Attractions shall be available for inspection twenty- four (24) hours before Opening Day. No deviations from these times shall be allowed unless by written agreement with Fair
- iii. Tear-down of Attractions shall not start until after the end of the Annual Event. Tear-down shall be complete no later than seventy-two (72) hours after the end of the Annual Event.

B. Other Engagements. Contractor shall not place all or any part of the carnival of Contractor, at any place within 100 miles of the Fairgrounds other than the Annual Event during the term of this Agreement, without the express written consent of Fair.

C. Credentials.

- i. Fair shall admit, without charge, Contractor's personnel (as defined below) with numbered working photo identification badges. Photo identification badges will be provided by Contractor. Contractor must provide Fair with a current list of Contractor employees for each Annual Event. Any change in personnel must be immediately reported to the Fair.
- ii. If credentials are found in the possession of anyone other than proper personnel of Contractor, the credentials shall be deemed invalid by Fair and shall be immediately impounded by Contractor and surrendered to Fair.

D. Carnival Premises.

- i. Fair shall provide a paved midway lot and a paved Kids' Zone area (collectively, the "Carnival Premises") as shown on attached Appendix "H". By taking possession of the Carnival Premises, Contractor shall be deemed to have accepted the Carnival Premises as suitable for the purposes of Contractor. The lot layout may be amended by mutual agreement.
- ii. Contractor shall position and operate Attractions and perform the work required under this Agreement solely within the confines of the Carnival Premises. Contractor's services shall be performed in the manner provided in this Agreement, and Contractor shall assure and be responsible for the performances of the subcontractors of Contractor (the "subcontractors"). Fair and its other contractors may sell any foods, goods or merchandise in areas of the Fairgrounds other than the Carnival Premises during the Annual Event. Fair may also, in its discretion, operate or allow others to operate any ride, show or concession in areas of the Fairgrounds other than the Carnival Premises during the Annual Event.
- iii. Contractor shall control personnel ingress and egress at the Carnival Premises gate located at the intersection of Domingo and California Streets. Members of

the public shall not enter this gate. Contractor, at its expense, shall be required to hire Fair-approved security personnel to control access through this gate. Contractor shall be responsible for the entire cost of such security personnel.

E. Attractions. Contractor shall operate a carnival during the Annual Event and shall provide the following Attractions.

- i. Rides/Shows. Contractor shall determine and provide an appropriate number of the latest and most popular Rides/Shows of the appropriate type and quality given the size of the Carnival Premises. Human or deformity shows, commonly referred to as "freak shows" or such side shows, are deemed inappropriate and not acceptable to Fair.
- ii. Games of Skill. Unless otherwise authorized by Fair, Contractor shall provide the latest and most popular games of skill. Without the written consent of Fair, Contractor shall not provide more than four (4) of the same type of game, i.e., basketball free throw, basket toss, plate pitch, etc. Game prizes shall be displayed for each category of win. Build-up and rogue games are prohibited. No conversion charts, score cards, or punch boards shall be used to play any game. Contractor shall not offer prizes such as live ducks, chicks or other live animals, sexually suggestive material, knives, firearms, any items that could be used as a weapon, drugs including marijuana, drug paraphernalia, liquor, "knockoff" or counterfeit items, or material that are illegal pursuant to federal or state law or local ordinance, or any other items that are found objectionable by Fair. Prizes may not be displayed that cannot be won. All games of skill shall comply with New Mexico gambling statutes. All games of skill shall involve predominately skill, shall be fair, and shall provide the player with a reasonable opportunity to win. All prizes or anything on display shall receive the prior written consent of Fair.
- iii. Concession Stands. Contractor shall provide an appropriate number and mix of the latest and most popular food and beverage Concession stands to be located on the Carnival Premises. Other types of Concession stands shall be considered on a case by case basis. Fair may increase the number of food and beverage Concession stands provided by Contractor. Concession rates must be posted conspicuously on the booth approved by Fair. Contractor shall submit to Fair, at least fifteen (15) days in advance of Opening Day, a complete list stating rates to be charged for all Concessions. Concessionaires shall charge reasonable prices and the prices are subject to review and prior written consent by Fair. Fair may limit what goods may be sold or distributed and may inspect and sample Concessionaire's food and beverage items or may conduct other tests to determine if the goods being sold or distributed meet quality standards. Liquor sales are prohibited.

F. Customer Service Program. Contractor shall provide and maintain a comprehensive customer service program, including training and orientation for all personnel and subcontractor personnel regarding Carnival Operations and matters regarding the New Mexico State Fair. Contractor shall provide a minimum of ten (10) rest areas, including canopies, seating, picnic tables, and shrubbery as landscaping throughout the midway.

G. Carnival Attraction Diagram and Price List.

- i. On or before June 1 in each year of this Agreement, Contractor shall provide Fair with a preliminary diagram showing the proposed location of all Attractions (the "Carnival Attraction Diagram"). No Attraction of any kind may be located within the restricted area at the main entrance to the midway. (See Appendix "H") The perimeters of this rectangular restricted area are as follows:

Northern boundary: starts at the south edge of Racetrack Avenue nearest the northwest corner of the restaurant facility and ends 72.5 feet west at approximately the northeast corner of the first-aid building;

Western boundary: starts at approximately the northeast corner of the first-aid building and ends 112 feet to the south;

Southern boundary: starts at the southwest corner of the restaurant facility and ends 72.5 feet to the west;

Eastern boundary: starts at the southwest corner of the restaurant facility and ends 112 feet to the north at the south edge of Racetrack Avenue nearest the northwest corner of the restaurant facility.

- ii. The Carnival Attraction Diagram shall be accompanied by: 1) a complete list of Rides/Shows listed by name of manufacturer, type, size, year of manufacture, riding capacity per hour, and the number of coupons/credits to be charged for each Ride/Show; 2) a complete equipment list of games of skill listed by name, type, size, year of construction or purchase, and prices to be charged for each game and prizes to be offered; 3) a complete list of rates to be charged for all food and beverage by item, size, and quality; 4) a list of all major equipment, other than Rides, games of skill and, Concession stands, that shall be provided under this Agreement, such as electrical generators, ticket booths, light towers, entrance gates, offices, maintenance facilities, housing units, restrooms, showers, etc., and 5) photographs of all Attractions. The photographs may not be more than six months old.
- iii. Fair will inspect and must consent to the list by August 1 in any given year of the Agreement, Contractor shall provide a final diagram and description/price lists that shall not be materially altered after they have been provided and consented to in writing by Fair. Contractor shall not change any prices or offer any prize without the prior written consent of Fair. All locations shall receive the prior written consent of Fair.

H. Camping Space and Parking

- i. A limited number of Camping spaces shall be available for Contractor's personnel use at a non-refundable fee of eight hundred dollars (\$800.00) per camper unit/vehicle four (4) days before Opening Day through three (3) days after the end

of the Annual Event. Any additional days shall be at the rate of forty dollars (\$40.00) per day per camper unit. In addition, parking passes shall be required for each car. Additional parking passes may be purchased from Fair. Spaces are available on a first come, first served basis and shall be paid in advance. No refunds shall be issued. All pets shall be kept within living quarters and said living quarters shall be maintained in a clean and sanitary manner.

- ii. Limited parking shall be provided by the Fair at a location to be determined by Fair.
- iii. Transport equipment, automobiles or tents may not be used for camping, sleeping or housing on the Fairgrounds.

I. Safety and Inspections.

- i. Contractor shall keep its Attractions and Support Equipment in a good and safe state of repair and upkeep, use every known practicable safety device for the protection and safety of passengers and the public, and the personnel of Contractor and subcontractors, and not bring onto or operate on the Fairgrounds, any Attraction or Support Equipment that may be deemed by a competent authority to be unsafe.
- ii. Fair will employ independent safety consultant(s) to perform safety inspections of rides, shows, games, concession stands and other related equipment and facilities in the Carnival Premises as well as perform safety inspections related to areas outside the Carnival Premises. The independent safety consultant shall report to, and take direction from, Fair. The cost of the independent safety consultant work for the Carnival Premises will be covered by the Contractor.
- iii. Contractor shall not permit any Ride, Show, game of skill, Concession stand, other related equipment, or facilities to operate unless the Ride, Show, game of skill, Concession stand, other related equipment, or facilities are inspected and approved for operation or public use by the independent safety consultant. The independent safety consultant shall provide safety inspections throughout the duration of each Annual Event. Safety inspection shall be documented in writing stating what was inspected, when, by whom, and the findings.
- iv. Contractor shall cooperate with the independent safety consultant to facilitate that each Ride and Show has posted on it a special inspection certificate noting that the Ride or Show was inspected after being installed/erected at the New Mexico State Fair and that said Ride and Show is deemed by the independent safety consultant to be safe to operate.
- v. Before starting Carnival Operations with respect to any Attraction, Contractor shall provide Fair with copies of any and all Attraction inspection reports and notice of any prior accidents or significant incidents involving the Attractions of Contractor during the preceding twelve (12) month period. If third parties have owned or operated the Attractions during this period, details of such circumstances should be provided.
- vi. All safety and restraint systems specified by the Ride/Show manufacturer shall be in place and in proper working order at all times on all Rides/Shows. Service manuals and updated service bulletins shall be available for each Ride/Show.
- vii. Contractor shall ensure that the use of the Carnival Premises for Carnival

Operations is arranged to protect the public from dangerous conditions, equipment, and maintenance operations.

- viii. In addition, Contractor will be required to provide its own independent ride safety inspector(s). Contractor's inspector(s) must be licensed by NAARSO, Class 2 or 3. Contractor's inspector will be required to be on the premises during all operating hours of the carnival.

J. Liquidated Damages.

- i. Contractor shall limit down time for all Rides, Shows, games of skill, and food and beverage Concession stands. Barring major power outages or Force Majeure Events, no more than five (5) Rides/Shows, five (5) games of skill, or one (1) food and beverage Concession stand shall be inoperable at any time on the Carnival Premises.
- ii. Contractor shall inform Fair when any Ride, Show, game of skill or Concession stand becomes inoperable. Such notification shall be made immediately following knowledge by Contractor of such information.
- iii. The following special damages shall be assessed by Fair:
 - a. If more than five (5) Rides/Shows are found simultaneously inoperable, Contractor shall be assessed \$500 per Ride or Show per operating hour for each inoperative ride that exceeds the authorized five (5) Ride and Show limit;
 - b. If more than five (5) Games of Skill are found simultaneously inoperable, Contractor shall be assessed \$1000 per game per day that exceeds the authorized five (5) game limit;
 - c. If more than one (1) food and beverage Concession stand is found inoperable, Contractor shall be assessed \$1000 per food and beverage Concession stand per day that exceeds the authorized one (1) food and beverage Concession stand limit.
- iv. Except for a Force Majeure Event, no excuses shall be accepted by Fair for an Attraction not being fully operational by 12:00 p.m. on Opening Day. If an Attraction is not operational at 12:00 p.m. on Opening Day or is non-operational due to late arrival, a penalty of \$2,500 per Ride, Show, game of skill, and food and beverage Concession stand shall be assessed per day for the first three days, and \$5,000 for each day thereafter, until the Attraction is fully operable.
- v. After submission of the final Carnival Attraction Diagram and list of attractions, and Fair's written consent, thereof, substitutions will be considered by the Fair on an emergency basis only. For any substitutions not approved by Fair, Contractor will be assessed \$25,000.
- vi. Special damages are not intended to limit damages Fair may be able to recover from Contractor's failure to perform this Agreement but constitute a fund from which Fair may make a partial recovery. The determination of Fair to assess special damages is final. Special damages shall be paid by Contractor to Fair before final settlement.

K. New Mexico Carnival Law. In addition to the inspection procedures provided in this Agreement, Contractor shall comply with the following carnival law (57-25-1 to 57-25-6 NMSA 1978) ;

- i. Each Carnival ride operating in the State of New Mexico shall be inspected as provided below at the expense of Contractor and each Ride, including subcontracted rides, shall be insured for three million dollars (\$3,000,000) against liability for injury to persons arising out of the operation of the Ride. The insurance obtained pursuant to this paragraph shall be in a form acceptable to the Regulation and Licensing Department or, if no forms are required by the Regulation and Licensing Department, in the form described in paragraph (K) The Fair shall be named as an additional insured on the certificate of insurance as a certificate holder.
- ii. The inspection shall be accomplished by an inspector licensed by the National Association of Amusement Ride Safety Officials (NAARSO). Class 1, 2 or 3. The inspection shall be accomplished annually and sent with the application to:

New Mexico Carnival Program
Regulation and Licensing Department
Po Box 25101
Santa Fe, New Mexico 87505

- iii. The liability policy shall list by name and serial number the Rides that are covered in the policy. The certificate of insurance and list of Rides shall be sent with the application.
- iv. A fifty dollar (\$50.00) per Ride per year fee is required with the application.
- v. For any questions concerning the carnival law or for an application contact: New Mexico Regulation and Licensing at (505) 476-4853.

L. Oversight Contractor. Fair reserves the right to retain an independent oversight contractor(s) to assist in oversight of Carnival Operations. If Fair retains an independent oversight contractor, the cost of the oversight contractor shall be borne by Fair, and Contractor shall cooperate fully with the independent oversight contractor(s). The independent oversight contractor shall be in addition to the independent safety consultant.

M. Added Attractions Not Permitted. Once the final Carnival Attraction Diagram described in paragraph 2.G has been consented to by Fair, Contractor shall not stage any added Attraction(s) on the Carnival Premises or inside the Attraction(s), whether or not an additional charge is made. The price for admission, product or play posted at the outside of each Attraction shall be the entire charge made to the public.

N. Cost of Operation. Unless otherwise specified in this Agreement, all costs and expenses of operation, cost of subcontractors, including wages, maintenance, repair parts, transportation, contract labor licenses, permits, safety inspections, utilities, insurance and all overhead expense shall be the obligation of Contractor. Contractor shall also provide and pay all personnel required for Attraction and Support Equipment operation and maintenance, and service provision, unless otherwise specified.

O. Sound Levels. The New Mexico State Fair has a sound policy that conforms to the City of Albuquerque Noise Control Ordinance §9-9-1 through §9-9-99. Sound levels must be

appropriate for the venue and audience at all times. The decibel level is to peak no higher than **85db** at any point during the performance. Control of sound levels shall be at the exclusive discretion of the Fair at all times. If a decrease in sound levels is requested by Fair personnel, you must comply immediately with the request.

P. Damages to Buildings/Land. By occupying permanent buildings and land, Contractor shall not cause or permit any nails or other things to be driven into any portion of the buildings or land, nor cause or permit any signs to be affixed unless first consented to in writing by Fair. Contractor 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 shall damage or change the finish or appearance of the buildings. Contractor is entirely responsible for the space allotted to Contractor and shall reimburse the Fair at least two days after the end of the Annual Event for any damage caused by Contractor, reasonable wear and tear and damage from causes beyond Contractor's control excepted.

Q. Signage. Any decoration or signage publicly displayed or affixed to Fair property shall be consented to in writing by Fair. Further, Fair may reject any signage displayed by Contractor that Fair deems inappropriate.

R. Appearance of Attractions. All attractions shall be neatly painted, clean and in good repair. All attractions shall be skirted. All electric signage and lighted decorations shall be in good working order and have no burned out bulbs or elements. Awnings shall have a clean and professional appearance and have no holes or tears. All Concessions and Rides shall be covered with clean canvas. Failure to meet appearance standards may result in ride closure.

S. Contractor Personnel and Facilities. Contractor shall provide sufficient personnel to service the public with respect to Carnival Operations. All personnel of both Contractor and subcontractors shall wear numbered photo identification badges, be clean, well groomed, and neat in appearance during the Annual Event. At a minimum, during the Annual Event, all personnel who provide service to the public shall be required to wear matching pants and shirts tucked in at the waist, which shall be consented to by Fair, and their hair and facial hair (if any) shall be neatly groomed. No cut-offs, rag bottoms, or rips in materials shall be allowed. The appearance of personnel who provide service to the public during the Annual Event shall be subject to inspection by and reasonable consent of the Fair. All personnel of both Contractor and its subcontractors shall maintain their conduct at the highest standards, including while they are "off duty" on Fairgrounds. No personnel who provide service to the public may smoke or consume alcoholic beverages or be under the influence of alcohol or illegal drugs while on duty. Smoking (including e-cigarettes) by personnel who are on break shall be permitted in designated areas only. Contractor assumes the full responsibility for the character, acts and conduct of all its personnel and the personnel of subcontractors. Contractor shall remove from the Carnival Premises any personnel or subcontractor or subcontractor's personnel as requested by Fair. If Fair discovers Contractor's personnel or the personnel of subcontractors who provide service to the public not properly uniformed or wearing a badge, written notice shall be delivered by Fair to Contractor, and Contractor shall promptly correct the problem, but in no event more than two (2) operating hours after delivery of the notice. Contractor shall be subject to a fine of fifty dollars (\$50.00) per day per personnel or subcontractor's personnel who is not properly uniformed or not

wearing a badge if the deficiency is not corrected within two (2) operating hours after delivery of written notice of the deficiency. For the purposes of this paragraph, "personnel who provide service to the public" includes all personnel except Contractor's and subcontractors' office and management personnel and mechanical maintenance personnel.

T. Employee Screening and Drug Testing.

- i. Contractor shall maintain policies and procedures to ensure that all employees, including subcontractor personnel, working in the Carnival Operations or supervising personnel working in the Carnival Operations and whose positions, jobs, assignments, occupations or responsibilities involve the operation of Rides and Shows and/or where public safety is or may be an issue, are screened and drug tested before and during each Annual Event.
- ii. Screening and drug testing policies and procedures must conform to the requirements of New Mexico state laws and be similar to those proposed in Contractor's proposal. All costs related to screening and drug testing for the Carnival Operations shall be borne by Contractor.
- iii. At no time shall the Contractor allow personnel, including subcontractor personnel working in the Carnival Operations or supervising personnel working in the Carnival Operations, and whose jobs, assignment, occupations or responsibilities involve the operation of Rides and Shows and/or where public safety is or may be an issue, continue to be employed or contracted in those positions, jobs, assignment, occupations or responsibilities who do not satisfactorily meet the appropriate screening and/or drug test standards.

U. Posting of Prices and Rules.

- i. All Attractions shall post prices in the manner prescribed by Fair on professionally painted signs to be consented to by Fair. In addition, games of skill shall post complete game rules and instructions. Such instructions shall clearly indicate the size and quality of prizes offered for each category of win and shall be consented to by Fair. The price for admission, product, or play posted at the outside of each Attraction shall be the entire charge made to the public for that Attraction.
- ii. Each Ride/Show shall be posted with an information sign that clearly communicates to the public appropriate instructions and warnings regarding safe use of the Ride. The information listed shall include instructions for persons with disabilities and parents of minor children as well as limitations or exclusions due to age, weight, height, or other physical condition.
- iii. Concessions shall charge Fair's patrons the rates posted conspicuously on the booth. Such rates shall have the prior written consent of Fair.
- iv. All such signs shall be displayed in a conspicuous place and shall be attached to the applicable Ride or booth and placed within the confines of the allotted space only. Signboards cannot be placed outside the space in a walk way.
- v. Each Attraction shall be plainly and clearly numbered. The Fair shall provide numbers at no cost to Contractor.
- vi. The posting or distribution of posters, handbills and other advertising matter is prohibited.

V. Closing of Midway. The Fair, at its sole discretion, may close all or any part of the midway, if Fair believes the best interest of Fair is to do so. Fair shall have the authority to order the removal of any Attraction or Support Equipment that Fair, in its sole discretion, deems objectionable.

W. Rest Room Facilities. Fair shall provide limited rest room and shower facilities at no cost to Contractor. Contractor shall be required to provide additional portable rest room facilities for its personnel and subcontractor personnel that shall be out of public view, but accessible to service trucks. Laundry facilities are not available. Contractor shall take responsibility to ensure the appropriate use of said facilities by its personnel and subcontractor personnel.

X. ATM Machines. Fair shall provide ATM machines in the Carnival Premises at no cost to Contractor.

Y. Soft Drink/Bottle Water Restrictions. Contractor shall only offer those items that have been first consented to in writing by Fair. All beverages must either be sold or served in disposable paper, foam or plastic containers. No glass beverage containers will be permitted. Used containers shall be stored within the contracted area and removed from the Fairgrounds daily. No vending machines shall be allowed.

Z. Fuel Restrictions. Propane fryers or propane gas cooking appliances shall not be allowed inside any permanent facility unless first consented to 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. The use of charcoal is prohibited.

AA. Fire Extinguisher. Each Attraction is required to have on hand, at all times, an ABC fire extinguisher of the size and weight approved by the state fire marshal.

BB. Trash/Garbage Disposal and General Sanitation Requirements.

- i. Contractor shall keep the entire Carnival Premises area clean during hours of operation and shall surrender the Carnival Premises, including storage areas, camping spaces, areas between and surrounding Attractions, and the perimeter of the midway, and in particular the areas bordering and visible from San Pedro Avenue and Domingo Street, in good and clean condition. If Contractor fails to return the Carnival Premises in the required condition, Contractor shall reimburse the Fair the reasonable cost of restoring the Carnival Premises to the required condition no later than 2:00 p.m. on the day after the end of the Annual Event.
- ii. Maintenance procedures for Carnival Premises, equipment and Attractions shall be established to include routine Contractor inspection by supervising personnel with such frequency to ensure no unsightly conditions (e.g., litter, trash accumulation, marred surfaces of any kind on Contractor or Fair property within the Carnival Premises) shall exist without attempt to correct the problem within a reasonable period of time. Reasonable time shall be defined according to the severity of the condition. Contractor shall maintain clean, attractive, brightly lit rides. Contractor and Fair shall establish a method of air-borne dust control. Contractor shall provide

- ride report maintenance records to Fair upon request.
- iii. Fair shall provide some trash receptacles; Contractor will be required to provide supplemental trash receptacles. Contractor shall provide trash bags and shall break down all cardboard. Contractor shall place cardboard and filled trash bags in roll-off containers provided by Fair. Fair shall provide pick-up of trash from roll-off containers only.
 - iv. Contractor shall be assessed a trash/garbage hauling fee. Payment of the hauling fee shall be made to the Fair no later than 2:00 p.m. on the day after the end of the Annual Event.

CC. Handling of Grease. Grease depositories are not available on the Fairgrounds. Food service operators cooking with grease shall provide their own grease mats and storage containers and shall remove and dispose of grease as required by applicable law. Grease shall not be disposed of in garbage receptacles or drain outlets.

DD. Gray Water. No gray water shall be allowed to spill on the Carnival Premises and RV parking areas. Each Concession unit shall store its gray water and gray water shall be removed and disposed of after hours as required by applicable law. Gray water from permitted Rides (e.g., bumper boats) shall be pumped out to change or dispose. Water shall not be allowed to free drain from Rides.

EE. Security. Contractor agrees to have on hand at all times sufficient security and police force to maintain order and protect persons and property upon the Carnival Premises. Fair reserves the right to determine security and police force requirements. At the sole discretion of the Fair's management, the Fair shall arrange for police service through New Mexico State Police and/or security services through the Fair's security contractor both of which are to be paid for by Contractor at the prevailing rate. Fair retains the right to shut down the Event for security reasons without penalty. Fair also reserves the right, with its officers and agents, including its police officers, to eject any objectionable person including employees of Contractor from the premises. Nothing in this Agreement shall prevent either Fair or Contractor from requesting additional assistance if an emergency occurs on the Carnival Premises.

FF. Utilities.

- i. Water. Water service is available on a limited basis and may be furnished to the Attractions and/or living quarters at no charge if and when requested and available. Contractor may be charged if Contractor uses water for any Rides or games of skill, i.e., bumper boats and similar rides.
- ii. Sewer. Sewer access is available on a limited basis, primarily for food and beverage Concessions, at no charge. Where sewer access is not available, holding tanks are required and Fair shall allow access to a pumping service at Contractor's expense.
- iii. Electricity. Electric service is available on a limited basis. Contractor shall be charged for electricity used on the Carnival Premises during the Annual Event, including set-up and tear-down time. In addition, Contractor shall supply sufficient equipment to properly handle all electrical requirements that exceed Fair's available power supply. Payment for electricity shall be made to Fair by Contractor no later

than 2:00 p.m. on the day after the end of the Annual Event.

- iv. Cables and Hoses. All cables and hoses that cross public walkways or are otherwise exposed to public view shall be protected and covered.

GG. Services. Fair shall provide no services, except as otherwise noted in this Agreement, to Contractor to assist Contractor in the Carnival Operations of Contractor unless Contractor reimburses Fair for the cost of the services. Further, Contractor shall make arrangements for its telephone service and storage of equipment, and shall perform normal maintenance of any and all equipment or materials provided by Fair to be used by Contractor in the Carnival Operations of Contractor. Payment for services shall be made to Fair by Contractor no later than 2:00 p.m. on the day after the end of the Annual Event.

HH. Payments, Prices, Tickets, and Coupons/credits for Rides/Shows.

- i. All Rides/Shows operated on the Carnival Premises shall work on a specific ticket or coupon basis requiring a specified ticket or coupon count, which number of tickets or coupons/credits shall be conspicuously posted at each Ride and Show location. Individual Ride tickets shall be priced at \$_____ each or \$_____ each when purchased in sheets of _____ (as proposed in Contractor's proposal). All Rides/Shows, including super spectaculars and those provided by subcontractors, shall be made available to those who purchase discount ride coupons/credits or wristbands. No tickets except those furnished by Fair shall be valid or used for any purpose, except by written consent of Fair.
- ii. Fair shall furnish all necessary tickets, wristbands, and/or coupons/coupons for all Rides/Shows and Contractor shall reimburse Fair one-hundred (100%) of the cost of printing. Contractor is responsible for providing promotions printed on the promotional coupons. Contractor shall provide ticket sales booths, including the adult midway and Kids' Zone, each staffed with necessary ticket sellers. Contractor shall provide a ticket or coupon taker at each Ride and Show, be responsible and accountable for all tickets and/or coupons collected at each Ride and Show and shall comply with all reconciliation and audit procedures prescribed by Fair. Tickets shall be torn upon acceptance by Ride and Show operator. All ticket functions undertaken by Contractor, including ticket taking, counting, and destruction of tickets, shall be supervised by Fair.
- iii. Contractor shall submit to Fair, at least fifteen (15) days in advance of Opening Day, a statement of the number of tickets or coupons/credits to be charged for each Ride and Show that shall be operated at the Annual Event. Tickets shall be printed in one denomination only. Except as provided for in paragraph E no Ride or Show may be operated without charge for use. Fair may negotiate an alternative Attraction admission program if Fair and Contractor agree such to be appropriate.

3. Consideration.

A. Gross Receipts

- i. In addition to all other payments and reimbursements required to pay to Fair by Contractor as provided in this Agreement, Contractor shall pay to Fair the following percentage on the Gross Receipts from the operation of each Ride and Show. (The sum paid to the fair shall not be less than a stated guarantee of

\$700,000.00)

_____% of Gross Receipts

- ii. Payment of the percentages due to Fair by Contractor from Rides and Shows including super spectaculars, shall be made daily to Fair after the first day of operation using procedures required by Fair, in its discretion. Final payment shall be made not later than 2:00 p.m. on the day after the end of the Annual Event.
- iii. At the time of final reconciliation, the total "Gross Receipts from the operation of each Ride and Show is calculated by determining the face value, less applicable gross receipts tax, of all tickets issued to Contractor less the number of tickets returned by Contractor to Fair. All tickets issued to Contractor shall be sequentially numbered. Wristbands for special promotions shall be accounted for in the same manner as tickets.

B. Concessions. For all Concessions, Contractor shall pay to the Fair \$_____ per linear front foot including hitches, but excluding awnings, provided, however, that for center Concessions, Contractor shall pay to the Fair \$_____ per linear foot measured by the combined length of one long and one short side of the booth including hitches, but excluding awnings. Fair personnel shall measure the booths in the presence of Contractor's designee. However, if Contractor designee fails to appear when an appointment to measure Concessions has been agreed upon, Contractor shall accept Fair's measurements. Payment of all front footage monies shall be made to Fair by Contractor no later than 2:00 p.m. on the day after the end of the annual event.

C. Super Spectacular Rides. Super spectacular Rides may be provided by Contractor with an adjustment in the percentage of Gross Receipts. The identity of each such Ride shall be established annually by Fair and Contractor. In each year of this Agreement, Contractor shall identify the proposed super spectacular rides to Fair in writing no later than June 1. At its own expense, Fair may observe and inspect the proposed super spectacular Rides. If Fair does not reasonably believe that a proposed super spectacular Ride is properly designated a super spectacular Ride pursuant to industry standards, Fair shall so notify Contractor no later than July 1 of that year and Contractor shall have the option to promptly propose an alternative super spectacular Ride for approval by Fair. The percentage rates to be paid to Fair on the Gross Receipts of these Rides shall be no less than twenty-five percent (25%). Percentage rates on these Rides shall be established by Fair and Contractor taking into consideration the Ride capacity per hour as rated by the manufacturer's stated standards, the newness to the industry, and the perceived appeal of the super spectaculars to the patrons of Fair. Such percentage rate(s) would be negotiated each year upon receipt of the Carnival Attraction Diagram described in paragraph G of this Agreement.

D. General Improvements

- i. Contractor will provide \$_____ per year for general improvements to structures of the fairgrounds or the provision of assets for the Fair. These general improvements will be in the form of cash payment for each year of this Agreement. All improvements shall be made at the discretion of the

Fair.

- ii. Any improvements made by Contractor that are permanently installed (ie, items that cannot be removed without damaging said item, building or structure) shall become the property of the Fair immediately upon completion of installation, and Contractor shall execute a document transferring ownership of such items free and clear of any encumbrances and stating Contractor's cost thereof. All other support equipment remains the property of the Contractor.

E. Advertising, Marketing, Publicity and Promotion

- i. Contractor shall work closely with Fair's designated media director for each promotion in developing and carrying out publicity and carnival promotions designed to increase attendance and revenues at the Annual Event. Promotions shall include a minimum of two (2) special price (discount) days to be established by Fair and Contractor in writing.
- ii. In each year of this Agreement, the pre-sale program and promotion package shall be established in writing by Fair and Contractor.
- iii. On or before August 1 of each year of this Agreement, Contractor shall pay \$_____ to Fair for advertising to promote midway activities and the Annual Event each year. Such advertising is to be done in concert with other Fair advertising and promotion.

F. Special Events. From time-to time, the Fair may require the Contractor to provide free rides to certain specified groups of patrons designated by Fair during certain specified hours on certain specified day(s) for promotional or other purposes. Dates, times, and number of free rides to be provided will be mutually agreed upon by Fair and Contractor in writing.

G. Security Deposit.

Contractor shall submit a refundable security deposit in the amount of \$25,000 per year no later than thirty (30) days prior to the commencement of the New Mexico State Fair. Said funds shall be held by the Fair as security for the performance by Contractor of all terms, covenants and conditions of this agreement. It is expressly understood and agreed that such deposit is not an advance payment of fees due here under, or as a measure of the Fair's damages in case of Contractor's default.

If Contractor defaults with respect to any provision of this agreement, the Fair may (but shall not be required to), without prejudice to any other remedy provided herein or by law, use the security deposit, or any portion of it, to cure the default or to compensate the Fair for all, or a portion of, the damages sustained by Fair resulting from Contractor's default. The Fair shall not be required to keep the security deposit separate from its general funds and the Fair, not Contractor shall be entitled to all interest if any accruing on such funds.

4. Alcohol and Drugs.

It is the policy of the Fair to prohibit all employees and contract personnel from being under the influence of alcohol, cannabis or illegal drugs while on the premises of the Fair, regardless of whether the alcohol or drugs are consumed on or off the premises. "Cannabis" means all parts of the plant cannabis sativa Linnaeus, whether growing or not, containing more three-tenths percent

tetrahydrocannabinol. “Under the influence” means the state of not having the normal use of mental or physical faculties or any state which alters performance responsibilities resulting from the introduction into the body of an alcoholic beverage or illegal drug. This includes the inability to perform satisfactorily the services for which Contractor has been engaged. Consuming any illegal drug on the premises of the Fair, regardless of impairment, is also prohibited. An illegal drug is any drug or derivative thereof which the use, possession, transfer or manufacture is illegal or regulated under any federal, state or local law or regulation and includes any Controlled Substance as defined by federal statute and any prescription drug used for any reason other than a legitimate medical reason according to physician’s instructions, and also includes inhalants used illegally. Included is marijuana or cannabis in all forms. Contractor agrees to abide strictly by this policy, and Fair shall have the right to terminate this agreement immediately upon any breach of the foregoing policy by Contractor, without prior warning based on, including but not limited to, types of the following physical symptoms and abnormalities: strong alcohol smell, staggering, unsteady gait, impaired speech, inability to perform, and/or the results of positive drug or alcohol test(s).

5. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL SIGNED BY THE GENERAL MANAGER OF THE FAIR. This Agreement shall terminate, without notice, on November 30, 2027. The Fair reserves the option of renewing the contract for a maximum of one additional four-year period, or any combination of years and/or months not to exceed four years, at the same terms and conditions contained herein, subject to written concurrence by the Contractor and the Fair. The total term of the contract shall not exceed eight years including all extensions and renewals.

6. 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 (6)(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 the Fair, as described in Paragraph 8; (iv) if, during the term of this Agreement, the Contractor is suspended

or debarred by the State Purchasing Agent; or (v) if the Agreement is terminated pursuant to Paragraph 31, (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.

7. New Mexico Environmental Department.

A. All temporary food and beverage Concessions shall comply with the food service regulations of the New Mexico Environment Department. The Environment Department may augment such requirements when needed to assure the service of safe food and beverages and may prohibit the sale of certain potentially hazardous foods. The Environment Department may modify specific requirements for physical facilities when, in the opinion of the Environment Department, no health hazard shall result.

B. Contractor shall submit permit applications and required fees to the Environment Department, 4131 Montgomery, N.E., Albuquerque, New Mexico 87109, at least twenty-one (21) days before the Annual Event.

C. Contractor 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 the Environment Department shall be set up and ready for inspection at least one-half hour before the start of an event.

8. 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 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 the Fair to be detrimental to the Fair or the operations of its business.

9. Contract Administrator.

The Contract Administrator for this Agreement will be the Fair's General Manager or his

designee. 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.

10. Insurance.

- A. Carnival Rides. Each Carnival ride operating in accordance with this Agreement shall be insured for three million dollars (\$3,000,000) against liability for injury to persons arising out of the operation of the ride. The insurance obtained pursuant to this paragraph shall be in a form acceptable to the Regulation and Licensing Department or, if no forms are required by the Regulation and Licensing Department, in the form described in Paragraph K.
- B. General Liability Including Automobile. The Contractor 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 one million dollars (\$1,000,000.00) single limit liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for the licensed area, operations, and the Contractor'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 the licensed area, coverage for the use of all owned, non-owned, or hired automobiles, vehicles, and other equipment, both on and off work.
- C. Additional insured, notice and default requirements. The Contractor shall furnish the Fair with certificates of insurance, insurance policies, and policy riders/endorsements to the Fair's Contract Administrator, New Mexico State Fair, Post Office Box 8546, Albuquerque, New Mexico 87198-8546, no later than fourteen (14) days prior to the first day of set up or move in, whichever occurs first. All insurance certificates shall show the type and amount of insurance provided. All policies of insurance shall: (1) contain a provision that the company writing said policy shall give to Fair's Contract Administrator thirty (30) days' notice in writing in advance of any cancellation, lapse, reduction or other adverse change respecting such insurance [ten (10) days' notice for non-payment of policy premiums] and that the additional insured shall be named as follows: **New Mexico State Fair**; or (2) that said insurance shall have a rider or endorsement naming the **New Mexico State Fair** as an additional insured and that the Fair shall receive thirty (30) days' notice in writing in advance of any cancellation, lapse, reduction or other adverse change respecting such insurance [ten (10) days' notice for non-payment of policy premiums] or a provision in the insurance policy providing for Fair to be an additional insured and to receive the required notice due to the provisions of this Agreement. If such notice is given by the insurance company, Contractor shall immediately cure its default with the insurance company or provide a new policy of insurance meeting the requirements of this Agreement in order that the insurance requirements of this Agreement are met at all times during the term of this Agreement. A certificate of policy, endorsement or rider which states that failure to give Fair notice imposes no liability or obligation on the insurer shall not be in compliance with this section. For instance,

certificates or policies stating that the insurance company shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to Fair. Failure to comply with the insurance specifications herein is a material breach of this Agreement. Various types of required insurance may be written in one or more policies.

- D. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. The Contractor shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under NMSA 1978, § 52-1-10 for safety devices. With respect to Workers' Compensation Insurance, if the Contractor elects to be self-insured, the Contractor shall comply with the applicable requirements of law. The Contractor hereby covenants and agrees that the Fair, its officers, or employees will not be liable or responsible for any claims or actions occasioned by the Contractor's failure to comply with the provisions of this paragraph and that the Indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Contractor are not Fair employees for any purpose.
- E. Contents Insurance. Contractor shall be solely responsible for obtaining insurance policies that provide coverage for losses of Contractor owned property. Fair shall not be required to provide such insurance coverage or be responsible for payment of Contractor's costs for such insurance.
- F. Additional Requirements. 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.

11. Property.

A. Contractor's Property.

Contractor acknowledges that in conjunction with this Agreement, materials, items, and other tangible property may be brought into Expo. Such property is the sole responsibility of Contractor or Contractor's invitees, agents or employees and as such, Contractor or its invitees, agents or employees have 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 Contractor's own insurance policy. Additionally, the Fair is not responsible for any personal injury or damage to property, direct or incidental, caused by the negligent or intentional acts of a third party. Contractor and Contractor's invitees, agents or employees are responsible for the removal of all its property from the premises at the termination of this Agreement. Any property remaining on the premises will be

either (i) deemed as abandoned and therefore become the property of the Fair; or (ii) removed from the premises at the expense of Contractor.

B. State Fair's Property.

Contractor agrees to surrender, upon termination of this Agreement, all Fair property, including the premises, in the same condition that existed prior to Contractor's use of such property. Contractor acknowledges that it shall not cause or permit any nails or other such tools to be driven into any portion of the buildings, nor cause or permit any signs to be affixed without prior written approval from the Fair. Contractor acknowledges that it shall not cause or permit any changes, alterations, repairs, painting or staining of any portion of the buildings, nor cause or permit to be done anything that shall damage or change the finish or appearance of the buildings. Failure to adhere to these requirements may result in the loss of Contractor's damage deposit. Contractor shall be responsible for the cost of repairing any and all damage done to the premises or any fixtures, furniture or furnishings thereof by any act of Contractor or Contractor's employees, invitees or agents.

12. Parking Rights.

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

13. Exclusive Grants by Fair.

- A. Fair may already have or may in the future enter into agreements with suppliers of certain products, which grant to that supplier the exclusive right to have their product sold and advertised on the Fairgrounds. Under no circumstance may the Licensee engage in conduct that conflicts with the Fair's exclusive contracts.
- B. Fair currently has an exclusive contract with **Coca-Cola Swire** for all carbonated beverages, bottled water, isotonic sports drinks, and energy drinks sold or dispensed on the Fairgrounds. Concessionaires approved to sell or dispense carbonated beverages, bottled water, isotonic sports drinks, and energy drinks are required to purchase the products from Coca-Cola Swire. Selling, dispensing, or advertising any other brands are prohibited. This includes all signage, cups, fountain taps, posters, etc.

14. Carnival Sponsors.

Any sponsorship funds or services that are secured by contractor for use in conjunction with the Carnival Operations of Contractor shall not be associated with space or exposure opportunities in other locations under the control of Fair. Fair retains rights to all other locations in and around the midway and on the Fairgrounds. Before obtaining sponsorships, Contractor shall provide a list of any and all potential sponsors to Fair before August 1st of each year for consent. Revenue from such arrangements shall be shared equally with Fair. Before placing any advertising in midway, Contractor shall submit all advertising to Fair for its consent.

15. Regulation Compliance.

Contractor and Contractor's employees must comply with all state, city, county, and federal laws. Contractor 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. Contractor shall adhere to guidelines for containing the COVID-19 pandemic set forth by the New Mexico Department of Health (NMDOH) as well as all New Mexico State Fair COVID Safe practice policies and procedures. In addition, the State of New Mexico has published *All Together New Mexico* (<https://nmml.org/together-new-mexico-covid-safe-practices-individuals-employers/>), a guide for individuals and businesses on COVID Safe Practices.

16. Records and Financial Audit.

A. The Contractor shall establish and maintain, and submit to Fair if requested, adequate financial records of the Carnival Operations of Contractor and applicable portions of Contractor's federal and state income tax returns, New Mexico gross receipts tax forms and 1099 forms. Such records shall be kept in accordance with generally accepted accounting procedures. These records shall be subject to inspection by Fair, the Department of Finance and Administration, and the State Auditor until three (3) years after the expiration or termination of this Agreement. Upon request, Contractor shall provide Fair with copies of the income statement and balance sheet of Contractor prepared by a certified public accountant for any year during the term of this Agreement.

B. Contractor shall submit a record of gross sales receipts at the end of the Annual Event for all transactions resulting from Contractor's Carnival Operations. Contractor shall also provide a daily sales report and a final ticket allocation by ride.

C. The Fair requires that Contractor operate an electronic cash register or accounting system that is easily auditable by fair at each food and beverage Concession. Any such register/system shall be obtained at the Contractor's own expense. The register/system provided shall meet the specifications as provided by the Fair. Contractor shall register all business transactions as an entry into the cash register/system and shall submit required tape readings to Fair as directed. Contractor grants to Fair authorization to audit cash register/system journal tapes.

D. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. Assignment & Subcontracting.

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. Furthermore, 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 Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Fair.

23. Corporate Structure.

The physical on-site presence of the current owner principals of Contractor or other representative of the Contractor's carnival company approved by Fair in writing is a material condition to this Agreement. 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 the Fair of the change and the Fair reserves the right to terminate this Agreement by giving thirty (30) days written notice to Contractor.

24. 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. Contractor agrees that the Fair is governmental entity. A governmental entity and any public employee while acting within the scope of duty are granted immunity from liability for any tort except as waived by 28-22-1 NMSA 1978 and by Sections 41-4-5 through 41-4-12 NMSA 1978.

25. 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. A "Force Majeure Event" can include a pandemic, epidemic, plague, outbreak of infectious disease, including quarantine or other employee restrictions, war, act of authority, compliance with any law or governmental order, rule, regulation or direction, or other event which renders the terms of this Agreement impossible, impractical 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.

26. 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 invitees, agents, or employees, or if caused by the actions of any guest of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any invitee, agent, or employee thereof is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the performance of this Agreement by Contractor or any of its invitees, agents, or employees 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.

27. 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 agrees to assure 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, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, 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. Otherwise, this Agreement may be terminated by the Fair.

28. 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.

29. 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 as appendix "I".

30. 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.

31. 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 (10) days of receipt of the proposed amendment.

32. 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.

33. 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.

34. 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.

35. Enforcement of Agreement.

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 remain valid and enforceable. 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.

36. 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
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

37. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

THE BALANCE OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

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

CONTRACTOR

XXXXXX

Date: _____

NEW MEXICO STATE FAIR

Approved as to form and legal sufficiency:

Chris Machin, General Counsel

Date: _____

Cara Smouse, Chief Financial Officer

Date: _____

Dan Mourning, General Manager

Date: _____

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.

YEAR PROPOSED (CIRCLE AS APPROPRIATE):

2023 2024 2025 2026

If Offeror is proposing different percentages for each year, duplicate this form and fill out one cost proposal form for each year. Points will be awarded on an annualized basis.

Percentage of gross receipts Contractor will pay the Fair from the operation of rides, shows, games and concessions.

_____ % PROPOSED PERCENTAGE

\$ _____ **PROPOSED FEE PER LINEAR FOOT FOR
CONCESSION SPACE**

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 37 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. | | | |

(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. | | | |

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”

Response Form to Section IV.A.3. Judgments

In response to Section IV.A.3 of the RFP, you must submit the following information.

YOU MAY COMPLETE AND SUBMIT THIS FORM AS YOUR RESPONSE TO SECTION IV.A.3. (Use additional sheets if necessary.)

- A. Describe in detail whether or not Offeror has any pending claims, suits or judgments against it arising out of prior carnival operations during the past seven (7) years beginning with January 1, 2016 through January 1, 2023.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

- B. If yes, please provide the cause of action, the date of the incident giving rise to the claim, suit or judgment; the circumstances as alleged against the Offeror; the Offeror's response to the allegations; and the disposition of the claim, suit, or judgment.

[illegible]

- C. Describe in detail whether or not injuries to patrons have occurred arising out of Offeror's carnival operations.

- D. Also indicate whether or not Offeror has ever filed bankruptcy or reorganization under the Bankruptcy Code.

IF YOU DO NOT SUBMIT THIS FORM AS YOUR RESPONSE TO SECTION IV.A.3, BE SURE TO SUBMIT A SEPARATE LETTER OR STATEMENT THAT INCLUDES ALL THE ABOVE INFORMATION.

APPENDIX “G”

CONTRACTOR STATUS - NEW MEXICO STATE FAIR

The undersigned, having studied the attached solicitation and specifications, and having a full understanding of the work to be performed, and the condition under which it is to be accomplished, hereby proposes to furnish all labor, materials, equipment, insurance, and skill required for the attached proposal. We agree, if this proposal is accepted, and we are selected as Contractor, we will execute a contract in the form specified.

1. Legal name of company

Address _____

City, state, and zip code

Phone numbers(s)

2. Name, position, address and phone number of person responsible for this proposal

3. Type of business organization (sole proprietorship, partnership, corporation, or other).

If other, explain

4. Names and titles of officers

5. Names of all persons having ownership rights in business organization (if corporation, name all persons holding five percent (5%) or more of outstanding stock)

6. Does any person named in #4 or #5 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:

Yes _____ No _____ If yes, explain:

7. Does any officer, commission member, member of the 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, explain:

8. Is any civil or criminal litigation currently pending against the named business organization, its owners, officers, or key employees? Yes _____ No _____ If yes, explain:

9. Does any owner, officers, or key employees of named business organization have any criminal convictions? Yes _____ No _____ If yes, describe in detail when, where, the nature of the conviction, and the sentence which was imposed:

10. Has any owner, officers, or key employees made any verbal agreement to pay any person, in any form, who may help secure this contract? If yes, describe in detail:

The undersigned understands and agrees that failure to provide accurate data and truthful disclosure as called for in the RFP specifications and this proposal form constitute grounds for rejection of the proposal. Any person signing the proposal as an agent of another, may be required to furnish legal evidence of their authority to do so.

NAME OF OFFEROR:

SIGNED BY: _____

TITLE: _____ DATE: _____

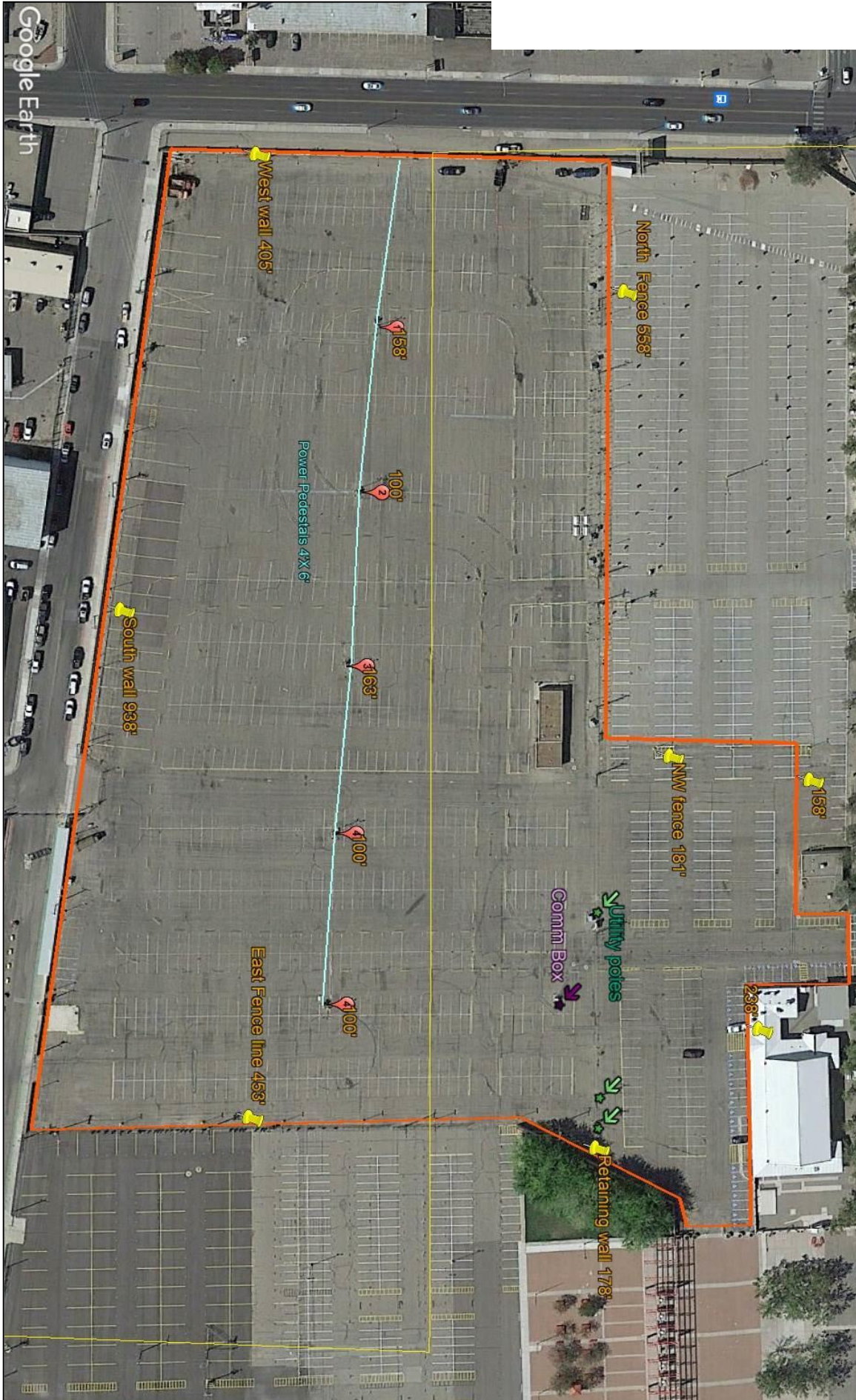
APPENDIX "H"

Site Maps



APPENDIX "H"

Site Maps



APPENDIX “I” 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