

**REQUEST FOR PROPOSALS**  
**FOR**  
**LONG TERM FOOD VENDOR**  
**AT**  
**EXPO NEW MEXICO**  
**RFP #24-001**

STATE OF NEW MEXICO  
NEW MEXICO STATE FAIR

PREPARED BY:  
NEW MEXICO STATE FAIR  
ISSUE DATE: July 21, 2023

**TABLE OF CONTENTS**  
**2023 LONG TERM FOOD VENDOR**  
**REQUEST FOR PROPOSALS**

	PAGE
I. INTRODUCTION.....	4
A. Purpose of this Request for Proposals.....	4
B. Summary of Scope of Work and Term.....	4
C. Procurement Manager.....	4
D. Definition of Terminology.....	5
E. Background Information.....	6
F. Concession Facility and Operation Information.....	6
II. CONDITIONS GOVERNING THE PROCUREMENT.....	9
A. Sequence of Events.....	9
B. Explanation of Events.....	10
1. Issue of RFP.....	10
2. Pre-proposal Conference .....	10
3. Distribution List Response Due.....	10
4. Deadline to Submit Additional Written Questions.....	10
5. Response to Written Questions/RFP Amendments.....	10
6. Submission of Proposal.....	11
7. Evaluation of Proposals.....	11
8. Selection of Finalists.....	11
9. Best and final Offers from Finalists.....	11
10. Oral Presentation by Finalists.....	12
11. Contract Finalization.....	12
12. Contract Award.....	12
13. Protest Deadline.....	12
C. General Requirements.....	12
1. Acceptance of Conditions Governing the Procurement.....	12
2. Incurring Cost.....	12
3. Prime Contractor Responsibility.....	13
4. Subcontractors.....	13
5. Amended Proposals.....	13
6. Offerors' Rights to Withdraw Proposal.....	13
7. Proposal Offer Firm.....	13
8. Disclosure of Proposal Contents.....	13
9. No Obligation.....	14
10. Termination.....	14
11. Sufficient Appropriation.....	14
12. Legal Review.....	14
13. Governing Law.....	14
14. Basis for Proposal.....	14
15. Contract Terms and Conditions.....	14
16. Offeror's Terms and Conditions.....	15
17. Contract Deviations.....	15
18. Offeror Qualifications.....	15

19. Right to Waive Minor Irregularities.....	15
20. Change in Contractor Representatives.....	15
21. Notice.....	15
22. Ownership of Proposals.....	15
23. Electronic Mail Address Required.....	15
24. Use of Electronic Versions of the RFP .....	16
25. New Mexico Preferences.....	16
III. RESPONSE FORMAT AND ORGANIZATION.....	17
A. Number of Responses.....	17
B. Number of Copies.....	17
C. Proposal Format.....	17
1. Proposal Organization.....	17
2. Letter of Transmittal.....	18
IV. SPECIFICATIONS.....	19
A. Mandatory Specifications.....	19
1. Contract Terms and Conditions.....	19
2. Qualifications and Experience. ....	19
3. Utility Requirements .....	19
4. Campaign Contribution Disclosure Form.....	19
B. Other Specifications.....	20
1. Proposed Menu.....	20
2. Concession Personnel and Uniforms.....	20
3. Booth Appearance.....	20
4. Capital Improvements.....	20
5. Percentage of Gross Receipts.....	20
V. EVALUATION.....	21
A. Evaluation Point Summary.....	21
B. Evaluation Criteria.....	21
1. Qualifications and Experience.....	21
2. Proposed Menu.....	21
3. Concession Personnel and Uniforms.....	22
4. Booth Appearance.....	22
5. Capital Improvements.....	22
6. Percentage of Gross Receipts.....	22
C. Evaluation Process.....	23
APPENDICES:	
A. Acknowledgement of Receipt Form	
B. Contract Terms and Conditions	
C. Cost Proposal Form	
D. Response Form to "Letter of Transmittal"	
E. Mandatory Response Form to Mandatory Specification "Contract Terms and Conditions"	
F. Qualifications and Experience Form	
G. Site Map	
H. Attendance Numbers	
I. Tingley Concession Sites	
J. Coca-Cola Pricing	
K. Campaign Contribution Disclosure Form	

## **I. INTRODUCTION**

### **A. Purpose of this Request for Proposals**

The State of New Mexico, New Mexico State Fair Commission, ("Fair"), is inviting responsible offerors to submit competitive sealed proposals to provide a food and beverage concession. 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 offerors whose proposals are 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(s) with the selected offerors who shall perform in the capacity of food and beverage concessionaire for the term of the contract.

### **B. Summary of Scope of Work and Term**

The scope of work shall consist of providing a non-exclusive concession service for serving and dispensing food and non-alcoholic beverages at a specific location in Tingley Coliseum ("Tingley"), or the Fair's Flea Market. A detailed scope of work, which is subject to regulatory oversight, may be found in Appendix "B", titled "Contract Terms and Conditions".

The Agreements awarded shall not become effective until signed by the general manager of the Fair. These Agreements shall terminate, without notice, on **June 30, 2024**. The Fair reserves the option of renewing the contract for a maximum of three additional one-year periods, or any combination of years and/or months not to exceed three years, at the same terms and conditions contained herein, subject to written concurrence by the Contractor and the Fair.

### **C. Procurement Manager**

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

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

All deliveries via express carrier should be addressed as follows:

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

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

**D. Definition of Terminology**

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

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

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

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

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

"Interim Event(s)" means any event held on the New Mexico State Fairgrounds other than the Annual Event.

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

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

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

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

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

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

**E. Background Information**

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

The 2022 Annual Event had an attendance of approximately 476,000. The 2023 eleven-day Annual Event will be held September 7th through September 17<sup>th</sup>.

During the Annual Event, the Fair features livestock, agricultural, 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.

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, ice, 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](http://www.ExpoNM.com) for more information regarding the Fair, interim events, and the Flea Market.

**F. Concession Facility and Operation Information**

**1. Tingley Coliseum "Tingley"**

The facility is designed for six (6) booths in the west lobby and three (3) booths in the east lobby. We have Two (2) spaces available during this RFP. The Fair may choose to add outdoor concession stands adjacent to Tingley, but these are not included in this procurement. In addition to the Annual Event, numerous Interim Events are held in Tingley on a year round basis. Any contract awarded for Tingley concessions will apply to year round operations, including the Annual Event. During the Annual Event, Concessionaires will be required to serve food and beverages from open to close of show times. The Fair will determine which Interim Events will require concession services. Hours of service will be determined by the Fair and will be tailored to the needs of each event.

The 2022 attendance is attached hereto as Appendix "H". A description of the Tingley concession sites is attached at Appendix "I".

## 2. Flea Market

The Flea Market has up to two (2) concession stand sites currently available. The Fair will determine how many contracts will be awarded. The Flea Market consists of the main entrance area of the State Fairgrounds and parking lots adjacent to Central Avenue, an area of approximately twenty-two (22) acres. The Flea Market operates every Saturday and Sunday beginning the first weekend after the Annual Event through Labor Day weekend of the following year. The Flea Market is also closed on Easter Sunday and Christmas if they the fall on a weekend. Concessionaires will be required to be open and serving food and beverages no later than 8:00 AM each day of the Flea Market, weather permitting. Closing times will be determined by Fair. All freestanding Flea Market booths must be removed from the Fairgrounds the day after Labor Day by 5:00 PM. Booths must remain off-site through the Annual Event. Decisions regarding weather will be made by Fair.

## 3. General Facility Information

The Concessions stands located in the Tingley facility shall be provided by the Fair at no cost to the concessionaire. The Fair will provide only the equipment listed in Appendix "I" of this RFP. The Fair does not warrant that the equipment is operable or in good working order. However, should the concessionaire elect to use any of the equipment, such equipment will be assumed to be in good working order and shall be returned to the Fair in good working order at the termination of any Concession Agreement. The Fair will not provide any other equipment, furniture, or telephone service. All utility charges (gas, water, and electricity) connected with the concession space shall be paid by the Fair. The Fair will agree to furnish electric service, water, and sewer to the space only at existing and presently available connecting points.

## 4. 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 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 the exclusive contractor. Selling, dispensing, or advertising any other brands are prohibited. This includes all signage, cups, fountain taps, posters, etc.

## 5. 2022 Concession Revenues

Gross revenues to long-term food and beverage concessionaires for 2022 were as shown in the table below. Gross receipts taxes have not been removed from these figures.

### **TINGLEY:**

<u>VENDOR NAME</u>	<u>INTERIM EVENTS</u>	<u>ANNUAL EVENT</u>	<u>TOTAL</u>
Baskin Robins	\$96,392.49	\$33,196.00	\$129,588.49
Batter-Up Mini Donuts	\$58,112.60	\$26,750.00	\$84,862.60
Lotza Pizza	\$27,062.06	\$19,882.24	\$ 46,944.30

The Taco Guy	\$56,984.70	\$17,345.00	\$74,329.70
Chicago Dog	\$35,273.09	\$13,371.15	\$48,644.24
NM Best Kettle Corn	\$15,063.45	\$11,314.00	\$26,377.45

**FLEA MARKET:**

<u>VENDOR NAME</u>	<b>INTERIM EVENTS</b>	<b>ANNUAL EVENT</b>	<b>TOTAL</b>
Tostadas	\$142,031.07	n/a	\$142,031.07
CC's Concession	\$175,224.37	n/a	\$175,224.37
Lotza Pizza	\$69,382.11	n/a	\$69,382.11



## 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.

	<b>ACTION</b>	<b>RESPONSIBILITY</b>	<b>DATE (if known)</b>
	Issue of RFP	Fair	7/21/2023
	Pre-proposal conference (if any)	Fair, Potential Offerors	7/27/2023 10:00am
	Distribution List Response	Potential Offerors	Date shown on Acknowledgement of Receipt Form
	Deadline to submit additional questions	Potential Offerors	8/3/2023 2:00 PM
	Response to written questions/RFP amendments	Fair	8/7/2023
	Submission of proposal	Offeror	8/22/2023 2:00 PM
	Proposal evaluation	Evaluation Committee	
	Selection of Finalists	Evaluation Committee	
	Best and Final Offers from finalists	Offeror	
	Oral presentation by finalists (if any)	Offeror	
	Contract finalization	Fair, Offeror	3 business days
	Contract award	Fair Management	
	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 Thursday, July 27, 2023 at 10:00 AM in the conference room in the Administration Building, located at Expo New Mexico. A public log will be kept of the names of potential Offerors that attended the pre-proposal conference.

Attendance at the pre-proposal conference is not a prerequisite for submission of a proposal.

### **3. Distribution List Response Due**

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

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

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

### **4. Deadline to Submit Additional Written Questions.**

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until 2:00 p.m. local time on Thursday, August 3, 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, 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 TUESDAY, AUGUST 22, 2023.** Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal at the New Mexico State Fairgrounds 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 “**Long Term Food RFP #24-001**”. 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, Paragraph B.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](http://www.state.nm.us/spd))

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

Any cost incurred by the offeror in the preparation, transmittal or presentation of any proposal or material submitted in response to this Request for Proposals will be borne

solely by the offeror. In addition, the New Mexico State Fair Commission will not be responsible for any costs or expenses incurred by the offeror in making its oral presentation.

3. Prime Contractor Responsibility

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

4. Subcontractors

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

5. Amended Proposals

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

6. Offerors' Rights to Withdraw Proposal

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

7. Proposal Offer Firm

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

8. Disclosure of Proposal Contents

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

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

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

9. No Obligation

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

10. Termination

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

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to 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 Commission.

23. Electronic Mail Address Required

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

24. Use of Electronic Versions of this RFP

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

25. New Mexico Preferences

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

**A. New Mexico Business Preference**

**B. New Mexico Resident Veterans Business Preference**

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

An agency shall not award 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 may submit proposal for any or all the following facilities:

1. Tingley (a preference for the east corridor or west corridor may be stated).
2. Flea Market

A separate proposal must be submitted for each facility for which the Offeror wishes consideration. However, no more than one proposal may be submitted for any individual facility. Proposals will be considered only for that concession facility specifically stated in each proposal and on the outside of the submission envelope. The Fair will select and assign concession stand locations for multiple vendors based on the proposals received for each individual facility. Therefore, an offeror wishing to propose a concession for the Flea Market and/or the Tingley facility who fails to submit a proposal for that facility will not be considered for a stand in the Flea Market or Tingley facility. If an offeror fails to specify clearly the facility for which it desires consideration, its proposal will be deemed non-responsive and will be rejected.

#### **B. Number of Copies**

Offerors shall deliver four (4) 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. Offeror's Additional Terms and Conditions
- g. 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 (Appendix “C”).**

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. (This paragraph is found on page 12 of the RFP.)
- 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 52, on an item-by-item basis in the order in which they appear. It is not necessary to re-type each paragraph. An offeror may state that he/she is prepared to meet each of the requirements by referencing the specific paragraph numbers to which the offeror is agreeing. If the offeror is not prepared to meet certain requirements, state the paragraph number(s) to which you are referring at this point and state your objections with specificity.

#### 2. Qualifications and Experience

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

- a. Offeror must have been engaged in restaurant, catering, and/or concession operations serving large crowds similar to those at the Fair for the past two (2) years.
- b. Offeror must demonstrate financial resources and stability, which in the opinion of the Fair, are adequate to assure full and proper performance of the contract.
- c. Offeror must provide their New Mexico CRS identification number.

#### 3. Utility Requirements

Offerors must provide:

- a. A detailed list of its proposed equipment.
- b. A detailed statement of its utility requirements, including voltage and amperage requirements, gas and electrical requirements, and any other special needs in order to accommodate its equipment. Without this information, the Fair cannot make a placement decision.

Any utility enhancements or relocations will be the responsibility of, and at the expense of, the Concessionaire. All such work must be performed by licensed contractors, and all work must be done in compliance with all applicable codes and regulations. Concessionaire must have prior approval from Fair prior to any enhancements or relocations.

#### 4. Campaign Contribution Form

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

## **B. Other Specifications**

### **1. Proposed Menu**

Include a complete menu for the food and non-alcoholic beverage concession operation. State the anticipated charges to the patron for purchasing concession items and portion sizes for each item. Seasonal items should also be included, if you are proposing such items. Proposed menus for Tingley should concentrate on specialties. For example, snack booths should have snacks on their menu, and food booth menus should concentrate on their own food specialties and not a combination of food and snacks.

### **2. Concession Personnel and Uniforms**

Concessionaire shall provide a sufficient number of attendants and personnel to service the public with respect to its business operation. Personnel shall wear badges and be clean and neat in appearance. Personnel will be required to wear uniforms. Uniforms will be provided by Concessionaire at no cost to Fair. Badges will be provided by Fair at no cost to Concessionaire.

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

### **3. Booth Appearance**

For all concession locations in the Flea Market, the concessionaire will be required to provide its own freestanding booth. Provide a photograph or professional drawing of the proposed booth, if applicable to your proposal.

In all other cases, the Fair will provide built-in booths or stands. If proposing for Tingley, Offeror must provide quality drawings of any proposed changes to both signage and interiors with their proposal.

### **4. Capital Improvements**

Using the cost proposal form found in Appendix “C”, state a dollar value of improvements that the offeror would make to the structures encompassing areas covered by any Concession Agreement including Flea Market spaces/trailers. The offeror must propose no less than two thousand dollars (\$2,000.00). Drawings of proposed booth enhancements including signage must be submitted with proposal. All drawings and specifications must have Fair approval prior to construction. The Fair is requiring that said improvements must be in place by a date mutually agreed to by the parties, but prior to October 1, 2023. The successful offeror will be responsible for obtaining, and paying for directly, architects, engineers, contractors, materials or anything else necessary to complete proposed capital improvements. Any money proposed not used for capital improvements by deadline will be paid to the Fair.

### **5. Percentage of Gross Receipts**

Using the cost proposal form found in Appendix “C”, the Offeror must propose a percentage of Gross Receipts it will pay to the Fair. The Offeror must propose no less than twenty-five percent (25%).

**V. EVALUATION**

A. 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.	Qualifications and Experience	150
2.	Proposed Menu	250
3.	Concession Personnel and Uniforms	100
4.	Booth Appearance	200
5.	Capital Improvements	100
6.	Percentage of Gross Receipts	200
	<b>SUB-TOTAL</b>	1,000
7.	Oral Presentation (if any)	50
	<b>TOTAL</b>	1,050
8.	New Mexico Preference- Resident Vendor Points	
9.	New Mexico Preference – Resident Veterans Points	

B. Evaluation Criteria

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

1. **QUALIFICATIONS AND EXPERIENCE:** Experience, qualifications and perceived competence of Offeror to operate a concession of the nature and volume required. This evaluation score will be determined by the Offeror’s responses on the “Qualifications and Experience” form found in Appendix “F”.

2. **PROPOSED MENU:** Points will be awarded based on the desirability, appropriateness and product mix of menu items proposed. Size of portions and prices will be considered with customer value being stressed.

3. CONCESSION PERSONNEL AND UNIFORMS: Points will be awarded based on the number of personnel proposed to service the public and design appearance of proposed uniforms and badges.

4. BOOTH APPEARANCE: Points will be awarded based on the desirability, design, functionality and appearance of proposed booth and/or finishes provided with proposal. Points will be awarded per facility.

5. DOLLAR AMOUNT FOR CAPITAL IMPROVEMENTS: Proposed dollar amount for capital improvements will be evaluated using the following formula per facility.

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

6. PERCENTAGE OF GROSS RECEIPTS: Proposed percentages of Gross Receipts Offeror will pay. Offeror may propose no less than 25%. If Offeror is proposing to pay different rates for each year of the Agreement, those rates will be averaged before evaluating according to the following formula per facility.

$$\frac{\text{This Offeror's Price}}{\text{Highest Offeror's Price}} \times 200 = \text{Award Points}$$

**In submitting a proposal for Evaluation Criteria number 5 and 6, 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.**

7. ORAL PRESENTATION, IF ANY: Points will be awarded to finalist Offerors for the oral presentation based upon the quality of the presentation, the knowledge and experience of the key staff, response to questions, and demonstrated understanding of the project.

8. NEW MEXICO PREFERENCES: Percentages will be determined based upon the point based system outlined in NMSA 1978, § 13-1-21 (as amended).

**A. New Mexico Business Preference**

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

**B. New Mexico Resident Veterans Business Preference**

If the Offeror has provided their Preference Certificate **and** the Resident Veterans Certification Form, the Preference Points are awarded as followings:

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

**C. Evaluation Process**

1. All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the offeror for clarification of the response as specified in Section 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  
2023 LONG-TERM FOOD AND BEVERAGE 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 "K".

This acknowledgement of receipt should be signed and returned to Antoinette Kulinna no later than **2:00 PM MST on Thursday, July 27, 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 **DOES OR DOES NOT** (circle one)  
intend to respond to this request for proposals.

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE NO: \_\_\_\_\_ FAX 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.



**APPENDIX “B”**  
**CONTRACT TERMS AND CONDITIONS**  
STATE OF NEW MEXICO  
NEW MEXICO STATE FAIR COMMISSION  
SERVICES AGREEMENT

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

**1. Definitions.**

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

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

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

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

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

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

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

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

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

**2. Scope of Work.**

The Concessionaire shall provide a concession service for serving and dispensing food and non-alcoholic beverages at \_\_\_\_\_ (space number) located in \_\_\_\_\_ (name of facility) \_\_\_\_\_. (Hours of operation for particular facility will be stated here) \_\_\_\_\_. During the Annual Event, excluding the Flea Market, Concessionaires will be required to serve food and beverages from open to close of show times. The Fair will determine which Interim Events will require concession services. Hours of service will be determined by the Fair and will be tailored to the needs of each event. Additionally, the Fair may require the Concessionaire to serve food and/or non-alcoholic beverages at other times. Hours of service will be determined by Fair.

**3. Types of Food and Beverage Served.**

- A. Concessionaire will assure that a sufficient supply of food and beverage products to fully stock its business is on the fairgrounds. All food and beverage shall be fresh and of top quality. Each menu shall conform to all laws concerning truth-in-advertising, and Concessionaire shall not misrepresent to its customers the quality or grade of products sold, the point of origin, size, weight, or portion of food or beverage, or utilize false or deceptive merchandising terms or advertising. The Fair reserves the right to inspect Concessionaire's food and beverage items or to conduct other tests to determine whether the goods being sold or distributed meet quality standards.
- B. Concessionaire will be required to sell carbonated beverages and bottled water, purchased from the exclusive contractor of the Fair, (see paragraph 25 “Exclusive Grants by Fair”).
- C. The Fair reserves the right to make changes in the types of food and beverages served by Concessionaire and to reduce or add the number of food and beverage items sold by Concessionaire. If Concessionaire wishes to delete items from, or add items to, its menu, Concessionaire shall submit the new menu and prices (if applicable) to the contract administrator for prior written approval. This menu shall be subject to approval by the contract administrator. Concessionaire shall not offer for sale any food or beverage or engage in any activity not specifically provided for under the terms of the Agreement, unless otherwise authorized in writing by the contract administrator. Concessionaire shall sell food and beverages only in accordance with the terms of the Agreement.

**4. Facilities and Services Provided by Fair.**

- A. \_\_\_\_\_ (*Description of particular space/booth*) \_\_\_\_\_.
- B. Utilities. The Fair will pay all utilities except the Concessionaire is responsible for all telephone and internet/Wi-Fi expenses associated with the concession operation. The Fair will not be liable in the event of any interruption in the supply of any utilities. Concessionaire agrees that it will not install any equipment that will exceed or overload the capacity of any utility facilities and that if any equipment installed by Concessionaire will require additional utilities, it shall be installed at Concessionaire's expense, which must be approved in writing by the Fair. A service charge may also apply to additional utility facilities.
- C. Fair shall provide no goods or services, except as otherwise noted in this Agreement, to Concessionaire to assist it in its concession operation unless Concessionaire reimburses Fair for the cost of said goods or services. Specifically, the Fair will not provide shade structures or tables to Concessionaire. The Fair, however, may provide tables for use by the general public for its convenience and at the Fair's choice of location. Further, Concessionaire must make arrangements for its telephone service, storage of equipment, and must perform normal maintenance of any and all equipment or materials provided by Fair, if any, including improvements made by Concessionaire, to be used by Concessionaire in its operations.

**5. Sampling.**

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

**6. Rules and Regulations.**

The Concessionaire will be required to abide by rules and regulations listed in Exhibit "B", which are subject to change by the Fair during the term of this Agreement. Further, the Concessionaire will be required to abide by the State Fire Marshal's regulations, which is attached to this contract as Exhibit "C". Concessionaire will be required to abide by any other regulations enforced by the State Fire Marshal's office. The Fair reserves the right to establish and enforce whatever policy appears necessary for the regulation of concessions.

**7. Consideration.**

A. In consideration of this Agreement, Concessionaire agrees to pay Fair \_\_\_\_% of Gross Receipts from the total revenue derived from its concession operation. All Payments to Fair will be based on cash register tape/reports reconciliation.

B. In consideration of this Agreement, Concessionaire agrees to invest \$\_\_\_\_\_ for improvements/enhancements in booth/space. The Fair is requiring that said improvements must be in place by a date mutually agreed to by the parties, but prior to the **October 1, 2023**.

C. Past Due Interest Rate. If payments and fees are not received when due the Concessionaire shall pay an interest charge of one and one-half percent (1.5%) per month (eighteen percent annually) for each month or partial month that any payment due is not paid.

**8. Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL SIGNED BY THE GENERAL MANAGER OF THE FAIR. This Agreement shall terminate on **June 30, 2024** unless terminated pursuant to paragraph 9 (Termination), or paragraph 45 (Appropriations). The Fair reserves the option of renewing the contract for a maximum of three additional one-year periods, or any combination of years and/or months not to exceed three years, subject to written concurrence by the Contractor and Fair.

**9. 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 (9)(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, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 45, "Appropriations", of this Agreement.

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.

## **10. Conduct Harmful to Fair.**

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

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

## **11. Contract Administrator.**

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

## **12. Insurance.**

A. Contractor agrees to provide and maintain comprehensive general liability insurance coverage in the amount of at least \$1,000,000.00 single limit for bodily injury and property damage. Or as an alternate, a split limits policy with minimum limits of \$700,000.00 bodily injury per person, \$1,000,000.00 bodily injury per occurrence and \$100,000.00 property damage per occurrence is required. In addition, Contractor must provide to the Fair a certificate of insurance naming the **New Mexico State Fair** as an additional insured. A copy of the insurance policy and all riders or amendments naming the **New Mexico State Fair** as an additional insured, must be available upon request of the Fair.

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

C. 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.

## **13. Damage/Security Deposit.**

Contractor shall submit a damage/security deposit in the amount of **\$2,000.00** no later than thirty (30) days of contract signing. 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.

## **14. Reporting Requirements.**

A. Concessionaire shall operate an electronic cash register/POS system at each point of sale and the registers'/POS system display must be visible to the public. The register/POS system shall be obtained at the Concessionaire's own expense. The register/POS system provided must meet the specifications as set forth in Exhibit "A" attached to this document. Concessionaire shall register all business transactions as an entry into the cash register/POS system and shall submit required tape readings/reports

to the contract administrator. Concessionaire hereby grants to the Fair authorization to audit cash register journal tapes/reports. Concessionaire shall be required to accept and be equipped to process credit card transaction for sales. Failure to comply with this requirement will result in a fine. Repeated violation can result in contract termination.

- B. Concessionaire will submit a gross sales record to Fair no later than two (2) calendar days after each event for all transactions resulting from its business on the Fairgrounds.
- C. Fair retains the right to audit Concessionaire's business at any time during hours of operation on the Fairgrounds. Auditors will make spot audits that will involve cash register records, including cash, paid out receipts, money drops, over rings, etc. Cash register tapes must be available on request for review by the auditor. Concessionaire must comply with any adjustments that are required as a result of an audit/evaluation conducted by the auditor.
- D. Failure to Record. In the event Concessionaire fails to create and/or preserve part or all of the Gross Receipt records required in this Agreement, Concessionaire shall pay Fair the percentage payment on an estimated amount of Gross Receipts for the time period for which such records were not created or preserved, plus eighteen percent (18%) thereon. The estimate of Gross Receipts shall be made by the Fair and shall be based on historical sales of the Concessionaire or other food and beverage concessions at the Fair correlated with type of events and tickets sold for the time period involved and/or sales of other food and beverage retail businesses situated in similar circumstances as Concessionaire. Failure of Concessionaire to create and/or preserve such records shall be a material breach of this Agreement by Concessionaire.
- E. Fair shall have the right at any time within three (3) years after termination of the Agreement to have the books and records of Concessionaire audited during reasonable hours by a certified public accountant including, but not limited to, an audit by the Fair's or a private certified public accountant; and, in the event that such audit shows Concessionaire's Gross Receipts as reported by said certified statement to be more than one percent (1%) in error, detrimental to Fair, Concessionaire shall reimburse Fair for the expense to Fair of such audit; otherwise, Fair shall bear the entire cost of such audit. Any additional moneys found due by such audit shall be paid to Fair within thirty (30) days and shall bear interest at the Past Due Interest Rate from the date such payment was due until paid; and if Concessionaire has overpaid such moneys, Concessionaire shall deduct such excess from the payment next falling due, if any, or be paid such excess by Fair if no payments owing remain. Concessionaire shall not be entitled to charge Fair any interest on such overpayments.

**15. New Mexico Environmental Department.**

- A. All temporary food service establishments shall comply with the food service regulations of the New Mexico Environment Department. The Environment

Department representative may augment such requirements when needed to assure the service of safe food and may prohibit the sale of certain potentially hazardous foods. The representative may modify specific requirements for physical facilities when, in his/her opinion, no health hazard will result.

- B. Concessionaire shall submit permit applications and required fees to the Environment Department, 5500 San Antonio Drive, N.E., Albuquerque, New Mexico 87109.
- C. Concessionaire shall not sell or distribute any food product until a valid food service permit is issued by the New Mexico Environment Department. Any food service operation requiring inspection by a representative of the Environment Department must be set up and ready for inspection at least one-half hour prior to the start of an event.

**16. Acceptance of Facilities.**

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

**17. No Other Obligation of Fair.**

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

**18. Alterations and Improvements Vest with Fair.**

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

**19. Property Lien.**

The Fair shall have a lien against all property of Concessionaire situated upon the Fairgrounds, for unpaid fees or for damages sustained by Fair. Concessionaire grants to Fair the right to retain and to appropriate such property without process of law to satisfy claims

against Concessionaire.

**20. End of Term.**

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

**21. Hawking, Other Concessionaires, and Future Concession Sites.**

- A. Concessionaire agrees that the Fair may allow hawking privileges to such individuals as it may choose in accordance with such procedures as the Fair deems appropriate and according to such terms and conditions as the Fair deems appropriate.
  
- B. Concessionaire's privileges and rights under this Agreement shall not include any additional rights to retail food and beverage space at the Fair. However, Concessionaire shall not be prohibited, because of entering into this Agreement, from submitting a bid or proposal for such future space when the Fair may issue a request for bids or request for proposals. Concessionaire further agrees that the Fair has and will have other Concessionaires who shall have the right to sell food and beverages, including the same type of food and beverages sold by Concessionaire. The Fair has the right to add additional concessions or catering services in any facility. Fair shall also be entitled to contract for restaurant managers or management services to operate restaurants.

**22. Non-Exclusive Right.**

Concessionaire's right to operate the above-described business on the Fair's premises is a non-exclusive right.

**23. Concessionaire'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, and as such, Contractor has the sole and exclusive responsibility for the care and safety of all such property brought into Expo. Fair does not make any warranties or promises as to the care, maintenance or security of any such property. Any damage to said property caused by rain, hail, wind, fire, or any other natural phenomena shall be covered by 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 is 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.

**24. Parking Rights.**

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

**25. 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 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 the exclusive contractor. Selling, dispensing, or advertising any other brands are prohibited. This includes all signage, cups, fountain taps, posters, etc.

**26. Use of Fair's Communications Contractor.**

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

**27. Regulation Compliance.**

Licensee and Licensee's employees, invitees or agents must comply with all state and federal laws. Licensee 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. Licensee 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.

**28. Records and Financial Audit.**

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

**29. 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.

**30. Photography and Publicity Rights.**

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

**31. 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.

**32. 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.

**33. 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.

**34. Status of Concessionaire.**

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.

**35. Subcontracting.**

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

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

**36. Assignment.**

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

**37. Corporate Structure.**

If the controlling interest in Contractor's company is sold, transferred, or assigned (by merger or otherwise) to a third party, or the current principals of Contractor, for any reason, cease to be active in the management and operation of Contractor's company at any time during the term of this Agreement, Contractor shall notify Fair of the change and Fair reserves the right to terminate this Agreement as provided in paragraph 9, "Termination".

**38. 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.

### **39. 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.

### **40. Indemnification.**

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

### **41. Equal Opportunity Compliance.**

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

### **42. 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.

**43. 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 “L”.

**44. 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.

**45. Appropriations.**

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

**46. Release.**

The Fair'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.

**47. 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.

**48. 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.

**49. Invalid Term or Condition.**

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

**50. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights. The receipt by Fair of payments or fees with knowledge of the breach of any provision of this Agreement shall not be deemed waiver of the breach unless such waiver be in writing and signed by the Fair's general manager. No payment by Concessionaire or receipt by Fair of a lesser amount than the payments or fees due shall be deemed to be other than on account of the earliest payments or fees then unpaid, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction and Fair may accept such check or payment without prejudice to Fair's right to recover the balance of such payment or fee and any other remedy available to Fair at law or equity, and no waiver by Fair in respect to one concessionaire shall constitute a waiver in favor to any other concessionaire at Expo New Mexico.

**51. 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

**52. 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.

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

**NEW MEXICO STATE FAIR**

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Chris Machin, General Counsel

Date: \_\_\_\_\_

\_\_\_\_\_  
Cara Smouse, CFO

Date: \_\_\_\_\_

\_\_\_\_\_  
Dan Mourning, General Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
XXXXXXXXXXXXXXXXXX

Date: \_\_\_\_\_

**Exhibit “A”**  
**CONCESSION CASH REGISTER/POS SYSTEM SPECIFICATIONS**

**REPORTING PROCEDURES**

All Concessionaires shall use an approved electronic cash register or POS System method for reporting purposes.  
**Concessionaire shall be required to accept and be equipped to process credit card transaction for sales.**

Each cash register system shall have the following features:

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

Each POS system shall have the following features:

1. Full POS terminal to include tablet, receipt printer, software with full reporting, cash drawer and credit card reader.
2. Concessionaire shall register all business transactions as an entry into the cash register or POS System. Cash drawers must be closed following each sale. Continuously open cash drawers or use of a cash box or apron is prohibited.

**The information documented on the “Z” tape or POS reports shall be used to prepare the reporting forms and determine settlement. If more than one register is in use, a separate tape/report must be submitted from each cash register/POS system. Each Concessionaire is responsible for keeping the proper receipts and void slips, locating missing voids and making certain the proper dates are shown on all “Z” readings or reports. All documentation must be complete and ready at time of collection.** Concessionaire shall register all business transactions as an entry into the cash register/POS system and shall submit required tape readings/reports to the contract administrator or designated representative at close of business each day of event for all transactions resulting from its business on the Fairgrounds. Failure to comply with this requirement will result in a fine. Repeated violation can result in contract termination.

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

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

In the event that the Concession Manager determines a violation of reporting procedures has occurred, in addition to paragraph 14 of the Agreement, “Reporting Requirements” and paragraph 23 of Exhibit “B”, “Penalties”, of the Agreement, penalties will be assessed according to the following schedule:

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

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



**Exhibit "B"**  
**RULES AND REGULATIONS**

**1. Accessibility to Concessions Sites by Fair.**

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

**2. Assigned Space.**

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

**3. Damage to Buildings.**

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

**4. Signage.**

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

**5. Credentials and Parking.**

- A. Credentials for use by Concessionaire during the term of the Agreement shall be issued by Fair. Concessionaire is responsible for picking up permits prior to the event date. If credentials are found in the possession of someone other than a legitimate attendant or employee, said credentials shall be declared invalid and must be immediately surrendered to the Fair.
- B. The Fair will provide at no cost to the Concessionaire (description of passes to be provided).

Replacement credentials may incur a fee. Additional parking passes will be available at the prevailing price. Currently, the cost of a year round pass is \$200.00 and each monthly pass costs \$20.00. Parking per day is \$5.00 for general parking and \$10.00 for special event parking. Concessionaire's employees will be required to park in a location or locations as designated by Fair. Failure by Concessionaire to park in designated locations may result in towing the offending vehicle and/or revocation of any or all parking privileges.

**6. Concessionaire Personnel and Facilities.**

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

**7. Beverage Container Restrictions.**

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

**8. Vending Machines.**

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

**9. Sale of Other Items.**

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

**10. Concessionaire's Activities.**

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

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

**11. Structural, Electrical or System Overloading.**

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

**12. Noise, Odors, Vibrations and Annoyance.**

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

**13. Handling of Grease.**

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

**14. Janitorial Services and Refuse Removal.**

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

**15. Posting of Prices.**

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

**16. Prices Comparable to Off-Fairground Prices.**

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

**17. Price and Quality Surveys.**

At any time during the Term of this Agreement, Fair may, at its sole option, cause to be made by an independent food services consultant a survey of prices and quality of food and beverage services at comparable food service

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

**18. Customer Complaints.**

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

**19. Ice Supplies.**

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

**20. Maintenance of Heating and Air Conditioning.**

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

**21. Additional Rules and Regulations.**

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

**22. Removal Damages.**

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

**23. Penalties.**

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

**First violation: \$100.00 fine**

**Second violation: \$200.00 fine**

**Third violation: May result in contract termination and eviction, and/or may affect future participation privileges.**

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

- a. Health Citations
- b. Failure to comply with insurance/bond requirements
- c. Failure to pay percentages on time
- d. Failure to obey fire codes
- e. Failure to wear uniforms
- f. Failure to wear badges

- g. Unauthorized menu/price changes
- h. Failure to maintain proper housekeeping measures
- i. Failure to provide keys to booths
- j. Illegal hawking (Tingley Coliseum only)
- k. Allowing unauthorized personnel in booths
- l. Improper handling of Grease or Grey Water
- m. Golf Cart Policy
- n. Failure to follow tip jar policy
- o. Failure to follow all pandemic public health orders (mask mandate)

**Exhibit “C”**  
**FIRE AND SAFETY STANDARDS**

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

**Fire Prevention**

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

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

Certificate shall include:

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

### **Open Out-door Fires**

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

### **Electrical Fire Safety**

1. All new, existing, permanent or temporary electrical wiring must be installed, maintained and operated in accordance with NFPA #70, the National Electrical Code.
2. Only approved electrical extension cords that are UL listed and are in compliance with NFPA #70 that meet a minimum 14 gauge rating with three prong plugs (grounding wire). Extension cords will be one length from the device to the outlet. Cords will not run along pedestrian travel or egress, this includes taping the cord to the floor. There will be no electrical hookups made unless existing hardwire is within 6 feet (maximum permitted length of an extension cord) of the device. Extension cords are prohibited to be suspended, supported or anchored from trees. Any riser supporting extension cords are to be grounded. No household electrical extension cords (2 wire extension cords) are allowed to be used in concession and exhibit booths or locations.
3. All electrical connections for concession and exhibit booths or locations must be connected by a Fair licensed electrician and inspected by a representative from the Fair or from NM Construction Industries Division.
4. Portable generators must have an inspection by the State Construction Industries Division prior to operation anywhere on the fairgrounds and approved by Fair officials prior to event. Refueling any power generator shall be conducted on down time hours and not during the event. Any portable generator must be a minimum of 20 feet away from any permanent building and protected from the public.
5. Any lighting shall be equipped with protective covers.
6. Vendors inside any building will be allowed the use of electricity within the limits as specified in the Electrical Service section of this manual.

### **Commercial Cooking**

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

### **Combustible Waste and Refuse**

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

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

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

### **PROPANE STANDARDS**

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

1. All containers must be located outside the booth, the building, or the enclosure.
2. All containers must be secured in a position so that vapor only will be present at the vapor service valve. The secured container's device, such as a chain, must be able to support the weight of the container plus the container's contents.
3. All containers must be approved LP gas containers.
4. Any DOT cylinder for LP gas must be marked with the re-qualification dates (s) if the container is more than twelve (12) years old.



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

#### Filling of Containers

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

Negligent acts and omissions can result in fire legal liability.

**APPENDIX "C"  
COST PROPOSAL FORM**

FIRM: \_\_\_\_\_

PHONE NO: \_\_\_\_\_ FAX NO: \_\_\_\_\_

EMAIL: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_ TITLE \_\_\_\_\_  
(Please print)

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

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

YEAR PROPOSED (CIRCLE AS APPROPRIATE):

2023/2024                      2024/2025                      2025/2026                      2026/2027

**If Offeror is proposing different prices for each year, duplicate this form and fill out one cost proposal form for each year. Final score will be based on an average of the maximum proposed cost for each year.**

A. Dollar amount for capital improvements to concession/space offeror will pay to Fair (no less than \$2,000.00)                      \$ \_\_\_\_\_

B. Percentage of gross receipts offeror will pay to Fair (no less than 25%)                      \_\_\_\_\_%

Please circle which location this proposal is being submitted for. Select only one:

Tingley Coliseum      (circle one)                      YES                      NO

Flea Market              (circle one)                      YES                      NO

If proposing for Tingley, offeror will be willing to accept a contract located in the following:

West Tingley (circle one)                      YES                      NO

East Tingley (circle one)                      YES                      NO

**Appendix “D”  
Mandatory 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:**

**If yes, complete the following:**

The offeror listed above is prepared to meet each of the requirements set forth in paragraphs 1 through 52 found in Appendix “B”, “Contract Terms and Conditions”.

**Circle one:                      YES                      NO**

**PART B:**

**If no, complete the following:**

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

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

*(Appendix "E" continued on next page)*

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

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

**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"**  
**Mandatory Qualification and Experience Form**  
**SUBMIT THIS FORM WITH YOUR PROPOSAL**

**General Information**

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

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

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone No.:( ) \_\_\_\_\_ Email Address: \_\_\_\_\_

**Business Structure**

Offeror intends to operate the Concession Agreement as a:

Corporation  Partnership  Joint Venture  Sole Proprietorship  Other \_\_\_\_\_

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

Date of Incorporation: \_\_\_\_\_ State of Incorporation: \_\_\_\_\_

Is the Corporation authorized to do business in New Mexico?

Yes – As of what date? \_\_\_\_\_

No

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

NAME	TITLE	ADDRESS
------	-------	---------

_____	_____	_____
_____	_____	_____

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

Date of Organization: \_\_\_\_\_

\_\_\_ General Partnership \_\_\_ Limited Partnership \_\_\_ Other: \_\_\_\_\_

Has the partnership done business in New Mexico?

\_\_\_\_\_ Yes \_\_\_\_\_ No

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

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____

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

Date of Organization: \_\_\_\_\_

Detail of joint venture: \_\_\_\_\_

Has the joint venture done business in New Mexico?

\_\_\_ Yes, When? \_\_\_\_\_

\_\_\_ No

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

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

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____

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

Proprietor's Full Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

How long in business under this company name? \_\_\_\_\_



## **Statement of Qualifications and Experience**

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

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

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

**Financing**

1. List the following information for all principals: Social security number(s), federal identification and state identification.
2. All Offeror's must provide a **New Mexico CRS identification number**.
3. All Offerors must provide financial statements of your organization as follows:
  - Provide complete income tax returns or audited financial statements, for the two most current years, including notes thereto, certified by corporate official as to accuracy, or income tax return of owners to substantial qualifying years.
  - Provide current year financial statements (unaudited financials are acceptable for current year).
4. All Offeror's must specify how they are going to finance the venture, debt financing and equity financing.
  - Provide details and documents including contact person(s) regarding long-term receivables and payables, including current status.
  - Provide information on Real estate declared as assets (provide legal description).
5. Does any person named above , or any other individual directly involved in the named business organization have a contractual, financial or other interest in any other exhibit, concession, ride, show, attraction or department at the New Mexico State Fair? Yes \_\_\_ No\_\_\_? If yes, please explain.
6. Does any officer, commission member, member of management staff or employee of the New Mexico State Fair have a contractual, financial or other interest in the named business organization? Yes\_\_\_ No\_\_\_? If yes, please explain.
7. Give names, addresses and telephone numbers of at least two (2) bank/financial institution references. (*Attach answer, if necessary, to this form*)

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

# APPENDIX "G" Site Map



**APPENDIX "H"**  
**Attendance Numbers**

**TOTAL 2022 ATTENDANCE AT EXPO NEW MEXICO**

<b>Month</b>	<b>Number of Events</b>	<b>Attendance</b>
<b>January</b>	<b>8</b>	<b>12,830</b>
<b>February</b>	<b>11</b>	<b>28,015</b>
<b>March</b>	<b>13</b>	<b>16,679</b>
<b>April</b>	<b>13</b>	<b>95,985</b>
<b>May</b>	<b>11</b>	<b>100,904</b>
<b>June</b>	<b>15</b>	<b>15,429</b>
<b>July</b>	<b>14</b>	<b>15,317</b>
<b>August</b>	<b>11</b>	<b>13,357</b>
<b>September</b>	<b>4</b>	<b>4,050</b>
<b>October</b>	<b>19</b>	<b>34,961</b>
<b>November</b>	<b>9</b>	<b>11,200</b>
<b>December</b>	<b>7</b>	<b>6,010</b>
<b>Total Event Attendance:</b>	<b>135</b>	<b>354,737</b>
<b>Total State Fair Attendance:</b>		<b>476,000</b>

**APPENDIX "I"**  
**Tingley Concession Sites and List of Fair-Owned Equipment**

#207- East Side

- ✓ ABC Fire Extinguisher
- ✓ Class K Fire Extinguisher
- ✓ Exhaust Hood – Suppression System
- ✓ Hand Sink
- ✓ Three Compartment Sink
- ✓ AC Unit
- ✓ Wire Shelving Brackets
- ✓ Soap Dispenser
- ✓ Paper Towel Dispenser

#401- West Side

- ✓ ABC Fire Extinguisher
- ✓ Class K Fire Extinguisher
- ✓ Hand Sink
- ✓ Soap Dispenser
- ✓ Paper Towel Dispenser
- ✓ White Metal Shelving Brackets
- ✓ Cotton Candy Displaying Brackets

**APPENDIX "J"**  
**Coca-Cola Pricing \*\*Subject to change\*\***

**2023 New Mexico State Fair**  
**Coke Products Order Form**

**Please Print**

<b>Customer:</b>		<b>Space #:</b>
<b>Customer Phone #:</b>		<b>Order Date:</b>
		<b>Qty:</b>
<b>Cost \$34.00 - 20 oz</b>		
	1/24	Coke
	1/24	Coke Zero
	1/24	Diet Coke
	1/24	Sprite
	1/24	Fanta Orange
	1/24	Cherry Coke
	1/24	Diet Dr. Pepper
	1/24	Dr Pepper
	1/24	Barqs Root Beer
<b>Cost \$22.00 - WATER NR - 16.9 oz</b>		
	1/24	Dasani 1/2 Liter
<b>Cost \$29.76 - ORANGE JUICE 15.2 oz</b>		
	1/24	Minute Maid Orange Juice
<b>Cost \$27.19 - JUICE 20 oz</b>		
	1/24	Minute Maid Fruit Punch
<b>Cost \$24.00 - POWERADE 20 oz</b>		
	1/24	PowerAde Mountain Blast
	1/24	PowerAde Fruit Punch
<b>Cost \$27.19 - TEA 20 oz</b>		
	1/24	Fuze Strawberry Red Tea
<b>Cost \$39.00 - ENERGY 16 oz Can</b>		
	1/24	Monster Green
	1/24	Monster Ultra Zero

**APPENDIX “K”  
CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

**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