

ISSUED BY

STATE OF NEW MEXICO

NEW MEXICO STATE FAIR  
OFFICE OF THE GENERAL MANAGER

REQUEST FOR PROPOSALS  
FOR A RACE TRACK AND CASINO OPERATION  
OR FOR ALTERNATIVE USES

New Mexico State Fair

Prepared by:  
New Mexico State Fair  
ISSUE DATE: July 24, 2011

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## SECTION 1 INTRODUCTION

### A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico State Fair (the “Agency”) is requesting proposals for an alternative use for the approximately 93 acres presently used for a casino, race track and barns (Option One) or to enter into a lease agreement with the New Mexico State Fair Commission to operate the Race Track and Casino and associated facilities at its Fair Grounds in Albuquerque, New Mexico (Option Two).

The purpose of this Request for Proposals is to select the most qualified Offeror who shall provide a significant and long-lasting impact on the quality of the Fair while integrating the proposed use with other Fair entertainment facilities such as Tingley Coliseum. An “Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

### B. SCOPE OF PROPOSALS

This Request for Proposals allows alternative proposals to be submitted. An Offeror may submit a single proposal proposing either or both options.

**OPTION ONE:** Propose a use of the approximately 93 acres presently being use as barns, race track and casino shown on Appendix A. The proposal shall be in accordance with the general requirements of this RFP and the Option One Requirements, below.

**OPTION TWO:** Propose to continue the race track and casino shown on Appendix A. The proposal shall be in accordance with the general requirements of this RFP and the Option Two: Race Track and Casino Requirements, below.

### OPTION ONE REQUIREMENTS

**1. ALTERNATE START DATE FOR LEASE PROPOSALS SHALL ADDRESS A LEASE TERM START DATE OF JANUARY 12, 2012 AND JANUARY 12, 2013.** At the time of the issuance of this RFP it is unknown if the present lease will terminate on January 11, 2012 or January 11, 2013. That determination will be made prior to the completion of the selection process under this RFP and all Offerors will be notified of the decision. However proposals must address any differences in the terms of the proposal that result from a later start date in 2013.

**2. USE** Submit a proposal for a use other than a race track, casino and barns on the approximately 93 acres shown on Appendix A. Proposals that do not propose a use of the entire 93 acres shall not be considered. Proposals shall specify any exceptions and modifications to the Lease requirements in Appendix E. Uses proposed shall be consistent and compatible with the uses of the remaining Fairgrounds and the State Fair programs.

**3. RENT** Proposals shall provide for rent paid to the State Fair in an amount of no

less than two million dollars (\$2,000,000.00) per year. The lease shall be for 25 years.

4. **FACILITIES** Proposals shall specify which, if any, of the existing structures on the 93 acre area will continue to be used by Offeror and propose which, if any, of the existing structures will be demolished by Offeror. The cost of demolition, restoration, new construction and modification of existing structures shall be specified. The lease offered under this RFP is a "triple net" lease. Offeror shall pay all of its operational costs, including but not limited to its own repairs, renovations, utilities including communications, security, janitorial and as specified in the lease in Appendix E.

5. **OPERATIONS** The proposal shall address the integration of its proposed use of the 93 acres with the programs conducted in the remaining fair grounds, and in particular, Tingley Coliseum, specifying parking needs and programmatic requirements.

6. **CONTENTS OF PROPOSALS:** All of the provisions that follow in this RFP shall apply to the Option One proposals, except those specifically pertaining to gaming, the casino, the barns, and horse racing.

#### **OPTION TWO: RACE TRACK AND CASINO REQUIREMENTS:**

1. **THE PROPOSALS SHALL ADDRESS A LEASE TERM START DATE OF JANUARY 12, 2012 AND JANUARY 12, 2013.** At the time of the issuance of this RFP it is unknown if the present lease will terminate on January 11, 2012 or January 11, 2013. That determination will be made prior to the completion of the selection process under this RFP and all Offerors will be notified of the decision. However proposals must address any differences in the terms of the proposal that result from a later start date in 2013.

2. **NO TRAINING FACILITY.** The Premises shall not be used as a race horse training facility. The Tenant shall not be allowed to have horses on the Premises other than during the approved racing season unless authorized by State Fair Manager or his designee. Offerors shall acknowledge their approval of this condition in their proposal.

3. **THIS REQUEST FOR PROPOSALS IS FOR A "TRIPLE NET" LEASE FOR THE CASINO, RACE TRACK AND RELATED FACILITIES AT THE STATE FAIR.**

#### **C. SCOPE OF PROCUREMENT**

The successful Offeror will enter into a long-term lease agreement ("Agreement") with the Agency, after approval by the Fair Commission to operate the Race Track, Casino and other Venture facilities and amenities.

The Agency will include in the Agreement: the use of all race Track facilities, including the track, grandstand, race horse barns and administrative offices, the Casino facility, and use of common parking areas to the extent designated by the Fair Commission.

The Agency shall retain all ownership interest in the land, buildings and other permanent structures at the Fair that are included in the lease. Ownership of all capital improvements made by the successful Offeror shall revert to the Fair Commission upon termination of

the Agreement.

**D. PROCUREMENT MANAGER**

The Agency has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address, e-mail and telephone numbers are listed below.

New Mexico State Fair  
P.O. Box 8546  
Albuquerque, New Mexico 87198-8546  
Attn: Karen Brandt, Procurement Manager  
(505) 222-9729  
FAX: (505) 266-7784  
E-mail: [Karen.Brandt@state.nm.us](mailto:Karen.Brandt@state.nm.us)

All deliveries via express carrier (including proposal delivery) should be addressed as follows:

Karen Brant, Procurement Manager  
New Mexico State Fair  
Administration Building, Gate 3  
300 Block San Pedro Blvd., NE  
Albuquerque, New Mexico 87108

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of the Agency.

**E. DEFINITION OF TERMINOLOGY**

This section contains definitions and abbreviations that are used throughout this procurement document.

"Agency" means the New Mexico State Fair.

"Agreement" means a written lease agreement for the race track and casino and associated facilities identified in this RFP between the Fair Commission and the successful Offeror.

"Best and final offer" means the offer from which the Agency will select the successful Offeror. The date and time for the Best and Final Offers shall be after negotiations with the finalist and shall be set by the Agency.

"Casino" means the premises housing the gaming machines approved for play by the New Mexico Gaming Control Board. It includes the casino cage, surveillance and other facilities necessary for the operation of the gaming machines.

"Close of Business" means 5:00 PM Mountain Standard or Mountain Daylight Time,

whichever is in effect on the date given.

“Department” means the New Mexico State Fair.

"Determination" means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

"DFA" means the Department of Finance and Administration for the State of New Mexico.

"Evaluation Committee" means a body appointed by the Agency management to perform the evaluation of Offerors' proposals.

"Evaluation Committee Report" means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the State Fair manager for recommendation of a contract award to the Fair Commission. It contains all written determinations resulting from the procurement.

“Fair Commission” means the New Mexico State Fair Commission.

“Fair” or “Fair Grounds” means the property situated on a 236 acre site and the improvements thereon, in Albuquerque, Bernalillo County, New Mexico located at 300 San Pedro, N.E., surrounded by Lomas, Louisiana, San Pedro and Central Streets. See Appendix A for a map of the Fair Grounds property.

"Finalist" is defined as an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Gaming Board” means the New Mexico Gaming Control Board, which has licensing and regulatory authority on behalf of the state of New Mexico over casino ownership, management, personnel and operations.

"Lessee" means a successful Offeror who enters into a binding Lease Agreement with the Fair Commission.

“Non-gaming facilities” means all facilities at the Fair Grounds except for the Race Track and Casino, such as parking offices and buildings not directly associated with the Race Track or Casino.

"Offeror" is any person, corporation, or partnership who chooses to submit a proposal.

“Participant” means any individual, joint venture, partnership, consortium or other entity or a subsidiary of another entity that is participating in the proposal submitted by Offeror.

"Procurement Manager" means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

“Race Track” means the premises housing the race track, grandstands and other seating, betting windows, stalls and other facilities necessary for the operation of pari-mutuel wagering on horse racing.

“Racing Commission” means the New Mexico Racing Commission that has licensing and regulatory authority on behalf of the state of New Mexico over race track ownership, management, personnel and operations.

“Racino” means the Race Track, Casino and other facilities such as food and beverage sales locations that comprise the leased area in the Agreement.

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

"State Purchasing Agent" or "SPA" means the purchasing agent for the State of New Mexico or a designated representative.

“Venture” means the Casino and Race Track operations as well as ancillary operations such as food and beverage sales that are part of the Agreement between the Fair Commission and the successful Offeror.

## **F. BACKGROUND INFORMATION.**

This section provides background on the New Mexico State Fair which may be helpful to

the Offeror in preparing the proposal. The information is provided as an overview and is not intended to be a complete and exhaustive description.

The New Mexico State fair is an agency of the State of New Mexico that is overseen by a seven-member commission appointed by the Governor and confirmed by the New Mexico State Senate. The State Fair is an enterprise agency that generates its own revenues to support its operational needs.

## 1. THE VENTURE.

**The Racino:** The Race Track is owned by the New Mexico State Fair commission. It is the oldest racetrack in New Mexico, having opened in 1938. The Racino facility is located on approximately 93 acres which is within the 236 acre parcel in Albuquerque, New Mexico that comprises the State Fair Grounds. The Fair is near Interstate 40 and has as its boundaries San Pedro, NE, Lomas, Louisiana and Central Streets.

**The Race Track:** The Race Track features live quarter horse and thoroughbred racing over a one-mile track with grandstand seating capacity of approximately 1,400 along with restaurant and beverage concessions. The Race Track includes approximately 36 barns with approximately 1,500 stalls, including receiving stalls. The successful Offeror will be allowed to occupy the barns only during live horse racing unless authorized by the State Fair Manager or his designee.

The State Fair is traditionally held in September of each year.

The Race Track also features simulcast racing from other United States racetracks seven days per week throughout the year.

The primary revenues for the Racino for calendar years 2009 and 2010 were:

	2010	2009
Racing:	\$8,202,728	\$8,852,386
Casino	\$17,546,632	\$16,550,747
Food and Beverage	\$1,211,063	\$1,302,271
Totals:	\$26,969,423	\$26,715,404

**The Casino:** The Casino opened in 1999 and is located at the north end of the grand stands on the third floor. The Casino includes 300 video poker and reel slot machines at this time. For limitations on the number of gaming machines and times permitted to be operated, see Section 60-2E-27, NMSA 1978.

**Other Fair Grounds Facilities:** Other Fair Grounds Facilities not included in the Premises are Tingley Coliseum, Lujan Complex, Fine Arts Gallery, Fair Offices and other facilities that are used to conduct events throughout the year. These facilities are operated by the Fair Commission.

Attendance at the Fair Grounds was in excess of 930,000 in 2010.

## **2. PERTINENT GAMING TAX AND DISTRIBUTION INFORMATION:**

This information may be obtained from the New Mexico Taxation and Revenue Department at [www.tax.newmexico.gov](http://www.tax.newmexico.gov).

## **3. ALBUQUERQUE DEMOGRAPHIC INFORMATION**

According to the 2010 Census, the Albuquerque metropolitan statistical area has a total population of 662,564. Of that total, 34,115 are age 20-24 and 67,150 are age 25-34. Of those in the labor force, 7.6% are unemployed as of April 2010. The median household annual income is \$24,600.

## **4. COMPETITIVE ENVIRONMENT – GAMING**

There are no other race tracks authorized by the Racing Commission in the greater Albuquerque area. The State of New Mexico has 4 other operating race tracks located in Ruidoso, Sunland Park and Farmington and Hobbs with a fifth license is held by the State Fair for racing on the Fair Grounds.

There are four tribal casinos operating in the greater Albuquerque area. These tribal casinos offer a full range of casino gaming, including table games and gaming machines.

The names and addresses of the licensed non-profit operators of gaming machines in the city of Albuquerque are available from the Gaming Board at [www.nmgcb.org/info/licenseelist.pdf](http://www.nmgcb.org/info/licenseelist.pdf).

## **5. REGULATORY REQUIREMENTS.**

The successfully Offeror will be subject to strict regulatory oversight and control. The two primary regulatory agencies are the Gaming Board for the casino and the Racing Commission for the race track. Both agencies charge fees for the initial licensing process and subsequent license renewals.

a) **The Casino:** The Gaming Board has extensive authority to investigate the background of companies and individuals that own and operate casinos and other locations that operate gaming machines. All persons desiring to obtain a casino license must file detailed applications and submit to company and personal background investigations, meeting suitability standards under law and the Gaming Board's rules and regulations. All Offerors are advised to carefully and completely review the licensing and operational requirements of the Gaming Board.

b) **The Race Track:** The Racing Commission licenses and controls horse racing in the state of New Mexico. The Commission has extensive authority to investigate the background of companies and individuals that own and operate race tracks. All

persons desiring to obtain a race track license must file detailed applications and submit to company and personal background investigations, meeting suitability standards under law and the Racing Commission's rules and regulations. All Offerors are advised to carefully and completely review the licensing and operational requirements of the Racing Commission. The State of New Mexico, the Agency and Fair Commission shall not be responsible for any costs associated with such licensing.

c) **Alcoholic Beverage Service:** The Racino has facilities to service alcoholic beverages except in the Casino which is prohibited by law from serving alcoholic beverages. There are local, state and federal requirements that apply to the successful Offeror in order to receive the necessary licenses to service alcoholic beverages. The State Fair owns one governmental liquor license that is presently leased and not available to Offeror at the time of the award of the Lease. The State of New Mexico, the Agency and Fair Commission shall not be responsible for any costs associated with such licensing.

d) **Other permits:** Other governmental agencies may require the successful Offeror to obtain permits to conduct at the Racino. Offeror shall be solely responsible for determine what permits are required and the State of New Mexico, the Agency and the Fair Commission shall not be responsible for any costs associated with such permits.

**ALL OFFERORS MUST PERFORM THEIR OWN RESEARCH AND VERIFICATION OF THE RACING AND GAMING MARKETS, COMPETITION, TAXES AND FEES, LICENSING REQUIREMENTS, LAWS, REGULATIONS AND RULES AND OTHER INFORMATION RELATING TO THIS RFP. THE INFORMATION CONTAINED IN THIS RFP IS BEING PRESENTED AS AN OVERVIEW AND SHALL NOT BE RELIED UPON BY THE OFFEROR IN MAKING ITS BUSINESS DECISION.**

#### **G. PROCUREMENT LIBRARY**

The Procurement Manager has established a Procurement Library. Offerors are encouraged to review the material contained in the Procurement Library by visiting the website.

The library contains information listed below:

Procurement Regulations, NMAC 1.4.1. A copy may be obtained from the following web site address:

<http://www.generalservices.state.nm.us/spd/pregulations.html>

## SECTION 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.

The Procurement Manager will make every effort to adhere the schedule that follows. Not all events listed below may occur. See Section II B as to events that are not mandatory.

### A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere the following schedule:

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issue of RFP	Agency	7-24-11
2.	Distribution List Response	Potential Offerors	8-1-11
3.	Deadline to Submit Questions	Potential Offerors	8-10-11
4.	Response to Written Questions/RFP Amendments	Agency	8-17-11
5.	Submission of Proposal	Offeror	8-25-11
6.	Proposal Evaluation	Evaluation Committee	
7.	Selection of Finalists	Evaluation Committee	
8.	Best and Final Offers	Offeror	
9.	Oral Presentation by Finalists	Offeror	
10.	Finalize Contract	Agency, Offeror	
11.	Contract Award	State Fair Manager submits to Fair Commission	
12.	Protest Deadline	Offeror	

### 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 Agency.

2. Distribution List Response Due

Potential Offerors should hand deliver or return by facsimile or by registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document (See Appendix B) 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 close of business on August 1, 2011.

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 the potential Offeror's organization name shall not appear on the distribution list.

3. Deadline to Submit Written Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until close of business on August 10, 2011. All written questions must be submitted via e-mail to the Procurement Manager (See Section I, Paragraph D).

4. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on August 17, 2011 via email 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.

5. Submission of Proposal

**ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 PM MOUNTAIN STANDARD TIME ON Thursday, August 25, 2011. Proposals received after this deadline will not be accepted.** The date and time of receipt will be recorded on each proposal at the New Mexico State Fair reception 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 1, Paragraph D, above. Proposals shall not be submitted electronically or by mail.

Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **RACE TRACK AND CASINO OPERATION OR ALTERNATIVE USES AT THE NEW MEXICO STATE FAIR REQUEST FOR PROPOSALS**. Proposals submitted by facsimile or other electronic means will not be accepted.

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

6. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by Agency management. During this time, the Procurement Manager may 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.

7. Selection of Finalists

The Procurement Manager or designees will notify the Offerors who have been selected as finalists. Only finalists will be invited to participate in the subsequent steps of the procurement.

8. 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 at the finalist Offeror's oral presentation.

9. Oral Presentation by Finalists

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager or designees will schedule the time for each Offeror's presentation. All Offeror presentations will be held at the Administrative offices of the State Fair, 300 San Pedro, NE, Albuquerque, New Mexico.

10. Finalize Contract

The contract will be finalized with the most advantageous Offeror. In the event that mutually agreeable terms cannot be reached, the Agency reserves the right to

finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

11. Contract Award

After review of the Evaluation Committee Report, a contract will be sent for execution to the Offeror. The Offeror will return the signed contract to the Fair and the signed contract will then be submitted to the Fair Commission to consider award of the contract, subject to the approval of DFA and the State Board of Finance.

The contract shall be awarded to the Offeror 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. The award is subject to approval by the Fair Commission, DFA and the Board of Finance.

12. Protest Deadline

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the contract award. Protests must be written and must include the name and address of the protestor and the request for proposals number. 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 by mail or in person to the address listed in Section I, Paragraph D.

Protests received after the deadline will not be accepted.

C. **GENERAL REQUIREMENTS**

This procurement will be conducted in accordance with the State Purchasing Agent's procurement regulations, 1.4.1 NMAC.

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 preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

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 Agency. The Agency 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 Agency 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 the 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 due date for the receipt of a best and final offer if one is solicited.

8. Disclosure of Offeror's Names, Disclosure by Offeror and Disclosure of Proposal Contents

- a) The Procurement Manager may release the names of the Offerors to the public.
- b) The Offeror and Participants shall not issue any news release or make any other public

announcement pertain to the details of their proposal without the prior written consent of the Procurement Manager. Failure to comply with the provision may be ground for disqualification to an award under this RFP.

c) The 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 Manager shall examine the Offeror's request 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 any of its agencies to the use of any proposed services until a valid written contract is awarded and approved by the appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Agency determines such action to be in the best interest of the State of New Mexico.

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 Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law/Venue

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico and venue shall be in the State District Court of Bernalillo County, New Mexico.

14. Basis for Proposal

Only information supplied by the Agency in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

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

Should an Offeror object to any of the Agency's terms and conditions, as contained in this Section or in D, that Offeror must propose specific alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions that are not acceptable to the Agency 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.

All contracts for professional services are subject to the review and approval of DFA pursuant to 13-1-118 NMSA 1978 and DFA Rule 2 NMAC 40.2.

16. Offeror's Terms and Conditions

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

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Agency 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 Evaluation Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

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

21. Notice

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

22. Agency Rights

The Agency reserves the right to accept all or a portion of an Offeror's proposal.

23. Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors, Offerors and contractors must secure from the Agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.

24. Ownership of Proposals

All documents submitted in response to this Request for Proposals shall become the property of the Agency and the State of New Mexico.

25. 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.

26. 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 insure 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 SPA, the version maintained by the SPA shall govern.

27. Suspension and Debarment Requirement

The Offeror shall certify, by stating in its proposal that to the best of its knowledge and belief that the Offeror and/or its Principals are not or have not been debarred, suspended, proposed for debarment or declared ineligible for the award of contracts by any Federal department or agency.

28. New Mexico Employees Health Coverage

28.1 For all contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to:

(a) have in place, and agree to maintain for the term of the contract, health

insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or

(c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

28.2 Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.

28.3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://insurenewmexico.state.nm.us/>.

28.4 For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000.

29. Campaign Contribution Disclosure Form Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (See Appendix F) as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor. Failure to complete and return the form will result in disqualification.

### 30. Pay Equity Reporting Requirements

“If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) with their bid or proposal for evaluation purposes.

“For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.

“Should Offeror not meet the size requirement for reporting at contract award but

subsequently grows such that they meet or exceed the size requirement for reporting, offer must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.

“Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.”

31. Disqualification

The Agency may disqualify any Offeror if unacceptable or negative information is discovered during the due diligence process. Successful completion of the due diligence investigation by the Agency in no way implies or guarantees that the Offeror or Participants will be licensed or approved by any licensing or regulatory agency including, but not limited to the Gaming Board or Racing Commission.

32. Failure to have Licenses

Failure of an Offeror or key management personnel or any Participant to successfully complete the licensing or approval process of the Gaming Board or the Racing Commission shall be grounds for disqualification of the Offeror and its proposal shall be deemed non-responsive.

33. Site Visit

Offerors may tour the Fair during the RFP process to evaluate the extent and quality of the existing facilities. Tours must be coordinated with the Procurement Manager and are allowed only to the extent they do not interfere with on-going operations.

35. Interpretation The terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal.

### **III. RESPONSE FORMAT AND ORGANIZATION**

This section describes the format and organization of the Offeror's response. Failure to conform to these specifications may result in the disqualification of the proposal.

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal, provided that the proposal may a proposal for Option One and another proposal for Option Two.

B. NUMBER OF COPIES

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

C. SEPARATE BINDER FOR COSTING DOCUMENTS

Offerors shall submit all costing documents in a separate folder with the submission of the proposal.

D. PROPOSAL FORMAT

All proposals must be typewritten or computer generated on standard 8 1/2 x 11 inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Pages must be numbered sequentially. The 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
- b) Table of Contents
- c) Proposal Summary
- d) Response to mandatory specifications
- e) Financial Statement Templates
  1. Projected balance Sheets
  2. Projected first year profit and loss statements
  3. Five year projected profit and loss statements
- f) Other supporting material
- g) The following completed forms:
  - 1) Campaign Contribution Form
  - 2) New Mexico Employees Health Coverage Form
  - 3) Offeror's additional terms and conditions
  - 4) Company Due Diligence Questionnaire and Release form
  - 5) Individual Due Diligence Questionnaire and Release form
  - 6) Pay Equity forms

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.

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

The proposal summary may be included by Offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced in other portions for the Offeror's proposal.

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 to their proposals.

2. Letter of Transmittal

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

- a) identify the submitting organization;
- b) identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) identify the name, title and telephone number and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
- d) identify the names, titles and telephone 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;
- f) be signed by the person authorized to contractually obligate the organization;
- g) acknowledge receipt of any and all amendments to this RFP.

#### **IV. SPECIFICATIONS**

Offerors must respond in the form of a thorough narrative to each mandatory specification. The narratives, along with required supporting materials will be evaluated and awarded points accordingly. Failure to respond to mandatory Specifications will result in the disqualification of the proposal as non-responsive.

### **MANDATORY CONTENTS OF PROPOSAL**

This Section outlines **the MANDATORY INFORMATION** that is required to be in the proposal. All Offerors are advised to carefully review the requirements herein. Offerors shall submit all of the requested information with their proposal; failure to do so may result in the proposal being deemed non-responsive.

#### **1. Identification of Offerors.**

If the Offeror has been newly formed by two or more entities to respond to this RFP or if the Offeror is a joint venture, partnership, consortium or other entity or a subsidiary of another entity, provide as to the Offeror and each entity, joint venture participant, partner, consortium member, parent and intermediary entity [referred to hereafter as “Participant”] the following information:

a) The formal name, physical address, mailing address, telephone number, facsimile number and e-mail address.

b) The names and respective positions of individuals who are authorized the Offeror for purposes of this RFP.

c) A detailed description of the legal nature of the Offeror and, if applicable, the relationships between the Offeror and its Participants. Provide copies of any written agreements between such entities.

d) List the date the Offeror was incorporated or otherwise formed; the state, province or other jurisdiction of incorporation or creation; and all names under which the Offeror is conducting business in each jurisdiction.

e) Summarize all legal agreements that describe the relationship between the Offeror and any person or entity involved with Offeror as a partner, consortium member, material shareholder, parent or controlling entity.

f) Provide an ownership chart indicating the ownership structure of the Offeror showing all individuals and entities that have direct or indirect ownership interests in Offeror. If the Offeror is publicly owned, it is only necessary to list the individuals or entities that beneficially own or control ten percent (10%) or more of the share of any class of stock. In this instance of private company, all shareholders and their percentage of ownership are to be identified. Complete Appendix C.

g) For all individuals or entities identified in f), above, and any officers and directors of the Offeror, provide the following: name, street address, telephone number, taxpayer identification number, birth date in the instance of individuals, the date and location of incorporation or creation for entities. Provide the signed consent and release form (see E and F).

h) Provide the last three years annual audited financial statements of Offeror. If the Offeror or Participants are public traded companies, submit the last three years SEC 10-K and SEC 10Q filings for each. If the Offeror does not engage an independent accounting firm to conduct an audit, the Offeror must supply un-audited financial statements for the past three years that shall include Balance Sheets, Profit and Loss statements, Sources and Use of Funds and the notes to the financial statements. All financial statement shall be prepared in accordance with United States generally accepted accounting principles. If an Offeror is newly formed and does not have the documents required in this paragraph, provide a pro-forma Balance sheet for Offeror.

i) If Offeror or Participant has ever filed for bankruptcy, and projects foreclosed upon or repossessed, any outstanding liens or judgments, or has sought protection of any bankruptcy or insolvency laws, provide details of each such event, listing place, time, amount of money involved and creditors involved.

j) If Offeror or any Participant is involved in any litigation or dispute, provide a description and the maximum exposure to the Offeror or Participant.

k) If the Offeror or Participant has been convicted of a crime other than a minor traffic offense within the past ten years, provide details of the conviction, including time, offense, penalty imposed, current status of the convicted party, including probationary or parole status.

l) If the Offeror or Participant has been issued a license or currently maintains a license to conduct the activities that the successful Offeror will conduct pursuant to this RFP (including but not limited to gaming license, racing license, any type of alcoholic beverage license or other professional license), as to each such license, provide the type of license and the name, address and telephone number of the issuing governmental agency.

If the Offeror or Participant has ever applied for a license described in this paragraph and such application was withdrawn or denied, for each such application provide complete details of the circumstances concerning the withdrawal, including the type of license and the name, address and telephone number of the governmental agency to which the application was submitted.

If the Offeror or Participant has ever had a license described in this paragraph revoked or suspended or been fined for a violation of the requirements associated with the license, for each

such event, provide complete details of the circumstances concerning the fine, revocation or suspension, including the type of license and the name, address and telephone number of the governmental agency imposing the fine, suspension or revocation.

m) Each officer, director and key management employee of Offeror and Participants shall complete the Due Diligence Questionnaire (Appendix D).

n) **Insurance and Bonds:** Offeror must submit with the Proposal proof of the ability to provide the insurance and bonds required in this RFP and that its insurance carrier(s) meet the requirements for insurers and sureties stated in this RFP. Such proof may consist of a letter of commitment to insure or bond Offeror in the event they are awarded the Agreement under this RFP by an insurer/surety that meets the requirements specified in this RFP. Insurance and bonding requirements are found in Appendix E, Agreement terms and conditions.

## **2. Terms of the Agreement.**

### **SELECTED BUSINESS TERMS AND CONDITIONS**

Offeror shall provide with its proposal any exceptions it has to the terms of the Agreement along with proposed alternatives.

#### **A. Basic Framework.**

The following are the selected terms and conditions that the successful Offeror can expect in the Agreement.

1) The State of New Mexico, through the Fair Commission, owns and operates all of the facilities at the Fair Grounds.

2) All fixed assets and capital improvements made by the Lessee shall be owned by the Fair Commission.

3) The term of the Lease of the Venture facilities will begin upon the approval of the DFA, the Fair Commission and the State Board of Finance, but no sooner than January 12, 2012.

4) The Fair Commission will be directly involved in approving all annual operating budgets and capital expenditures for the Fair.

5) The Fair Commission will have access to all books, records and reports of the Lessee.

6) The Racino shall be operated in an integrated fashion with Non-Gaming Facilities at the Fair Grounds. The Racino shall be fully integrated with the Tingley Coliseum and other facilities by means of marketing and operations. Address in your proposal how you would coordinate events with State Fair for performances at Tingley Coliseum and address

revenue sharing approaches.

**B. Capital improvements.**

Capital improvements do not include Tenant's obligation to maintain the Premises or pay for utilities or other costs specifically listed herein.

1) State what capital improvements you will provide to eliminate the infield race track parking and replace it with other parking facilities. Address whether additional land would have to be added to the Premises to accommodate your proposed parking and identify the location of such area. Propose how the State Fair would share revenues from parking and use of parking for State Fair events. Address exclusive use of parking by Landlord during the State Fair.

2) Identify other capital improvements in addition to parking you propose to make at your cost, such as, but no limited to, the repair and/or replacement of the Grandstand roof, reconstruction of the open portion of the south end of the Grandstand and providing an additional entrance at the south end of the Grandstand.

3) Proposals shall not include payment of capital improvements through rent credits.

**C. Term.** The term of the Agreement shall not exceed 25 years.

**D. Quality Requirements.** The lessee shall maintain the leased facilities at a high standard of quality, safety and cleanliness.

**E. No Financial Assistance.** No financial assistance or guarantees in any form will be given by the State of New Mexico or Fair Commission to support the lessee's operations and capital improvements. Lessee has all financial risks associated with the Venture, including but not limited to capital improvements, tax liabilities, purchase of equipment (including but not limited to gaming machines), supplies and hiring and employing personnel.

**F. Parking:** See requirement for a proposal concerning parking above.

**G. Compliance with Laws.** The lessee shall comply with all gaming, racing, liquor and other applicable laws, rules and regulations. The Fair Commission may terminate the Agreement if the lessee places any of its privileged licenses in jeopardy.

**H. Lease Payments.** The lease payment shall be a fee based on a minimum annual lease fee of no less than \$2 million or at such additional amount as proposed and agreed upon by the Offeror and State Fair as well as a percent of gross revenues as additional rent as proposed and agreed upon by the Offeror and State Fair. Include in your proposal that the minimum annual rent is in addition to all utility costs and maintenance as required in this RFP

and the attached Agreement Terms and Conditions found in Appendix E.

**I. General Terms and Conditions.** See Appendix E for the terms and conditions of the Agreement the successful Offeror shall enter into.

**J. Racing during the State Fair.** Offeror shall state in its proposal that it agrees to operate live horse racing during the State Fair under the racing license held by the Agency. The decision as to whether Offeror operates State Fair horse racing or the Agency operates the horse racing or contracts with others to operate the State Fair horse racing in any particular year during the Lease awarded by this RFP is solely that of the Agency. In the event the Agency elects to have the Offeror operate the State Fair horse racing, the Offeror and Agency will enter into an agreement for each year Offeror operates said racing. The revenue sharing provisions of the agreement to have Offeror operate said racing shall be based on the proposal submitted by Offeror pursuant to this RFP.

**K. Maintenance/Repair.** The lease will be a “triple net” lease, and as such, Tenant shall be responsible for all maintenance, preventative maintenance, repairs, structural maintenance, warranty compliance and general upkeep of the Premises. See the Agreement Terms and Conditions, Appendix E, for a full statement of maintenance requirements.

### **3. Qualifications of Offeror.**

If the Offeror has been newly formed by two or more entities to respond to this RFP or if the Offeror is a joint venture, partnership, consortium or other entity or a subsidiary of another entity, provide responses to the information required in this section as to each entity, joint venture participant, partner, consortium member, parent and intermediary entity (collectively hereafter, the “Offeror”).

a) Describe the type of casino gaming and racing licenses for each jurisdiction in which Offeror is or was licensed, registered or approved. Provide the date of license issuance, type of license issued and the name address and telephone number of the issuing agency. Describe in detail any pending applications for a casino gaming or racing license, registration or approval in all jurisdictions providing the name address and telephone number of the agency with such application was submitted.

b) Describe the experience of the Offeror as it applies to all aspects of the RFP pertaining to Race Track and Casino operations.

c) Provide full details on any projects developed and operated by the Offeror and its senior management, including any projects currently under development. This detailed

description shall include the role in which the Offeror/senior management played in the development and operation of the projects, the size and scope of the projects, current relationship with the projects and the type of market served by the projects. Provide illustrative materials where relevant.

d) Provide the name and address of every casino gaming establishment and race track owned or operated by Offeror presently or within the last 10 years identifying the Offeror's role with the casino and race track, and the name of the owner of each facility, where applicable.

e) If the Offeror is currently involved in or proposing to construct a new project or expand an existing project involving a casino or race track, for each project provide

- 1) A brief description of the project giving the type, location, concept and size;
- 2) Estimated cost of the project;
- 3) Anticipated dates of construction and completion;
- 4) The financing arrangements and commitments for the project;
- 5) The role of Offeror in the project and identification of any partners or joint venture participants.

#### **4. Leasehold Improvements Proposal.**

The Offeror shall describe in detail the proposed leasehold improvements that it will make in order to meet the objectives of this RFP. The Offeror shall include the following minimal information:

- a) Details of the proposed leasehold improvements;
- b) Discussion of how the leasehold Improvements will integrate into existing entertainment facilities at the Fair Grounds;
- c) Detailed financial projections on the costs of the leasehold improvements and a full description of any phasing in of leasehold improvement, including projected dates; and
- d) Plans for the continuation of operations during the remodeling and capital improvement periods.

Capital improvements made with funds set aside in the capital improvement fund required by the New Mexico racing Commission are required capital improvements and shall be made on a schedule determined by the Fair Commission, subject to the New Mexico Racing Commission.

e) Offerors are encouraged to provide renderings and other visual representations of the Offeror's plan for the facilities and the leasehold improvements.

#### **5. Business Operations and Marketing.**

- a) **Management personnel** Provide a description of key management personnel that

Offeror proposes to operate each department of the Racino and as to each such person, identify the main areas of their responsibility and their experience working in such area. For each department, indicate the number of staff required and total estimated costs of salaries and benefits.

b) **Staff training** Outline the Offeror's initial orientation and on-going staff training programs, including the content of the training. If the Offeror is presently operating a casino or race track, include for each casino and race track a description of the training programs Offeror has implemented.

c) **Marketing plan** Describe in detail the Offeror's marketing plan to enhance revenues and integrate the Racino with other facilities and events at the Fair Grounds. Include details on the type of promotions and advertising that will likely be undertaken and a description of the target markets. Include details of proposed marketing and advertising budgets.

d) **Security Services** Offeror shall provide security for the Premises at all times of the day and all days of the year. State Fair provides security services at all times of the day, all days of the year for the Fair Grounds excluding the Premises. State Fair requires that the successful Offer coordinate its security with that of the State Fair. Describe in your offer how you will implement participate in that coordination and what financial responsibilities Offeror shall have to provide a total security system for the entire Fair Grounds.

e) **Sponsorships** Identify in your proposal all events Offeror agrees to sponsor and the financial extent of such sponsorship.

f) Describe the types and number of gaming machines that will be placed in the facility and the plan for dealing with machine obsolescence. Include a plan and schedule to increase the number of gaming machines from the current 300 machines to the maximum allowed by law.

## **6. Financial Projections.**

a) Provide a detailed projected budget for financing, the leasehold improvements and operations for the first five years of the Agreement.

b) Explain in detail all material assumptions upon which the projects are based.

c) Provide projected balance sheets, income statements (detailed on a departmental basis) and cash flow statements for a period of five years of operations, using generally accept accounting principles. The first year of operations shall be detailed on a monthly basis.

d) All material assumptions for financial projects and operating performance are to

include at a minimum the following detail:

- 1) Date(s) of anticipated improvements and expansions;
  - 2) Race handle by type of wager (Such as straight bet, quinella) live versus simulcast handle, commissions received from live racing and simulcast racing.
  - 3) Projected gaming machine handle, drop and win (Net Take) for each denomination of machines;
  - 4) Expected visitors per day and average spend per visit; and
  - 5) Other material assumptions used.
- e) Complete the financial templates contained in Appendix H.

## **7. Campaign Contribution Disclosure Form**

The Offeror **must** complete Campaign Contribution Disclosure Form and submit a signed copy with their proposal. This must be accomplished whether or not an applicable contribution has been made. (See Appendix F)

## **8. Employee Health Coverage Form**

The Offeror **must** agree with the terms as indicated in Appendix G. The form **must** be completed and must be signed by the person authorized to obligate the company.

## **9. Pay Equity Reporting**

The Offeror **must** agree with the requirements of reporting as defined in Section II.C.30.

**A statement of concurrence with this requirement must be included in Offeror's submitted proposal.**

## **10. Financing.**

Provide a summary of the anticipated sources of funds to be used in the proposed leasehold improvements, equipment expenditures and pre-opening expenses. Include documentation that supports the availability of the necessary funds or firm commitments for the founding.

The Agreement will clearly state that the Fair Commission and the State of New Mexico will not be a party to any financial guarantees and will be protected against any financial risk for the capital expenditures or operations. The Offeror shall provide all appropriate security, guarantees and indemnifications relating to the financing of the operations and capital expenditures of Offeror.

## **11. List of Consultants and Advisors.**

Provide a list of all firms and individuals that have been retained to assist the Offeror in the

planning or implementation or operations proposed in your proposal. Designate the responsibility of each of the individual or entities you list. Such individuals and entities include but are not limited to consultants, developers, accountants, attorneys, market research firms, architects, engineers and design firms, construction contractor firms, investment bankers or other investors.

**12. Ethics and Financial Capabilities:** The Offerors a must demonstrate a history of successful management in the racing and casino gaming industries, offer a concept for capital improvements that meets the objectives of this RFP, exhibit financial capabilities to enhance the Venture facilities and provide an acceptable level of assurance that on-going operations will be conducted in an ethical and fair manner and incompliance with all applicable laws.

**13. Estimated return and analysis of the Business Terms and Conditions.** Offerors shall include within their proposals the estimate return to investors for the Venture and the capital improvements related to the Venture. Actual returns to the Offeror will be evaluated according to the Offeror's ability to operate efficiently and successfully. The Offeror shall include within its proposal an analysis of the selected Business Terms and Conditions contained in this RFP and its ability to meet the required provisions, or in the alternative, propose other comparable provisions.

**14. Other Required Information.**

a) Provide a complete Business Plan with a full description of the market, financial projections, marketing plan, pro forma financial statements, management experience and other relevant information.

b) Provide copies of any market studies commission or conducted by Offeror.

c) Submit completed due Diligence Questionnaires and Release Forms for all entities and individuals pursuant to the requirements of this RFP.

d) Complete and submit all templates contained in Appendix H. These documents shall be submitted in both electronic and hard copy versions.

e) The proposal must be accompanied by letter of transmittal as required in this RFP.

f) The proposal must include all information required in this RFP.

g) Campaign Contribution Disclosure form, Appendix F, completed and signed.

h) New Mexico Employee's Health Coverage Form, Appendix G, completed and signed.

**15. General Requirements:** Offerors shall include in their proposals provisions addressing (1)

how they will provide the Fair with added revenues that can be used to enhance the overall quality of the Fair Grounds; (2) making improvements to the Race Track and Casino that will enhance customer appeal, entice visitation by new customers and improve the quality of the product offered to the public; (3) making a long-term and lasting impact on the quality of services provided to the public that will in turn enhance and improve tourism to the Greater Albuquerque area; (4) how the Offeror will be a catalyst to sustained growth and redevelopment at the Fair Grounds and surrounding areas; and (5) how to successfully integrate other entertainment facilities on the Fair Grounds with the Venture

**16. Site visits:** Offeror shall, upon the request of the Evaluation Committee allow the Evaluation Committee to visit any or all of the Offeror’s existing operations as designated by the Evaluation Committee, to examine the quality of the facility and its operation.

**V. EVALUATION**

**A. Evaluation Point Summary**

The following is a summary of evaluation factors with point value assigned to each. These, along with the general requirements, will be used in the evaluation of Offeror proposals.

FACTOR	POINTS AVAILABLE
1. Management Expertise	300
2. Financial Proposal	300
3. Business Plan	250
4. Integration	100
5. Concept	50
6. New Mexico Employees Health Coverage	0
7. Campaign Contribution Disclosure Form	0
8. Pay Equity Form	<u>0</u>
<b>TOTAL POSSIBLE POINTS</b>	<b>1000</b>

Other requirements in this RFP must be met but none except those factors listed above shall receive points toward ranking the proposals:

**B. Evaluation Factors**

The following evaluation factors will be used to evaluate all proposals. No single factor will be used to make a final determination on the ranking of the Offerors. The evaluation shall be made on the totality of the proposal that best meets the evaluation factors and fulfills the goals and objectives thereof. Each factor is weighted in terms of its relative importance in the evaluation process.

Points will be awarded on the basis of the following evaluation factors:

**1. Management Expertise (300 points)**

This factor includes expertise and experience of Offeror and Participants and Offeror's senior staff. The Fair Commission requires a minimum of five years of gaming and racing related experience to qualify as a successfully Offeror. Management experience in only one industry will not qualify the Offeror for consideration as the successful Offeror. If the lead entity in the Offeror's proposal has its primary business in only industry, the Offeror is required to provide documentation of commitments from experienced and qualified management personnel in the other industry to participate in the Agreement.

**2. Financial Proposal (300 points)**

This factor includes financing arrangements for the capital improvements proposed by Offeror, the financial projects for the operation pursuant to the Agreement, financial strength of the Offeror and fiscal benefits to the Fair from Offeror's proposed operations and capital improvements.

**3. Business Plan (250 points)**

This factor includes plans for the capital improvements to be made by Offeror, Offeror's marketing plans and the human resources provide by Offeror.

**4. Integration (100 points)**

This factor includes the quality of the proposed integration of the Offeror's operations and capital improvements with Non-Gaming Facilities.

**5. Concept (50 points)**

This Factor includes the proposed leasehold improvements, including design innovation, creativity and feasibility.

**6. New Mexico Employees Health Coverage (0 Points)**

Pass or fail

**7. Campaign Contribution Disclosure Form**

Pass or fail

**8. Pay Equity Form**

Pass or fail

Pay Equity Forms are at:

[http://www.generalservices.state.nm.us/spd/pay\\_e.html](http://www.generalservices.state.nm.us/spd/pay_e.html)

**C. Evaluation Process**

The evaluation process will follow the steps listed below:

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.6.
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 that 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 or choose 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 will be added to the previously assigned points to attain final scores. The responsible Offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Section V, will be recommended for contract award 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**

**Fair Grounds Map showing the Premises**

Appendix A



**APPENDIX B**

**Acknowledgement of Receipt Form**

REQUESTS FOR PROPOSALS

Request for Proposals for a Race Track and Casino Operation or for Alternative Uses

**ACKNOWLEDGEMENT OF RECEIPT FORM**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix H.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on August 1, 2011. Only potential offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all offeror written questions and the Agency's written responses to those questions as well as RFP amendments, if any are issued.

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

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

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

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

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

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (**circle one**) intend to respond to this Request for Proposals.

Procurement Manager: Karen Brandt  
PO Box 8546  
Albuquerque, NM 87198

505-222-9729 phone  
505-266-7784 fax

Karen.brandt@state.nm.us

**APPENDIX C**

**Company Due Diligence Questionnaire and Release form**

# New Mexico State Fair Commission Company Due Diligence Questionnaire

## Introduction

The following questions must be fully responded to with supporting documentation attached when appropriate and when required. Failure to fully and accurately respond to the following questions may result in disqualification of the Offeror and its Proposal. At the discretion of the Agency, any of the information provided is subject to verification. The Agency may contract with a third party contractor to perform the necessary verification and due diligence.

**Name of Offeror, Participant or other party:** \_\_\_\_\_

Please complete the following information and sign the attached release form.

1. Company legal name: \_\_\_\_\_  
Doing business as: \_\_\_\_\_
2. Company Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Company telephone: \_\_\_\_\_  
Company FAX # \_\_\_\_\_  
Company e-mail: \_\_\_\_\_
4. Company's State of organization \_\_\_\_\_
5. Business License number and issuing agency (include a Copy of each business License \_\_\_\_\_)
6. Company Federal Tax identification number \_\_\_\_\_
7. List name and address of the parent company \_\_\_\_\_  
(include a company organization chart)
8. If the company prepares A form 10-K, please Furnish a copy of the Most recent filing
9. Has the Company or any of its affiliates, been the subject of any criminal judgments?

\_\_\_\_\_ NO

**NEW MEXICO STATE FAIR COMMISSION  
COMPANY DUE DILLIGENCE QUESTIONNAIRE**

\_\_\_\_\_ YES

If yes, list all criminal judgments entered against the company or any of its affiliates. Include the Court name and location and cause name and number.

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10. Please have all persons with a beneficial ownership in excess of five percent (5%) of the Company (include the percentage of ownership) and persons possessing the following titles or perform the following functions complete an Individual Due Diligence Questionnaire

Principal Executive Officer  
Principal Operating Officer  
Principal Financial Officer  
Principal Accounting Officer  
Board of Directors

11. Has the Company applied for and been granted or denied any privileged license, or permit, including but not limited to liquor, gaming, horse racing or other professional license?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If yes, please lit the details of any such applications, including final disposition of each application and the name and address of the agency to which the application was made.

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12. If you answered Yes to # 11, above, has the Company or any of its affiliates, been the subject of any disciplinary action or revocation proceeding relating to any privileged license it has been issued?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

**NEW MEXICO STATE FAIR COMMISSION  
COMPANY DUE DILLIGENCE QUESTIONNAIRE**

If YES, Please include the details of any such actions for each license.

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13. Has the Company, or any of its affiliates, ever filed bankruptcy?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If yes, please provide details including but not limited to date, court and cause number.

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14. Has the Company, or any of its affiliates, had tax related liens filed against it by any governmental agency?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If yes, Please provide details including but not limited to date and place of filing.

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15. Has the Company, or any of its affiliates, ever been the subject of any lawsuits alleging fraud or unethical practices?

\_\_\_\_\_ NO

**NEW MEXICO STATE FAIR COMMISSION  
COMPANY DUE DILLIGENCE QUESTIONNAIRE**

\_\_\_\_\_ YES

If yes, please provide details, including but not limited to name of case, name of the court, case number, the disposition of the claim and the nature of the claim.

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16. Have you ever been a party to a law suit?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If YES, Please provide details, including but not limited to the name of case, the name of court, case number, disposition of the claim and the nature of the claim.

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17. Please list three personal references giving name, address, telephone and/or e-mail and FAX.

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18. Have you ever had a bond or surety cancelled or forfeited?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

**NEW MEXICO STATE FAIR COMMISSION  
COMPANY DUE DILLIGENCE QUESTIONNAIRE**

If yes, state the name of the surety, amount of bond, and the date of and the reason for the cancellation or forfeiture.

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Submit proof of your ability to provide the insurance and bonds required in this RFP and that your insurance carriers/sureties meet the requirements for insurers and sureties stated in this RFP. Such proof may consist of a letter of commitment to insure or bond Offeror in the event they are awarded the Agreement under this RFP by an insurer/surety that meets the requirements specified in this RFP.

The undersigned hereby attests to the truth, sufficiency, completeness and accuracy of all statements, answers and representations made in this form, including but not limited to all supplementary statistics, references and information attached hereto. The persons signing below represent that they have authority to sign on behalf of the entity that they represent.

\_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Title: \_\_\_\_\_

**NEW MEXICO STATE FAIR COMMISSION  
COMPANY DUE DILLIGENCE QUESTIONNAIRE**

**PAGE 1 of AUTHORITY TO RELEASE ALL INFORMATION AND RELEASE OF ALL CLAIMS**

TO: \_\_\_\_\_

FROM: \_\_\_\_\_ (Name of Company)

I hereby authorize and request all persons to whom this request is presented, having information relating to or concerning the \_\_\_\_\_ (“Company”), to furnish such information to any authorized representative of the New Mexico State Fair Commission, including but not limited to the State Fair Manager, Deputy State Fair Manager or his designee (“Fair Commission”), whether or not such information would otherwise be protected from disclosure by any constitutional, statutory or common law privilege.

This is an unqualified release for disclosure of information concerning the Company, including but not limited to information concerning credit worthiness, financial, criminal, business associations or other pertinent information required to perform an adequate due diligence inquiry.

This authorization also pertains to any records or documents related to or concerning the Company and permits the authorized representative of the Fair Commission to review and copy any such records or documents, whether or not these records or documents are protected from disclosure by constitutional, statutory or common law privilege.

I understand that the purpose of this release is to allow any authorized representative of the Fair Commission to comply with any due diligence investigation that is required in the course of the Fair Commission business, including but not limited to agreements, regulations and statues of gaming, horse racing and law enforcement agencies, both domestic and foreign.

I do, for the Company, its heirs, executors, successors and assigns, hereby release, waive and forever discharge the person or agency to whom this request is presented by the Fair Commission and their agents and employees from all manner of actions, causes of actions, suits, debts, judgments, executions, claims and demands whatsoever, known or unknown, in law or equity, which the Company or I ever had, now have may have or claim to have against the person(s) to whom this request is presented or their agents or employees, arising out of or by reason of complying with this request.

I am the legally authorized agent/representative of the Company and in such capacity agree to indemnify and hold harmless the Fair Commission, its authorized agents and representatives, and the person(s) to whom this request is presented and their agents and employees from and against all claims, damages, losses and expenses, including reasonable attorneys fees arising out of or by reason of complying with this request.

I am furnishing the Business Federal Tax Identification Number and other Company information or the equivalent thereof, on a voluntary basis with the understanding that such is not required by



**APPENDIX D**

**Individual Due Diligence Questionnaire and Release form**

# New Mexico State Fair Commission Individual Due Diligence Questionnaire

## Introduction

The following questions must be fully responded to with supporting documentation attached when appropriate and when required. Failure to fully and accurately respond to the following questions may result in disqualification of the Offeror and its Proposal. At the discretion of the Agency, any of the information provided is subject to verification. The Agency may contract with a third party contractor to perform the necessary verification and due diligence.

**Name of Offeror, Participant or other party:** \_\_\_\_\_

Please complete the following information and sign the attached release form.

1. Name: \_\_\_\_\_

Other names you have used or by which you have been known:

\_\_\_\_\_

2. Residential Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Home telephone: \_\_\_\_\_

Business telephone: \_\_\_\_\_

e-mail \_\_\_\_\_

4. Employer's name and \_\_\_\_\_

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

5. Position/title with  
Employer: \_\_\_\_\_

6. Date of Birth: \_\_\_\_\_

7. Social Security Number or other government identification number (include country of  
issuance): \_\_\_\_\_

8. Have you ever been the convicted of a crime other than minor traffic violations?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If yes, list all criminal judgments entered against the company or any of its affiliates.  
Include the Court name and location and cause name and number.

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**New Mexico State Fair Commission  
Individual Due Diligence Questionnaire**

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9. Have you ever held or applied for and been granted or denied any privileged license or permit, including but not limited to liquor, gaming, horse racing or other professional license?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If yes, please lit the details of any such applications, including final disposition of each application and the name and address of the agency to which the application was made.

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10. Have you ever had a privileged license or permit, including but not limited to liquor, gaming, horse racing or other professional license revoked or denied?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If YES, Please include the details of any such actions for each license.

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11. Have any disciplinary actions been taken or are there any such actions pending against you concerning the above referenced licenses?

\_\_\_\_\_ NO

**New Mexico State Fair Commission  
Individual Due Diligence Questionnaire**

\_\_\_\_\_ YES

If YES, Please include the details of any such actions for each license.

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12. Have you ever filed bankruptcy?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If YES, please provide details including but not limited to date, court and cause number.

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13. Have you ever been arrested or indicted for an offense involving moral turpitude, dishonesty or any gambling related offense?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If yes, please provide details including but not limited to date, court and cause number.

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14. Have you ever had tax related liens filed against you by any governmental agency?

\_\_\_\_\_ NO

**New Mexico State Fair Commission  
Individual Due Diligence Questionnaire**

\_\_\_\_\_ YES

If yes, Please provide details including but not limited to date and place of filing.

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15. Have you ever been the subject of any lawsuits alleging fraud or unethical practices?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If yes, please provide details, including but not limited to name of case, name of the court, case number, the disposition of the claim and the nature of the claim.

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16. Have you ever been a party to a law suit?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If YES, Please provide details, including but not limited to the name of case, the name of court, case number, disposition of the claim and the nature of the claim.

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17. Please list three personal references giving name, address, telephone and/or e-mail and FAX.

**New Mexico State Fair Commission  
Individual Due Diligence Questionnaire**

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18. Have you ever had a bond or surety cancelled or forfeited?

\_\_\_\_\_ NO

\_\_\_\_\_ YES

If yes, state the name of the surety, amount of bond, and the date of and the reason for the cancellation or forfeiture.

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Submit proof of your ability to provide the insurance and bonds required in this RFP and that your insurance carriers/sureties meet the requirements for insurers and sureties stated in this RFP. Such proof may consist of a letter of commitment to insure or bond Offeror in the event they are awarded the Agreement under this RFP by an insurer/surety that meets the requirements specified in this RFP.

The undersigned hereby attests to the truth, sufficiency, completeness and accuracy of all statements, answers and representations made in this form, including but not limited to all supplementary statistics, references and information attached hereto. The persons signing below represent that they have authority to sign on behalf of the entity that they represent.

\_\_\_\_\_ Title: \_\_\_\_\_  
\_\_\_\_\_ Title: \_\_\_\_\_  
\_\_\_\_\_ Title: \_\_\_\_\_  
\_\_\_\_\_ Title: \_\_\_\_\_

**New Mexico State Fair Commission  
Individual Due Diligence Questionnaire**

**PAGE 1 OF AUTHORITY TO RELEASE ALL INFORMATION AND RELEASE OF ALL CLAIMS**

TO: \_\_\_\_\_

FROM: \_\_\_\_\_(Name of Company)

I hereby authorize and request all persons to whom this request is presented, having information relating to or concerning me, to furnish such information to any authorized representative of the New Mexico State Fair Commission, including but not limited to the State Fair Manager, Deputy State Fair Manager or his designee ("Fair Commission"), whether or not such information would otherwise be protected from disclosure by any constitutional, statutory or common law privilege.

This is an unqualified release for disclosure of information concerning me, including but not limited to information concerning credit worthiness, financial, criminal, business associations or other pertinent information required to perform an adequate due diligence inquiry.

This authorization also pertains to any records or documents related to or concerning me and permits the authorized representative of the Fair Commission to review and copy any such records or documents, whether or not these records or documents are protected from disclosure by constitutional, statutory or common law privilege.

I understand that the purpose of this release is to allow any authorized representative of the Fair Commission to comply with any due diligence investigation that is required in the course of the Fair Commission business, including but not limited to agreements, regulations and statues of gaming, horse racing and law enforcement agencies, both domestic and foreign.

I do, for myself, my spouse, my heirs, executors, successors and assigns, hereby release, waive and forever discharge the person or agency to whom this request is presented by the Fair Commission and their agents and employees from all manner of actions, causes of actions, suits, debts, judgments, executions, claims and demands whatsoever, known or unknown, in law or equity, which the Company or I ever had, now have may have or claim to have against the person(s) to whom this request is presented or their agents or employees, arising out of or by reason of complying with this request.

I agree to indemnify and hold harmless the Fair Commission, its authorized agents and representatives, and the person(s) to whom this request is presented and their agents and employees from and against all claims, damages, losses and expenses, including reasonable attorneys fees arising out of or by reason of complying with this request.

I am furnishing my Social Security Number, or the equivalent thereof , on a voluntary basis with the understanding that such is not required by Federal statues or regulation. I have been advised that the Fair Commission will utilize this information to facilitate the location of information concerning Company records as stated in connection with the Fair Commission's inquiries. I



**APPENDIX E**

**Agreement Terms and Conditions**

# LEASE AGREEMENT

between

NEW MEXICO STATE FAIR, (Landlord)

and

\_\_\_\_\_, (Tenant)

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## LEASE AGREEMENT

This Lease Agreement ("**Lease**") is entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2011, (the "**Effective Date**") between the NEW MEXICO STATE FAIR, an agency of the State of New Mexico, ("**Landlord**"), and \_\_\_\_\_, a \_\_\_\_\_ (type of entity) ("**Tenant**").

**FOR THE CONSIDERATION RECITED HEREIN, THE LANDLORD AND TENANT ENTER INTO THIS LEASE OF THE PREMISES.**

### **Section 1 Representations**

**1.1** The Tenant has been granted a license to conduct gaming at the Casino and is in good standing with the Gaming Board.

**1.2** The Tenant has been granted a license to conduct pari-mutuel wagering, horse racing and simulcast racing at the Race Track and is in good standing with the Racing Commission.

**1.3** The Landlord owns the Fair Grounds and has the authority to enter into this Lease subject to the approval of the State Board of Finance.

### **Section 2 Definitions**

**2.1** "**Access tunnels**" means the tunnels under the Race Track for vehicular and pedestrian access to and from the Infield.

**2.2** "**Casino**" means the facilities on the Fair Grounds housing the gaming machines approved for play by the New Mexico Gaming Control Board at the location shown on Exhibit "A". It includes the casino cage, surveillance and other facilities necessary for the operation of the gaming machines.

**2.4** "**Fair**" or "**Fair Grounds**" means the property situated on a 236 acre site and the improvements thereon, in Albuquerque, Bernalillo County, New Mexico located at 30 San Pedro, N.E., surrounded by Lomas, Louisiana, San Pedro and Central Streets as shown in Exhibit "A".

**2.5** "**Gaming Act**" means the Gaming Control Act (§60-2E-1 *et. seq.* NMSA 1978 Comp.)

**2.6** "**Gaming Board**" means the Gaming Control Board created pursuant to the Gaming Control Act that has licensing and regulatory authority on behalf of the state of New Mexico over casino ownership, management, personnel and operations.

**2.8 “Gaming License”** means the license that the Tenant has obtained from the Gaming Board.

**2.9 “Gaming Regulations”** means the regulations adopted by the Gaming Board under the authority of the Gaming Act.

**2.10 “Improvements”** means all of the improvements, now or in the future, constructed upon the Land included in the Premises.

**2.11 “Infield”** means the portions of the Fair Grounds inside the Race Track as shown on Exhibit “A” that includes the access tunnels under the Race Track for vehicular and pedestrian access to and from the Infield, but excludes the portion of the Infield designated as the Tote Board Area.

**2.12 “Interest Rate”** means an annual rate equal to the lesser of five (5) percentage points above the prime rate of interest quoted in the Wall Street Journal as of the date such interest is required in this Lease or a comparable rate of interest if such rate of interest is not in effect or the maximum rate of interest permitted by applicable law.

**2.13 “Non-gaming facilities”** means all facilities at the Fair Grounds except for the Race Track and Casino, such as parking offices and buildings not directly associated with the Race Track or Casino.

**2.14 “Premises”** means the Land and the Improvements thereon within the Fair Grounds as shown in Exhibit “A”. The Premises does not include the infield and the barns.

**2.15 “Racing Act”** means the Horse Racing Act, Sections 60-1A-1 *et. seq.* NMSA 1978 Comp.

**2.16 “Racing Commission”** means the State Racing Commission created pursuant to the Racing Act that has licensing and regulatory authority on behalf of the state of New Mexico over race track ownership, management, personnel and operations.

**2.17 “Racing License”** means the license that the Tenant has obtained from the Racing Commission to conduct pari-mutuel wagering, horse racing, and simulcast racing at the Racing Facilities.

**2.18 “Racing Regulations”** means the regulations adopted by the Racing Commission.

**2.19 “Race Track”** means the premises housing the race track, grandstands and other seating, betting windows, stalls and other facilities necessary for the operation of pari-mutuel wagering on horse racing.

**2.20 “Racino”** means the Race Track, Casino and other facilities such as food and

beverage sales locations that comprise the leased area in the Agreement.

**2.21 “Signs” and “Sign Leases”** means the outdoor billboard advertising structures and signs on the Premises Landlord has entered into under various leases (the “**Sign Leases**”).

**2.22 “State Fair”** means the annual New Mexico state fair State Fair Commission is authorized to hold annually pursuant to Section 16-6-4 NMSA 1978.

**2.23 “State Fair Racing License”** means the license the Landlord has obtained from the Racing Commission to run pari-mutuel horse racing at the Race Track.

### **Section 3 Lease**

**3.1 Lease of the Premises** Landlord herewith leases to Tenant and Tenant leases from Landlord the Premises, to have and to hold together with all rights, privileges, and appurtenances thereunto attaching or in anywise belonging exclusively unto Tenant, its successors and assigns, except as otherwise set out herein, upon the terms and conditions set forth herein.

**3.2 Vehicle Access** Vehicular access locations to the Premises are from Louisiana Blvd. and Central Ave. at the locations shown on Exhibit “A”. Tenant shall have no access to the Premises from any other locations including access through any other portion of the Fair Grounds not identified on Exhibit “A”.

**3.3 Landlord Sign Leases.** Portions of the Premises are leased by Landlord for Signs. Landlord reserves all rights in the Sign Leases and so much of the Premises as reasonably required to access, operate, maintain, repair, replace or reconstruct the Signs. The Landlord reserves the right to renew the Sign Leases or to enter into new Sign Leases for Signs, or replacement Signs at or near the locations of the existing Signs. Landlord agrees to prohibit the use of the Signs to advertise or promote any business or entity that is a gaming facility, in whole or in part, that is in competition with the Tenant and is located in Sandoval, Santa Fe, Cibola, Valencia, Torrance, or Bernalillo Counties, New Mexico as to new Sign Leases and, to the extent that it has the right to do so, under the current Sign Leases. Landlord agrees that if the current locations of any of the Signs interferes with the Tenant’s use of the Premises, or with Tenant’s proposed sign locations, the Landlord will relocate the Sign(s) to another location on the Premises, so long as the relocation of the Sign(s): does not result in a loss in the number and size of Signs on the Fairgrounds and does not reduce the income which the Landlord receives from the Sign Leases, provided that the relocation is permitted pursuant to the Sign Lease and the cost of the relocation is paid by the Tenant. Landlord agrees that it shall not be entitled to increase the number of Signs on the Premises unless Tenant provides its written approval.

**3.4 Tenant Signs.** Tenant shall be allowed to have signs on the Premises provided that no Tenant signs shall block the view of or access to Landlord signs described in the previous paragraph. All Tenant signs shall be signage pertaining to the commercial activities of Tenant on the Premises. Tenant shall obtain advanced written approval of Tenant signs from Landlord as sign size, location and access. The number of

commercial signs (unrelated to informational/directional signage) outside of the buildings on the premises shall be limited to \_\_\_\_\_ signs.

**3.5 The Barns** Only the barns shown in Exhibit "A" shall be used by Tenant unless a written agreement allows use of additional. The Tenant shall use the barns shown in Exhibit "A" only during live horse racing days. The barns, as well as all portions of the Premises, shall not be used as a training facility. The Landlord shall have the use of the barns at all times that are not within Tenants live horse racing days. On days a barn is used by Tenant, Tenant shall be solely responsible for the cleaning and upkeep of that barn, including but not limited to proper waste removal and disposal. Tenant shall be solely responsible for, and shall repair, all damages to the barns caused by Tenant or Tenant's licensees, subtenants and invitees. Controlled access to the barns shall be maintained by Tenant on all live horse racing days.

**3.6 Landlord's use of Premises** In addition to the Landlord's rights to use of the Premises identified elsewhere in this Lease, the Landlord reserves the right to use the e Race Track as follows:

**3.6.1 The Race Track** The Landlord has the right to use the Race Track each calendar year during the term of this Lease for the month of July, unless the Landlord gives the Tenant written notice that it elects for a month other than July. Notice must be given on or before the first day of April of the prior calendar year. The month discussed in this Section is in addition to the Race Track use for the State Fair allowed in Section 4 of this Lease.

**3.6.2 Insurance by Users** In the event that the Landlord allows a third party to use the Race Track during the one month use by Landlord, Landlord shall cause the Licensee to maintain a public or commercial liability insurance policy in the amount of at least Two Million Dollars (\$2,000,000.00) naming the Landlord as an additional insured. The policy shall be issued by a company authorized to do business in New Mexico.

**3.6.3 Additional Locations** In addition to the reservation of rights provided to Landlord in this Lease, the Tenant agrees to grant to the Landlord and its licensees, from time to time, to use the Meeting Room and Offices (the "Offices") located north portion of the Grandstand. The Landlord's use of the Offices shall be secondary to the Tenant's use of such areas. In the event Landlord's use of the Offices interfere with the Tenant's use and enjoyment of the Premises, in the Tenant's reasonable judgment, the Tenant shall have the right to terminate the Landlord's use of the Offices, to the extent of such interference. Tenant shall be under no obligation to maintain the Offices in such a manner or configuration to accommodate Landlord's rights created herein. Landlord shall maintain the Offices in a neat and orderly condition, including removal of trash. Following the Landlord's use of the Additional Areas they shall be left in the condition in which they were received from the Tenant subject to ordinary wear and tear.

### **3.7 State Fair Racing**

**3.7.1 The State Fair Racing License.** The Landlord reserves the right to use Race Track and such other areas of the Premises required for use of Landlord's State Fair Racing License during the State Fair.

**3.7.2 Tenant operation of the State Fair Racing.** Upon the written request of Landlord, Tenant shall operate live horse racing at the Premises pursuant to and under the authority of the Landlord's Racing License during the State Fair. The Tenant agrees that there will be live pari-mutuel horse racing at the Race Track each day that the State Fair is open to the public, pursuant to the State Fair Racing License, subject to the approval of the Racing Commission. Landlord and Tenant agree to use their best efforts to obtain the approval of the Racing Commission. The number of days the State Fair is open to the public shall be determined solely by Landlord. A separate agreement shall be entered into between Landlord and Tenant for each year Landlord elects to have tenant operate live horse racing during the State Fair. If Landlord does not notify Tenant that Tenant shall operate live horse racing at the State Fair, Landlord shall be entitled to conduct or have its agent conduct such racing and conduct pari-mutuel racing at Tenant's facilities on Premises throughout the State Fair. If Landlord conducts said racing, all proceeds of the pari-mutuel racing and admission fees will be retained by Landlord. Should Landlord choose to have Tenant operate said racing, Landlord shall receive a minimum of one percent (1%) of the pari-mutuel gross proceeds. In the event that the Landlord ceases to hold the State Fair Racing License Tenant agrees to hold live pari-mutuel horse racing under Tenant's Racing License on the days that the State Fair is open to the public, subject to the approval of the Racing Commission, which the parties shall use their best efforts to procure.

### **3.8 Use of Premises**

**3.8.1 Primary Use** The primary use of the Premises by Tenant shall be for a Racino, including gaming, horse racing pari-mutuel wagering, simulcast racing, a food court, a restaurant and bar, and other uses normally associated therewith. Tenant shall use and maintain the Premises in accordance with the Racing Act and the Gaming Act and the Racing Commission and the Gaming Board rules and regulations.

**3.8.2 Exclusive Use** The Tenant shall have the exclusive right to use of the Fairgrounds for gaming, as defined in the Racing Act or Gaming Board Regulations, with the exception of pari-mutuel horse racing at the Premises by the Landlord during the State Fair, pursuant to the Landlord's Racing License and the use of the Fairgrounds for carnival games of chance, such as offered at the midway during the State Fair.

**3.8.3 Other Uses** Tenant may use the Premises for other uses which complement and enhance the Tenant's primary use of the Premises such as spa services and specialty equine services.

### **3.9 The Infield**

**3.9.1 Use of Infield** The Landlord has exclusive use of the infield and may lease, license or otherwise allow the use of the infield. The Landlord's use of the infield includes the right to use tunnels to the infield and Tenant shall receive no compensation for such use. Landlord shall have the right use the infield for parking and to charge for parking at the Infield during periods that events are being held at the Fairgrounds outside of the Premises or events held by Landlord at the Premises which are

sponsored by the Landlord. The Landlord, and its licensees shall have the right of ingress and egress to the Infield by way of the Premises north Louisiana access road commonly referred to as Gate 8. The Tenant shall not have the right to charge for parking at the Infield. In the event Tenant provides alternative parking to the parking in the infield, Landlord agrees to not use the infield for parking during Tenant sponsored events at the Race Track.

**Temporary Improvements** The Landlord reserves the right to construct temporary improvements within the Infield for the use by Landlord, and its tenants or licensees, provided that such temporary improvements do not block the view of the Race Track from the Grandstand during the live racing days as approved by the Racing Commission and Landlord shall be responsible for all cost of construction, reconstruction, operation, and maintenance of the Infield Improvements described in this paragraph.

**Lighting** The Tenant shall have the right to use of the Infield for lighting to light the Rack Track, for night time racing, at the Tenant's expense, subject to the Tenant receiving all required Governmental approvals. Additionally, the Tenant shall have the right to use of the Infield for temporary events which do not conflict with Landlord's sponsored events including, but not limited to the State Fair.

**3.9.2 Condition As Is** The Tenant accepts its right to use of the Infield and the Improvements constructed thereon in their "as is" condition, and the Landlord shall have no obligation to improve the Infield except as expressly provided for herein.

**3.10 Inspection.** Landlord and its agents shall have the right to enter upon the Premises or any portion thereof at any reasonable time after reasonable notice to inspect the operation, sanitation, safety, maintenance and use of the same, or any portions of the same and to determine whether or not Tenant is in full compliance with its obligations under this Lease. Landlord's inspection under this section shall not be interpreted to mean that the Landlord assumes or shall have any responsibility for the performance of any of Tenant's obligations hereunder or any liability arising from the improper performance of this Lease by Tenant. In making any such inspections, Landlord shall not unreasonably interrupt or interfere with the conduct of Tenant's business.

## **Section 4 Tenant's obligations**

**4.1 Pari-Mutuel Horse Race Wagering** Tenant shall conduct pari-mutuel horse race wagering at the Premises for as many days as may be granted by the Racing Commission (similar provision for casino gaming)

**4.2 Promotional Advertising Program** Tenant, as an expense of operation, shall prepare and conduct an extensive program for promoting and advertising purposes to capture the interest of the public in the pari-mutuel horse racing wagering and gaming at the casino to be conducted by Tenant at the Premises.

**4.3 Labor-Management Relations** Tenant shall take all reasonable steps necessary to assure satisfactory labor-management relations to assure that the

operations of the parties, exhibitors, concessionaires, or others on the premises shall in no way be affected by strikes, picketing, boycotts, or other labor activity.

**4.4 Pricing** The prices for all items to be sold by Tenant, including food, beverages, novelties, admission prices, rental fees and any costs of any sort which Tenant or its subtenants, concessionaires, or licensees charge patrons shall be approved in writing in advance by Landlord.

**4.5 Quality of Facilities** Tenant shall provide adequate and modern facilities at the grandstand and race track consistent with the standards set by Landlord in its operations and by environmental health authorities. Tenant shall sell all drinks in disposable paper, foam or plastic cups only. Bottled or canned drinks are not permitted. Facilities shall be spacious enough to accommodate the public. Tenant must provide a sufficient number of attendants to properly serve the public consistent with the practices of the Landlord in its operation. Equipment or facilities that are inconsistent with the standards utilized by the Landlord in its operations shall not be utilized by Tenant or its concessionaires, subtenants or licensees.

**4.6 Posting Prices** Tenant shall post or cause to be posted all prices for food, soft drinks, and alcoholic beverages in a location that the customer may easily see such signs. Alcoholic beverages, excluding beer, shall be sold through automatic metering type dispensers. Brix metering standards shall be used on all soft drinks sold. Landlord may inspect and sample Tenant's goods or conduct any other test to determine whether the goods being sold meet the standards set by Landlord in its operations.

**4.7. Quality of Equipment** All materials and equipment utilized by Tenant shall be of late model, clean, safe and in excellent working condition and must not be in violation of New Mexico legal requirements or Landlord's rules or regulations. Tenant shall provide a list of its equipment at the beginning of the Term and update its previously furnished list of equipment by December 1 of each year.

**4.8. Cleanliness** Tenant shall furnish sufficient garbage/trash containers and bags for containers for each day of operation. Adequate personnel shall be provided to pick up and remove garbage/trash. Cleanliness of operations and adequacy of operations and proper maintenance of equipment and materials shall be consistent with the standards and practices of Landlord in its operations.

**4.9. Pest Control and Waste Removal** Tenant shall furnish Landlord with Tenant's plan to control flies and insects and remove waste. Such plan shall be submitted by Tenant to Landlord at the commencement of the Term and on every January 1 thereafter. Landlord may accept, modify or reject the plan. Tenant shall modify the plan to meet any Landlord objections and resubmit the plan for approval by the Landlord. Tenant shall document the implementation and effectiveness of the plan approved by Landlord and immediately take action to correct any deficiencies in the plan or in its implementation should they occur. Should any deficiencies in the implementation and effectiveness of the plan be noted by Landlord, Landlord shall notify Tenant in writing. Tenant shall respond to Landlord within seven business days of

receipt of the Landlord's notice, detailing the remedies Tenant intends to implement to correct the deficiencies detailed in the notice.

**4.10 Return of Premises** Upon termination of this Lease, Tenant shall return the Premises to Landlord in at least the same order and condition as such Premises were received by Tenant, ordinary wear and tear excepted. Tenant shall be liable to Landlord for all damages to the Premises or to the Fair Grounds caused by Tenant, its agents, employees, licensees, subtenants or concessionaires.

**4.11 Waste** Tenant shall not make or suffer to be committed any waste on the Premises or any part thereof, or any acts to be done thereon in violation of any law, or which create a nuisance or impairs the use of the Premises for the conduct of the activities allowed under this Lease.

**4.12 Landlord Equipment or Personnel** In the event Tenant wishes the use of equipment or personnel of Landlord, Tenant shall compensate Landlord for such use at a fee to be negotiated between the parties. Such equipment as may be used by Tenant shall be maintained by Tenant and returned to Landlord in good condition subject to reasonable wear and tear. Landlord shall not be required to provide equipment and/or personnel if Landlord determines that equipment and personnel are not available.

**4.13 Security** Tenant shall provide adequate security for the protection of the public present at the Premises and for protection and perseveration of the Premises. Tenant shall provide security that meets or exceeds the requirements imposed by the Gaming Board and the Racing Commission. If Tenants fails to furnish adequate personnel for maintenance or security to the satisfaction of Landlord, Landlord may give written notice of the condition that must be remedied, and if such condition is not remedied by Tenant within twenty-four (24) hours after Tenant's receipt of such notice, Landlord may take the necessary measures to correct such condition and all costs incurred by Landlord shall be reimbursed by Tenant.

In addition to the above, the security provided by Tenant shall include security for the Premises at all times of the day and all days of the year. Landlord provides security services at all times of the day, all days of the year for the Fair Grounds excluding the Premises. Tenant shall coordinate its security with that of the State Fair. [Insert security agreement and cost sharing agreement here.]

**4.14 Tote Board** The Tote Board Housing area (in the infield) including the landscape and irrigation is not part of the Premises, however Tenant shall maintain, repair and when necessary replace the tote board, tote board housing and the landscaping adjacent to the tote board housing, as shown in Exhibit A.

**4.15 Notice of Damage.** Tenant will immediately notify Landlord of any destruction or damage to the Premises.

## **Section 5 Lease Term**

**5.1 Term** The term of this Lease (the "Term") shall be for twenty-five (25) years. The term shall begin on the date first entered in this Lease (the "Effective Date") and shall

terminate without notice to Tenant at the end of the twenty-five year term unless terminated earlier pursuant to the provisions of this Lease.

The Effective Date shall not be a date prior to January 12, 2012 or prior to the time both parties have signed the Lease. The Fair Commission shall not sign the Lease until the Lease has been approved by the State Board of Finance.

**5.2 Lease Year** A "**Lease Year**" will mean a continuous twelve (12) month period commencing with the Effective Date or any anniversary date thereof.

**5.3 Lease Month** A "**Lease Month**" will mean a period of time during the term of this Lease commencing the first day of the calendar month and ending on the last day of the calendar month.

**5.4 No Renewal Term** The term of this lease shall not be extended without the approval of the New Mexico Legislature pursuant to present law. Any request by tenant to extend the term of this lease shall be given to Landlord in writing two years before the termination of the term of this Lease. Tenant agrees that Landlord shall have no duty to present any Tenant requested extension of the term of this Lease to the New Mexico Legislature and that Landlord shall have no liability to Tenant if it does not submit the requested extension to the Legislature.

**5.5 Holding Over** Upon termination or the expiration of this Lease, Tenant will peaceably quit, deliver up, and surrender the Premises. If Tenant does not surrender possession of the Premises at the end of the Term, such action will not extend the Term, Tenant will be a tenant at sufferance, and during such time of occupancy Tenant shall pay to Landlord base rent in amount equal to twice the amount of base rent that was being paid immediately prior to the end of the Term and percentage rent in an amount that twice the percentage that was being paid immediately prior to the end of the Term and such other fees a payments as are required by this Lease. Acceptance of the surrender of the Premises by Tenant shall be in writing from Landlord to be effective. In addition to the provisions of this section, Landlord shall have the right to evict Tenant who holds over without permission. The amounts of rent stated herein merely establish the rent that Tenant shall owe until the eviction process is completed.

## **Section 6 Rent**

**6.1 Rent** Insert accepted proposal for rent here. Distinguish between base rent (the minimum rent for the Premises), rent based on percent of gross revenues and other fees and charges payable to Landlord. Base rent shall be paid in advance on or before each Lease Month. If the first and last Lease Months are less than a full calendar month, the payment shall be prorated by dividing the number of days of the calendar month into the monthly base rent amount and multiplying that number by the number of days Tenant leases the Premises in that month. Rent shall not include the minimum one percent of the pari-mutuel gross proceeds as provided in section 3.7.2.

**6.2 Late Payment - Due Date – Interest** Should Tenant fail to pay when due any installment of rent or any other sum payable to Landlord under the terms of this Lease within five (5) Landlord working days of its due date then Tenant shall pay the "Interest

Rate” on the outstanding balance due from the due date until the date payment is received by Landlord. Should Tenant remit a partial payment for any outstanding amount due to Landlord, Landlord shall apply said partial payment to the outstanding amount owing, including principal and interest owing. The due date for all payments to Landlord required of Tenant under this Lease shall be on or before the first day of the Lease Month unless specified otherwise by agreement of Landlord and Tenant.

**6.3 Definition of Gross Revenues.** The term “**Gross Revenues**” as used herein shall mean the gross revenues generated at the Premises by the Tenant, its subtenants, concessionaires, or licensees, from all activities conducted at the Premises, either currently permitted by law, or permitted by law from time to time in the future.

**6.4 Payment of Rent** All rent will be payable to Landlord at the original or changed address of Landlord provided pursuant to the terms of this Lease or to other persons or at such other addresses as Landlord may designate from time to time in writing to Tenant. Landlord may require that Rent be paid by wire transfer.

**6.5 “Triple Net” Lease** This Lease is a triple net lease. Tenant will not be entitled to any abatement or reduction, set-off, counterclaim, defense or deduction with respect to any rent or other sum payable hereunder except as specifically provided herein. The parties intend that the obligations of Tenant hereunder will be separate and independent covenants and agreements and will continue unaffected unless such obligations will have been modified or terminated pursuant to an express provision of this Lease.

## **Section 7 Financial Records and Audits**

**7.1 Records of Ownership** For each year of operation and for three (3) years thereafter, Tenant shall maintain its papers, contracts, books, ledgers, journals, accounts and other data (the “records”) which reflect the identity and interest of all persons having any beneficial interest, direct or indirect in the Tenant and which reflect the identity and capacity of officers, directors and other persons having managerial responsibility of and for Tenant and which reflect the business activities of Tenant on an in connection with the Premises, including but not limited to the financial and other records which reflect all receipts and disbursements of any nature.

### **7.2 Records and Financial Audit**

Tenant hereby agrees to maintain adequate records, conforming to generally accepted accounting practices consistently applied, showing all of the receipts and disbursements at, in, from and upon the Premises (the “records”). The records shall be subject to inspection by the Landlord, the Department of Finance and Administration and the State Auditor. Tenant shall provide the records to Landlord within 60 days after the end of each calendar year with a statement that shows in detail all receipts and disbursements of the Tenant and all subtenants, licensees, concessionaires or other people or entities conducting business by authority of Tenant. The statement shall be signed and certified under oath as being true and correct by a person authorized by Tenant to make such representations. In addition, Tenant shall provide to Landlord its

annual financial statements as filed with the Gaming Board and Racing Commission for the prior year within fifteen consecutive calendar days after such filing. Landlord, the Department of Finance and Administration and the State Auditor shall have the right to examine tenant's books and records and may at any reasonable time, with least fifteen consecutive calendar days notice, cause an audit at Tenant's expense to be made of tenants books, records and other materials that Tenant is required to retain. "Records" shall include all revenues, receipts and disbursements of Tenant and its subtenants, licensees, concessionaires or other people or entities conducting business by authority of Tenant. Tenant shall retain all books, records and other materials showing all revenues received and disbursements as well as such records of any subtenants, licensees, concessionaires or other people or entities conducting business by authority of Tenant for a three (3) years prior to the year in which the audit is requested. If the records provided by Tenant, the reports to the Gaming Board or Racing Commission or an audit show a failure to pay the rent required in this Lease, such rent shall be paid within thirty consecutive calendar days from Landlord's notice of rent due to Tenant.

**7.3 Costs** The Records shall be delivered to the Landlord's address given in this Lease or any revision thereto and shall be provided at no cost to Landlord.

## **Section 8 Taxes**

**8.1 Tax Payment** Tenant shall pay before they become delinquent all real estate, personal property and ad valorem taxes, and associated levies and assessments, including penalties levied for failure of Tenant to pay any of same in a timely manner ("taxes"), which will or may during the Term be assessed, levied or imposed by any Governmental Authority upon (a) the Land or any part thereof, (b) the Improvements, the appurtenances to the Land or the sidewalks, streets, or vaults adjacent thereto, or (c) Tenant's personal property, equipment, fixtures, and furniture. Upon Landlord's request, Tenant shall deliver to Landlord evidence of payment of all taxes Tenant is obligated to pay concurrently with the making of such payment. Tenant shall not allow any taxes to remain unpaid for such length of time as would permit the Premises or any part thereof, to be sold or seized by any Governmental Authority for the nonpayment of taxes.

## **Section 9 Utilities**

**9.1 Utilities** Tenant shall pay all charges and assessments for gas, electricity, communication services, and all other utilities and similar services rendered or supplied to the Premises, and all water, refuse, sanitary sewer service charges, storm sewer charges or other similar charges or assessments levied or charged against, or in connection with, the Premises. In the event that any of these utilities are not currently separately metered to the Premises, the Tenant, at its expense, shall cause all of these utilities to be separately metered for utility services to the Premises. In the event that any utility lines or their appurtenances, which serve the Premises or the remainder of the Fairgrounds, need to be relocated or replaced due to Tenant's construction, or separate metering, Tenant shall relocate or replace the utility lines, or appurtenances, at the Tenant's expense. The Landlord shall have no obligation to share in expense of relocation or separation of the utilities.

## **Section 10 Improvements**

**10.1 Agreed upon capital improvements.** List in this section the capital improvement projects agreed upon.

**10.2 Premises “As Is”.** Tenant acknowledges and agrees that the Premises is and shall be leased by Landlord to Tenant in its present “as is” condition, and that Landlord makes absolutely no representations or warranties whatsoever with respect to the Premises or the condition thereof. Tenant is aware of defects in the Premises, including but not limited to the potential need for a new or repaired roof, HVAC systems, electrical systems, and plumbing systems. Tenant acknowledges that Landlord has not investigated and does not warrant or represent to Tenant that the Premises are fit for the purposes intended by Tenant or for any other purpose or purposes whatsoever, and Tenant acknowledges that the Premises are to be leased to Tenant in their existing condition, that is, “as-is”, on and as of the Effective Date except as expressly set forth herein. Except as expressly set out herein, Tenant acknowledges that Tenant shall be solely responsible for any and all actions, repairs, maintenance, preventive maintenance, warranty compliance, permits, meter costs, construction expenses, approvals and costs required for the use, occupancy, development and operation of the Premises in accordance with applicable governmental requirements, including, without limitation, all governmental charges and fees, if any, which may be due or payable to applicable authorities. Tenant agrees that, by leasing the Premises, Tenant warrants and represents that Tenant has examined and approved all things concerning the Premises which Tenant deems material to Tenant’s leasing and use of the Premises. Tenant further acknowledges and agrees that (a) neither Landlord nor any agent of Landlord has made any representation or warranty, express or implied, concerning the Premises or which have induced Tenant to execute this Lease except as contained in this Lease, and (b) any other representations and warranties are expressly disclaimed by Landlord. Notwithstanding the foregoing, Landlord warrants and represents to Tenant that Landlord owns fee simple title to the Premises, free of all liens, assessments and financial encumbrances.

**10.3 Zoning, Licenses, Permits and Regulatory Approval.** This Lease is contingent upon Tenant’s obtaining all necessary permits, licenses, variances and approvals pertaining to the New Building and New Improvements, occupancy, signs, curb cuts, driveways (including ingress and egress to public thoroughfares), zoning, environmental controls, and any other governmental permits (collectively, the “Permits”) which, in the sole judgment of Tenant, are necessary to permit it to construct and operate a Racino hereunder shall be conditioned upon all of said Permits being validly and irrevocably granted on terms and conditions and at a cost satisfactory to Tenant without qualification, except such qualification as shall be acceptable to Tenant, and no longer subject to

appeal. Landlord agrees to execute any applications or other documents reasonably requested by Tenant in order to obtain any Permits.

**10.4 Zoning, Environmental Audit and Testing.** Tenant, at Tenant's expense, shall obtain a Phase I Environmental Audit of the Premises (the "Phase I") and any other environmental testing which Tenant deems reasonably necessary to evaluate potential environmental risks. If such audit or tests reveal the existence of any toxic or hazardous waste, material or substance on or under the Premises or any other environmental condition which would adversely affect Tenant's ability to finance or use the Premises, then Tenant may terminate this Lease by written notice to Landlord given within thirty (30) days of the Effective Date of this Lease. Tenant shall have no responsibility for pre-existing adverse environmental conditions, which are disclosed by the Phase I. This Agreement shall not release predecessor tenants from any liability for environmental conditions pursuant to the terms of the prior leases of the Premises.

**10.5 Title.** Tenant may elect to carry out such title searches and investigations as it deems appropriate to ascertain the state of Landlord's title. In pursuance of same, Tenant may obtain, at the expense of Tenant, a title insurance commitment and a title insurance policy issued by a title insurance company acceptable to Tenant. Landlord, at no cost to Landlord, agrees to cooperate with Tenant in obtaining said policy.

**10.6 Alterations.** At any time during the Term, Tenant may perform such alteration, renovation, repair, refurbishment, expansion of structures, infrastructure and buildings ("Improvements") that were in existence at the beginning of the term of this Agreement. It is anticipated that given the age and condition of existing improvements that they will require Alterations during the Term of this Lease. All such construction or work will be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question and performed in compliance with all applicable building codes, ordinances, and other laws or regulations of Governmental Authorities having jurisdiction. Tenant shall obtain and shall maintain in force and effect the insurance coverage required in this Lease with respect to the type of construction or work in question. After commencement of such construction, such work shall be prosecuted with due diligence to its completion. All construction work shall be approved in advance in writing by Landlord. Landlord shall be given construction plans at or before the time Tenant requests landlord's approval of the construction. Upon completion of the work, Landlord shall be given record drawings of the work.

**10.7 Mechanic's and Materialmen's Liens.** Tenant will have no right, authority, or power to bind Landlord or any interest of Landlord in the Premises for any claim for labor or for material or for any other charge or expense incurred in construction of any Improvements or performing any alteration, renovation, repair, refurbishment, or other work with regard thereto, nor to render Landlord's interest in the Premises liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith. Tenant shall not be considered as the agent of Landlord in the construction, erection, or operation of any such Improvements. If any liens or claims for

labor or materials supplied or claimed to have been supplied to the Premises are filed against the interest of the Landlord, Tenant will promptly pay or bond such liens to Landlord's reasonable satisfaction or otherwise obtain the release or discharge thereof. In any event, Tenant must provide notice to Landlord and an opportunity to timely post a notice of non-responsibility.

**10.8 Ownership of Improvements.** All Improvements will be solely the property of Landlord. However, upon expiration or earlier termination of this Lease, Tenant will have the right to remove all trade fixtures, movable equipment, furniture, furnishings and other personal property located in the Premises and other items not permanently attached to the Premises provided that Tenant repairs any damages caused by the removal of such items.

## **Section 11 Hazardous Materials**

**11.1 Hazardous Materials** Tenant and its employees, agents, subtenants, licensees, contractors or other people or entities Tenant allows to use, occupy or be present on the Premises shall not at any time dispose of or generate on or discharge or release to or from the Premises, or permit any party in possession through or under Tenant to dispose of, discharge from or generate or release on the Premises any Hazardous Materials. Tenant or any party in possession of any portion of the Premises through or under Tenant or any persons occupying or present on the Premises with the consent of Tenant will not at any time discharge from, spill or release any Hazardous Materials in or onto the Premises. Tenant, its employees, agents, subtenants, licensees and contractors shall comply with the prohibition of all applicable building codes and other federal, state and municipal laws, directives, orders, ordinances and regulations relating to Hazardous Materials with respect to any use by Tenant of such Hazardous Materials and with all Laws relating to the environment.

The term "**Hazardous Materials**" as used herein shall include any hazardous waste, hazardous substances or any pollutant or contaminant as defined by 42 U.S.C. § 9601 and any toxic substances, petroleum, oil, asbestos or other hazardous materials, chemical or substances now or hereafter regulated by any laws relating to hazardous or toxic materials, wastes or substances and/or the environment.

**11.2 Hazardous Materials Laws** Tenant shall comply with all laws governing the handling and disposal of Hazardous Materials.

**11.3. Removal of Hazardous Materials** Tenant shall pay for the removal of all Hazardous Materials from the Premises placed, released, disposed, discharged, spilled or generated in, on, over or under the Premises by, through or under Tenant or any persons occupying or present on the Premises with the consent of Tenant, including but not limited to Tenant, its employees, agents, subtenants, licensees and contractors. Such removal shall comply with the requirements of any governmental agency, including but not limited to the State and Federal Environmental Protection Agencies and as required by Landlord.

**11.4 Provisions Surviving the Term of this Agreement** The foregoing covenants and agreements of Tenant will survive the term and expiration or termination of this

Lease, and Tenant will immediately notify Landlord of its receipt of any report, citation, notice or other writing by, to or from any governmental or quasi-government authority and power to regulate or oversee any of the foregoing activities or in any way related to or connected with Hazardous Materials.

## **Section 12 Maintenance and Repairs**

**12.1 Maintenance and repairs** Tenant shall make or caused to be made and shall pay for all costs and charges for repair, maintenance, warranty compliance and preventative maintenance of the Premises, including, but not limited to (1) the structural and load bearing portions of all structures and improvements to the Premises, (2) foundations of all structures, (3) all roofs [including but not limited to repair and/or replacement of the grandstand roof], (4) the HVAC and mechanical systems, (5) landscaping, (6) the parking lots, (7) the infrastructure on, under over and in the Premises, (8) decorating (9) painting (10) replacing and resurfacing damaged walls, ceiling and floors and other members of buildings and structures, (11) the horse racing surface which shall be in good condition for conducting pari-mutuel horse race wagering at all times, (12) plumbing and sanitary facilities, (13) electrical facilities, (14) other utilities (15) elevator maintenance repair, maintenance and replacement, (16) tote board housing and housing area in the infield and (17) major repairs such as breaks in sewer mains and water service lines, road repair and repairs to the electrical power sources or main electrical lines. Tenant shall meet the obligations of this paragraph in a manner that the Premises shall be in good condition at all times throughout the Lease.

Tenant shall not make any alterations of or additions or improvements to the Premises with the prior written permission and consent of Landlord. Any alterations, additions or improvements to the Premises, except trade fixtures or moveable equipment or furniture, shall become a part of the Premises and the property of Landlord.

Tenant shall surrender the Premises at the expiration or earlier termination of this Lease in as good condition as at the Commencement Date except for ordinary wear and tear. Tenant will replace any plate, window or door glass broken in the Premises with glass of like kind and quality. Tenant will comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to the Premises, including but not limited to the Americans with Disabilities Act.

## **Section 13 Insurance**

**13.1 Insurance Required** Tenant shall, at its cost and expense, obtain, keep and maintain in force at all times during the Term of this Lease (hereafter, "obtain") the policies of insurance listed in this section. Tenant shall require all subtenants, licensees and others conducting business on the Premises to obtain property damage, vehicle, commercial/public liability, worker's compensation (when applicable) and Liquor liability insurance (when applicable) or, when allowed by Tenant's policy, to insure such people or entities under Tenant's policies. The State of New Mexico and the Landlord shall not be liable for the payment of any premiums, assessments or deductions on any insurance required in this Lease.

**13.2 Insurance Policy Requirements** All insurance coverage required by this Section shall be issued by companies licensed to do business in New Mexico that are satisfactory to Landlord. Tenant shall furnish Landlord evidence of all insurance policies required under this Section including (1) certificates of insurance that shall show the amounts and types of coverage and the dates of inception and expiration of the insurance and (2) endorsements, riders or other amendments to each insurance policy showing Landlord as an additional insured and providing that each additional insured shall receive thirty (30) days advance written notice of cancellation or material alteration of the insurance policy, with ten (10) days notice for non-payment of insurance premiums or provide the insurance policy that shows that the Landlord is an additional insured and entitled to such notice due to the provisions contained in this Lease.

Proof of the insurance coverage required in this Lease shall be provided by Tenant to Landlord prior to the beginning of each Lease Year or upon the annual renewal of each policy.

The requirement that the Landlord be named as an additional insured shall not apply to the worker's compensation insurance policy. Insurers shall waive their subrogation rights as to vehicle and commercial/public liability insurance.

The insurance requirements of this section shall not be construed as a limitation of Tennant's liability nor shall they be construed as a waiver of Landlords immunity or of any limits under the tort claims act.

**13.3. Real Property Damage Insurance** Tenant shall obtain insurance coverage for the buildings, structures and other improvements on the Premises, including improvements constructed by Tenant during the Term of this Lease, against loss or damage by fire and extended coverage insurance and vandalism and malicious mischief insurance on the Premises, including but not limited to the grandstand, the horse barns, the paddock area and all other buildings and structures used for or in connection with the conduct activities Tenant is allowed to conduct under the provisions of this Lease. Such insurance shall be in an amount equal to the replacement costs of such buildings and structures and any fixture appurtenant thereto, with such replacement costs to be determined by the insurance carrier prior to the commencement of the issuance of each insurance policy or renewal thereof. The insurance shall have a replacement cost endorsement or similar provision which shall be an amount equal to the actual replacement value (exclusive of cost of excavation, foundations, and footings below the surface of the ground or below the lowest basement level). Tenant's insurance shall insure against other insurable hazards which at the time are commonly insured against in the case of improvements similarly situated, due regard being given to the height and type of the Improvements, their construction, location, use, and occupancy.

**13.4 Tenant personal property insurance** Tenant shall obtain insurance covering losses to Tenant's personal property located on the Premises, including removable trade fixtures to which tenant retains ownership or Tenant improvements that Tenant may remove and retain ownership under the provisions of this lease.

**13.5 Vehicle insurance.** Tenant shall obtain vehicle coverage for all vehicles (whether or not licensed to operate on public right-of way) operated in, on or onto the Premises by Tenant in the amount of ten million dollars (\$10,000,000.00) for any number of persons in any one accident or occurrence and in the aggregate.

**13.6 Commercial or Public Liability Insurance.** Tenant shall obtain comprehensive general liability insurance, commercial or public liability insurance, including contractual liability and completed operations liability, with limits of not less than twenty Million Dollars (\$20,000,000.00) with respect to bodily injury or death to any number of persons in any one accident or occurrence and in the aggregate and in the amount of at least five million dollars (\$5,000,000.00) covering property damage in any one accident or occurrence and in the aggregate. Upon the Request of Landlord, Tenant shall increase, at Tenant's cost, the limits on each accident or occurrence as to property damage in an amount based on property damages incurred since the commencement of the Term.

**13.7 Liquor Liability Insurance** Tenant and its subtenants or others occupying the Premises who serve, dispense and/or sell alcoholic beverages on the Premises or from the Premises shall obtain Liquor Liability Insurance Policies, a Alcoholic Beverages Purveyor's Insurance policy or the equivalent thereof, in the amount of two million dollars (**\$2,000,000.00**) for each occurrence and in the aggregate.

**13.8 Workers Compensation** The Tenant agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Tenant fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Lease may be terminated by the Landlord. Tenant shall provide to Landlord a documentation showing that it is currently in compliance with the Workers Compensation Act.

**13.9 Environmental Hazard Insurance** Tenant shall obtain insurance coverage for cost of removing and otherwise remediating any Hazardous Materials from the Premises placed, released, disposed, discharged, spilled or generated in, on, over or under the Premises by, through or under Tenant or any persons occupying or present on the Premises with the consent of Tenant, including but not limited to Tenant, its employees, agents, subtenants, licensees and contractors. Such removal shall comply with the requirements of any governmental agency, including but not limited to the State and Federal Environmental Protection Agencies and as required by Landlord. The amount of such insurance shall be \$\_\_\_\_\_.

**13.10 Builders Risk** Tenant shall obtain or cause its construction contractor to obtain builders risk insurance covering the entire value of any construction on the Premises. Such insurance shall be obtained and proof thereof provided to Landlord prior Landlord's approval of the construction and prior to commencement of any construction on the Premises.

**13.11 Deductibles** Tenant shall be responsible for payment of the full amount of any deductible due under the insurance policies required in this Section. In not event shall the deductible feature only insurance policy exceed the following: (1) for property

damage, Twenty-five thousand dollars (\$25,000.00) dollars and for personal injury coverage, two thousand five hundred dollars (\$2,500.00).

**13.12 Failure to Obtain insurance** If Tenant fails to procure or maintain insurance as herein provided, Landlord, at its option, may acquire such insurance and said cost shall be repaid by Tenant to Landlord. Such repayment shall be in addition to any other payments due and payable under this Lease. Failure to repay Landlord within thirty (30) days of Tenant's receipt of the bill for such insurance shall constitute a material breach of this Lease. In the event that any insurance cannot be procured or maintained as required in this Lease due to the act or omission by Tenant, the same shall constitute a material breach of this Lease.

## **Section 14 Bond Required**

**14.1 Fidelity Bond** Tenant agrees to obtain a bond, naming Landlord as obligee, covering any loss resulting from the infidelity or dishonesty of Tenant's directors, officers and employees in the performance of this Lease in an amount of not less than five hundred thousand and no/100 dollars (\$500,000.00).

## **Section 15 Indemnification Agreement**

**15.1 Indemnity** Tenant shall defend, indemnify and hold harmless the Landlord and the State of New Mexico and their respective officials, agents and employees (hereafter, collectively, the "Landlord") from any and all causes of actions, legal proceedings, claims, demands, costs, judgments, damages, attorneys' fees and all other liabilities and expenses of any kind from any source incurred by Landlord by reason of any claim against Landlord which may arise out of any negligent or failure to act or intentional or willful act by Tenant, its directors, officers, agents, employees or contractors of out of the occupancy or the use of the Premises, or any portion thereof or in Tenant' performance of the terms of this Lease. Tenant's defense and indemnification of the Landlord and obligation to hold Landlord harmless shall include but not be limited to the acts or omissions of Tenant arising or alleged to have arisen from or in connection with (a) injury to or death of any person, or damage to or loss of property on or about the Premises or on adjoining property, sidewalks, streets or ways, or connected with the ownership, use, condition, design, occupancy, lease, sublease, construction, maintenance, repair or rebuilding of any thereof, (b) any violation of any legal requirement whether with respect to environmental protection or hazardous waste matters or otherwise, (c) any violation of the requirements of this Lease by Tenant, (d) any nonpayment or delayed payment of any Basic Rent or any percentage or Additional Rent, (e) any act or omission of Tenant or its agents, contractors, licensees, sub-lessees or invitees, and (f) actions or demands in connection with any of the foregoing. Tenant may contest the validity of any claims, in the name of Landlord or Tenant, as Tenant may deem appropriate, provided that the expenses thereof will be paid by Tenant. The foregoing covenants and agreements of Tenant will survive the expiration or termination of this Lease. In the event that any action, suit or proceeding related to the performance of this Lease by Tenant or any officer, agent employee, servant or subcontractor under this Lease is brought against Tenant, Tenant shall, as soon as practicable, but no later than (2) Landlord working days after it receives notice thereof,

notify the legal counsel of the Landlord and the Risk Management Division of the New Mexico General Services Department by Certified mail.

**15.2. Personal Property** Landlord shall not be liable for damages to personal property and trade fixtures on the Premises belonging to Tenant or Tenant's concessionaires, subtenants and or licensees.

**15.3 Indemnity Exception.** To the extent, if at all, 56-7-1 NMSA 1978, as amended, is applicable, any agreement to indemnify, hold harmless, insure or defend another party contained herein or in any related documents will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligent act or omission of any indemnitee, its officers, employees or agents.

## **Section 16 Damages to Premises**

**16.1 Tenant's Obligation to Restore.** In the event of damage to, or destruction of the Premises due to fire or other casualty, Tenant will promptly repair, replace, restore, and reconstruct the same. In the event that the damage is so extensive that the repairs cannot be completed prior to the term of this lease, the Tenant shall have the right to terminate this Lease by notice to Landlord effective as of the date of such fire or other casualty. In the event of a casualty loss where the Improvements will not be restored or replaced, the insurance proceeds on the Premises shall be paid to Landlord and insurance proceeds for Tenant's personal property shall be paid to Tennant.

### **16.2 Restoration and Deposit of Funds.**

**16.2.1** Prior to Tenant commencing any repair, restoration or rebuilding involving an estimated cost of more than twenty-five thousand Dollars (\$25,000.00). Tenant shall submit to Landlord for its approval, which will not be unreasonably withheld or delayed: (i) plans and specifications therefore, prepared by a licensed architect reasonably satisfactory to Landlord; (ii) copies of appropriate governmental permits; (iii) construction contract in an amount not in excess of such architect's estimated cost from a reputable and experienced general contractor; and (iv) satisfactory evidence of sufficient contractor's comprehensive general liability insurance covering Landlord, builder's risk insurance and workman's compensation insurance. Upon completion of any such work by or on behalf of Tenant, Tenant will provide Landlord with written evidence, in form and substance reasonably satisfactory to Landlord, showing that (i) Tenant has paid all contractors for all costs incurred in connection with such repair, restoration or rebuilding, and (ii) that the Premises is not encumbered by any mechanic's or materialmen's liens relating to such repair, restoration or rebuilding.

**16.2.2** If tenant restores damaged Premises, then all sums arising by reason of such loss under insurance policies maintained by Tenant, shall be deposited with a Third Party that is acceptable to Landlord and Tenant, and shall be made available to Tenant for the repair, restoration and rebuilding of the Premises. Tenant will diligently pursue the repair, restoration and rebuilding of the damaged Premises in a good and workmanlike manner using only materials which are of a quality comparable to the quality of the materials used in the Improvements prior to their destruction or damage.

The insurance proceeds will be disbursed to Tenant by the Third Party after delivery of evidence reasonably satisfactory to the Third Party that (A) such repairs, restoration, or rebuilding have been completed and effected in compliance with the plans and specifications for the restoration or rebuilding, (B) no mechanic's and materialman's liens against the Premises have been filed, or that all such liens have been paid or bonded around, and (C) all payments for work performed and materials purchased as of the date of such disbursement for which mechanic's and materialman's liens might arise have been paid or will be paid from such disbursement or that all such potential liens have been paid or bonded around. Such proceeds will be advanced in reasonable installments and each installment, except the final installment, shall be advanced in an amount equal to the cost of the construction work completed since the last prior advance (or since commencement of work as to the first advance) less retainage in respect of mechanic's and materialman's liens or retainage which may be required by Landlord in an amount not to exceed ten percent (10%) of such cost. The amount of each installment requested will be certified as being due and owing by Tenant's architect in charge, and each request will include all bills for labor and materials for which reimbursement is requested and reasonably satisfactory evidence that no lien affidavit has been placed against the Premises for any labor or material furnished for such work. The final disbursement, which will be an amount equal to the balance of the insurance proceeds, will be made upon receipt of (1) an architect's certificate of substantial completion as to the work from Tenant's architect, and (2) reasonably satisfactory evidence that all bills incurred in connection with the work have been paid.

**16.2.3** If no Default then exists, any excess of money received from insurance policies remaining with the Third Party after the repair or rebuilding of the Improvements will be paid to Tenant.

**16.2.4** If Tenant will not commence the repair or rebuilding of the Improvements within a period of sixty (60) days after damage or destruction by fire or other casualty and prosecute the same thereafter with such dispatch as may be necessary to complete the same within a reasonable period after said damage or destruction occurs; then, in addition to all other remedies Landlord may have either under this Lease, at law or in equity, the Landlord shall be entitled to the money received by and remaining in the hands of the Third Party for the continued performance and observance by Tenant of Tenant's covenants and agreements hereunder.

## **Section 17 Eminent Domain**

**17.1 Total Taking** Should the entire Premises be taken, including any conveyance in avoidance or settlement of eminent domain by any governmental authority or other entity under the right of eminent domain, then Tenant's right of possession under this Lease will terminate as of the date of taking possession by the authority exercising its eminent domain authority. The award for the taking shall will be distributed as follows: (1) to the payment of all reasonable fees and expenses incurred in collecting the award then; (2) to Tenant for any improvements for which Tenant is entitled to reimbursement by Landlord pursuant to this Lease less the depreciation of such improvements; and (3) to Landlord, except for any award for Tenant's personal property, which will be paid to Tenant. After the determination and distribution of the eminent domain award as herein provided, the Lease will terminate.

**17.2 Partial Taking** Should a portion of the Premises be taken by any Governmental Authority under the right of eminent domain, this Lease shall continue in effect as to the remainder of the Premises unless in Landlord's judgment, so much of the Premises will be so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease will terminate as of the date of taking of possession by the condemning authority in the same manner as if the entire Premises had been taken, and the award therefore will be distributed as provided in Section 13.2. In the event of a partial taking where this Lease is not terminated, all awards payable in respect thereof will be payable to Landlord, except for any award for Tenant's personal property, which will be paid to Tenant. Following such partial taking, Tenant will make all necessary repairs or alterations to the remaining Premises required to make the remaining portions of the Premises an architectural whole; provided, however, that Landlord makes the proceeds from the award for any such taking available to Tenant. The base rent payable hereunder during the unexpired portion of the Lease will be reduced. The reduction shall be based on the percentage of revenue lost directly due to the partial taking and not on a pro rata basis of the reduction of square feet taken from the Premises. Such reduction shall be effective on the date physical possession is taken by the condemning authority.

**17.3 Temporary Taking** If the whole or any portion of the Premises will be taken for temporary use or occupancy, the Term will not be reduced or affected. If the temporary taking is for the entire Premises, then Base Rent payable hereunder during the unexpired portion of the Lease will be reduced for the time of the temporary taking based on a per day rental rate times the number of days of the temporary taking. If the temporary taking is for only a portion of the Premises, then the rent shall be reduced in an amount based on average gross revenue generated by the business activity in the area of the partial taking. If no revenue is generated in the area temporarily taken, there shall be no reduction in the base rent or rent calculated on the basis of gross revenues. Landlord shall be entitled to receive the entire amount of any award for a temporary taking, except for any award for Tenant's personal property, which will be paid to Tenant.

**17.4 Notice of Taking** Tenant shall immediately notify Landlord and each Tenant's Permitted Lien Holder of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to Premises. Landlord and Tenant covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

## **Section 18 Default and Termination**

**18.1 DEFAULT** Each of the following will be deemed a "Default" by Tenant hereunder and a material breach of this Lease whenever:

**18.1.1** Tenant fails to pay any installment of rent or any other sum payable by Tenant to Landlord under this Lease on the date upon which the same is due to be paid, and full payment of such rent or other sum owed by Tenant has not been paid in full within fifteen (15) consecutive calendar days after Tenant receives a written notice from Landlord specifying such default;

**18.1.2** Tenant fails to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept or performed by Tenant other than with respect to payment of rent or other sum payable and Tenant fails to cure such default within thirty (30) days of tenant's receipt of the default notice from Landlord; or, when it is physically impossible to cure the default with such thirty day period, the Tenant fails to proceed diligently and continuously to commence and pursue the cure of such default within thirty (30) days after Tenant's receipt of the notice of default from Landlord;

**18.1.3** An involuntary petition is filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any similar law or whenever a receiver of Tenant, or of all or substantially all of the property of Tenant, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event; or

**18.1.4** Tenant makes an assignment of its property for the benefit of creditors or will file a voluntary petition under any bankruptcy or insolvency law, or seek relief under any other law for the benefit of debtors; or

**18.1.5** Tenant adopts or files articles of dissolution.

**18.2 TERMINATION** In the event that Tenant fails to cure any default for which notice was given pursuant to this Section, Landlord may at any time thereafter, in its sole discretion, with or without notice or demand and without limiting Landlord in the exercise of a right or remedy which Landlord may have by reason of such default.

**18.2.1 Termination** Landlord may terminate this Lease and Tenant's right to possession of the Premises. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of tenant's default, including but not limited to the costs of recovering possession of the Premises, reasonable attorneys' fees and court costs. Overdue payments shall bear interest from the date due at the Interest Rate; or

**18.2.2 Enforcement of Lease** Enforce this Lease, in which case this Lease shall continue in effect to the extent that the Landlord maintains the right to recover from the Tenant the payments to Landlord set forth in this lease and any other charges and adjustments as may become due here under; or

**18.2.3 Other Remedies** Landlord may pursue any other remedy now or hereafter available to Landlord under New Mexico law.

**18.3 No Reimbursement** In the event of termination of this Lease by Landlord, neither the Landlord nor the State of New Mexico shall be liable for damages nor for reimbursement to Tenant for capital improvements or unrealized anticipated revenues or any other expense incurred by Tenant pursuant to this Lease.

## **Section 19 Assignment, Subletting and Concessions**

**19.1 Assignment** Tenant shall not assign or transfer any of its rights or interests in this Lease or assign any claims for money due or to become due under this Lease.

**19.2 Concessions** The provisions of this Section shall not prohibit Tenant from granting concessions for the operation of one or more of the business activities permitted under this Lease. Advanced written approval of Landlord shall be obtained by Tenant for each concession agreement prior to Tenant entering into a concession agreement. Approval of Landlord shall not be unreasonably withheld. In addition, the following conditions shall be met:

(1) Each concession agreement entered into by Tenant shall be subject to all of the terms and provisions of this Lease;

(2) All pari-mutuel horse race wagering and gaming conducted under this Lease shall be conducted under the direct supervision and management of Tenant and shall not under any circumstances be conducted by any other person or concessionaire;

(3) The conduct of any concession granted by Tenant shall be conducted only on the Premises;

(4) Any concessionaire which has been granted a concession under this Lease shall execute and deliver to Landlord prior to entering the Premises a written agreement stating the following (a) The concessionaire has read this Lease; (b) In consideration of the granting of its concession, concessionaire agrees to be bound by all of the terms and provisions of this Lease; and (c) Concessionaire will permit Landlord, DFA and the State Auditor to examine all financial records relating to the operation of the concession pursuant to the audit clause of this Lease.

**19.3 Continued responsibility** Tenant shall be responsible for the conduct of its concessionaires and a violation by any such concessionaire of any of the terms or provisions of this Lease shall have the same effect as if such violation had been committed or suffered by Tenant.

**19.4 No Assignment by Concessionaires, licensees and sub-lessees.** No concessionaire, licensee or sub-lessee, whether its agreement with Tenant is a sub-lease or other form of agreement shall be entitled to assign, sublet, hypothecate, mortgage, pledge or otherwise dispose of any interest in this Lease. Any attempt by concessionaire, licensee or sub-lessee of Tenant to do so shall be null and void under the terms of this Lease.

## **Section 20 Health Coverage**

### **20.1 New Mexico Employees Health Coverage.**

A. If Tenant has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Lease, Tenant certifies, by signing this agreement, to have in place, and agree to maintain for the term of this Lease, health insurance for those

employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Tenant and the State exceed \$250,000 dollars.

B. Tenant agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Tenant agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information:

<http://insurenwemexico.state.nm.us/>.

## Section 21 General Provisions

### 21.1 Notice

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 or by hand delivery to the locations listed below. Notice given in accordance herewith will be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses of the parties hereto will, until changed, be as follows:

Landlord: New Mexico State Fair  
Attn: General Manager  
Physical address for hand delivery: 300 block of San Pedro Blvd.,  
NE, Gate 3, Albuquerque, NM 87108

Mailing address:  
P. O. Box 8546  
Albuquerque, New Mexico 87198  
Facsimile: (505) 266-7784

Tenant: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
Physical address for hand delivery \_\_\_\_\_  
Albuquerque, New Mexico 87 \_\_\_\_\_  
Facsimile: (505) \_\_\_\_\_

The parties hereto will have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving a notice to such effect in accordance with the provisions of this Section.

**21.2 Governing Law and Venue** The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be in a New Mexico State court of competent jurisdiction in Bernalillo County, New Mexico. By execution of this Agreement, Tenant 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.

**21.3 Number and Gender, Captions, References** Pronouns, wherever used herein, and of whatever gender, will include natural persons and corporations and associations of every kind and character, and the singular will include the plural wherever and as often as may be appropriate. Section and Section headings in this Lease are for convenience of reference and will not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein," or words of similar import are used in this Lease, they will be construed as referring to this Lease in its entirety rather than to a particular Section or provision, unless the context specifically indicates to the contrary or the reference is to a specific Section of this Lease.

**21.4 Non-Discrimination** Tenant with respect to employment of staff and to those persons using the leases Premises or receiving services from Tenant, shall not discriminate unlawfully with respect to race, sex, national origin, age, religion or as to any other class protected against discrimination by applicable state or federal laws.

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

**21.6 Non-Appropriation** The terms of this Lease, to the extent of Landlord's obligations only, are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Lease. If sufficient appropriations and authorization are not made by the Legislature, this Lease shall terminate immediately upon written notice being given by the Landlord to the Tenant. The Landlord's decision as to whether sufficient appropriations are available shall be accepted by the Landlord and shall be final.

**21.7 Conflict of Interest; Governmental Conduct Act** The Tenant warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Lease. The Tenant certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

**21.8 Confidentiality** Any confidential information provided to or developed by the Tenant in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Tenant without the prior written approval of the Landlord.

**21.9 Status of Tenant** The Tenant and its agents and employees are independent contractors and are not employees of the State of New Mexico. The Tenant and its

agents and employees shall not accrue leave, retirement, insurance, bonding, or have the use of state vehicles or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Tenant acknowledges that it is solely responsible for reporting income received due to this for tax purposes, including without limitation, employment and business income tax. The Tenant agrees not to purport to bind the State of New Mexico unless the Tenant has express written authority to do so, and then only within the strict limits of that authority.

**21.10 Subcontracting** The Landlord shall not sublease any portion of the services to be performed under this Lease without the prior written approval of the Landlord. **No subleasing of the Casino or Race Track shall be allowed.**

**21.11 Estoppel Certificate** Landlord and Tenant will execute and deliver to each other, promptly upon any request therefore by the other party, a stating: (a) whether or not this Lease is in full force and effect; (b) whether or not this Lease has been modified or amended in any respect and (c) whether or not there are any existing defaults by the party requesting the certificate, specifying the nature of the default. Issuance of a certificate under this section shall not bar the issuing party from making claims for damages based on conditions or events unknown to the party signing the certificate as of the date of the certificate.

**21.12 Modification and Non-Waiver** 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.

**21.13 Relation of Parties** It is the intention of Landlord and Tenant to hereby create the relationship of landlord and tenant, and no other relationship whatsoever is hereby created. Nothing in this Lease will be construed to make Landlord and Tenant partners or joint venturers or to render either party hereto liable for any obligation of the other. Agreements Tenant enters into shall not be binding on the Landlord, including but not limited to all vendor contracts, sponsorship agreements and collective bargaining agreements.

**21.14 Force Majeure** "Force Majeure" means the occurrence of any event whereby Landlord or Tenant will be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, failure or refusal of governmental authorities or agencies to timely issue permits or approvals or conduct reviews or inspections, civil disorder, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted). If Tenant or Landlord will be delayed, hindered, or prevented from performance of any of its obligations by reason of Force Majeure, the time for performance of such obligation will be extended for the period of such delay, provided that the aforesaid causes shall not be a basis for extending the Term of this Lease. This lease shall not be terminated by reason of any suspension due to the aforesaid causes nor shall any damages accrue to either party as a result of any suspension due to the aforesaid causes.

**21.15 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.

**21.16 Successors and Assigns** This Lease will constitute a real right and covenant running with the Premises, and will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference will include the party's successors and assigns.

**21.17 Landlord's Joinder** To the extent required by law, Landlord agrees to join with Tenant in the execution of such applications for permits and licenses from any Governmental Authority as may be reasonably necessary or appropriate to effectuate the intents and purposes of this Lease, provided that Landlord will not incur any liability or become liable for any obligation as a result thereof.

**21.18 No Third Parties Benefited** The terms and provisions of this Lease are for the sole benefit of Landlord and Tenant, and no third party shall benefit under this Lease.

**21.19 Survival** Any terms and provisions of this Lease pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Lease will survive the end of the Term.

**21.20 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.

**21.21 Independent Counsel** Landlord and Tenant declare that each has had independent legal advice by counsel of their own selection; that each fully understands the facts and has been fully informed of all legal rights or liabilities; that after such advice or knowledge, each believes the Lease to be fair, just, reasonable and that each signs the Lease freely and voluntarily.

**21.22 Amendment** This Lease shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

**21.23 Exhibits and Order of Precedence** The exhibits identified in this Lease are attached hereto and incorporated herein as though set forth in full. Provisions of the Lease shall govern over provisions in the RFP and the Final Best Offer.

**21.24 Compliance with Laws** Tenant shall comply and shall ensure that those persons or entities using the Premises by authority of Tenant shall comply with the following: (1) all applicable laws, regulations and rules and regulations of any governmental agency with jurisdiction; (2) all applicable regulations of the Landlord not inconsistent with this Lease; and (3) the Gaming Act and the Racing Act and the rules and regulations of the Gaming Board and Racing Commission. In addition Tenant

those persons or entities using the Premises by authority of Tenant shall not use or occupy, permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would constitute a public or private nuisance, or which would violate any laws, regulations, ordinances, or requirements of any governmental authority having jurisdiction in the Premises including, but not limited to those which relate to Hazardous Materials.

**21.25 Pay Equity** Tenant shall complete the pay equity forms as required by the General Services Department. The pay equity forms are provided at [http://www.generalservices.state.nm.us/spd/pay\\_e.html](http://www.generalservices.state.nm.us/spd/pay_e.html)

**21.26 Pari-mutuel taxation** This lease is not intended by the parties to provide for horse racing conducted by a State Fair association for purpose of pari-mutuel taxation.

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

**LANDLORD**

New Mexico State Fair, an  
Agency of the State of New Mexico

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

**TENANT**

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

REVIEWED and APPROVED AS TO BUDGETARY SUFFICIENCY:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
DCA, Budget Director

REVIEWED and APPROVED as to COMPLIANCE with IT POLICIES:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
DCA, Chief Information Officer

The records of the Taxation and Revenue Department reflect that the Tenant is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 00-000000-00-0

By: \_\_\_\_\_  
Taxation and Revenue Department

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

This Agreement has been approved by the DFA Contracts Review Bureau:

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

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

**APPENDIX F**

**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

**APPENDIX G**  
**New Mexico Employees Health Coverage Form**

## New Mexico Employees Health Coverage Form

1. For all contracts solicited and awarded on or after January 1, 2008: If the offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, offeror must agree to:
  - (a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars (\$1,000,000); or
  - (b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate or any and all contracts between Contractor and the State exceed five hundred thousand dollars (\$500,000); or
  - (c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed two hundred fifty thousand dollars (\$250,000).
2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
3. Offeror must agree to advise all employees of the availability of State public financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://insurenwemexico.state.nm.us/>.
4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to placed against it); these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000, or \$1,000,000.

Signature of Offeror: \_\_\_\_\_ Date: \_\_\_\_\_

**APPENDIX H**  
**Financial Statement Templates**

- 1. Projected balance Sheets**
- 2. Projected first year profit and loss statements**
- 3. Five year projected profit and loss statements**

## New Mexico State Fair Commission

Projected First Year Profit and Loss Statements														
Assumptions			Month 1	$\frac{\$}{\text{to TR}}$	Month 2	$\frac{\$}{\text{to TR}}$	Month 3	$\frac{\$}{\text{to TR}}$	Month 4	$\frac{\$}{\text{to TR}}$	Month 5	$\frac{\$}{\text{to TR}}$	Month 6	$\frac{\$}{\text{to TR}}$
Win per unit per day - Slot machines														
5 cent														
10 cent														
25 cent														
50 cent														
1 dollar														
Other														
Visits per day - race track														
Average spend per day - race track														
Visits per day - casino														
Average spend per day - casino														

New Mexico State Fair Commission

Projected First Year Profit and Loss Statements																
		Month 7	% to TR	Month 8	% to TR	Month 9	% to TR	Month 10	% to TR	Month 11	% to TR	Month 12	% to TR	Year 1 Totals	% to TR	
<b>Casino</b>																
	Casino taxes															
	Food and beverage cost of sales															
	Horseman's Fund awards															
	Compulsive gambling fees															
	Other (specify)															
	Other (specify)															
	Other (specify)															
	<b>Total Casino</b>	0		0		0		0		0		0		0		
	<b>Total Cost of Revenues</b>	0		0		0		0		0		0		0		
<b>Operating Expenses</b>																
<b>Track</b>																
	Payroll															
	Rent															
	Employee benefits and payroll taxes															
	Totalizator fees															
	Satellite fees															
	Promotional expenses															
	Janitorial															
	Repairs and maintenance															
	Supplies															
	Contract labor															
	Professional services															
	Advertising															
	Insurance															
	Utilities															
	Telephone															
	Uniforms and linens															
	Automobiles															
	Travel, meals and entertainment															
	Taxes, fees and licenses															
	Other (specify)															
	Other (specify)															
	Other (specify)															
	<b>Total Track</b>	0		0		0		0		0		0		0		
<b>Casino</b>																
	Payroll															
	Rent															
	Employee benefits and payroll taxes															
	Promotional expenses															
	Janitorial															
	Repairs and maintenance															

## New Mexico State Fair Commission

Projected First Year Profit and Loss Statements															
	Month 7	½ to TR	Month 8	½ to TR	Month 9	½ to TR	Month 10	½ to TR	Month 11	½ to TR	Month 12	½ to TR	Year 1 Totals	½ to TR	
Supplies															
Contract labor															
Professional services															
Advertising and promotion															
Insurance															
Utilities															
Telephone															
Uniforms and linens															
Automobiles															
Travel, meals and entertainment															
Taxes, fees and licenses															
Other (specify)															
Other (specify)															
Other (specify)															
<b>Total Casino</b>	0		0		0		0		0		0		0		
<b>General and Administrative</b>															
Payroll															
Rent															
Employee benefits and payroll taxes															
Depreciation and amortization															
Advertising and promotion															
Office expenses															
Professional services															
Repairs and maintenance															
Insurance															
Utilities															
Telephone															
Uniforms and linens															
Automobiles															
Travel, meals and entertainment															
Taxes, fees and licenses															
Other (specify)															
Other (specify)															
Other (specify)															
<b>Total G &amp; A Expenses</b>	0		0		0		0		0		0		0		
<b>Total Operating Expenses</b>	0		0		0		0		0		0		0		
<b>Net Income</b>	0		0		0		0		0		0		0		
<b>EBITDA</b>															

## New Mexico State Fair Commission

Projected First Year Profit and Loss Statements																
			Month 7	% to TR	Month 8	% to TR	Month 9	% to TR	Month 10	% to TR	Month 11	% to TR	Month 12	% to TR	Year 1 Totals	% to TR
<b>Assumptions</b>																
Win per unit per day - Slot machines																
	5 cent															
	10 cent															
	25 cent															
	50 cent															
	1 dollar															
	Other															
Visits per day - race track																
Average spend per day - race track																
Visits per day - casino																
Average spend per day - casino																