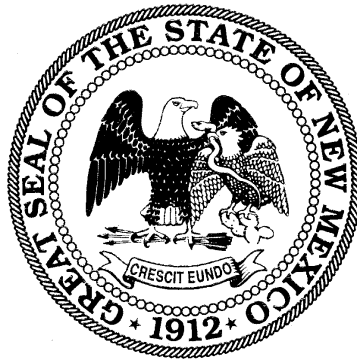


STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
FARM & RANCH HERITAGE MUSEUM



REQUEST FOR PROPOSALS

**GIFT SHOP & SNACK BAR SERVICES AT THE
FARM & RANCH HERITAGE MUSEUM**

RFP: 2009-01

Farm & Ranch Heritage Museum
4100 Dripping Springs Road
Las Cruces NM 88011-5067
Mark Santiago, Director

ISSUE DATE: March 11, 2009

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The Board of Directors of the New Mexico Farm & Ranch Heritage Museum is seeking competitive proposals from qualified independent contractors to operate and administer a gift shop and snack bar.

The purpose of this Request for Proposals (RFP) is to select a qualified Offeror to operate and administer a gift shop inside the Bruce King Building of the Farm & Ranch Heritage Museum (hereinafter “the Museum”). The Museum, located in Las Cruces, N.M., is a division of the Department of Cultural Affairs.

B. SUMMARY SCOPE OF WORK

- 1) Vendor will operate a retail gift shop, providing its own wide-array inventory of materials, a portion of which shall relate to farming, ranching, and rural life in New Mexico (including pre-packaged food products, books, and family items). Vendor will also utilize space and equipment provided to operate a snack bar that sells snacks, drinks, and light lunch products, such as soda pops, popcorn, ice cream, hot dogs, hamburgers, etc. All items are expected to include mostly reasonably-priced items and foods to serve the Museum visitor clientele.
- 2) The Premises where the awarded Offeror (Vendor) will operate and provide its services are defined as: a) a retail space area of approximately 2,682 square feet; b) a retail storage room of approximately 235 square feet; and c) a retail office area of approximately 159 square feet. These areas are defined in map layout in Exhibit A of the sample lease attached. The Premises includes some equipment provided by the Museum, which is delineated in Exhibit B of the sample lease attached.
- 3) Vendor will, at a minimum, be open during the Museum’s operating hours, which at this time are Monday-Saturday, 9am to 5pm, and Sunday, 12n to 5pm. Vendor also will work with Museum, on an event-by-event basis, to accommodate special events of the Museum which might occur outside of regular operating hours.
- 4) Vendor will sell quality products and publications that relate to the Museum’s mission and are compatible with Museum programs and exhibits.
- 5) Vendor will provide quality service in meeting Museum visitors’ needs for drinks, snacks, and lunch products.
- 6) Vendor will obtain all food permits necessary and follow and abide by all applicable federal, State, county, and municipal regulations with regard to food service, storage, and preparation.
- 7) Pursuant to §60-6A-11 NMSA 1978, Museum would permit Vendor to conduct wine tastings under Vendor’s winegrower’s license, subject to Vendor applying for, being permitted to, and complying with all applicable regulations of the New Mexico Alcohol and Gaming Division.
- 8) Vendor must agree to various terms and conditions included in the sample lease in the attachment, including following any Museum policies and procedures.

- 9) Museum will pay for all water, gas, heat, light, telephone service, power, sewage charges, and janitorial services as supplied to the Premises. Vendor will pay for additional telephone services, including additional lines for operation of credit card machines, fax machines, and other similar units.
- 10) Vendor will be responsible for securing the leased Premises. Museum will provide security outside the leased Premises and for all areas after normal business hours.

C. SCOPE OF PROCUREMENT

The scope of procurement shall encompass the defined Scope of Work, detailed in the Sample Lease attached and additional information in this RFP. The lease is scheduled to begin on approximately July 1, 2009, or upon receiving all required state approvals, for a term of no more than two years, ending June 30th of the year, as proposed by offeror and negotiated with Museum. The Museum reserves the option to extend the lease on two occasions for a period of one or two years each. In no case shall the lease, including all renewals thereof, exceed a total of six years in duration (beyond June 30, 2015). The contract shall be reviewed annually based on performance and the needs of the Museum. This procurement will result in a single source award.

D. PROCUREMENT MANAGER

The Farm & Ranch Heritage Museum has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address, and telephone number are listed below. All deliveries via express carrier should be addressed as follows:

Gift Shop RFP Evaluation Committee
%Jean Gomez, Procurement Manager
Farm & Ranch Heritage Museum
4100 Dripping Springs Road
Las Cruces NM 88011-5067
Phone: 575-522-4100
FAX: 575-522-3085
E-mail: jean.gomez@state.nm.us

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 Museum employees do not have the authority to respond on behalf of the Museum. Any question, comment or concern will be shared with all interested parties to this proposal. **Fax or e-mail proposals will not be accepted.**

E. DEFINITION OF TERMINOLOGY

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

“Agency” means the Department of Cultural Affairs.

“Close of Business” means 5:00pm Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“Contract” means a written agreement for the procurement of items of tangible personal property or services.

“Contractor” means a successful Offeror who enters into a binding Lease.

“Department” – For purposes of administering the RFP and associated proposals, “Department” means the Department of Cultural Affairs.

“Desirable” – The terms “may”, “can”, “should”, “preferably”, or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

“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.

“Evaluation Committee” means a body determined by the Museum administration to perform the evaluation of offeror proposals.

“Evaluation Committee Report” means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the Museum Board of Directors for lease award. It contains all written determinations resulting from the procurement.

“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.

“Lease” means a written agreement for the procurement of items of tangible personal property or services.

“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.

“Museum” means the Farm & Ranch Heritage Museum, a division of the State’s Department of Cultural Affairs.

“Offeror” is any person, corporation, or partnership that chooses to submit a proposal.

“Procurement Manager” means the person or designee authorized by the Farm & Ranch Heritage Museum to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

“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.

“Secretary” means the Cabinet Secretary of the Department of Cultural Affairs.

F. **BACKGROUND INFORMATION**

This section provides background on the Farm & Ranch Heritage Museum, a division of the State’s Department of Cultural Affairs, which may be helpful to the Offeror in preparing its proposal. The Museum is a 47-acre site that includes the Bruce King Building and several exterior barns, fields, and supporting facilities. The King Building includes facilities for a gift shop/snack bar, meeting spaces, and a catering kitchen.

Its mission statement states: “The Museum connects the present generation to the history of farming and ranching in New Mexico, inspiring a deeper appreciation and understanding of the state’s rich heritage. The Museum accomplishes this by providing exhibitions and programs that enable its users to understand and learn from the past in ways that enrich their present lives and help them shape a better future.”

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. **SEQUENCE OF EVENTS**

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

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1. Issue of RFP	Museum	March 11, 2009
2. Distribution List Response	Potential Offerors	March 23, 2009
3. Pre-Proposal Conference/Site Visit	Museum	March 23, 2009

4. Deadline to Submit Questions	Potential Offerors	March 26, 2009
5. Response to Written Questions/RFP Amendments	Museum	March 27, 2009
6. Submission of Proposal	Offeror	Close of Business April 3, 2009
7. Proposal Evaluation	Evaluation Committee	April 6, 2009
8. Selection of Finalists	Evaluation Committee	April 6, 2009
9. Best and Final Offer	Offeror	Close of Business April 9, 2009
10. Oral Presentations by Finalists	Offeror	April 10, 2009
11. Finalize Lease	Museum & Offeror	April 30, 2009
12. Execution of Lease	Museum Board of Directors	May 15, 2009
13. Protest Deadline	Offeror	June 1, 2009
14. Oversight Approval	State Board of Finance	June 24, 2009
15. Start of Contract Term / Operations Begin	Awarded Offeror (Vendor)	July 1, 2009

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 Mark Santiago, Museum Director, by authority of the Museum’s governing Board of Directors.
2. Distribution List Response – 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 A) to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated, and returned by the pre-proposal conference/site visit on March 23, 2009. 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 name shall not appear on the distribution list.
3. Pre-Proposal Conference / Site Visit – All Offerors shall be required to attend a pre-proposal meeting at 1:00pm on March 23, 2009, in the Conference Room of the King Building at the Farm & Ranch Heritage Museum. At that time all Offerors will be given a tour of and be allowed to inspect the Premises, as well as to pose any questions regarding this RFP, in order to prepare their best proposal.

4. 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 March 26, 2009. All written questions must be submitted via e-mail to the Procurement Manager (see Section I, Paragraph D) or in writing at the pre-proposal conference/site visit.
5. Response to Written Questions/RFP Amendments – Written responses to written questions and any RFP amendments will be distributed on March 27, 2009, via e-mail 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, which shall result in the Offeror's organization name being deleted from the procurement distribution list.
6. Submission of Proposal – ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE **BY CLOSE OF BUSINESS ON APRIL 3, 2009.** ***Proposals received after this deadline will not be accepted.*** The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the GIFT SHOP RFP. 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 lease award.
7. Proposal Evaluation – The evaluation of proposals will be performed by an Evaluation Committee of Museum Board and staff members. The Evaluation Committee will meet one or more times on or about the time(s) noted in the Sequence of Events to assess the written proposals. 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. The Evaluation Committee's meetings may be subject to the provisions of the Open Meetings Act.
8. Selection of Finalists – Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations will be determined at this time.
9. Best and Final Offer – Finalist offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by the close of business April 9, 2009. Best and final offers may be clarified and amended at the finalist offeror's oral presentation.
10. Oral Presentations by Finalists – The Evaluation Committee will meet with each finalist offeror to hear its presentation about its proposal and to participate in a

question-and-answer session, as outlined elsewhere in this RFP. The time of the interview, which will take place in the King Building Conference Room at the Museum, will be coordinated by the Procurement Manager with the Offeror's agent, as described in its letter of transmittal in its proposal. Each presentation will be limited to one (1) hour in duration.

11. Finalize Lease – The lease will be finalized with the most advantageous Offeror between April 10th and April 30th, 2009. In the event that mutually agreeable terms cannot be reached within the time specified, the Museum reserves the right to finalize a lease with the next most advantageous Offeror without undertaking a new procurement process.
12. Execution of Lease – After review of the Evaluation Committee Report, the recommendation, and the signed lease, the Museum's governing Board of Directors will approve and execute the lease at its regular meeting of May 15, 2009 (or at a special meeting called for the purpose). The lease 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 lease may be subject to the approval of the New Mexico Board of Finance.
13. 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 lease award and will end at the close of business on June 1, 2009. Protests must be written and must include the name and address of the protestor and the RFP title and number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested. The protest must be delivered to: Mark Santiago, N.M. Farm & Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces NM 88011-5067. Protests received after the deadline will not be accepted.
14. Oversight Approval – The lease award may be subject to approval by the State Board of Finance. If so, it is the Museum's intention to have the Lease be considered by the Board of Finance at its next available scheduled meeting following the Lease's approval by the Museum's Board of Directors. Due to the deadline for submission of items for the Board of Finance agenda, this lease would be expected to appear on the agenda for the meeting of June 24, 2009.
15. Start of Contract Term / Operations Begin – If there are no changes in the sequence of events, the lease term and vendor operations will begin on July 1, 2009. Otherwise it will be the day following oversight approval by the Board of Finance or the Lease Award, whichever is later.

C. GENERAL REQUIREMENTS

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 lease that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the lease with the Farm & Ranch Heritage Museum.
4. Subcontractors – The prime contractor shall be wholly responsible for the entire performance described in the lease. Subcontracting will not be permitted.
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. Farm & Ranch Heritage Museum personnel will not merge, collate, or assemble proposal materials.
6. Offeror's Rights to Withdraw Proposal – Offerors will be allowed to withdraw its proposal 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 for receipt of a best and final offer if one is submitted.
8. Disclosure of Proposal Contents – The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information. If a request is received for disclosure of data for which an offeror has made a written request for confidentiality, the Museum Director 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 Farm & Ranch Heritage Museum to the use of any proposed professional services until or unless a valid written lease 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 Museum determines such action to be in the best interest of the State of New Mexico.
11. Sufficient Appropriation – Any lease awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Sending written notice to the contractor will effect such termination. The Farm & Ranch Heritage Museum’s decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.
12. Legal Review – The Farm & Ranch Heritage Museum 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 – The laws of the State of New Mexico shall govern this procurement and any agreement with offerors that may result.
14. Basis for Proposal – Only information supplied by the Farm & Ranch Heritage Museum in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of offeror proposals.
15. Lease Terms and Conditions – The lease between the Museum and a vendor will follow the format specified by the Museum Board and contain the terms and conditions set forth in the sample lease attached. However, the Museum reserves the right to negotiate with a successful offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful offeror’s proposal will be incorporated into and become part of the contract.
16. Offeror’s Terms and Conditions – Offerors must submit with its proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the Farm & Ranch Heritage Museum.
17. Contract Deviations – Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Farm & Ranch Heritage Museum 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 Farm & Ranch Heritage Museum reserves the rights to require a change in contractor representatives if the

assigned representatives are not, in the opinion of the Farm & Ranch Heritage Museum, 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. Museum Rights – The Museum 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 Farm & Ranch Heritage Museum 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 Farm & Ranch Heritage Museum.
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. State and Local Ordinances – In submitting a proposal, the Offeror represents that the Offeror has familiarized himself with the nature and extent of the RFP dealing with federal, state, and local requirements that are part of this RFP. The successful Offeror(s) shall perform work under the resultant Lease in strict accordance with the latest version of all State and local codes, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the successful Offeror (Vendor). In the event of a conflict between various codes and standards, the more stringent shall apply.
28. Status of Successful Offerors – The successful Offeror (Vendor) is an independent contractor performing services for the Museum and neither he/she nor his/her agents or employees shall, as a result of the resultant Lease, accrue leave, retirement, insurance, bonding authority, use of State vehicles, or any other benefits, prerequisites, or allowances normally afforded only to employees of the State. The successful Offeror (Vendor) acknowledges that all sums received under the resultant Contract are personally reportable by him/her for income, self-employment, and other applicable taxes.

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.

B. NUMBER OF COPIES

Offerors shall deliver six (6) identical copies of its proposal to the location specified in Section 1, Paragraph D on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.

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) Responses to Mandatory Specifications
- e) Service Provider Form
- f) Response to Museum Terms and Conditions
- g) Offeror's Additional Terms and Conditions
- h) Other Supporting Material

Within each section of its proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates, or expenses must occur only in a separate envelope.

Any proposal that 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 from other portions of the offeror's proposal.

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

2. Letter of Transmittal

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

- 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, e-mail address, and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) Identify the names, titles, e-mail addresses, and telephone numbers of persons to be contacted for clarification;
- e) Be signed by the person authorized to contractually obligate the organization;
- f) Explicitly indicate acceptance of the Conditions Governing the Procurement stated in the RFP;
- g) Acknowledge receipt of all amendments to this RFP.

IV. MANDATORY SPECIFICATIONS

Offerors should 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.**

A. Experience

Offerors must submit a statement of relevant experience. The documentation must thoroughly describe how the Offeror has supplied expertise for similar contracts and work related to this RFP. The following information must be specified:

1. Your interest in providing gift shop/snack bar services at the Museum.
2. A description of your company.
3. Your background and history in the retail sales industry.
4. Your proposed approach to gift shop and snack bar operations at the Museum.
5. Your past history in working with the Museum.
6. Any special skills in marketing applicable to promoting the gift shop/snack bar and the Museum to the public.

B. Standards and Compensation

1. Offeror's proposals will address the following standards: customer service and satisfaction; complement the mission of the Museum; providing quality products; operating on a sound financial basis; generating revenue; and producing revenue or other valuable consideration for the Museum.

2. Offeror’s proposal shall include in its proposal its offer of compensation for the desired services outlined in this procurement. This may be a combination of cash rent and in-kind services, the latter which may be defined as amounts for advertising, marketing, promotional materials, or similar activities in support of Museum activities, events, or programs.

C. Service Provider Form

Offeror must complete the Gift Shop Service Provider Form, included in the Appendix.

D. Sample Menu and Inventory

Offerors must submit sample menus detailing food items for the snack bar, cost per person, and projected prices. Offerors must provide an overview list of proposed inventory and projected prices in its proposal.

V. EVALUATION

A. Evaluation Criteria

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. A maximum total of 1000 points are possible in scoring each proposal for the evaluation. The Selection Committee will evaluate the proposals and may or may not conduct interviews with Offerors applying for selection. The evaluation criteria to be used by the Selection Committee and the corresponding point values for each criterion are as follows:

1. Cost / Financial Benefit to Museum300 points
2. Benefit to Overall Museum Mission.....250 points
3. Ability to Provide Products Described and Services150 points
4. Special Skills in Marketing100 points
5. Fiscal Feasibility / Financial Soundness of Offeror100 points
6. Previous Experience.....100 points
7. Required Forms.....0 points

B. Evaluation Factors

A brief explanation of each evaluation category is listed below. Information in one category may overlap information in other categories. Offerors are encouraged to fully address each category completely, as points are assigned for responses to each separate category.

1. Cost / Financial Benefit to the Museum – Provide proposal for compensation terms to Museum, including willingness to provide discounts to Museum members (and amount). If proposed compensation includes in-kind services, defined as (but not limited to) advertising, marketing, and promotional materials in support of Museum activities, events, or programs, proposal should detail what those in-kind services would be, their amounts, and how Offeror would demonstrate completion of those in-kind services. The greater the financial benefit to the Museum and its users as demonstrated in the Offeror’s proposal,

the more points will be awarded in this evaluation factor. The Evaluation Committee will consider the proposed compensation for fixed rent (if any) separately from proposed compensation through share of sales (such as, but not limited to, a percentage of gross sales) separately, but will add those points together in this evaluation factor.

2. Benefit to Overall Museum Mission – Offeror should state how its company and its proposal for gift shop goods and snack bar foods would contribute to, further, or otherwise provide benefit to the overall mission of the Museum. The Evaluation Committee will consider the benefits of the proposed gift shop goods and their alignment and appropriateness to the Museum’s mission separately from an assessment of snack bar foods, services, and prices and their appropriateness to the Museum’s visitors and other services, but will add those points together in this evaluation factor. Offerors who can demonstrate in their proposal that the breadth and depth of their offerings (through some combination of larger selection and/or more targeted products) are aligned with or support the Museum’s mission statement and philosophy (which will be discussed in greater detail at the pre-bid conference) will be scored higher. Likewise, Offerors who can demonstrate in their proposal that the breadth and depth of their snack bar offerings and service will be desirable to Museum visitors and will support and aid the Museum’s efforts to increase average length-of-visit will be scored higher.
3. Ability to Provide Products Described and Services – Offeror should elaborate on its ability to provide the products described and provide service to Museum visitors to the gift shop and snack bar. Offerors who can demonstrate a greater specificity and familiarity with what products they can obtain and from which sources will be scored higher. Similarly, Offerors who can demonstrate, through the breadth and depth of the company’s experience or business plan for the Museum facility, that they will be able to provide a strong, stable environment, to acquire stock, and to operate the facility (including staffing) will be scored higher.
4. Special Skills in Marketing – The Museum is seeking a vendor who will be an active partner in promoting the Museum as well as the gift shop/snack bar it operates. Offeror should describe any special skills, abilities, or plans for promoting the gift shop/snack bar and the Museum to the public. Offerors who describe a realistic and vibrant marketing strategy which most closely fits the Museum’s image and mission will be scored higher.
5. Fiscal Feasibility / Financial Soundness of Offeror – Offeror shall demonstrate through historical documentation and business plans that it has the ability to maintain the inventory necessary and to provide the services described herein. Offerors who are unable to demonstrate the fiscal feasibility, financial soundness, or realistic goals of their company to support and operate the facility will be scored lower.
6. Previous Experience – Include information about the Offeror’s previous experience working with the Museum and/or with providing Museum-related products and services. The greater the experience level as demonstrated in the Offeror’s proposal, the more points will be awarded in this evaluation factor.

A serious deficiency in any one category may be grounds for rejection of the proposal regardless of the overall score.

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.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.18.
4. Responsive proposals will be evaluated on the factors in Section V 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 will be invited to make a presentation on its proposals including its business plan for the Museum's gift shop/snack bar facility. The Evaluation Committee will ask questions relevant to a gift shop or snack-bar services at the time of presentation.
5. 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 Museum, taking into consideration the evaluation factors in Section V, will be recommended for lease award as specified in Section II, Paragraph B.11. A serious deficiency in the response to any one factor, however, may be grounds for rejection regardless of overall score.

VI. APPENDICIES

APPENDIX A – ACKNOWLEDGEMENT OF RECEIPT FORM

REQUESTS FOR PROPOSALS

Gift Shop/Snack Bar Services for Farm & Ranch Heritage Museum

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 C.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than 1:00pm on March 23, 2009. 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 Museum’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.

Jean Gomez
Procurement Manager – Farm & Ranch Heritage Museum
4100 Dripping Springs Road
Las Cruces NM 88011-5067
Telephone: (575) 522-4100 Fax Number: (575) 522-3085
jean.gomez@state.nm.us

APPENDIX B – SERVICE PROVIDER FORM

**GIFT SHOP/SNACK BAR SERVICE PROVIDER FORM
FOR THE FARM & RANCH HERITAGE MUSEUM**

Please print clearly

Company Name _____

Physical Address _____

Mailing Address _____

Telephone Number _____

Fax Number _____

E-mail Address _____

Web Site _____

Federal Tax ID # _____

State of New Mexico Gross Receipts

Tax Identification # _____

I wish to enter into a Lease with the Farm & Ranch Heritage Museum to operate a retail gift shop and snack bar.

Owner Name _____

Owner Signature _____

Date _____

APPENDIX C – SAMPLE LEASE AGREEMENT

**SAMPLE AGREEMENT BETWEEN
THE NEW MEXICO FARM AND RANCH HERITAGE MUSEUM
AND
THE VENDOR**

**FOR THE LEASE OF MUSEUM SPACE FOR
THE DEVELOPMENT AND MANAGEMENT OF A GIFT SHOP & SNACK BAR**

This Agreement is made this 15th day of May, 2009, between the New Mexico Farm and Ranch Heritage Museum (the "Museum"), a division of the New Mexico Department of Cultural Affairs, and the Vendor (the "*Vendor*"), a New Mexico corporation.

RECITALS

WHEREAS, pursuant to §18-11-2 NMSA 1978, of the Farm and Ranch Heritage Museum Act, the Museum's purpose is to create a New Mexico Farm and Ranch Heritage Museum, which shall collect, preserve, study and display materials representative of farming and ranching in the state and region and develop and maintain exhibits and programs of an educational nature for the benefit of the citizens of New Mexico and visitors to the state; and,

WHEREAS, consistent with the Request for Proposals issued by the Museum in March 2009, the Museum wishes to enter into an agreement with the *Vendor* for the lease of premises within the Museum authorizing the *Vendor* to operate and administer a gift shop and snack bar as more fully described in this Agreement.

THEREFORE, in consideration of the terms and conditions in this lease, the parties entered into this lease on the 15th day of May, 2009, between the Museum ("Landlord") and the *Vendor* ("Tenant") and agree as follows:

PROPERTY LEASED.

- A. Landlord does hereby lease to Tenant and Tenant hereby leases from Landlord certain areas within the southwestern corner the Bruce King Building of the Museum (herein called "Premises"), to operate a gift shop and snack bar, for storage of related supplies and equipment, office space, and for other similar concession enterprises as may be agreed upon in writing by both parties.
 - B. The Premises consists of a retail space area (approximately 2,682 square feet), a retail storage room (approximately 235 square feet), and a retail office area (approximately 159 square feet). The location and dimensions of said Premises are delineated on Exhibit A, attached hereto. Said Premises are contained within the Museum.
 - C. This Lease is subject to the terms, covenants, and conditions herein set forth and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants, and conditions by it to be kept and performed.
2. **TERM.** The term of this Lease is for ___ *years* commencing July 1, 2009, or when approved by the New Mexico Board of Finance, whichever comes later, and terminating on June 30, 20___, unless sooner terminated as herein provided. Pursuant to NMSA 1978 §13-6-2.1, this agreement may be subject to approval by the New Mexico Board of Finance and will not be effective until such approval is granted. <**ADD renewal language as determined in RFP Process**>
 3. **HOLDING OVER.** Tenant's holding over or continued use or occupancy shall be construed as a month to month tenancy at the same monthly rent and subject to the same terms and conditions set forth in this Lease.

4. **RENT.** In consideration of this Lease, Tenant agrees to pay Landlord in the following manner:
 - A. A monthly rental fee charged by Landlord and paid by Tenant shall be *<As determined in RFP Process>*. Rent for any period that is less than one month shall be a prorated portion of the monthly installment herein based on a thirty (30)-day month.
 - B. As used in sub-paragraph A above, “monthly gross receipts” shall be defined as the net sales of Tenant’s business operations at the Premises minus gross receipts tax for the calendar month preceding the day rent is due. Tenant shall provide Landlord documentation evidencing the monthly gross receipts for that preceding calendar month at the time the rent is due.
 - C. In addition to the monthly rental fee described in sub-paragraph A above, Tenant will provide *<as determined in RFP Process>* per year of in-kind services which may include but is not limited to: advertising, marketing, and promotional materials in support of Museum activities, events, or programs.
 - D. The total monthly rent shall be payable to Landlord, without notice or demand, on or before the twentieth (20th) day of each and every successive calendar month during the term of this Lease.

5. **USE OF LEASED PREMISES.** Tenant may use the leased premises for, among other things, a gift shop and snack bar. Landlord agrees that the Premises are suitable for these purposes or has revealed to Tenant any reasons Landlord knows of or reasonably should know why the Premises might not be suitable for such purposes.

6. **FOOD SERVICES AND ALCOHOLIC BEVERAGES.**
 - A. Lessee shall obtain all applicable and necessary food permits for the operation of food services. Lessee also promises to follow and abide by all applicable federal, state, county, and municipal regulations with regard to food service, storage, and preparation.
 - B. Pursuant to §60-6A-11 NMSA 1978, Landlord will permit Tenant operating in the Premises to conduct wine tastings under Tenant’s winegrower’s license, subject to Tenant applying for, being permitted to, and complying with all applicable regulations of the New Mexico Alcohol and Gaming Division.

7. **CONDITION OF PREMISES.** Landlord warrants that the Premises are in good and safe condition, structurally sound, and of safe design and that they comply with all applicable building codes, ordinances, rules and regulations.

8. **ACCESSIBILITY TO THE DISABLED.** The Landlord warrants that the Premises shall meet standards consistent with the Americans with Disabilities Act (ADA). The Landlord also warrants that the Premises will be maintained in compliance with these standards.

9. **ENVIRONMENTAL SAFETY.** Landlord warrants that the Premises comply with any and all federal and state environmental regulations. During the term of this Lease, Landlord agrees to maintain the Premises consistent with these regulations.

10. **DELIVERY OF POSSESSION.** Landlord warrants that the Premises will be vacant and will put Tenant in possession on the first day of the initial or any subsequent term.

11. **DAMAGE TO PREMISES.**
 - A. If at the inception of this lease or at any time thereafter (including any renewal) all or any part of the leased premises shall be so slightly damaged through any cause, other than Tenant’s willful act, ordinary wear and tear, or repair subject to routine maintenance, as not to be rendered unfit for

Tenant's occupancy, Landlord shall repair the Premises with all reasonable promptness, at Landlord's expense, and the rent shall abate fairly until repairs are completed.

- B. Tenant shall report any damages as soon as possible. Any damage to the Premises or the contents therein will be assessed and determined after inspection by Landlord and Tenant.
 - C. Damage shall be broadly defined to include any condition altered from a normal or previous condition, including but not limited to food, dirt, and beverage residues. Where such damage is believed to constitute a health and safety hazard by Landlord, Landlord may require (if reasonable) for Tenant to remedy the damage.
12. **ALTERATIONS.** Tenant shall obtain the Landlord's written permission before making any alterations or improvements of a permanent nature.
- A. Landlord shall provide the fixtures detailed in Exhibit B. Tenant shall provide the fixtures detailed in Exhibit C. Tenant shall install all other fixtures and equipment necessary for the effective operation of the Premises.
 - B. If Landlord consents to the making of any alterations or improvements to or of the Premises by Tenant, the same shall be made at Tenant's sole cost and expense and under Landlord's direction.
 - C. Upon the expiration or earlier termination of the Lease term, Tenant shall remove from the Premises all Tenant-owned trade fixtures, equipment, and movable personal property and shall promptly repair any damage caused to the Premises by such removal. All of such removal and repair shall be entirely at Tenant's expense.
13. **OWNERSHIP OF IMPROVEMENTS.** All alterations and improvements made to or placed in the premises by Tenant are and shall remain the Tenant's property except as the parties mutually agree otherwise in writing, if such alterations and improvements can be removed without undue damage to the premises and are, in fact, removed by Tenant prior to termination of this lease or any renewal thereof or within a reasonable time after termination. Alterations and improvements of a permanent nature which cannot be removed without undue damage to the premises shall become Landlord's property except as the parties mutually agree otherwise in writing.
14. **CONDITION OF PREMISES UPON SURRENDER.** Based on a walk through by Landlord and Tenant, at the termination of this Lease, Tenant shall surrender the Premises in the condition in which they were at the inception of this lease or as agreed upon during the walk through, excepting:
- A. deterioration caused through reasonable use and ordinary wear and tear;
 - B. alterations, improvements, or conditions made with Landlord's written approval; and
 - C. any change, damage, or destruction not resulting from Tenant's or its guest's willful act(s).
15. **PAYMENT OF ASSESSMENTS, ETC.** The Tenant shall promptly pay all applicable taxes and other exactions assessed or assessable and pay all license fees and permit fees applicable to the Tenant's operations, and acquire and keep current all licenses, municipal, state, or federal, required as the result of the Tenant's operations at the Museum pursuant to this Lease, and shall not allow any of said taxes, excises, or fees to become delinquent. The Tenant shall not permit any mechanic's or materialman's or any other lien to become attached to or be foreclosed upon the Museum or any part or parcel thereof by reasons of work, labor performed, or materials or equipment furnished. Tenant shall pay promptly when due all bills, debts, and obligations incurred by it in connection with its operations or activities on or in the Museum and will not permit the same to become delinquent, and will suffer no lien, mortgage, judgment, or execution to be filed against the *Vendor* which will in any way impair the rights of the Museum under this Agreement.
16. **UTILITIES, JANITORIAL SERVICES, AND SUPPLIES.** Landlord shall pay for all water, gas, heat, light, telephone service, power, sewage charges, and janitorial services as supplied to the Premises, together

with any tax thereon. Tenant shall pay for additional telephone service, including additional lines for credit card machines, fax machines, and other similar units. Landlord shall provide security after normal business hours.

17. RIGHT OF ENTRY. Tenant is responsible for securing the leased Premises. However, Landlord is responsible for the security of the King Building. Landlord or its agent also retains the right to enter upon the leased premises to inspect, to make repairs, and for other reasonable purposes, with Tenant's permission, which shall not be unreasonably withheld. In an emergency, such as fire, Landlord or its agent may enter the premises without securing Tenant's prior permission, but shall give Tenant notice of entry as soon thereafter as practicable.

18. DUTY TO MAINTAIN PREMISES.

A. Tenant shall, at its sole cost and expense, keep clean and in good order, condition, and repair the Premises. Tenant's maintenance obligation with respect to the Premises shall include, but not be limited to, all trade fixtures, equipment and appurtenances thereto. Landlord may, when necessary, reasonably require and request maintenance on the aforementioned fixtures, equipment, appurtenances, and interior surfaces.

B. Tenant will pay for the maintenance of all food service equipment and fixtures, related commercial cleaning services, and disposal of cooking oil in a Health Department-approved container.

19. RIGHT TO ASSIGN OR SUBLEASE. Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet said Premises or any part thereof, or any right or privilege appurtenant thereto.

20. DUTY TO INSURE.

A. Tenant shall obtain, at Tenant's expense, a policy of comprehensive general public liability insurance acceptable to Landlord, and keep it in force during the term of this Lease. This policy shall insure the Landlord and the Tenant against any and all liability and risk arising out of the use, occupancy, or maintenance of the Premises. Such insurance shall be in the amounts of not less than one million dollars (\$1,000,000). Tenant may provide this insurance under a blanket policy, provided that said insurance shall have a Landlord's Protective Liability Endorsement attached thereto and it be used by a carrier licensed in the State of New Mexico. Tenant shall deliver to Landlord, prior to right of entry, copies of policies of liability insurance required herein or certificates evidencing the existence and amount of such insurance with loss payable clauses satisfactory to Landlord. No policy shall be subject to reduction of coverage without a minimum of twenty (20) days written notice to Landlord. All such policies shall be written as primary policies not contributing with and not in excess of coverage which Landlord may carry. In addition, Tenant shall provide Landlord with a certificate of insurance of Workmen's Compensation Liability.

B. To the extent permitted under their respective insurance policies, Landlord and Tenant waive all rights, against each other, for damages arising out of any damage to or destruction of the leased premises caused by fire or other perils insured against.

21. LIABILITY. Any liability incurred by Landlord in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, §41-1-1 *et seq.* NMSA 1978, as amended.

22. LIABILITY INSURANCE. Tenant shall obtain, at Tenant's expense, a policy of comprehensive general public liability insurance acceptable per the requirements of State statutes and keep in force during the term of this Lease. This policy shall insure the Landlord and/or the Tenant against any and all liability and risk arising out of the use, occupancy or maintenance of the Premises. Such insurance shall be in the amounts of not less than one million dollars (\$1,000,000). Tenant may provide this insurance under a blanket policy,

provided that said insurance shall have a Landlord's Protective Liability Endorsement attached thereto by a carrier licensed to operate in New Mexico. Tenant shall deliver to Landlord, prior to right of entry, copies of policies of liability insurance required herein or certificates evidencing the existence and amount of such insurance with loss payable clauses satisfactory to Landlord. No policy shall be subject to reduction of coverage without a minimum of twenty (20) days written notice to Landlord. All such policies shall be written as primary policies not contributing with and not in excess of coverage which Landlord may carry. In addition, Tenant shall provide Landlord with a certificate of insurance of Workmen's Compensation Liability.

23. INDEMNIFICATION.

- A. Notwithstanding any other provision of this Lease to the contrary, no term or condition of this Lease shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits or protection provided to Landlord under the New Mexico Tort Claims Act, §41-4-1 *et seq.* NMSA 1978, as amended or as may be amended (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted). The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of New Mexico, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the New Mexico Tort Claims Act, §41-4-1 *et seq.* NMSA 1978, as amended or may be amended. Any provision of this Lease, whether or not incorporated herein by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of Landlord and the State of New Mexico to the above cited laws. The parties agree that as among the parties, Landlord's and the State of New Mexico's liability shall be determined pursuant to said statutes whether claims are based on Landlord's acts or omissions within New Mexico or elsewhere.
- B. Tenant agrees to defend, indemnify, and hold harmless the Museum and their officers, officials, agents, and employees from and against all suits, actions, claims, demands, penalties, fines, liabilities, settlements, damages, costs, and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against the **Vendor** and/or the Museum because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons, or property arising out of or resulting from any negligent act, error, or omission of the Tenant, its agents, subcontractors, or its employees arising out of the operations of the Tenant or the Tenant's performance, purported performance, or non-performance of this Agreement or Tenant's activities at the Museum.
- C. The Landlord shall not, however, in any event be required to indemnify or hold harmless the Tenant pursuant to this paragraph with respect to any bodily injury, death, or injury to or destruction of property that results from the negligence or willful misconduct of the Tenant or their agents, servants, or employees.
- D. In addition, with respect to any claims, actions, suits, damages or judgments caused by or resulting from acts, omissions, or operations of the Tenant, its agents, servants, subcontractors, or employees, the Tenant shall:
 - i. investigate or cause the investigation of accidents involving such injuries;
 - ii. negotiate or cause to be negotiated all claims made as may be deemed expedient by Tenant, and defend, or cause to be defended, suits for damages, even if groundless, false, or fraudulent, brought on account of such injuries or damages, in the name and on behalf of the Tenant or the Landlord;
 - iii. pay and satisfy judgments finally establishing the liability of the Tenant or the Landlord in all actions defended by the Tenant pursuant to this paragraph; and
 - iv. pay, or cause to be paid: (1) all costs taxed against the Tenant or the Landlord in any legal proceeding defended or caused to be defended by the Tenant as aforesaid; (2) any interest accruing up to the date of payment by the Tenant; (3) all premiums charged upon appeal bonds

required in such proceedings; and (4) all expenses incurred by the Tenant or the Landlord for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred, should the Tenant fail to provide the defense and indemnification required herein.

- E. Tenant shall, promptly upon receipt, give the Landlord every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. In the event the Tenant shall fail to give the Landlord notice of any such demand, notice, summons, or other process received by the Tenant and such failure to give notice shall result in prejudice to the Landlord in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release the Landlord of its liability as set forth in this paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this subsection shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the Tenant or the Landlord. This paragraph shall not be construed as a waiver of the Landlord's immunity. The provisions of this paragraph shall not be construed to prohibit the Tenant from seeking contribution or indemnity from any third-party which may have caused or contributed to the event for which that party indemnified the Tenant or the Landlord. Tenant's agreement to defend, indemnify, and hold the Tenant and the Landlord harmless shall not be limited by reason of the specification of any particular insurance coverage in this lease agreement.

- 24. HOLD HARMLESS.** Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant's use of the Premises or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the Tenant in or about the Premises, and shall further indemnify and hold harmless Landlord against and from any and all claims arising from any breach, default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, any officer, agent, or employee, of Tenant and from all costs, attorney's fees and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon and in case any action or proceeding be brought against Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents on the Premises.

25. EARLY TERMINATION.

- A. The terms of this Lease are contingent upon sufficient appropriations and authorizations being made by the Legislature of the State of New Mexico for the performance of this Lease. If sufficient appropriations and authorizations are not made by the Legislature, this Lease shall terminate 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 Tenant and shall be final.
- B. Notwithstanding any provisions for termination in this Lease, either party may terminate this Lease without cause upon sixty (60) days written notice to the other party.

- 26. RIGHT TO TERMINATE UPON BREACH OF CONDITION OR AGREEMENT.** Either party may terminate this Lease upon the other party's substantial breach of any term or condition contained in this Lease, provided that the breaching party shall be given thirty (30) days from the receipt of written notice of a substantial breach to cure the breach or to begin and proceed, with due diligence, to cure a breach that cannot be cured within thirty (30) days. In the event of a substantial breach, the non-breaching party shall give the breaching party written notice that describes the nature of the breach and notifies the breaching party that, unless the breach is cured within the time limits contained herein, the Lease shall terminate without further notice at the end of the cure period. Upon termination of the Lease, Tenant shall surrender the premises to Landlord and shall be obligated to pay rent only to the date of surrender.

27. RULES AND REGULATIONS.

- A. Tenant shall faithfully observe and ensure compliance with the rules and regulations, subject to sound business practices and the Museum's image and quality, that Landlord may from time to time promulgate and/or modify ~~as agreed to by all affected parties~~. Landlord will provide copies of the applicable rules and regulations, including those policies and procedures dealing with the health and safety of visitors to the Museum campus, to Tenant within ten (10) business days of the effective date or signing of this Agreement and when any rules or regulations are promulgated and/or modified.
 - B. All public entrances, exits, and designated fire exits of the Premises and other areas of the Museum shall be kept unobstructed and open to the public at all times.
 - C. It is the responsibility of Tenant to enforce all rules, regulations, policies, and procedures described or referred to herein.
28. **HOURS OF BUSINESS.** Tenant shall operate the enterprise concessions described in this Agreement, at a minimum during the Museum's hours of operation. At the execution of this Lease, the Museum's hours of operation are Monday through Saturday from 9:00 a.m. until 5:00 p.m. and Sunday from 12 noon until 5:00 p.m. Landlord and Tenant agree that Tenant shall use reasonable efforts to accommodate special events of the Museum which might occur outside regular operation hours on an event-by-event basis. Tenant shall conduct said business in accordance with sound business practices and consistent with the Museum's image and quality.
29. **SIGNS AND USE OF LANDLORD'S LOGO.** Landlord shall approve all signs identifying Tenant's enterprise concessions either within the Premises or within the physical boundaries of the Museum, its common areas, and parking lots to the satisfaction of Tenant. Landlord shall further approve any advertising or use of the logo of the Museum prior to Tenant using such logo in connection with any promotion, advertising, display, or other use in writing and shall take all action necessary to allow such use of the logo. Tenant shall not purport to represent the Landlord in any promotion, advertising, or display. Tenant will be responsible for the expense of the purchase, installation, and operation of any signs proposed by Tenant and approved by Landlord. Tenant shall collaborate with the Museum Director for any production of advertising or use of the name of the Museum or its logo prior to Tenant using such logo in connection with any promotion, advertising, display, or other writing intended for public dissemination. All signs or similar advertising or advertising devices will be erected in accordance with local applicable laws.
30. **APPLICABLE LAW.** This Lease shall be governed by the laws of the State of New Mexico.
31. **MERGER OF PRIOR AGREEMENT.** This Lease incorporates all of the conditions, agreements and understandings between the parties concerning the subject matter of this Lease, and all such conditions, agreements, and understandings have been merged into this written Lease. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Lease.
32. **AMENDMENTS TO BE IN WRITING.** This Lease shall not be altered or amended except by instrument in writing executed by the parties.
33. **WAIVER.** Waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same term, covenant or condition nor shall any practice which may become established between the parties in the administration of this Lease be construed to waive or lessen Landlord's right to insist upon Tenant's performance in strict accordance with such terms, covenants or conditions. Subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing by Landlord. The fact that Landlord performs

an act that it is not (by law or under this Lease) obligated to perform shall under no circumstances be deemed a waiver of its right not to perform such act or similar acts in the future. If Tenant fails to perform any of its affirmative obligations under this Lease, such unperformed obligation shall survive the expiration or sooner termination of this Lease. In addition, Landlord's consent to or approval shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant, whether similar or dissimilar to the act which was consented to or approved by Landlord.

34. **PARTIAL INVALIDITY.** Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.
35. **PLANS AND RIDERS.** Exhibits and attachments affixed to this Lease are a part thereto.
36. **MARGINAL HEADINGS.** The marginal headings and paragraph titles to this Lease are not a part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.
37. **TIME.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.
38. **QUIET POSSESSION.** Upon Tenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions, and provisions of Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease.
39. **CUMULATIVE REMEDIES.** No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.
40. **ATTORNEY'S FEES.** Should it be necessary for Landlord to employ legal counsel to enforce any of the provisions herein contained, Tenant agrees to pay all attorney's fees and court costs reasonably incurred.
41. **LATE CHARGES.** Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which are difficult to ascertain. Accordingly, if any installment of rent or any sum due from Tenant shall be received by Landlord or Landlord's designee within ten (10) days after written notice that said amount is past due, then Tenant shall pay to Landlord a late charge equal to the maximum amount permitted by law (and in the absence of any governing law, ten percent (10%) of such overdue amount), plus any attorney's fees incurred by Landlord by reason of Tenant's failure to pay rent and/or other charges when due hereunder. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver or Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.
42. **NOTICE.** The Procurement Code, §13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.
43. **EQUAL OPPORTUNITY COMPLIANCE AND DRUG-FREE WORKPLACE.** Tenant agrees to abide by all Federal and State laws and regulations pertaining to equal employment opportunity and maintenance of a drug-free workplace. In accordance with all such laws and regulations, Tenant agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or

handicap, be excluded from employment with or participation in, be denied the benefits or, or be otherwise subjected to discrimination under any program or activity performed under this Lease. If Tenant is found to be not in compliance with these requirements during the life of this lease, Tenant agrees to take appropriate steps to correct these deficiencies. Tenant shall follow the State's and Department of Cultural Affairs' policies on a drug-free workplace.

44. **RECORDS AND AUDITS.** Tenant shall maintain complete and proper books, records and accounts of its gross sales, both for cash and on credit. Landlord, its agents and employees, and the New Mexico Department of Finance Administration shall have the right at any and all times, during regular business hours, to examine and inspect all of the books and records of the Tenant, including any sales tax reports pertaining to business of the Tenant conducted in, upon, or from the Premises, for the purpose of investigating and verifying the accuracy of any statement of sales or compliance with any requirements of state law. Tenant shall keep all said records for three (3) years after the expiration of the term of this Lease. If such examination shall disclose any willful or substantial inaccuracies, this Lease may thereupon be canceled and terminated, at the option of Landlord.
45. **STATUS OF TENANT.** The Tenant, and its agents, and employees, are not employees of the State of New Mexico. The Tenant, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Lease Agreement.
46. **AUTHORITY OF TENANT.** The individual executing this Lease on behalf of Tenant, *a non-profit corporation*, represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with the bylaws of said corporation, and that the Lease is binding upon said non-profit corporation.
47. **LEASE BINDING ON HEIRS, ETC.** This Lease and the covenants and conditions herein contained, subject to the provisions as to assignment and subletting, is binding upon the heirs, executors, administrators, personal representatives, assignees, and successors-in-interest of the parties.
48. **TENANT'S DEFAULT.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:
 - A. The vacating or abandonment of the Premises for a period of thirty (30) days by Tenant;
 - B. The failure by Tenant to make any payment of rent or other payment required to be made by Tenant hereunder within ten (10) days after written notice to Tenant;
 - C. The failure by Tenant to observe or perform any of the covenants, conditions or provisions, rules and regulations in or referred to by Paragraph 27 (Rules and Regulations) of this Lease to be observed or performed by the Tenant, where such failure shall continue for a period of twenty (20) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than twenty (20) days are reasonably required for its cure, then Tenant shall not be deemed in default if Tenant commences such cure within said twenty (20) days period and thereafter diligently prosecutes such cure to completion;
 - D. The making by Tenant of any general assignment or general arrangement to the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankruptcy, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of petition filed against Tenant, the same is dismissed with sixty (60) days, or the appointment of a Trustee or Receiver to take possession of substantially all of Tenant's assets located on the Premises or of Tenant's interest in this Lease where possession is not restored to Tenant within thirty (30) days, or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days;

- E. The failure of Tenant to operate the Premises during all hours of business as set forth in Paragraph 28 (Hours of Business);
- F. If an audit or examination performed pursuant to Paragraph 44 (Records and Audits) discloses any willful or substantial inaccuracies; or
- G. The assignment of this Lease or subletting of the Premises by Tenant.

49. REMEDIES IN DEFAULT. In the event of any such default or breach by Tenant, Landlord may at anytime thereafter, in its sole discretion, with or without notice of demand and without limiting Landlord in the exercise of a right or remedy which Landlord may have by reason of such default or breach:

- A. Terminate Tenant’s right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant all damages incurred, but not limited to, the cost of recovering possession of the Premises, expenses of re-letting, including necessary renovation and alteration of the Premises; and reasonable attorney’s fees. Unpaid installments of rent or other sums shall bear interest from the date due at the legal minimum rate; or
- B. Maintain Tenant’s right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event, Landlord shall be entitled to enforce all of Landlord’s right and remedies under this Lease, including the right to recover the rent and any other charges and adjustments as may become due hereunder; or
- C. Pursue any other remedy not or hereafter available to Landlord under the laws or judicial decisions of the State of New Mexico.

50. ADDRESS FOR NOTICES, PAYMENT OF RENT, ETC. Notices required under this Lease and rental payments shall be made at the following addresses, except as changed by written notice to the opposite party:

To Landlord at:

New Mexico Farm & Ranch Heritage Museum
 4100 Dripping Springs Road
 Las Cruces NM 88011-5067

with a copy sent to
 N.M. Department of Cultural Affairs
 407 Galisteo Street Suite 260
 Santa Fe NM 87501-2834

To Tenant at:

Vendor Name
Vendor Address

51. LIST OF EXHIBITS ATTACHED. The following exhibits and attachments affixed to this Lease are a part thereto:

- A. Map of the Bruce King Building Indicating Location of the Premises Described in this Agreement.
- B. List of Equipment Provided by Landlord.
- C. List of Equipment Provided by Tenant.

SIGNATURES AND REQUIRED APPROVALS

IN WITNESS WHEREOF, the parties have executed this Agreement between the Museum and the Vendor for the Lease of Museum Space for the Development and Management of a Gift Shop and Snack Bar dated the 15th day of May, 2009.

New Mexico Farm and Ranch Heritage Museum

By: _____
Dave DeWitt, Chairman

As authorized and approved by the Board of Directors of the New Mexico Farm & Ranch Heritage Museum at its meeting of May 15, 2009.

STATE OF NEW MEXICO)
) ss.
COUNTY OF DOÑA ANA)

The foregoing is acknowledged before me this ____ day of _____, 2009, by Dave DeWitt, chairman of the Farm & Ranch Heritage Museum Board of Directors, on behalf of the New Mexico Farm & Ranch Heritage Museum.

Notary Public

My commission expires:

Vendor Corporate Name

By: _____
Signer

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

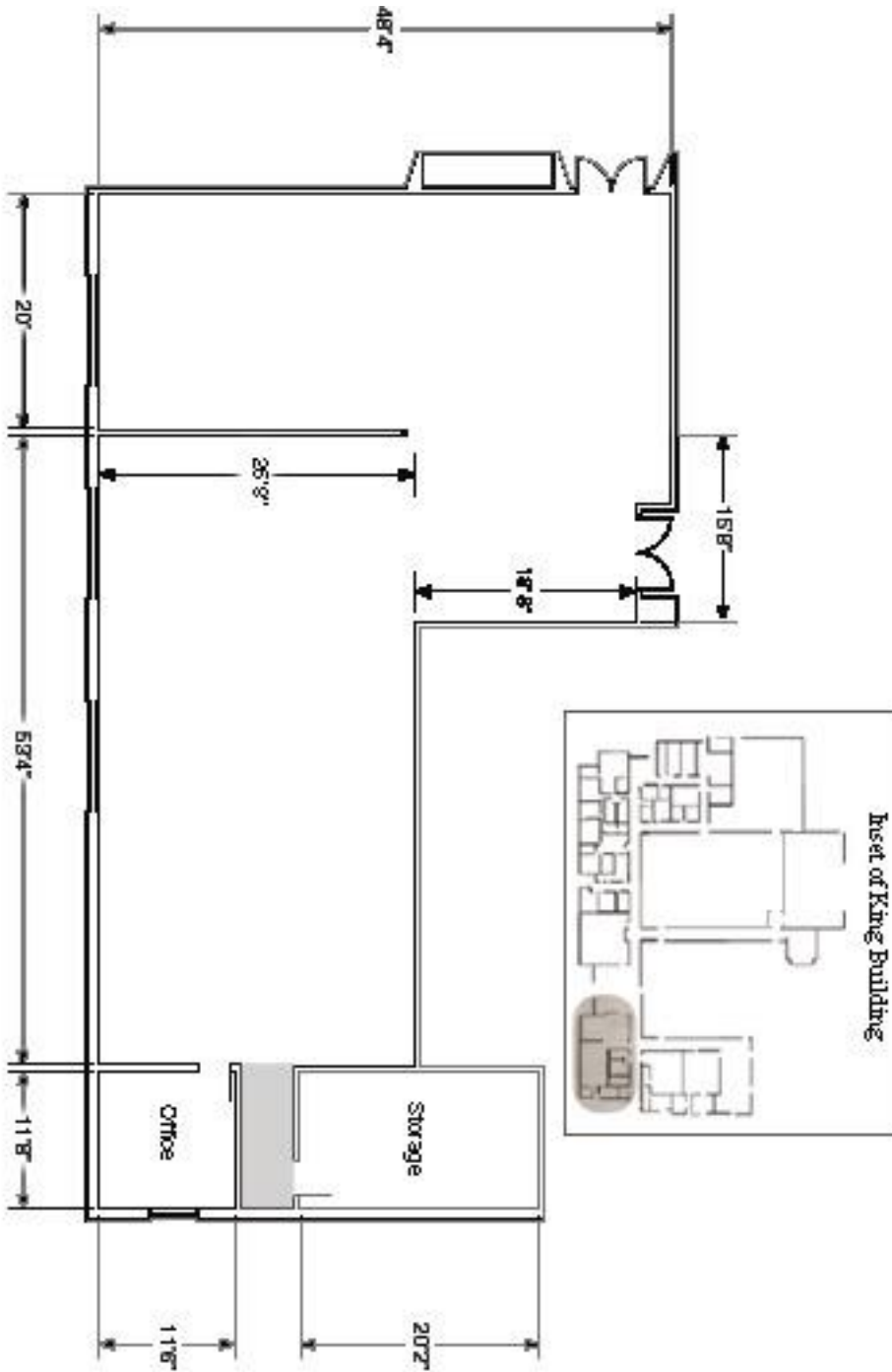
The foregoing is acknowledged before me this ___ day of _____, 2009, by *Signer, officer of the Vendor Corporation, a corporation* organized under the laws of New Mexico.

Notary Public

My commission expires:

Exhibit A.

Map of the Premises Described in this Agreement
(with inset of Bruce King Building).



GIFT SHOP AND SNACK BAR
(Excluding shaded area)

Exhibit B.

List of Equipment Provided by Landlord.

Antique mercantile display case with glass

Antique patio cart

Avaya telephone unit/phone line (ext. 130)

Cabinet (four-sided)

Cabinetry (Cinnamon Oak) and wineberry counter top (56 linear feet)

Combination cabinet and detachable tall shelving unit

Commercial under-counter refrigerator (Model #UR-27-SST, Serial #E0747613)

Counter popcorn popper (Model #MPC-1A, Serial #420040806008)

Credenza (three-door)

Exhibit components (assorted, to be rotated out by consultation of Museum staff and Tenant)

Faucet (splash-mount, over-counter, 8 inch)

Hotdog steamer/Bun warmer (Model #DS-1A, Serial #430030805018)

Microwave (Model #ALD10DT, Serial #11443055JL)

Nacho chip merchandiser (Model #GOLSP2185ST)

Sink (three-compartment, sixteen-gauge stainless steel, free-standing)

2 – Stepped display units

2 – Warmer with heated pump (Model #APWCCW56822)

Wiremold 12 ft. split compartment power pole (#25DTP-412)

20 – Wood chairs

6 – Wood bar stools, 24” high

5 – Wood tables, 36” square

Exhibit C.

List of Equipment Provided by Tenant.

List of items provided by the Tenant at Outset of the Agreement