

City of Albuquerque

Request for Proposals

Solicitation Number: RFP2007-003-SV

**"Advertising Concession:
ABQ RIDE Vehicles and Facilities"**



Proposal Due Date: 8 November 2006 - NLT 4:00 PM {Local Time}

The time and date proposals are due shall be strictly observed.

Pre-Proposal Conference: 18 October 2006 – 10:00 AM {Local Time}

City of Albuquerque
Department of Finance and Administrative Services
Purchasing Division
09/2/06

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OFFEROR CHECKLIST

Checklist of Items to be Completed and Submitted with Proposal. The following forms and questionnaires are to be completed in full, fully executed, signed, and included as part of the Proposal you submit:

1. Proposal

- Hard Copy: One (1) Original and seven (7) copies of your Proposal.
Soft Copy: One Original

2. Forms

- Business Information Statement (see Part 5, Proposal Form 1, of this RFP).
- Qualifications and Experience Statement (see Part 5, Proposal Form 2 of this RFP),
- Financial Information Statement (see Part 5, Proposal Form 3 of this RFP).
- Advertising Program (see Part 5, Proposal Form 4 of this RFP).
- Compensation Offer (see Part 5, Proposal Form 5 of this RFP).
- Disadvantaged Business Enterprises Participation Form (see Part 5, Proposal Form 6 of this RFP).
- Offeror's Disclosure Form (see Part 5, Proposal Form 7 of this RFP).

3. Addenda Sheets (if applicable)

- Acknowledge, sign and respond to all Addenda issued for this RFP as stated therein..

4. Insurance

- Provide evidence of ability to comply with insurance requirements described in Part 6, Section 10 of the proposed Agreement. (such as insurance binder or certificates of insurance), (see Exhibit I of the proposed Agreement).

INTRODUCTION

The City of Albuquerque Purchasing Division is soliciting responses for its Transit Department, ABQ RIDE (hereinafter referred to as “Transit”) and requests proposals for Bus & Facility Advertising Sales and Services (“Advertising”).

The City of Albuquerque Transit Department has had a commercial advertising program for the past 15 years. For the past 9 years, however, bus panels on the sides and backs of Transit buses, vans, and trolleys have become a widely accepted means of advertising. The relative low cost of bus panel advertising as compared to the cost of billboard advertising has contributed to its increased interest and current success.

Bus panels exist on the sides, backs, and interiors of all City buses. Transit, as defined in this request for proposals, will no longer use the frame/advertisement (“panel”) method for exterior advertising, and will be exclusively soliciting bids for self-adhering, vinyl decal advertisements (materials used must be 3M ScotchCal or equivalent). Transit currently has approximately 150 buses and 50 paratransit vehicles on which to advertise. Transit is also in the process of adding 5 new articulated buses to expand Rapid Ride services and replacing a significant amount of the fleet with environmentally friendly hybrid vehicles. Transit would also like to encourage the sale of vinyl bus wraps, which cover a large segment (in some cases, all) of the exterior of the vehicle.

In the interest of expanding the available products to generate revenue for Transit, this RFP will not be limited to just interior and exterior vinyl panels on transit vehicles. Also available for sale under the terms of this RFP will be advertising space in the new ABQ RIDE Guide (Transit’s schedule book), Rapid Ride monument signs and LED displays. Transit is exploring the possibility of equipping the fixed route fleet with onboard televisions. Other advertising product opportunities may be introduced during the life of the contract.

ABQ RIDE is committed to implementing a shelter construction / advertising agreement similar to what was recently agreed to with SamTrans (a transit provider for San Mateo County, California). The contractor (CBS Outdoor) has agreed to construct transit shelters in exchange for advertising space on the structure over a span of 15 years. This RFP will grant additional points to a proposal for providing a shelter construction / advertising component. For more information regarding the SamTrans agreement, see http://www.samtrans.org/news_2006_shelter_contract.html.

In general, the successful Offeror (the “Contractor”) will be responsible for the sale of advertising in and on Transit vehicles and facilities to commercial and non-profit advertisers. In addition, the Contractor will coordinate the installation and removal of the advertisement(s) from the buses. Bus wraps will require special installation and removal procedures that will need to be detailed in the proposal.

**PART 1
INSTRUCTIONS TO OFFERORS**

1.1 RFP2007-003-SV, “Advertising Concession: ABQ RIDE Vehicles and Facilities.”

1.2 Proposal Due Date: 8 November 2006, NLT 4:00 PM (MDT)

The time and date proposals are due shall be strictly observed.

1.2.1 Pre-Proposal Conference: Although not mandatory, potential Offerors are strongly encouraged to attend the scheduled pre-proposal conference. Each Offeror is expected to examine this Request for Proposals (RFP) document in its entirety to become familiar with the project, terms and conditions of this solicitation. **Those Offerors who do not attend will be responsible for requesting any addenda or other information that may be generated as a result of this pre-proposal conference.**

1.2.2 Purpose: The purpose of this pre-proposal conference will be to clarify the contents of this Request for Proposals in order to prevent any misunderstanding of the City's directives. Any doubt as to the requirements of this RFP or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine the appropriate action necessary, if any, and issue a written addendum to this Request for Proposals. Oral statements or instructions will not constitute an addendum to this Request for Proposals.

1.2.3 Questions/Clarifications: The City shall have in attendance key personnel to answer questions or discuss issues that may arise. **In order to ensure all potential Offeror questions are received by the Purchasing Office, such questions should be prepared in writing prior to the conference and a copy submitted to the purchasing representative on the day of the conference. Please submit 1 hard copy and 1 electronic copy of written questions on this day.**

1.2.4 Time, Date and Location of Pre-Proposal Conference:

Time & Date: Wednesday, 18 October 2006 at 10:00 AM (Local Time)
Address: Alvarado Transportation Center
100 First Street, SW 2nd Floor Conference Room
Albuquerque, New Mexico 87102

1.3 City Purchasing Office: This Request for Proposals (“RFP”) is issued on behalf of the City of Albuquerque Transit Department by the City Purchasing Office, which is the sole point of contact during the procurement process. All communications regarding this Request for Proposals shall be directed in writing to the Purchasing Office to the attention of Sandy Vescovi as stated herein. Written communication may be made via e-mail, facsimile, U.S. Mail or delivery service.

1.4 Authority: Chapter V, Article V of the Revised Public Purchases Ordinance of the City of Albuquerque, 1994, ("Public Purchases Ordinance"). The City Council, pursuant to Article 1 of the Charter of the City of Albuquerque and Article X, Section 6 of the Constitution of New Mexico, enacted this Ordinance to provide maximum local self-government. To that end, it is intended that this Ordinance govern all purchasing transactions of the City and serve to exempt the City from all provisions of the New Mexico Procurement Code, as provided in Section 13-1-98.K, NMSA 1978.

1.5 Acceptance of Offer: Acceptance of Offer is contingent upon Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the following:

1.5.1 City Public Purchases Ordinance.

1.5.2 City Purchasing Rules and Regulations: These Rules and Regulations (hereinafter "Regulations") are written to clarify and implement the provisions of the Public Purchases Ordinance. These Regulations establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of goods, services, and construction, as applicable, under the authority of the Ordinance.

1.5.3 Civil Rights Compliance: Acceptance of Offer is contingent upon the Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders, New Mexico statutes and City of Albuquerque ordinances relating to the enforcement of civil rights. Offeror additionally certifies to abide by and cooperate in the implementation of the policies and practices set forth in the City Affirmative Action Plan. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City of Albuquerque Human Rights Division, Community Services Department.

1.5.4 Americans with Disabilities Act Compliance: Offeror certifies and agrees, by submittal of its Offer, to comply and act in accordance with all applicable provisions of the Americans with Disabilities Act of 1990 and Federal regulations promulgated thereunder.

1.5.5 Insurance and Bonding Compliance:

1.5.5.1 Insurance: Acceptance of Offer is contingent upon Offeror's ability to comply with the insurance requirements as stated herein. Please include a copy(s) of such certification or statement of compliance in your proposal.

1.5.6 Ethics:

1.5.6.1 Fair Dealing. The Offeror warrants that its proposal is submitted and entered into without collusion on the part of the Offeror with any person or firm, without fraud and in good faith. Offeror also warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be offered or given by the Offeror, or any agent or representative of the Offeror to any officer or employee of the City with a view toward securing a recommendation of award or subsequent contract or for securing more favorable treatment with respect to making a recommendation of award.

1.5.6.2 Conflict of Interest. The Offeror 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 services required under the contract resulting from this RFP. The Offeror also warrants that, to the best of its knowledge, no officer, agent or employee of the City who shall participate in any decision relating to this RFP and the resulting Agreement, currently has, or will have in the future, a personal or pecuniary interest in the Offeror's business.

1.5.7 Participation/Offeror Preparation: Offeror may not use the consultation or assistance of any person, firm or company who has participated in whole or in part in the writing of these Specifications or Scope of Services, for the preparation of their offer or in the management of business if awarded this contract.

1.5.8 Debarment or Ineligibility Compliance: By submitting its offer in response to this RFP, the Offeror certifies that (i) it has not been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and (ii) should any notice of debarment, suspension, ineligibility or exclusion be received by the Offeror, the Offeror will notify the City immediately.

1.5.9 Goods Produced Under Decent Working Conditions. It is the policy of the City not to purchase, lease, or rent goods for use or for resale at City owned enterprises that were produced under sweatshop conditions. The Offeror certifies, by submittal of its offer in response to this solicitation, that the goods offered to the City were produced under decent working conditions. The City defines "under decent working conditions" as production in a factory in which child labor and forced labor are not employed; in which adequate wages and benefits are paid to workers; in which workers are not required to work more than 48 hours per week (or less if a shorter workweek applies); in which employees are free from physical, sexual or verbal harassment; and in which employees can speak freely about working conditions and can participate in and form unions. [*Council bill No. M-8, Enactment No. 9-1998*]

1.6 DBE Requirements: Based on the nature of the services to be provided by the successful Offeror regarding this RFP, the City of Albuquerque Transit Department has determined that a Race-Neutral measure (refer to Proposal Form 6) will be a part of this RFP, in accordance with 49 CFR Part 26.51(b). The successful offeror is, therefore, strongly encouraged to make a good faith effort to assist the City of Albuquerque Transit Department in reaching its overall annual DBE participation goal, by using the services of Small Business Enterprises (SBE)/ Woman Business Enterprises (WBE)/and Certified DBE's whenever possible. Race-Neutral Measure means a program that is, or can be, used to assist all small businesses. For purposes of this section, race-neutral includes gender-neutrality. **See Part 5, Proposal Form 6 of this RFP.**

1.7 City Contact: (Per Paragraph 1.3 above.) Sandy Vescovi, Contracting Supervisor, City of Albuquerque, Department of Finance and Administrative Services, Purchasing Division, PO Box 1293, Albuquerque, New Mexico 87103. Phone (505) 768-3341 or email: svescovi@cabq.gov. All questions must be submitted in writing throughout the procurement process, within the time frame provided below.

1.8 Contracting Agency: The agreement resulting from this RFP will be administered by the City of Albuquerque Transit Department.

1.9 Clarification: Any explanation requested by an Offeror regarding the meaning or interpretation of this Request for Proposals must be submitted to the City Contact in writing not less than fifteen (15) working days prior to the hour and date specified for the receipt of offers to allow sufficient time for a reply to reach Offerors before the submission of their offers. Oral explanations or instructions given before the award of the Agreement will not be binding. Any information given to a prospective Offeror concerning this RFP will be furnished to all prospective Offerors as an amendment of this RFP if such information is necessary to Offerors in submitting offers on this RFP or if the lack of such information would be prejudicial to uninformed Offerors.

1.10 Submission of Offers: The Offeror's sealed proposal must be in the format outlined in Part 2 of this RFP and mailed or delivered pursuant to the following requirements:

1.10.1 Envelope Preparation. Offers and modifications thereof shall be enclosed in sealed envelopes and have the following identifying information on the outside:

- 1.10.1.1 Name and Address of Offeror
- 1.10.1.2 Closing Date and Time of RFP
- 1.10.1.3 RFP Number
- 1.10.1.4 RFP Title

1.10.2 Ship, Deliver or Hand Carry Sealed Offers to: The Office of the City Clerk, City /County Government Center, 11th Floor, One Civic Plaza, Albuquerque, New Mexico 87102. Mark all packages as stated above. Use this address for packages sent via non United States Postal Service carriers.

1.10.3 Mail Sealed Proposals to: Office of the City Clerk, Post Office Box 1293, Albuquerque, New Mexico 87103. (Certified Mail is recommended). The City shall not be responsible for the failure of mailed offers to actually be received by the Office of the City Clerk by 4:00 PM (MDT) of the day of closing.

ALL SEALED PROPOSALS MUST BE RECEIVED BY THE OFFICE OF THE CITY CLERK AS SPECIFIED HEREIN.

1.10.4 No other methods of offer delivery: Neither telephone, facsimile, electronic nor telegraphic offers shall be accepted.

1.10.5 Submit one (1) original and seven (7) copies of your Proposal.

1.10.6 Modification: Offers may be modified or withdrawn only by written notice, provided such notice is received prior to the Proposal Due Date.

1.10.7 Failure to Submit Offer: If no offer is submitted the recipient shall not return the Request for Proposals.

1.11 Receipt of Proposals: The only acceptable evidence to establish the time of receipt of Proposals at the City Clerk's Office is the time-date stamp of that Office on the Proposal wrapper or other documentary evidence of receipt maintained by that Office.

1.12 Acknowledgment of Amendments To the Request For Proposals: Receipt of an amendment to the Request For Proposals by an offeror must be acknowledged (a) by signing and returning the amendment, or (b) by letter. Such acknowledgment may be submitted with your offer. Such acknowledgment must be received prior to the hour and date specified for receipt of offers.

1.13 Proposed Concession Agreement: An example of the proposed Agreement to be entered into is provided in Part 6 of this RFP. Please state that you accept the terms and conditions of the Agreement, or note exceptions.

1.14 Evaluation period: The City reserves the right to analyze, examine and interpret any offer for a period of ninety (90) days after the hour and date specified for the receipt of offers.

1.15 Evaluation Assistance: The City of Albuquerque, in evaluating proposals, reserves the right to use any assistance deemed advisable, including City contractors and consultants.

1.16 Rejection and Waiver: The City reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

1.17 Debarment of Offeror: Any proposal received from an Offeror that is, at the time of submitting its proposal or prior to receipt of award of a contract, debarred by or otherwise ineligible to receive funds from any agency of the State of New Mexico, any local public body of the State, or any state of the United States, shall be rejected.

1.18 Award of Agreement:

1.18.1 When Award Occurs: Award of agreement occurs when a Purchase Order is issued or other evidence of acceptance by the City is provided to the Offeror. A Recommendation of Award does not constitute award of agreement.

1.18.2 Award: If an agreement is awarded, it shall be awarded to the responsive and responsible Offeror whose offer conforming to the RFP will be most advantageous to the City as set forth in the Evaluation Criteria.

1.18.3 Approval of Insurance/Bonds: The Contractor will not be given notice to proceed, or begin any work under the agreement until the required insurance/bonds have been obtained and the proper certificates (or policies) filed with the City. Neither approval nor failure to disapprove certificates, policies, or the insurance by the City shall relieve the Contractor of full responsibility to maintain the required insurance in full force and effect.

1.18.4 Agreement Term: The initial Agreement Term shall be for a period of five (5) years from the effective date of the execution of the contract by the City. This contract term may be extended for up to an additional three (3) year term followed by a two (2) year term by mutual written agreement between the City and the contractor.

1.18.5 Type of Agreement: Concession Agreement (“Agreement”).

1.18.6 Debarment/Cancellation of Agreement: Upon receipt of notice of debarment of an Offeror awarded a contract as a result of this RFP (the “Contractor”), or other ineligibility of the Contractor to receive funds from any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, the City shall have the right to cancel the contract with the Contractor for cause as provided in accordance with the terms of said contract.

1.18.7 Graffiti Free: When required, the Contractor shall furnish equipment, facilities, or other items required to complete these services, that are "graffiti free". Failure of Contractor to comply with this requirement may result in cancellation of the agreement resulting from this RFP.

I.19 Cancellation: This Request for Proposals may be canceled and any and all proposals may be rejected in whole or in part when it is in the best interest of the City.

1.20 Negotiations: Negotiations may be conducted with the offeror(s) recommended for award of contract.

1.21 City-Furnished Property: No material, labor or facilities will be furnished by City unless provided for in this RFP.

1.22 Proprietary Data: This RFP shall be open to public inspection after award of agreement, except to the extent the Offeror designates trade secrets or other proprietary data to be confidential. Material so designated shall accompany the Proposal and each page shall be clearly marked and readily separable from the Proposal in order to facilitate public inspection of the non-confidential portion of the Proposal. Prices and makes and models or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available regardless of any designation to the contrary. The City of Albuquerque will endeavor to restrict distribution of the material designated as confidential or proprietary to only those individuals involved in the review and analysis of the Proposals. Offerors are cautioned that materials designated as confidential may nevertheless be subject to disclosure under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978).

1.23 REQUEST FOR PROPOSALS (“RFP”) PROTEST PROCESS:

1.23.1 When: If the protest concerns the RFP components or other matters pertaining to the RFP documents, it must be received by the City Purchasing Officer no later than ten (10) working days prior to the Proposal Due Date.

1.23.2 Recommendation of Award: If the protest concerns other matters relating to this RFP, the protest must be filed within ten (10) working days after the receipt of notice of the Recommendation of Award.

1.23.3 Timely Protests: Protests must be received by the City Purchasing Officer prior to the appropriate deadline as set out herein, or they will not be considered valid. The City Purchasing Officer may waive the deadline for good cause, including a delay caused by the fault of the City. Late delivery by the U.S. Postal Service or other carrier shall not be considered good cause.

1.23.4 How to File: Protests shall be addressed to the City Purchasing Officer, must be submitted in written form and must be legible. Protests may be hand-delivered or mailed. Facsimile, telephonic, telegraphic or electronic protests will not be accepted.

1.23.5 Required Information: Protests shall contain at a minimum the following:

- The name and address of the protesting party;
- The number and title of the RFP;
- A clear statement of the reason(s) for the protest;
- Details concerning the facts, which support the protest;
- Attachments of any written evidence available to substantiate the claims of the protest; and
- A statement specifying the ruling requested.

Address Letters as follows:

Envelopes should clearly indicate:

- | | |
|---|-----------------------------|
| • Purchasing Officer | RFP Number and Title |
| • City of Albuquerque DFAS, Purchasing Division | PROTEST |
| • P.O. Box 1293 | |
| • Albuquerque, New Mexico 87103 | |

1.23.6 All protests will be responded to by the City Purchasing Officer upon evaluation: The City Purchasing Officer will, after evaluation of a protest, issue a response. Only the issues outlined in the written protest will be considered by the City Purchasing Officer.

1.23.7 Protest Hearing: If a hearing is requested, the request must be included in the Protest and received within the time limit to be allowed. A filing fee of twenty dollars (\$20.00) must accompany the request for hearing. Only the issues outlined in the protest will be considered by the City Purchasing Officer, or may be raised at a protest hearing. The granting of a hearing shall be at the discretion of the City Purchasing Officer following review of the request.

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PART 2 PROPOSAL FORMAT

2. Proposal Format. Offerors must complete and submit all required proposal forms and other documentation as required, and must adhere to all instructions contained in this RFP. Proposals are to be prepared in such a way as to provide a straight forward, concise delineation of capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on conformance to the RFP Instructions, responsiveness to the RFP requirements, on completeness and clarity of content. The information contained in the subsections of this Section is intended to assist in the completion of the required proposal forms in Part 5 of this RFP.

The materials and information requested in Part 5 of this RFP must be completed in full as a condition of the Proposal and submitted in one (1) original and seven (7) copies {hard copy} and 1 Original CD or Diskette {soft copy}. The original Proposal shall be clearly marked as "Original" on the cover of the Proposal. A checklist of items to be completed and submitted with Offeror's Proposal is provided after the Table of Contents, on Page ii (prior to the Introduction of this RFP).

2.1 Business Information. Part 5, Proposal Form 1 of this RFP.

2.1.1 Name and address of the organization.

2.1.2 The form of organization, e.g., individual, partnership, joint venture, corporation, limited liability company (LLC). If a corporation, name the state of corporation.

2.1.3 For joint ventures, partnerships and limited liability companies, identify the ownership interest of each party. Include the names, addresses, and telephone numbers of each party.

2.1.4 Name, address, phone number, FAX number, and email address of the person who represents the Offeror.

2.1.5 Other References. Part 5, Proposal Form 1 of this RFP. Provide a representative listing of other business entities, including contact person and telephone number, with a description of each entity's business activities, with which the Offeror, or any of its owners, officers, directors or management employees are affiliated in a decision-making or managerial capacity. Such representative listing must include all business entities that do business in the state of New Mexico.

2.2 Minimum Qualifications and Experience. City has set criteria for the Minimum Qualifications and Experience that the Offeror must meet or exceed to be considered as submitting a responsive Proposal. Any Offeror who does not meet these Minimum Qualifications and Experience shall not have its Proposal considered by the City. The Minimum Qualifications and Experience listed below pertain to the Offeror's Business Entity. If the Business Entity is a partnership, LLC or a joint venture, the partners, LLC investors, or joint venture parties that will actually manage, design, and operate the Concession Using ABQ RIDE Vehicles and Facilities shall be identified. The Business Entity shall meet the following Minimum Qualifications and Experience in order to have its Proposal considered by the City:

2.2.1 Experience. Part 5, Proposal Form 2 of this RFP. Offeror must provide evidence that it has the necessary experience and capacity to fulfill the requirements of the Advertising Concession Using ABQ RIDE Vehicles and Facilities Agreement.

At a minimum, Offeror, must have five (5) years (“Qualifying Years”) of continuous experience in the management and operation of an Advertising Concession that is similar in scope and complexity as that which is contemplated under this RFP. Additionally, Offeror must show evidence of a comprehensive sales organization capable of procuring a mix of advertising contracts from local, regional, and national advertisers – with a greater emphasis on local advertising.

2.2.2 Defaults, Terminations, Judgments. Part 5, Proposal Form 3 of this RFP. Provide the name, location, and date (if any) of any of Offeror's development projects, management contracts, or any related advertising business ventures for which it has been placed in default and/or which have been terminated, either voluntarily or involuntarily, prior to the expiration of their terms, within the past five (5) years. The reason(s) for such default and/or termination shall be indicated. For the same period of time, list any judgments or orders that have been issued affecting Offeror's business operation and any pending lawsuits for the termination of any business operated by the Offeror or any of its owners, officers, directors or management employees.

2.2.3 Bankruptcy. Part 5, Proposal Form 3 of this RFP. Provide a statement advising whether Offeror or any of its principals, officers, directors, subsidiaries, or related entity's have been parties to any bankruptcy proceedings in the past seven (7) years.

2.3 Advertising Program. Part 5, Proposal Form 4 of this RFP. Offeror must provide information, which, at a minimum, includes the following plans and strategies to describe the Offeror's Advertising Program that will meet or exceed the scope and complexity of the concession that is contemplated under this RFP:

2.3.1 Advertising Design Plan. Offeror must submit a plan that details the locations and types of media proposed for the offered Advertising Concession Using ABQ RIDE Vehicles and Facilities. The plan should include:

2.3.1.1 Rationale and targeted audience for the proposed advertising locations.

2.3.1.2 Drawings, photographs, illustrations, renderings, or other materials of proposed media displays that indicate the general color scheme, style, and design of proposed media displays.

2.3.1.3 The types of materials to be used in the construction of the proposed media displays.

2.3.2 Plans and renderings submitted with the Proposal should be eight and one-half inches (8½”) by eleven inches (11”) or eleven inches (11”) by seventeen inches (17”) folded to eight and one-half inches (8½”) by eleven inches (11”). Offerors may submit one (1) additional set of thirty-six inches (36”) by twenty-four inches (24”) plans and/or renderings in a separate package.

2.3.3 Marketing Strategy. Describe the Offeror’s marketing strategy to achieve the objectives of the Advertising Concession Using ABQ RIDE Vehicles and Facilities. This description should address at least the following items:

2.3.3.1 Marketing and promotional strategies for use in operations, with emphasis on measures to achieve maximum revenue;

2.3.3.2 Solicitation and presentation of advertising opportunities to prospective advertisers;

2.3.3.3 Capability to solicit and sell available advertising to local, regional, and national advertisers;

2.3.3.4 Sales objectives and projected mix of local, regional, and national advertising, including the Offeror’s rationale for the proposed mix;

2.3.3.5 A description of the method of selecting new innovative concepts and marketing packages to increase revenues; and

2.3.3.6 Promotional materials and/or advertising sales kits that will be used to attract prospective advertisers.

2.3.4 Management and Operating Plan. Describe Offeror’s plan to ensure a quality advertising program. The plan should include the following:

2.3.4.1 Organizational chart and its relationship to the Offeror’s business structure;

2.3.4.2 Resumes of key management personnel;

2.3.4.3 Qualifications, responsibilities, and the decision-making ability of its various levels of personnel;

2.3.4.4 Description of how Offeror intends to maintain, clean, and repair the advertising displays. Discussion of procedures for routine maintenance, frequency of service, and explanation of how these services will be performed;

2.3.4.5 Description of how Offeror will monitor customer service and advertising effectiveness.

2.4 Proposed Minimum Annual Guarantee (“MAG”). Part 5, Proposal Form 5 of this RFP. In accordance with Part 6, Section 8.1 of this RFP, a MAG will be required for the full term of the Agreement. For the initial Fiscal Year (FY 2007) of the Term, Offeror shall pay City a MAG of **One Hundred Forty-Four Thousand and 00/100 Dollars (\$144,000.00)**, or an amount proposed by Offeror, **whichever is greater.**

2.5 Proposed Percent of Gross Revenues Fee. Part 5, Proposal Form 5 of this RFP. In accordance with Part 6, Section 8.2 of this RFP, a Percent of Gross Revenues Fee will be required for the full term of the Agreement. Offeror shall pay City a Percent of Gross Revenue Fee of **fifty percent (50%)**, or an amount proposed by Offeror, **which ever is greater.**

2.6 Projected Gross Revenues, Net Income, and Cash Flow. Offeror must include a good faith estimate of the expected annual revenues, expenses, net income, and cash flow to be derived from the Advertising Concession Using ABQ RIDE Vehicles and Facilities over the Term of the Agreement. Offeror may use a format of its choice, but must include, at a minimum, projected annual gross sales, agency commissions, gross revenues, direct expenses (including, but not limited to maintenance), general and administrative expenses, depreciation, interest expense, and debt service.

2.7 Disadvantaged Business Enterprises (“DBE”) Participation Plan. Part 5, Proposal Form 6 of this RFP. Describe the extent of DBE participation in the areas of responsibility pertaining to the management and operation of the Advertising Concession Using ABQ RIDE Vehicles and Facilities. These DBE participants may include joint ventures, limited liability companies, partnerships, and licensees.

2.8 Attach to your Proposal a Disadvantaged Business Enterprises Participation Form for each DBE included in your Proposal and copies of all agreements, both actual and proposed, between Offeror and DBEs. Offerors are **required** to take all necessary and reasonable steps to achieve the Transit Department’s DBE goal, as further explained in Part 1, Section 1.6, of this RFP.

2.9 Additional Information. Include other information relevant to your operation that you believe to be pertinent but not required in this Section.

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PART 3 SCOPE OF SERVICES

3 Advertising Program. The selected Offeror (the “Contractor”) shall provide services to conduct an advertising program for Transit. The advertising program shall be for the sale and placement of commercial advertising on ABQ RIDE interior and exterior buses (“Transit Vehicles”) as well as implement a construction / advertising shelter program (see Introduction).

3.1 Shared Revenues. The advertising program shall be operated as a concession and revenues shall be shared by Transit and the Contractor, with Transit receiving a minimum of fifty percent (50%) of all gross revenues billed from advertising on Transit Vehicles **or the MAG, whichever is greater, as defined in Part 5 of this RFP**, Draft Agreement for Advertising Program.

3.2 Revenue Reports. The Contractor will submit to Transit a detailed summary of advertising revenues, plus copies of all invoices sent to advertisers, and payment of the amount due to Transit within thirty (30) days following the end of the month in which the revenue activity occurred. (Example: January revenues and corresponding invoices will be submitted to Transit within thirty (30) days following January 31st.)

3.3 Minimum Sales. The Contractor shall sell a minimum of seventy-five percent (75%) of the advertising space available for sale each month and shall note the percentage sold on its monthly revenue sheets. Documentation of the percentage shall be provided on request. Failure to maintain a seventy-five percent (75%) level may result in cancellation of the contract.

3.4 Reserved Rights to Advertising Space. Transit reserves exclusive rights to bus and facility advertisements per month of up to a maximum of 25% of the total fleet size to advertise Transit events or promotions, which may include the logo of co-sponsors of the event. Transit also reserves exclusive use of the sign space on the driver panel behind the motor coach operator’s seat.

3.5 Unsold interior or exterior space on Transit Vehicles and facility space may be used by Transit to advertise events or promotions and Transit reserves the right to attach vinyl decals to all buses for advertisement of Transit promotions or events.

3.6 Trades of Advertising Space. Given the written consent of Transit, the Contractor may accept media advertising for Transit events and promotions and general use in lieu of payment by the advertiser for advertising on Transit Vehicles. In addition, Transit reserves the right to directly trade advertising on Transit Vehicles for direct media advertising. Transit’s reserved advertising space described above shall be first utilized for such trades and in such event, no revenues will be received by the Contractor from the advertiser or from Transit for the transaction. If Transit’s reserved advertising space has been utilized and is no longer available, Contractor’s advertising space may be used and the Contractor shall be entitled to a credit of the amount it would have received on the transaction if it was not a trade, i.e., its standard percentage of the applicable rate card revenues for the transaction. All costs associated with the production of the advertising will be paid for by the advertiser.

3.7 Public Service Ads. The Contractor will allow duly licensed non-profit, public, educational and charitable organizations to utilize the interior space on all Transit Vehicles at no charge. All costs of production associated with public service ads shall be borne by the non-profit, public, educational or charitable organization.

3.8 Advertising for Other City Departments. The sale of advertising space to other City Departments will be provided at discounted rates approved by Transit. All costs of production associated with the advertising shall be borne by the other City Department.

3.9 Advertising Contracts. The Contractor shall enter into written contracts with advertisers for interior and exterior advertising on Transit Vehicles.

3.9.1 Contract Form. If requested by Transit, the Contractor shall provide the form of contract to be entered into with advertisers for review and approval by Transit.

3.9.2 Transit Requirements. The Contractor shall provide all potential advertisers with the advertising rate card approved by Transit and any other Transit requirements.

3.9.3 No Particular Route. When soliciting a contract, the Contractor shall under no circumstances represent to potential advertisers that any Transit Vehicles on which the advertiser's advertising appears will be used on any particular route or in any particular service.

3.9.4 Copy of Contract to Transit. Within fifteen (15) days of signing a contract with an advertiser, the Contractor shall provide Transit a copy of the contract.

3.9.5 Assignment. All of Contractor's contracts with advertisers shall contain a provision allowing the assignment of such contracts to the City at the end of the term of this Agreement or any earlier termination thereof.

3.10 Costs of Production of Advertising.

3.10.1 Not Covered Under Contract. Production of advertising for advertisers on Transit Vehicles & Facilities is not covered under the contract for Bus & Facility Advertising Sales and Services ([Section 3.1 of the RFP](#)) resulting from this RFP.

3.10.2 Restrictions on Production. Advertisers are not required to utilize the production services of the advertising program Contractor for the production of advertising for Transit Vehicles & Facilities. The Contractor shall notify all advertisers that they are free to utilize the services of any company to produce their advertising as long as Transit's advertising standards are met.

3.10.3 Contractor Responsible for All Costs. Transit shall not be obligated to pay any production or other costs incurred by the Contractor in the operation of the advertising program.

3.11 Installation and Removal of Advertising.

3.11.1 Installation and Removal. The Contractor shall be responsible for installation and removal of all advertisements on Transit Vehicles & Facilities and shall remove all ads on buses within five (5) days after the ads have expired or become obsolete. ABQ RIDE will remove advertisements that are past the five-day window and the costs incurred by removal will be passed on to the contractor.

3.11.2 Times. The Contractor shall install and remove interior and exterior ads on Transit Vehicles between the hours of 8:00 p.m. and 4:00 a.m., Monday through Sunday. However, all buses will not be available by 8:00 p.m. Facility ads will not be subject to these restrictions.

3.11.3 Services for All Ads. The Contractor shall provide installation and removal services for advertisers, for Transit advertising, public service advertising, advertising resulting from media trades and discounted ads at no additional charge.

3.11.4 Workspace. Transit shall provide a workspace accessible to the buses and large enough to allow mounting of advertisements onto the bus.

3.12 On Termination of Contract.

3.12.1 Contracts. On termination for cause of the contract for Bus & Facility Advertising Sales and Services, the City shall have the right to have all contracts between the Contractor and advertisers assigned to the City. On termination for convenience or expiration of the contract, the Contractor shall collect all revenues, shall make payments to the City and shall be entitled to retain its percentage of such revenues, as provided in the terminated contract, through the end of the term of each advertiser's contract, or for six (6) months, whichever occurs first. At such time, each such contract shall be assigned to the City.

3.12.2 Advertising Space. On termination of the contract for Bus Advertising Sales and Services, the Contractor will leave the advertising space on Transit Vehicles & Facilities in the same condition as it existed at the commencement of the contract resulting from this RFP, reasonable wear and tear excepted.

3.13 General Requirements.

3.13.1 Local Representative. The Contractor shall maintain a local Albuquerque telephone number and provide a Contractor's representative located in the Albuquerque Metropolitan Area, Bernalillo County, Southern Sandoval County, Western Torrance County or Valencia County, to ensure effective response to Transit's inquiries as well as timely production for all media and marketing assistance.

3.13.2 General Standard. The subject matter of bus advertising shall be limited to speech that proposes a commercial transaction.

3.13.2.1 The following standards for advertising have been adopted and advertising copy must not be displayed which:

- Is false, misleading, or deceptive
- Relates to an illegal activity
- Advertises alcohol or tobacco products.
- Depicts violence and/or anti-social behavior.
- Includes language, which is obscene, vulgar, profane or scatological.
- Advertisements displayed by the Contractor on Transit Vehicles shall be in good taste, observe all copyright requirements, and conform to community standards.

3.13.2.2 Additional Rights. Transit reserves the right to order the removal of any posted advertisement that does not conform to the aforementioned requirements. Upon written explanation by the Transit Director or designee, the Contractor shall immediately remove such display. Transit reserves the right to further restrict advertising content during the term of the contract resulting from this RFP.

3.13.2.3 Graffiti Free. The Contractor will be required to furnish equipment, facilities, or other items required to complete these services that are “graffiti free”. Failure of Contractor to comply with this requirement may result in cancellation of the contract resulting from this RFP.

3.13.2.4 UV Protected. The Contractor will be required to provide self adhesive vinyl advertisements that are UV protected so they withstand the sun without fading to unprofessional looking advertisements throughout the duration of their showing. The Contractor will be responsible for replacing vinyl advertisements deemed unacceptable due to fading by the Transit Director or designee in a timely fashion at no cost to the Transit Department. Vinyl Advertisement Specifications. All self-adhesive vinyl advertisements shall be at least 3 mil thick. (3M ScotchCal or equivalent).

3.13.2.5 Minimum Down Time For Transit Vehicles. The contractor will work with ABQ RIDE maintenance and operations staff to ensure that vehicles that are slated to receive a partial or full vinyl bus wrap be removed from service for shortest time possible.

PART 4 EVALUATION OF OFFERS

4.1 Selection Process: The Mayor of the City of Albuquerque shall name, for the purpose of evaluating the proposals, an Ad Hoc Advisory Committee (“Committee”). On the basis of the evaluation criteria established in this RFP, the Committee shall submit to the Mayor a list of qualified firms in the order in which they are recommended. Proposal documentation requirements set forth in this RFP are designed to provide guidance to the Offeror concerning the type of documentation that will be used by the Committee. Offerors should be prepared to respond to requests by the Purchasing Office on behalf of the Committee for oral presentations, facility surveys, demonstrations or other information deemed necessary to assist in the detailed evaluation process. Offerors are advised that the City, at its option, may award an agreement on the basis of the initial written Proposals submitted to the City.

4.2 Evaluation Criteria: The following general criteria, not listed in order of significance, will be used by the Committee in recommending agreement award to the Mayor. The Proposal factors will be rated on a scale of **0 - 1000** with weight relationships as stated below:

4.2.1 Evaluation Factors:

0 – 150 Points – Qualifications and Experience:

- Number of years and type of experience as it relates to the concepts set forth in this RFP
- Professional references as they relate to Offeror’s capabilities to develop and operate an Advertising Concession Using ABQ RIDE Vehicles and Facilities
- Financial capability, personal resources, and credit check
- Organization of Proposal and adherence to RFP instructions

0 – 150 Points – Marketing Strategy:

- Marketing and promotional strategies for use in operations, with emphasis on measures to achieve maximum revenue
- Strategy for the solicitation of local, regional, and national advertisers
- Description of the method of selecting new innovative concepts and marketing packages to increase revenues
- Materials or sales kits that will be used to attract prospective advertisers

0 – 150 Points – Advertising Design Plan:

- Creative and innovative design as it relates to the concepts set forth in this RFP
- The quality of design, including materials to be used in the construction of the proposed media advertising displays, as it relates to the concepts set forth in this RFP

0 – 150 Points – Proposed Management and Operating Plan:

- Organizational chart and relation to business structure

- Qualifications, responsibilities, and resumes of key management personnel and the decision-making abilities of those personnel
- Methods to monitor customer service, e.g., customer comment cards
- Forecasts of gross sales for the initial term of the agreement
- Quality control program as it relates to the maintenance and repair of the media advertising displays

0 – 150 Points – Bus Shelter Construction, Advertising and Maintenance Program:

- Completeness of the proposal by the contractor to provide a transit shelter construction and advertising program similar to SamTrans (California).

0 – 250 Points – Proposed Compensation to the City:

- Annual Guarantee: Up to 100 Points
- Percentage of Gross Revenues Up to 150 Points

4.2.2 Although Disadvantaged Business Enterprise (“DBE”) participation is not included in the Evaluation of Offers, Part 5, Proposal Form 6 of this RFP, must be completed and signed by Offeror or Offeror’s Proposal will be disqualified.

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PART 5
REQUIRED PROPOSAL FORMS

Proposal Form 1 – Business Information Statement (4 pages)

Proposal Form 2 – Qualifications and Experience Statement (2 pages)

Proposal Form 3 – Financial Information Statement (3 pages)

Proposal Form 4 – Advertising Program (2 pages)

Proposal Form 5 – Compensation Offer (3 pages)

**Proposal Form 6 – Disadvantaged Business Enterprises
Participation Form (4 Pages)**

Proposal Form 7 - Offeror's Disclosure Form (2 pages)

Optional Form 8 - Local Preference Form and Instructions (2 pages)

NOTE: All forms in this Part 5 must be completed in full and submitted with each Proposal, one (1) original and seven (7) copies. Failure to do so may deem Offeror's Proposal to be considered non-responsive.

FORM 1 - BUSINESS INFORMATION STATEMENT

1. GENERAL INFORMATION. The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be considered non-responsive.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

A. Name, address and telephone number of Offeror exactly as it should appear in the proposed Advertising Concession Using ABQ RIDE Vehicles and Facilities Agreement.

Name:
Address: _____
City: _____ **State:** _____ **ZIP:** _____
Telephone No: (____) _____ **FAX No:** (____) _____
Email Address: _____

B. Information of Offeror, if different from above, for purposes of Notice(s) or other communication relating to the Proposal and the proposed Advertising Concession Using ABQ RIDE Vehicles and Facilities Agreement. (If Offeror is other than a designee or authorized person, provide the name of an individual who can answer for Offeror).

Name:
Address: _____
City: _____ **State:** _____ **ZIP:** _____
Telephone No: (____) _____ **FAX No:** (____) _____
Email Address: _____

2. BUSINESS STRUCTURE. Offeror intends to operate the Advertising Concession Using ABQ RIDE Vehicles and Facilities as a:

____ Corporation ____ Partnership ____ Sole Proprietorship
____ Joint Venture ____ Ltd. Liability Company (LLC)
Other _____

A. CORPORATE OR LLC STATEMENT (COPIES REQUIRED, PLEASE ATTACH TO FORM) If a corporation, LLC or corporation/LLC-in-formation, answer

the following:

- 1) Date of Incorporation or Formation: _____
- 2) State of Incorporation or Formation: _____
- 3) Is the corporation or LLC authorized to do business in New Mexico?
 - Yes - As of what date? _____
 - No
- 4) Furnish the following information on the principal officers of the corporation or LLC, and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. PARTNERSHIP STATEMENT If a partnership, answer the following:

- 1) Date of Organization _____
- 2) General Partnership _____
- 3) Limited Partnership _____
- 4) Other: _____
- 5) Has the partnership done business in New Mexico?
 - Yes – When? _____
 - No
- 6) Furnish the following information of each general partner and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. JOINT VENTURE STATEMENT If a joint venture, answer the following:

- 1) Date of Organization: _____
- 2) Has the joint venture done business in New Mexico?
 - Yes – When? _____
 - No
- 3) Detail structure of joint venture (% of each joint venturer).
- 4) Furnish the following information for each joint venturer, identifying the key joint venturer, and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- 5) Where (which state) was joint venture formed?

- 6) Is the joint venture currently authorized to do business in New Mexico?
____ Yes ____ No

D. SOLE PROPRIETORSHIP If sole proprietorship, answer the following:

- 1) Proprietor's Full Name: _____
- 2) Address: _____
- 3) Company Name: _____
- 4) Company Address: _____
- 5) How long in business under this company name? _____

E. OTHER BUSINESS REFERENCES. Provide a representative listing of other business entities, including contact person and telephone number, with a description of each of these

entity's business activities, with which the Offeror, or any of its owners, officers, directors or management employees are affiliated in a decision-making or managerial capacity. Such representative listing must include all business entities that do business in the state of New Mexico.

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ Title: _____

(CORPORATE SEAL)

Dated: _____, 2006

FORM 2 - QUALIFICATIONS AND EXPERIENCE STATEMENT

1. GENERAL INFORMATION. The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be considered non-responsive.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

A. Name, address and telephone number of Offeror exactly as it should appear in the proposed Advertising Concession Using ABQ RIDE Vehicles and Facilities Agreement.

Offeror Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No. (____) _____ FAX No. (____) _____

E-Mail Address: _____

B. Is the Offeror currently engaged in the transit advertising business?

- yes How long _____
- no

Provide history of experience Offeror has in the development and operation of an Advertising Concession. (Attach answer to this Form).

C. Are the principal owner(s) and/or manager(s) of the Offeror currently engaged in the transit advertising business?

- yes
- no

Attach resumes of the principal owners and managers of Offeror including specifically the individual who will be the primary contact to City for the agreement and concession matters and the individuals who will be primarily responsible for the day-to-day operations of the Advertising Concession Using ABQ RIDE Vehicles and Facilities. (Attach answer to this Form).

D. Provide a listing of up to five (5) current transit advertising, or other large-scale facility advertising contracts held and operated by the Offeror including the following information for *each* contract (attach answer to this Form):

- 1) Name and location of transit system (or other facility).
- 2) Contract dates – commencement and expiration dates.
- 3) Description of the scope of advertising services provided.
- 4) Photographs showing the types of advertising displays utilized and sample copies of media kits, if available.
- 5) Annual gross sales (net of agency commissions) and revenues paid to the transit system (or other facility) for the years 2000 through 2005.
- 6) Contact person and telephone number for this contract.

E. Give name, location and date of all transit advertising concession agreements, if any, for which Offeror has been placed in default, terminated, or suspended within the past five (5) years for any reason, either voluntarily or involuntarily, prior to the expiration of the contractual term. List any judgments pending, or any pending lawsuits or unresolved disputes for the termination of advertising concessions operated by Offeror within the past five (5) years. (attach answer, if necessary, to this Form.)

If none, indicate not applicable "N/A " here: _____

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ Title: _____

(CORPORATE SEAL)

Dated: _____, 2006

FORM 3 - FINANCIAL INFORMATION STATEMENT

1. GENERAL INFORMATION. The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be considered non-responsive.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

A. Name, address and telephone number of Offeror exactly as it should **appear in the proposed Advertising Concession Using ABQ RIDE Vehicles and Facilities Agreement.**

Offeror Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No. (____) _____ FAX No. (____) _____

E-Mail Address: _____

2. FINANCIAL INFORMATION. Provide financial statements of your organization, as follows:

- A.** If a publicly held corporation (attach information to this Form):
 - 1) Consolidated financial statements as submitted to the Securities and Exchange Commission (SEC) on Form 10K for your last three (3) fiscal years.
 - 2) The most recent Form 10Q since the last Form 10K was submitted.
 - 3) Any form 8Ks in your last fiscal year.
- B.** If a privately held organization (attach information to this Form):
 - 1) Provide complete income tax returns or financial statements, for the three (3) most current years, including notes thereto, certified by corporate official as to accuracy, or income tax return of owners for qualifying years.
 - 2) List credits (business and personal) detailing names, addresses, phone numbers, account numbers, current balances and contact persons.

- 3) Disclosure of long-term receivables and payables, including current status. Provide details and documents including contact person(s).
- 4) List bank accounts, detailing bank name, address, account numbers, current balance by account, contact person(s), and phone numbers.
- 5) Real estate declared as assets (provide legal description).

3. BANKRUPTCY. Provide a statement advising whether Offeror or any of its principals, officers, or directors have been parties to any bankruptcy proceedings in the past seven (7) years.

4. SURETY INFORMATION

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

- Yes. If yes, state name of bonding company, date, amount of bond and reason for such cancellation or forfeiture (attach to this Form).
- No

B. Provide information, including name of surety/bonding company that indicates your ability to qualify for, obtain, and submit the Performance Bond and (Materials Payment Bond if required). Use Performance/Materials Payment Bond form as indicated herein which must be submitted to City if you are awarded this Concession Agreement.

C. List the insurance companies you will use to meet the insurance requirements of the proposed Advertising Concession Using ABQ RIDE Vehicles and Facilities (Part 6, Section 8 of the proposed Agreement) and provide certificates of insurance or insurance binders (attach to this Form).

5. CONFIDENTIALITY OF RECORDS. Offeror should indicate by page number the identification of any portions of their Proposal, which they deem confidential, or which contains proprietary information or trade secrets, copyrights, patents or patents pending. Offeror should provide justification of why materials, upon request, should not be disclosed by City under the Inspection of Public Records Act §14-2-1 NMSA 1978. City may otherwise use or disclose the data submitted by Offeror. The Offeror's opinion of proprietary information is not necessarily binding upon City (attach to this Form). (Reference Section 1, Paragraph 1.23 of this RFP.)

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ Title: _____

(CORPORATE SEAL)

Dated: _____, 2006

FORM 4 - ADVERTISING PROGRAM

1. GENERAL INFORMATION. The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

A. Name, address and telephone number of Offeror exactly as it should appear in the proposed Advertising Concession Using ABQ RIDE Vehicles and Facilities Agreement.

Offeror Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No. (____) _____ FAX No. (____) _____

E-Mail Address: _____

2. ADVERTISING PROGRAM.

A. Advertising Design Plan. Detail on separate sheet(s): Offeror must submit a plan that details the locations, and types of media proposed for the offered Advertising Concession Using ABQ RIDE Vehicles and Facilities in accordance with Part 2, Section 2.1.3 of this RFP.

B. Marketing Strategy. Detail on separate sheet(s): Describe the Offeror's marketing strategy to achieve the objectives of the Advertising Concession Using ABQ RIDE Vehicles and Facilities in accordance with Part 2, Section 2.1.3.3 of this RFP.

C. Management and Operating Plan. Detail on separate sheet(s): Offeror's proposed management structure, style and method of operation based on the following: personnel training, wages, uniforms, affirmative action program, and quality control. Provide names of key management personnel and forecasts of gross sales in accordance with Part 2, Section 2.1.3.4 of this RFP.

3. CONDITIONS OF PROPOSAL SUBMITTAL. Submittal of this Proposal constitutes an offer to City.

4. CONDITIONS OF AWARD OF AGREEMENT. Offeror agrees to execute the Agreement and deliver the duly executed Concession Agreement to City within fourteen (14) days from receipt of such Agreement from City.

5. PROPOSED CONCESSION AGREEMENT. An example of the proposed Agreement to be entered into is provided in Part 6 of this RFP. Please state that you accept the terms and conditions of the Agreement, or note exceptions. Please check appropriate box below and attach appropriate documentation to this form as required.

We accept the terms and conditions of the proposed concession agreement and take no exceptions.

We do not accept all the terms and conditions of the proposed concession Agreement. Exceptions have been noted and attached to this form as prescribed herein.

6. CONFLICT IN LANGUAGE. If any language or information contained in this Proposal Form conflicts with the proposed Concession Agreement included in Part 6 of this RFP, then the language of the Agreement shall govern.

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ Title: _____

(CORPORATE SEAL)

Dated: _____, 2006

FORM 5 - COMPENSATION OFFER

1. GENERAL INFORMATION. The Offeror hereby certifies that all statements contained herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror’s Proposal to be non-responsive by City.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

A. Name, address and telephone number of Offeror exactly as it should **appear in the proposed Advertising Concession Using ABQ RIDE Vehicles and Facilities Agreement.**

Offeror Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No. (____) _____ FAX No. (____) _____

E-Mail Address: _____

ENTER AMOUNT HERE:

2. PROPOSED COMPENSATION TO CITY. As consideration for the privilege of developing and operating an Advertising Concession Using ABQ RIDE Vehicles and Facilities, Offeror shall pay to City each year, for the full Term of the Agreement, the greater of a Minimum Annual Guarantee or a Percentage of Gross Revenue Fee applicable to Gross Revenues derived from the concession.

A. Minimum Annual Guarantee (“MAG”). In accordance with Part 2, Section 2.1.5 of this RFP, a MAG will be required for the full Term of the Agreement. Offeror shall pay City a MAG of **One Hundred Twenty Thousand and 00/100 Dollars (\$120,000.00)**, or an amount proposed below by Offeror, **whichever is greater.**

ENTER AMOUNT BELOW:

Proposed Minimum Annual Guarantee:

_____ Dollars (\$_____.00)
(Amount expressed in words) (Amount in Numbers)

(This amount shall be no less than the One Hundred Twenty Thousand and 00/100 dollars [\$120,000.00] Minimum Annual Guarantee as required by City.)

B. Percent of Gross Revenues Fee. In accordance with Part 5, Section 8.2 of this RFP, Offeror shall pay City a Percentage of Gross Revenues Fee equal to **fifty percent (50%)** of Gross Revenues derived from the concession, or an amount proposed below by Offeror, **whichever is greater.**

ENTER AMOUNT BELOW:

Proposed Percent of Gross Revenues Fee:

_____ Percent (_____%)
(Amount expressed in words) (Amount in Numbers)

(This amount shall be no less than the fifty percent [50%] of Gross Revenues Fee as required by City.)

NOTE: If the Initial Term of the Agreement is extended in accordance with Part 1, Section 1.18.4 of this RFP, the Percentage of Gross Revenues Fee established for the Initial Term will apply during the extension period.

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ Title: _____

(CORPORATE SEAL)

Dated: _____, 2006

FORM 6 - DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION FORM

A. SUBMIT this form with your proposal.

B. INSTRUCTIONS:

1. This form **must** be completed, signed and submitted by **all** Offerors with their Proposal to Develop and Operate an Advertising Concession Using ABQ RIDE Vehicles and Facilities. Offerors must make good faith efforts to meet the Disadvantaged Business Enterprises (DBE) participation goal established for this RFP. The Offeror can meet this requirement in one of three ways: **First**, if the Offeror is itself a certified DBE; **second**, documenting commitments for participation by certified DBE firms; or **third**, documenting good faith efforts.
2. In the event the Offeror qualifies as a DBE as defined below, please provide DBE Certificate or Control Number (DBE Part I below).
3. All addresses provided must be complete street addresses. Post Office box numbers shall not be considered. All phone numbers provided must be current.
4. Submit supplemental pages if the number of entries provided under each item of information is insufficient.

C. DISADVANTAGED BUSINESS ENTERPRISES (DBE) means a for-profit small business concern that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it and has been duly certified in the state in which they do business.

D. GOOD FAITH EFFORTS means efforts to achieve a DBE goal or other requirement of the DBE program, which, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirements. Evidence of good faith efforts include the names, addresses and current telephone numbers of DBEs that were considered, and evidence as to why agreements could not be reached for DBEs to participate in the program.

E. THE ALBUQUERQUE METROPOLITAN AREA means the following New Mexico Counties: Bernalillo, Sandoval, Santa Fe and Valencia **for purposes of this form only**.

F. A DBE PARTICIPANT is a business that has a direct area of responsibility in the development and operation of the Advertising Concession Using ABQ RIDE Vehicles and Facilities.

PART I – OFFEROR IS ITSELF A DBE

If Offeror is a DBE, please provide your DBE Certificate/Control No.: _____.

**PART II – OFFEROR OBTAINED DBE PARTICIPATION
FOR EACH DBE PARTICIPANT, PROVIDE THE FOLLOWING INFORMATION (use
additional sheets as necessary):**

1. Name, address and current phone numbers of the DBE Participant:

DBE Participant Name: _____

City: _____ State: _____ ZIP: _____

Telephone No.(____) _____ FAX No.(____) _____

Email Address: _____

2. DBE Certificate or Control Number: _____

**3. Area of direct responsibility of the DBE Participant for the development and operation
of the Advertising Concession Using ABQ RIDE Vehicles and Facilities if your Proposal is
accepted: _____**

4. The type of business experience that will be provided by the DBE Participant: _____

5. Name and addresses of all businesses operated by the DBE Participant:

DBE Participant's Business Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No.(____) _____ FAX No.(____) _____

Email Address: _____

**6. The name and residential address of each owner of the DBE Participant and percent of
ownership:**

Owner's Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Percentage Ownership: _____

Name of DBE entity: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No.: (____) _____ FAX No.: (____) _____

Type of Business Operated: _____

Contact: _____ DBE Certificate/Control No.: _____

Reason this entity was unavailable to participate: _____

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ Title: _____

(CORPORATE SEAL)

Dated: _____, 2006

FORM 7 - OFFEROR'S DISCLOSURE FORM

GENERAL INFORMATION. The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Offeror Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No. (____) _____ FAX No. (____) _____

E-Mail Address: _____

Disclose the name of each officer, director, principal and owner of each proposing entity and/or shareholder who owns or controls five percent (5%) or more of the business entity. This page may be photocopied if additional space is required. The individuals listed below are disclosed as having the noted relationship with the business entity/Offeror listed above. Show appropriate letter in the box to the left.

<p>KEY: A=Officer B=Director C=Principal D=Owner</p>	<p>E=Controller of 5% or more of stock F=Spouse G=Child under the age of 18</p>
---	--

1. _____

7. _____

2. _____

8. _____

3. _____

9. _____

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ Title: _____

(CORPORATE SEAL)

Dated: _____, 2006

**FORM 8 - INSTRUCTIONS FOR
LOCAL PREFERENCE CERTIFICATION FORM**

1. ALL INFORMATION MUST BE PROVIDED. A 5% local preference is available for this procurement. To qualify for this preference, an Offeror **MUST** complete and submit this Form **WITH ITS OFFER**. If an offer is received without the Form attached, completed, signed and certified, or if the Form is received without the required information, the preference will not be applied. **THE FORM OR A CORRECTED FORM WILL NOT BE ACCEPTED AFTER THE DEADLINE FOR RECEIPT OF BIDS OR PROPOSALS.**

2. LOCAL PREFERENCE PRECEDENCE OVER STATE PREFERENCE. The local preference takes precedence over the State Resident Business Preference and only one of the two preferences will be applied to any one offer. If it is determined that the local preference applies to one or more Offerors in any solicitation, the State Resident Business Preference will not be applied to any offers.

3. PHYSICAL LOCATION MUST BE STATED. To qualify for the local preference, a business must have a location in the Albuquerque Metropolitan Area (Abq. Metro Area). The business location inserted on the form must be a physical location, street address or such. **DO NOT** use a post office box or other postal address.

4. ADDITIONAL REQUIREMENT. To qualify for this preference, the principal Offeror (i.e. the business, **NOT** the individual signing the form) if it is a corporation, must be a New Mexico corporation with its articles of incorporation filed with the New Mexico Public Regulation Commission.

5. DEFINITIONS. The following definitions apply to this preference:

- The Abq. Metro Area includes all locations within the City of Albuquerque and Bernalillo County, and within any municipality (i.e. incorporated city, town or village) contiguous to the City of Albuquerque and Bernalillo County.
- A resident of the Abq. Metro Area is a person who occupies a dwelling in the Area and who manifests an intent to maintain that dwelling on a permanent basis.
- A principal Offeror is a single Offeror; a business which is the prime contractor or one of the prime contractors and not a subcontractor; or a partner or joint venturer submitting an offer in conjunction with other businesses.

6. ADDITIONAL DOCUMENTATION. If requested, a business will be required to provide, within 10 working days of the request, documentation to substantiate the information provided on the form.

9/24/02

FORM 8 - LOCAL PREFERENCE CERTIFICATION FORM

RFP07-003-SV: "Advertising Concession: ABQ Ride Vehicles & Facilities"

Business Name: _____

Business Location (in Abq. Metro Area): _____

Business Type: SELECT ONE

- Corporation -- Indicate state of incorporation.  _____
- Partnership -- Indicate "general" or "limited".  _____
- Sole Proprietorship (Single Owner with employees)
- Individual (Single Owner/No employees)
- Other - Indicate status.  _____

Additional Information: (PROVIDE IF BUSINESS IS A CORPORATION)

Date of incorporation in the State of New Mexico:  _____

CERTIFICATION

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City, will provide, within 10 days of notice, the necessary documents to substantiate the information provided on this form.

Signature of Authorized Individual: _____

Printed Name: _____

Title: _____ **Date:** _____

YOU MUST RETURN THIS FORM WITH YOUR OFFER

9/24/02

PART 6
PROPOSED CONTRACT

PART 6
Proposed Contract
Advertising Concession Using ABQ RIDE Vehicles & Facilities

(CONCESSIONAIRE NAME)

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Advertising Using ABQ RIDE Vehicles and Facilities Concession Agreement

(CONCESSIONAIRE)

This Advertising Using ABQ RIDE Vehicles and Facilities Concession Agreement ("Agreement") is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City") and (name of company), a (business entity) organized and existing under the laws of the State of (state name) ("Concessionaire").

In consideration of the rights, privileges, and mutual obligations contained in this Agreement, City and Concessionaire agree as follows:

Section 1. Recitals.

1.1 City owns and operates through its Transit Department vehicles and facilities as shown in **Exhibit ___A**, located in the County of Bernalillo, State of New Mexico; and

1.2 Concessionaire is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over Concessionaire; and

1.3 City issued a Request for Proposal ("RFP"), RFP2006-XXX-SV, "Operate an Advertising Concession Using ABQ RIDE Vehicles and Facilities Concession", dated XX XXXX 2006, attached hereto as **Exhibit B** and

1.4 Concessionaire submitted its Proposal, dated _____, 2006, in response to RFP2006-XXX-SV, "Operate an Advertising Concession Using ABQ RIDE Vehicles and Facilities", which Proposal is attached hereto as **Exhibit C**, and Concessionaire selection was approved City Council via EC No. _____ dated _____, 2006; and

1.5 City desires to enter into a Concession Agreement for the operation of an Advertising Concession Using ABQ RIDE Vehicles; and

1.6 Concessionaire desires to operate an Advertising Concession Using ABQ RIDE Vehicles and Facilities upon the terms and conditions stated in this Agreement; and

1.7 City and Concessionaire have the right and power to enter into this Agreement.

Section 2. Assigned Area. City, for and in consideration of the Fees and Charges reserved in this Agreement and each of the covenants, conditions, and agreements set forth in this Agreement to be kept and performed by Concessionaire, hereby grants Concessionaire the right to use certain

areas of the ABQ RIDE vehicles and facilities to operate and manage an innovative, state-of-the-art Advertising Concession Using ABQ RIDE Vehicles and Facilities as described further in Section 3, Section 4, and Section 5 of this Agreement. Concessionaire hires and takes from City upon the conditions, covenants, and agreements set forth in this Agreement, all of which Concessionaire accepts, the Assigned Area as described in **Exhibit D** (“Assigned Area”).

2.1 Exclusive Right. Concessionaire shall have the exclusive right, privilege, and obligation to provide approved advertising in the Assigned Area. Any additional area identified for advertising at ABQ RIDE facilities or on ABQ RIDE vehicles may be made available to Concessionaire and shall be subject to all terms and conditions of this Agreement upon mutual agreement of City and Concessionaire pursuant to a written Amendment to Exhibit D.

2.2 Specific Exclusions and Exceptions. Notwithstanding the foregoing, Concessionaire’s rights granted hereunder EXCLUDE, without limitation, the following advertising rights:

2.2.1 advertising and displays specific to ABQ RIDE activities or events, as described in Part 3 Scope of Services, Subsection 3.1.1.4.

Section 3. Operating Standards and Criteria. Concessionaire shall develop, operate, and maintain a comprehensive advertising program consistent with the advertising plan submitted in Concessionaire’s Proposal, as modified from time to time by mutual agreement of City and Concessionaire. Concessionaire shall manage the Advertising Concession Using ABQ RIDE Vehicles and Facilities in a manner necessary to achieve and maintain the following goals, as established by City to create an innovative state-of-the-art advertising program that optimizes advertising effectiveness and maximizes advertising revenues for the Transit Department.

3.1 Advertising Media Display Content. All advertising media displays shall be commercial and public service oriented reflecting good taste, professionally developed, and presented in such a manner as to not be offensive to the general public, and consistent with Section 3, subsections 3.1.7.2 and 3.1.7.3. The Director of Transit (“Director”) may require the removal of any advertising that he, in his sole discretion, deems objectionable.

Section 4. Operational Requirements.

4.1 Management and Staffing. Concessionaire shall maintain a professional staff to manage, maintain, and operate the Advertising Concession Using ABQ RIDE Vehicles and Facilities in a first-class manner as follows:

a) Concessionaire shall provide an effective sales organization having ability, experience, and business relationships of sufficient scope to solicit and sell available advertising space to national, regional, and local advertisers.

b) Concessionaire shall designate an active, qualified, and competent local service manager who will be responsible for all aspects of project management and shall be the primary contact for City. Concessionaire shall ensure that the local service manager can be reached by phone at all times between 8:00 a.m. and 5:00 p.m., Monday through Saturday.

c) Concessionaire, its employees, agents, suppliers, and contractors shall conduct themselves in an orderly and professional manner at all times.

4.2 Business Conduct. Concessionaire shall maintain and conduct its operations in a proper business-like manner so as not to disturb or be offensive to other persons or customers at or around the Assigned Area.

4.3 Advertising Sales. Concessionaire shall use diligent and good faith efforts to maximize advertising sales to the greatest extent possible. Concessionaire shall achieve and maintain at least seventy-five percent (75%) annual Advertising Media Display occupancy.

4.3.1 Concessionaire shall establish rates and charges to be assessed to its advertisers. Concessionaire shall ensure that such fees are not established in an arbitrary or indiscriminate manner. In the event Concessionaire offers quantity purchase and incentive discounts to advertisers, Concessionaire shall provide to the Director, upon request, a schedule of such discounted rates.

4.4 Repairs and Maintenance. Concessionaire shall maintain and make necessary general repairs to all of the improvements, fixtures, and equipment placed or installed in the Assigned Area by Concessionaire, including, without limitation, signs, showcases, displays, and racks.

4.4.1 All repairs done by Concessionaire or on its behalf shall be of first-class quality in both materials and workmanship. All repairs shall be made in conformity with the rules and regulations prescribed from time to time by federal, state, or local authority having jurisdiction over the work in the Assigned Area.

4.4.2 Concessionaire shall ensure that corrective action on maintenance and/or repair requests by City be made within eight (8) hours of notice from City.

4.5 Concessionaire's Activities. Concessionaire agrees that nothing shall be done or kept on the Assigned Area and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Assigned Area, which might be unsafe or hazardous to any person or property. Further, Concessionaire shall not do or permit to be done any act or thing upon the Assigned Area which, in the opinion of City, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement; provided, however, that nothing herein shall preclude Concessionaire from bringing, keeping, or using on or about the Assigned Area such materials, supplies, equipment, and machinery as are appropriate or

customary in carrying on its business, or from carrying on the normal operations contemplated herein.

4.6 Director's Right to Object. Director shall have the right to raise objections to the conditions of the Assigned Area or Concessionaire's practices and conduct and to require such Assigned Area conditions or Concessionaire practices or conduct to be remedied by Concessionaire. In addition, Director reserves the right to change, remove, or relocate any advertising space as it deems appropriate.

Section 5. Term.

5.1 Effective Date. The Effective Date of this Agreement shall be the date of City's signature.

5.2 Agreement Term. The Agreement Term ("the Term") shall be for a period of five (5) years, commencing on the Effective Date of this Agreement, unless sooner terminated pursuant to any provision of this Agreement. City shall retain an option to extend the Term for three (3) additional years, followed by a two (2) year extension period. Such option shall not be unreasonably withheld if Concessionaire maintains standards of operation, as set forth in Section 4 of this Agreement, throughout the Term to the satisfaction of City and is not otherwise in default of this Agreement.

Section 6. Fees and Charges. As consideration for the privilege of developing and operating an Advertising Concession Using ABQ RIDE Vehicles and Facilities throughout the Term, Concessionaire shall pay all fees and charges required under this Agreement to City as provided for, and in the manner prescribed in this Section 7. If the Commencement Date or the expiration or earlier termination of this Agreement occurs on a date other than the first or last day of a calendar month, respectively, fees and charges for the partial first or last calendar month will be prorated.

6.1 Minimum Annual Guarantee: During the Term, Concessionaire will be required to pay a Minimum Annual Guarantee ("MAG") . The MAG for the initial calendar year will be One Hundred Forty Four Thousand and 00/100 Dollars (\$144,000.00) [or the MAG proposed by Concessionaire in its RFP Proposal (**Exhibit C**), whichever is greater].

Commencing at the end of each calendar year, the MAG shall be adjusted for the next year to a sum of money representing eighty-five percent (85%) of the Percentage of Gross Revenues Fee payable for the preceding agreement year calculated in accordance with Section 7.2; provided, however, that in no event shall the MAG for any year be less than the MAG for the initial calendar year of the Agreement.

Beginning on the Commencement Date and continuing on the first day of each month thereafter during the remainder of the Term, Concessionaire shall pay to City one twelfth (1/12) of the applicable MAG as required above. The MAG shall be payable in advance and without invoice, on

the first day of each calendar month throughout the Term. For any period less than one calendar month that this Agreement shall be in effect, the MAG shall be calculated on a pro rata basis, pursuant to this Section 7.

6.2 Percentage of Gross Revenues Fee: Concessionaire shall pay to City a Percentage of Gross Revenues Fee equal to fifty percent (50%) [or the percentage proposed by Concessionaire in its RFP Proposal (**Exhibit C**), whichever is greater] of Gross Revenues derived from the Operation of the Advertising Using ABQ RIDE Vehicles and Facilities Concession, or a MAG, whichever is greater, for each year of the Agreement.

Immediately upon Concessionaire's receipt of monies from sales by Concessionaire, the percentages of the monies belonging to City shall immediately vest in and become the property of City. Concessionaire shall be responsible as trustee for the monies until the sums are delivered to City.

6.2.1 Payment of Percentage of Gross Revenues Fee. Concessionaire agrees to pay to City monthly, the Percentage of Gross Revenues Fee, to the extent that such percentage fee is higher than the MAG. Within **fifteen (15) days** after the beginning of each calendar month during the Term, Concessionaire shall pay to City a sum of money that represents the excess of the difference between the MAG and the Percentage of Gross Revenues for the previous month. The Percentage of Gross Revenues Fee shall be reported separately from other fees required under this Agreement as provided for in this Section 7, and on the form attached hereto as **Exhibit G** (Monthly Statement of Gross Revenues Form).

If the Term is extended in accordance with Section 6.3 of this Agreement, the Percentage of Gross Revenues Fee established for the Term will apply during the extension period. Gross Revenues means the total amount of money or the value of other considerations received from advertising sales.

6.2.2 Specific Inclusions. Gross Revenues include but are not limited to the following:

- a) the total amount of money or the value of other consideration received shall be included whether payment is for cash or on credit and whether or not such amount is collected;
- b) all credit losses, credit charges, or credit deductions incurred by Concessionaire or imposed on Concessionaire shall remain part of the Gross Revenues and shall not be deducted from Gross Revenues;

6.2.3 Specific Exclusions. Excluded or deducted from Gross Revenues are the following:

- a) federal, state, municipal or other government excise taxes (except Federal manufacturer's excise taxes), use, sales, privileges or retailer's occupation taxes now

- or hereafter imposed and required to be collected by Concessionaire directly from patrons or customers or as part of the price of services and required to be paid over in turn by Concessionaire to any governmental agency;
- b) receipts from the sale or trade-in value of any equipment owned by Concessionaire;
 - c) the amount of cash or quantity discounts received from sellers, suppliers or manufacturers;

Section 7. Reporting Requirements.

7.1 Monthly Statement of Gross Revenues . Within thirty (30) days after the close of each calendar month during the Term of this Agreement, Concessionaire shall submit to City, on the form attached hereto as **Exhibit G** (Monthly Statement of Gross Revenues Form), information concerning its Gross Revenues, including, but not limited to a statement of its Gross Revenues during the preceding month upon which the Percentage of Gross Revenues Fee payments required in Section 7.2 above, are computed. **Concessionaire must submit the monthly statement with its payment of the Percentage of Gross Revenues Fee.** This statement shall be signed by a responsible accounting officer of Concessionaire. City shall have the right to modify the Monthly Statement of Gross Revenues Form and to require Concessionaire to submit other information pertaining to its Gross Revenues, and Concessionaire agrees to use such forms and provide such additional information.

As a condition of the reporting requirements pursuant to this Section 8.1, Concessionaire agrees to submit a monthly statement of Gross Revenues, whether or not a percentage of gross revenues fee may be due to City.

7.2 Accounting Records. Concessionaire agrees to keep full and accurate books showing all of its Gross Revenues and City shall have the right to inspect, examine, copy and audit such books and records, including, but not limited to Concessionaire's federal, state, and local tax returns and New Mexico Gross Receipts tax return records as filed with the State of New Mexico, as further provided in Section 8.4 below.

7.3 Annual Reporting. Within ninety (90) days after the end of each calendar year of operation, Concessionaire shall transmit to the Transit Department a statement of its Gross Revenues due for the previous calendar year. Such annual reports shall be prepared by Concessionaire's certified public accountant in accordance with Generally Accepted Accounting Principles. If such annual report shall disclose an overpayment or underpayment of fees calculated pursuant to Section 7 of this Agreement, Concessionaire shall pay to, or be paid or credited by, City for the amount of such overpayment or underpayment, as the case may be. Any payment due shall accompany Concessionaire's annual report. Concessionaire shall take any overpayment credit during the month next following transmittal of its annual report.

7.4 Auditing by City. City shall have the right at any time within three (3) years after receipt of Concessionaire's annual statement or monthly statements to have the books and records of

Concessionaire audited during reasonable hours by a certified public accountant including but not limited to the Department's Auditor, City's Office of Internal Audit, or its successor agency, or a private certified public accountant; and, in the event that such audit shows Concessionaire's Gross Revenues as reported by said certified statement to be more than one percent (1%) in error, detrimental to City, Concessionaire shall reimburse City for the expense to City of such audit; otherwise, City shall bear the entire cost of such audit. Any additional percentage of gross revenues fees and charges found due by such audit shall be paid to City within thirty (30) days of the audit and shall bear interest at the late payment interest rate from the date such payment was due until paid; and if Concessionaire has overpaid such fees, Concessionaire shall deduct such excess from the fees next falling due, if any, or be paid such excess by City if no fees are owed. Concessionaire shall not be entitled to charge City any interest on such overpayments.

Concessionaire shall maintain records of its Gross Revenues for a period of at least three (3) years following the end of each calendar year and such records shall be available to City for audit or review on request during usual office hours. Concessionaire shall allow City's representatives to photocopy any records the representatives determine to be necessary to conduct and support their audit. Concessionaire shall provide City's representatives with retrievals of computer based records or transactions the representatives determine to be necessary to conduct the audit. Concessionaire shall not charge City for reasonable use of Concessionaire's photocopy machine while conducting the audit, nor for any cost of retrieving, downloading to diskette and/or printing any records or transactions stored in magnetic, optical, microform or other media.

Concessionaire shall maintain such records at its corporate office and provide them to City, in Albuquerque, New Mexico, upon fifteen (15) days written request. Should Concessionaire not wish to make its books and records available at the Transit Department offices, then Concessionaire shall pay reasonable travel and accommodation expenses for the Transit Department staff or its duly authorized representatives to travel to Concessionaire's corporate offices to conduct the audit. City's rights under this Agreement to inspect and audit the books and records of Concessionaire shall survive the expiration or earlier termination of this Agreement.

7.5 Failure to Record. In the event Concessionaire fails to create and/or preserve part or all of the Gross Revenue records required in this Agreement, Concessionaire shall pay City the percentage of gross revenues fees on an estimated amount of Gross Revenues for the time period for which such records were not created or preserved, plus eighteen percent (18%) thereon. The estimate of Gross Revenues shall be made by City and shall be based on historical sales. Failure of Concessionaire to create and/or preserve such records shall be a material breach of this Agreement by Concessionaire.

Section 8. Insurance.

8.1 General Requirements. Concessionaire shall, procure and maintain in full force and effect during the Term, the insurance required in this Agreement. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and shall be on forms

properly filed and approved by the Superintendent of Insurance, State of New Mexico. When requested by City, Concessionaire shall provide to City copies of any or all policies of insurance for the insurance coverage required in this Section 8. Policies of insurance shall be procured for all insurance required herein and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided hereinafter.

Concessionaire shall not violate the terms or conditions of insurance policies required to be furnished by Concessionaire. Concessionaire shall promptly notify City of any claim of loss exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

Concessionaire shall furnish City with certificates of insurance by sending the certificates to the Director of Transit, Alvarado Transportation Center, 100 First Street SW, Albuquerque, New Mexico 87102. All insurance certificates shall provide that thirty (30) days written notice be given to the Director of Transit before a policy is canceled, materially changed, or not renewed. **A certificate or policy which states that the failure to give City notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For instance, certificates or policies stating that the insurance company shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to City.** The form of certificates of insurance shall be substantially the same as **Exhibit I** attached hereto. Documents establishing the continuation or replacement of insurance shall be delivered to the Transit Department no less than thirty (30) days prior to the continuation or replacement of the insurance coverage.

8.2 Approval of Insurance. Even though a "notice to proceed" may have been given, neither Concessionaire nor any contractors, assignees or other transferees of Concessionaire shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Director of Transit. Neither approval nor failure to disapprove certificates of insurance by City shall relieve Concessionaire or any transferees of full responsibility to maintain the required insurance in full force and effect.

8.3 Required Insurance.

8.3.1 Commercial General Liability including Automobile. Concessionaire shall procure and maintain policies of insurance for commercial general liability and vehicle liability for all vehicles used in its operation at the Airport, as further described below. All such policies of insurance shall have liability limits in amounts not less than **XXXXXX and 00/100 Dollars (\$X,000,000.00)*** single limit liability for bodily injury, including death, and property damage in any one occurrence. The insurance policies shall include coverage for Assigned Area (if applicable), operations, and Concessionaire's contractual liability to City hereunder. Contractual liability coverage shall specifically insure the Indemnification provision of this Agreement. The insurance policies shall contain "products" and "completed operations" coverage (if applicable) and shall not

be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to the Airport, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. City reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment and inflationary trends.

8.3.2 Increased Limits. If, during the Term of this Agreement, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that required for commercial general liability including auto above, City shall be entitled to require Concessionaire to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

8.3.3 Contractor Bond and Insurance. Concessionaire shall require any contractor or contractors who perform any work for ABQ RIDE on behalf of or for the benefit of Concessionaire to procure contractor's commercial general liability insurance, ground vehicle liability insurance, property damage insurance and workers' compensation insurance in amounts no less than those required of Concessionaire pursuant to this Agreement. Concessionaire shall furnish the Director of Transit with evidence that the contractor has procured such insurance coverage.

8.3.4 Additional Insured. City of Albuquerque shall be named as an additional insured on each insurance policy referred to in Sections 10.3.1, 10.3.2, and 10.3.3, above.

8.3.5 Workers' Compensation Insurance. Concessionaire shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Concessionaire shall procure and maintain during the Term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. In addition, Concessionaire shall procure and maintain Employer's Liability Coverage in an amount not less than XXXXX and 00/100 Dollars (\$X,000,000.00) per occurrence.

With respect to Workers' Compensation Insurance, if Concessionaire elects to be self-insured, Concessionaire shall comply with the applicable requirements of law. If any portion of the work is to be sublet, Concessionaire shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. Concessionaire hereby covenants and agrees that City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by Concessionaire's failure to comply with the provisions of this subparagraph and that the Indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Concessionaire are not City employees for any purpose.

8.4 Self-Insurance Retention/Deductibles. In the event any of the insurance policies required in this Section (except as allowed by New Mexico law regarding Workers' Compensation)

contain a self-insurance retention provision (whether or not in the form of a deductible), for each such amount, Concessionaire shall post a bond or an irrevocable letter of credit made exclusively for the benefit of City and held by a bank authorized to do business in New Mexico which is acceptable to the Transit Department.

8.5 Failure to Maintain Insurance. In the event Concessionaire, shall, at any time, fail to have in effect the insurance required under the provisions of this Agreement, such failure shall constitute an Event of Default pursuant to Section 11 below. City shall have the option, but no obligation, to secure the insurance required hereunder at the cost and expense of Concessionaire, providing Concessionaire with fifteen (15) calendar days written notice of its intention to obtain such insurance coverage. Said fifteen (15) days shall run from the date notice is received by Concessionaire. Concessionaire agrees to reimburse City for costs of such insurance plus fifteen percent (15%) thereof for administrative overhead.

8.6 Additional Requirements. Insofar as the above-described insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, City shall be included as an additional insured; provided such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or City-leased property and City personnel, and caused by or resulting from work, acts, operations or omissions of Concessionaire, its officers, agents, employees and independent contractors. City shall have no liability for any premiums charged for such coverage, and inclusion of City as an additional insured is not intended to and shall not make City a partner or joint venturer with Concessionaire in its operations at the Airport.

Section 9. Termination of Agreement.

9.1 Termination: 15-Day Cure Period. This Section shall govern Concessionaire's failure to comply with the following provisions (hereafter "Events of Default"):

11.1.1 Maintain operating standards and criteria pursuant to Section 3;

11.1.2 Adhere to operational requirements pursuant to Section 5;

11.1.3 Provide the reports required in Section 8;

11.1.4 Provide and maintain insurance pursuant to Section 10.

In the event Concessionaire fails to comply with any or all of the aforementioned sections for a period of fifteen (15) days after receipt from City of written notice of Events of Default, City shall be entitled to terminate this Agreement, provided that no notice of termination shall be effective if Concessionaire shall have fully cured all Events of Default identified in the fifteen (15) day notice prior to Concessionaire's receipt of the notice of termination. Termination of this Agreement shall

take effect immediately upon Concessionaire's receipt of the notice of termination, unless stated otherwise in the notice of termination.

9.2 Termination: 30-Day Cure Period. Except for Events of Default which are governed by Section 11.1, above, City shall be entitled to terminate this Agreement in the event of default by Concessionaire in the performance of any covenant or agreement herein required to be performed by Concessionaire and the failure of Concessionaire to remedy such default for a period of thirty (30) days after receipt from City of written notice to remedy the same; provided, however that no notice of termination, as above provided, shall be of any force or effect if Concessionaire shall have remedied the default prior to Concessionaire's receipt of City's notice of termination. Termination of this Agreement shall take effect immediately upon Concessionaire's receipt of the notice of termination, unless stated otherwise in the notice of termination.

9.3 City's Non-Waiver. City's performance of all or any part of this Agreement for or during any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Concessionaire, shall not be deemed a waiver of any rights on the part of City to terminate this Agreement for failure by Concessionaire to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed by Concessionaire and shall not be construed to be or act as a waiver by City of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Concessionaire.

9.4 Termination by Concessionaire: 30-Day Cure Period. Concessionaire shall be entitled to terminate this Agreement in the event of a default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of thirty (30) days after receipt from Concessionaire of written notice to remedy the same; provided, however, that no notice of termination, as above provided, shall be of any force or effect if City shall have remedied the default prior to receipt of Concessionaire's notice of termination.

9.5 Concessionaire's Non-Waiver. Concessionaire's performance of all or any part of this Agreement for or during any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by City, shall not be deemed a waiver of any rights on the part of Concessionaire to terminate this Agreement for failure by City to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed by City and shall not be construed to be or act as a waiver by Concessionaire of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by City.

Section 10. Financial Responsibility.

10.1 Taxes, Licenses, Debts. Concessionaire shall promptly pay all taxes and other exactions assessed or assessable and pay all license fees and permit fees applicable to Concessionaire's operation.

Section 11. Surrender of Assigned Area. Upon expiration of the Term or earlier termination of this Agreement, Concessionaire shall, within sixty (60) days, remove any and all non-permanent advertising media displays, equipment, trade fixtures, materials, supplies, and other personal property. However, the City shall have the right to occupy and use the area and facilities immediately upon the expiration of the Term. Following the removal of the personal property, Concessionaire shall be required to return the work area to the same or comparable condition as existed on the Effective Date of this Agreement, reasonable wear and tear excepted.

11.1 Removal Damages. In the event Concessionaire removes its materials and other personal property described in Section 14 above, Concessionaire shall repair any damage caused by such removal. Removal and repair shall be at Concessionaire's expense.

11.2 Ownership of Property Not Removed. In the event Concessionaire fails to remove its personal property, City shall have the option of 1) removing Concessionaire's personal property at Concessionaire's expense, but only in the event Concessionaire takes possession of personal property immediately upon such removal; City shall be entitled to all proceeds of sale of such improvements and personal property as liquidated damages for the breach of Concessionaire's covenant to remove.

Section 12. General Conditions.

12.1 Rules and Regulations. During the Term, Concessionaire shall observe and obey all rules and regulations promulgated from time to time by City. Concessionaire shall not violate, nor knowingly permit its agents, contractors, or employees acting on Concessionaire's behalf to violate any such rules and regulations.

12.2 Hazardous Materials.

12.2.1 Concessionaire's Compliance with Environmental Laws. Concessionaire shall at all times in all respects comply with all environmental laws, and any amendments thereto affecting Concessionaire's operation at ABQ RIDE facilities, including all federal, state and local laws, ordinances and regulations relating to Hazardous Materials.

12.2.2 Notices. Concessionaire shall immediately notify City in writing of any enforcement, clean-up, removal, or other Governmental or regulatory action instituted, completed, or threatened pursuant to any Hazardous Materials laws. Except as otherwise provided in Section 24.2.2, Concessionaire shall also supply to City as promptly as possible, and in any event within ten (10) business days after Concessionaire first receives or sends the same, with copies of all claims,

reports, complaints, notices, or warnings or asserted violations relating in any way to the Assigned Area or Concessionaire's use thereof.

12.2.3 Hazardous Material Defined. As used herein the term “Hazardous Materials” means any hazardous toxic substance, material or waste, which is or becomes regulated by any local governmental authority, the State of New Mexico or the United States government. The term “Hazardous Material” includes, without limitation, any material or substance which is 1) defined as a “Hazardous Waste,” under Section 74-4-3 of the New Mexico Statutes (NMSA 1978), 2) designated as a “Hazardous Substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC Section 1317), 3) defined as a “Hazardous Waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.* (42 USC Section 6903) or 4) defined as a “Hazardous Substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601 *et seq.* (42 USC Section 9601).

12.3 Contract Interpretation.

12.3.1 Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either City or Concessionaire in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

12.3.2 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

12.3.3 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

12.3.4 Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

12.3.5 Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings and agreements have been merged into this Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

12.3.6 Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

12.3.7 Exhibits, Certificates, Documents Incorporated and Attachments. All certificates, documents, exhibits, attachments, riders and addenda referred to in this Agreement, including but not limited to the attached exhibits, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

12.3.8 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules, and regulations of the City of Albuquerque.

12.3.9 Successors. All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

12.3.10 Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by City in the Airport; except as specifically provided in this Agreement; or impairing, exercising or defining governmental rights and the police powers of City.

12.3.11 Cross References. References in the text of this Agreement to articles, sections or exhibits pertain to articles, sections or exhibits of this Agreement unless otherwise specified.

12.3.12 Relation to Other Concessionaires. This Agreement is separate and distinct from, and shall be construed separately from any other agreement between City and any other concessionaire at the Airport. The fact that such other agreement contains provisions, which differ from those contained in this Agreement shall have no bearing on the construction of this Agreement.

12.3.13 Time is of the Essence. Time is of the essence in the performance of this Agreement.

12.4 Discrimination Prohibited.

12.4.1 General: In the use and occupation of the Assigned Area, Concessionaire shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap in violation of any federal, state or local law.

12.4.2 Civil/Human Rights Laws: In the operation and use of the Assigned Area, Concessionaire shall not on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21, 23 and 26, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, the New Mexico Human Rights Act, and the Albuquerque Human Rights Ordinance. Concessionaire agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Concessionaire agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

12.5 Indemnification Agreement. Concessionaire covenants that it and all of its agents, servants, and employees will use due care and diligence in all of its or their activities and operations at ABQ RIDE facilities. Concessionaire agrees to and recognizes the broad nature of this indemnification provision (hereafter the “Indemnification Agreement”) and voluntarily makes this covenant and expressly acknowledges the receipt of adequate compensation by the City in support of this Indemnification Agreement.

12.5.1 General Indemnification. Concessionaire agrees to defend, indemnify and hold harmless City and its officers 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 City 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 Concessionaire, its agents or its employees arising out of the operations of Concessionaire or Concessionaire's performance, purported performance, or non-performance of this Agreement or Concessionaire's activities.

12.5.2 Costs. As used in this Indemnification Agreement, “Costs” shall include but not be limited to:

12.5.2.1 all claims of third parties, including government agencies for damages, response costs or other relief;

12.5.2.2 the cost, expense or loss to the City of any injunctive relief, including preliminary or temporary injunctive relief applicable to the City;

12.5.2.3 all expenses of evaluation, testing analysis related to Hazardous Substances including fees of attorneys, engineers, consultants, paralegals and experts;

12.5.2.4 any and all expenses or obligations including attorneys’ and paralegal fees incurred at, before or after any trial or appeal therefrom, or any administrative proceeding or appeal therefrom, whether or not taxable as costs, including without limitation, attorneys’ and paralegal fees, witness fees (expert or otherwise), deposition costs, copying and telephone charges and other expenses; and

12.5.2.5 any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state agency.

12.5.3 Limitations.

12.5.3.1 Concessionaire shall not be required to indemnify or hold harmless City pursuant to this Section with respect to any bodily injury, death or injury to or destruction of property which results from the negligence or willful misconduct of City, its agents, servants or employees.

12.5.4 Scope of Indemnification. With respect to any claims, actions, suits, damages or judgments caused by or resulting from acts, omissions or operations of Concessionaire, its agents, servants, or employees, Concessionaire shall:

12.5.4.1 investigate or cause the investigation of accidents involving such injuries;

12.5.4.2 negotiate or cause to be negotiated settlement of all claims made as may be deemed expedient by Concessionaire, and defend, or cause to be defended, suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages against City;

12.5.4.3 pay and satisfy judgments finally establishing the liability of City in all actions defended by Concessionaire pursuant to this Section; and

12.5.4.4 pay, or cause to be paid: 1) all costs taxed against City in any legal proceeding defended or caused to be defended by Concessionaire as aforesaid; 2) any interest accruing up to the date of payment by Concessionaire; 3) all premiums charged upon appeal bonds required in such proceedings; and 4) all expenses incurred by City for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred, should Concessionaire fail to provide the defense and indemnification required herein.

12.5.5 Miscellaneous. City shall, promptly upon receipt of a notice of claim, give Concessionaire every demand, notice, summons, or other process received in any claim or legal proceeding contemplated therein. In the event City shall fail to give Concessionaire notice of any such demand, notice, summons, or other process received by City and such failure to give notice shall result in prejudice to Concessionaire in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Concessionaire 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 condition of preserving, asserting, or enforcing any claim or legal liability against City. This subsection shall not be construed as a waiver of City's immunity. The provisions of this subsection shall not be construed to prohibit Concessionaire from seeking contribution or indemnity from any third party that may have caused or contributed to the event for which Concessionaire indemnified City.

12.5.6 Length of Indemnification. Concessionaire's obligations and liabilities under this Section shall survive the termination or expiration of this Agreement.

12.6 Assignment and Subletting. Concessionaire shall not assign, sublet, mortgage, or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of City. Such approval shall not be unreasonably withheld.

12.7 Ethics.

12.7.1 Conflict of Interest. Upon execution of this Agreement, or within five (5) days after the acquisition of any interest described in this Agreement during the Term, Concessionaire shall disclose in writing to City whether any City Councilor of the City of Albuquerque, Albuquerque Transit Advisory Board member, officer or employee of City has or hereafter acquires any direct, indirect, legal, or beneficial interest in Concessionaire or in any contract, lease, or agreement between City and Concessionaire, or in any franchise, concession, right, or privilege of any nature granted by City to Concessionaire in this Agreement or otherwise.

12.7.2 Fair Dealing. Concessionaire covenants and warrants that the only person or firm interested in this Agreement as principal or principals is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by Concessionaire without collusion on the part of Concessionaire with any person or firm, without fraud and in good faith. Concessionaire also covenants and warrants that no gratuities, in the form of

entertainment, gifts or otherwise, were, or during the Term of this Agreement, will be, offered or given by Concessionaire, or any agent or representative of Concessionaire, to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

12.7.3 Board of Ethics and Campaign Practices. Concessionaire agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator ("Board") with any records or information pertaining in any manner to this Agreement, or both, whenever such records or information are within Concessionaire's custody, are germane to an investigation authorized by the Board, and are requested by the Board. Concessionaire further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Concessionaire agrees to require that all subcontractors employed by Concessionaire for services performed for this Agreement shall agree to comply with the provisions of this Section. Concessionaire and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this Section.

12.7.4 Harassment. Concessionaire shall not harass or annoy City Councilors of the City of Albuquerque or officers or employees of City with requests for modifications resulting in more favorable treatment under this Agreement than the treatment accorded other Concessionaires.

12.8 Approvals, Consents and Notices.

12.8.1 All notices, consents and approvals required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

City: Transit Director
Alvarado Transportation Center
Personal Delivery: 100 First St. SW
Albuquerque, New Mexico 87102
Telephone: (505) 724-3100
FAX Transmission: (505) 724-3189

Concessionaire: (Name of Concessionaire)
Concessionaire Official: _____
Title: _____
Certified Mail and _____
Personal Delivery: _____, _____

12.14 Administration of Agreement. The Chief Administrative Officer or his authorized representative shall administer this Agreement for the City of Albuquerque.

12.15 Approval of Agreement. This Agreement shall not become effective or binding until signed by the Chief Administrative Officer for the City of Albuquerque.

12.16 Savings. City and Concessionaire acknowledge that they have thoroughly read this Agreement, including all exhibits hereto, and have sought and received whatever competent advice and counsel that was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Concessionaire further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its Chief Administrative Officer and Concessionaire has caused the same to be executed by its appropriate and authorized officer.

City Of Albuquerque:

By: _____
Chief Administrative Officer

Date: _____

By: _____
Transit Director

Date: _____

Concessionaire: (Name of Concessionaire)

By: _____
(appropriate official i.e.: president, vice president, etc.)

Date: _____

City of Albuquerque Business Registration No.: _____

NM State Taxation and Revenue Taxpayer I.D. No.: _____

Federal Taxpayer ID Number: _____

Exhibit A
Request For Proposal (RFP)

Exhibit B

Proposal

Exhibit C
Rates and Charges

Exhibit D
Installation Plans

Exhibit E

Monthly Statement of Gross Revenues

