

**REQUEST FOR PROPOSALS SEEKING A PUBLIC-PRIVATE PARTNERSHIP
FOR THE LEASE, MANAGEMENT, OPERATION, MAINTENANCE AND IMPROVEMENT
OF WESTCHESTER COUNTY AIRPORT**

**TO BE SUBMITTED TO THE WESTCHESTER COUNTY
DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION
148 MARTINE AVENUE WHITE PLAINS, NEW YORK 10601**

PROPOSAL DUE DATE: July 14, 2017 at 4:00 P.M. E.D.T.

DESIGNATED CONTACT PERSON:

Vincent F. Kopicki, P.E.
Commissioner
Westchester County Department of Public Works and Transportation
148 Martine Avenue, Room 518
White Plains, NY 10601
Phone: (914) 995-2546
Email: AirportHPN-RFP@westchestergov.com

Please be advised that all matters concerning this Request For Proposals (“RFP”), from the date of issuance until the RFP evaluation process as described herein is completed and negotiations commence between the County and a Proposer or Proposers, are to be directed in writing to the above named Designated Contact Person. Proposers are to restrict their contact with the County of Westchester (the “County”) regarding this RFP to the Designated Contact Person. Contact with any other official, staff, advisor or agent of the County may serve as grounds for disqualification.

Proposers to this RFP may only rely on the information contained in this RFP and the responses to written Requests for Clarification (“RFCs”) described herein in preparing their Proposals.

The following must be sent to the attention of the Designated Contact Person at the above address no later than the above Proposal due date and time:

1. One (1) unbound, reproducible, executed original copy, five (5) bound hard copies, and three (3) USB drives, each with a PDF electronic copy, of the Proposer’s Technical Proposal

2. In a separate, sealed envelope, One (1) unbound, reproducible original copy and five (5) bound hard copies of the Proposer's Financial Offer, as well as three (3) USB drives, each with:
 - a) A PDF electronic copy of the Proposer's Financial Offer; and
 - a. b) an Excel file containing the Financial Model per the requirements set forth in Section 12 of this RFP. This separate, sealed envelope shall be labeled: "[Proposer Name]: Financial Offer; Public Private Partnership for the Lease, Management, Operation, Maintenance and Improvement of Westchester County Airport."

All Proposals will become the property of the County and will not be returned.

The County does not discriminate on the basis of disability in the admission or access to its programs or activities. Any requests for reasonable accommodations required by individuals to fully participate in any aspect of the RFP process should be directed to the County's Designated Contact Person.

Selection criteria are outlined in the request for Proposal documents. The County reserves the right to reject any or all Proposals, to combine Proposals, to waive technicalities, and to make an award deemed in its best interest.

IT IS THE COUNTY'S GOAL TO COMPLETE THIS PRIVATIZATION PROCESS, INCLUDING EXECUTION OF THE LEASE AGREEMENT AND RECEIPT OF ALL NECESSARY LEGAL APPROVALS BEFORE THE END OF 2017.

We look forward to your Proposal and appreciate your interest in this opportunity.

I. REQUEST FOR PROPOSALS BACKGROUND AND DETAILS

A. Background

On November 4, 2016, the County filed a preliminary application under the Federal Aviation Administration's (FAA's) Airport Privatization Pilot Program¹ ("Pilot Program" or "APPP"), and the FAA accepted the application for review by letter dated December 2, 2016.² Proposers may consult the County's Preliminary Application which may be viewed and downloaded from the following site: <https://www.regulations.gov/docket?D=FAA-2016-9477>.

Although a proposed entity was identified in the County's preliminary application, the County now desires to conduct a competitive solicitation and procurement for the creation of a public-private partnership for the Airport through the APPP. The County has no contractual or any other commitment with the previous proposed entity.

On December 12, 2016, in consultation with the County Executive, the Westchester County Board of Legislators adopted Res-2016-132 whereby the Board of Legislators and the County Executive committed to undertake this RFP process.³

The objective of this RFP is the receipt by the County of bona fide Proposals from Proposers with the technical expertise and financial resources to enter into a public-private partnership for a long-term lease to operate, manage, maintain and improve the Westchester County Airport. The Airport privatization lease must be in a format acceptable to the FAA and must be appropriate for submission as part of the County's final application document.

The County's goal is to complete the privatization, including evaluating all RFP responses, selecting the preferred Proposer, negotiating favorable terms for the County, obtaining the FAA's approval, and closing the transaction before the end of 2017. To the extent that a Proposal is accepted by the County, the Preferred Proposer shall be responsible for negotiating with and obtaining the approval of the airlines as required by the laws and regulations governing the APPP. However, the County reserves the right to have its Airport advisor, Frasca & Associates, LLC, and its aviation counsel, The Wicks Group, PLLC, participate in such negotiations to ensure that the outcome of such negotiations is consistent with FAA requirements, with the negotiated terms of the Agreement, and generally protective of the County's interests.

B. Airport Information

The County is a municipal corporation of the State of New York and the owner and sponsor of the Westchester County Airport ("HPN" or "the Airport"), which is located in the Towns of

¹ 49 U.S.C. §47134.

² See Westchester County Airport – Airport Privatization Pilot Program, Federal Aviation Agency, Docket No. FAA-2016-9477.

³ See Resolution available at http://westchestercountyny.igm2.com/Citizens/Detail_LegiFile.aspx?&ID=9829.

Harrison and North Castle and the Village of Rye Brook, New York. The Airport is located five miles from White Plains, New York, and approximately 30 miles north of Manhattan. The Airport is comprised of 702 acres and serves an average of 1.75 million passengers per year. It supports a wide variety of commercial, business, and general aviation entities. The Airport is further described on the County's website: <http://airport.westchestergov.com/>.

More information about the Airport is provided in the Data Room. (See Section III. B. below.)

Management of Airport operations is currently provided by a private airport manager, AFCO AvPORTS/AvPORTS Management LLC.⁷ The existing contract is in the Data Room. AvPORTS provides for most of the Airport's personnel and contracts for certain operational services (e.g. ground handling). Currently, the County is responsible for any contracts for Airport capital projects, leases, and licenses for Airport facilities, including all concession agreements and certain maintenance contracts. The County is also responsible for providing police and security services and there is a County police precinct at the Airport.

C. **Purpose**

The County is seeking proposals ("Proposals") from qualified airport management and development entities ("Proposers")⁴ interested in entering into a Public Private Partnership with the County under a long-term lease to operate, manage, maintain, and improve the Westchester County Airport.

The County, as the Airport sponsor, desires and expects the Airport to be operated in perpetuity as an aviation facility available for public use in compliance with all existing and future applicable laws, regulations, and ordinances, and in compliance with all existing and future agreements between the County, New York State and/or the FAA, specifically including, but not limited to, FAA grant agreements and the Airport sponsor grant assurances. In seeking to preserve and optimize the value of the Airport to the community, the County has determined that the Airport could be leased, operated, maintained and improved by an entity selected through a competitive process (the "Preferred Proposer")⁵.

Through the transaction, the County seeks to accomplish the following goals and objectives:

1. **Revenue for the County General Fund:** The County requires revenue from this privatization that it can use for non-airport purposes and the Proposal must ensure that such use does not constitute revenue diversion under applicable federal laws, rules and regulations, as discussed elsewhere in this RFP;
2. **Preserve the Quality of Life of the Surrounding Communities:** Increase the Airport's role as an economic engine and business gateway for the County, while preserving the

⁴ The County desires to enter into a single agreement with one legal entity, not multiple agreements. Accordingly, Proposers should consider this in developing a Proposal that involves multiple legal entities.

⁵ See RFP §IA above.

quality of life of the surrounding communities **and operating within the current physical boundaries of the Airport, as well as abiding by current terminal use restrictions and the Voluntary Restraint From Flying (VRFF) operating curfew;**

3. Airport's Financial Performance: The County desires the private sector to increase Airport revenues using its experience and expertise. **In Part II, Short-Term Improvement Plan, and Part III, Strategic Enhancement of the Airport, in their Technical Response, Proposers may suggest or recommend reasonable plans and strategies to enhance Airport revenues. These plans and strategies may be an agenda item for a Collaborative Dialogue Meeting ("CDM") per the process described in section II.B.6 of this RFP;**

4. Enhance Passenger Experience and Airline Operations and Efficiencies: Invest in technology, infrastructure, and amenities that will improve passenger experience and airline operations and efficiencies, such as:
 - i. Redesigning the passenger lounge with enhanced seating;
 - ii. Reconfiguring the ticketing and boarding areas;
 - iii. Improving automobile parking with valet and garage check-in options;
 - iv. Enhancing the arrivals area with new baggage claim equipment; and
 - v. Upgrading concessions and restaurants with more food and dining offerings, including a mix of brand names and locally accented concessions, providing a sense of place;

5. Implement Capital Improvements: Make all necessary investments in the Airport's structures and infrastructure to maintain the Airport's operating capabilities and also make significant additional investments over the term of the Agreement;

6. Strengthen Environmental Protections: Given the proximity of the Airport to a reservoir which is part of New York City's water supply and the sensitivity of local residents to the environmental impacts of Airport operations, specifically fueling and de-icing activities, the County has established a strong environmental protection program. The Proposer must manage and continue the Airport Environmental Management System and maintain the Airport's ISO 14001 environmental certification. The County also requires that the Proposer continue operation and maintenance of the Airport Noise and Operations Monitoring Systems (ANOMS) and the programs that are in place to reduce airport noise, including but not limited to: VRFF, which is a curfew for planes to encourage them not to fly during the hours of midnight to 6:30 a.m.; the High Range Noise Event Program which uses the ANOMS (higher than 90 decibels). Proposers should propose programs and procedures to strengthen the Airport's existing environmental protections.

7. Protect the County from Airport Financial Liability: Ensure that the privatization does not adversely impact the County's general fund or create incremental financial liability for the County (e.g. investments in the Airport by the Proposer shall be non-recourse to the County).

D. Evaluation of Proposals

The County will evaluate and rank the Proposals based upon the Evaluation Criteria set forth below in Section III.D. After evaluation and ranking, the County reserves the right to negotiate with one or more of the highest ranked Proposers to determine the final rankings. The County will then negotiate with the top ranked Proposer to execute the long-term lease for the operation and improvement of the Airport (the "Lease Agreement"). If, in the sole opinion of the County, these negotiations are unsuccessful or are not completed in a timely manner, the County reserves the right to initiate negotiations with the next-ranked Proposer.

If the County determines, in its sole discretion, that none of the Proposals submitted are acceptable and/or the County's application for participation in the APPP is not ultimately approved by the FAA, the County reserves the right to reject all Proposals and terminate the procurement process.

The process will be conducted in accordance with all applicable Federal, State, and County laws, regulations and ordinances. Any agreement between the successful Proposer and the County shall be subject to the approval of the County Board of Legislators and the County Board of Acquisition and Contract, and, if applicable and to the extent required by law, the FAA and any other state or federal agency with jurisdiction over the Agreement.

E. Legal Requirements

The Lease Agreement will be subject to all applicable Federal, State, and other local laws, regulations and ordinances, including SEQRA.

First, Proposers should review the statutory requirements of the APPP, including two notices issued by the FAA, 62 F.R. 19638 (issued April 22, 1997) and 62 F.R. 48693 (issued September 16, 1997), and be prepared to meet those requirements. In addition to the goals and objectives noted above, the following statutory objectives of 49 U.S.C. § 47134 must be satisfied pursuant to the APPP's requirements:

- a. The Airport will continue to be available for public use on reasonable terms and conditions and without unjust discrimination;
- b. The operation of the Airport will not be interrupted in the event that the Proposer becomes insolvent or seeks or becomes subject to any State or Federal bankruptcy, reorganization, insolvency, liquidation, or dissolution proceeding or any petition or similar law seeking the dissolution or reorganization of the Proposer or the appointment of a receiver, trustee, custodian, or liquidator for the Proposer or a substantial part of the Proposer's property, assets, or business;

- c. The Proposer will maintain, improve, and modernize the facilities of the Airport through capital investments and will submit to the U.S. Secretary of Transportation a plan for carrying out such maintenance, improvements, and modernization;
- d. Every fee of the Airport imposed on an air carrier on the day before the execution of the Lease Agreement will not increase faster than the rate of inflation unless a higher amount is approved:
 - i. by at least 65 percent of the air carriers serving the Airport; and
 - ii. by air carriers whose aircraft landing at the Airport during the preceding calendar year had a total landed weight during the preceding calendar year of at least 65 percent of the total landed weight of all aircraft landing at the Airport during such year.
- e. The percentage increase in fees imposed on general aviation aircraft at the Airport will not exceed the percentage increase in fees imposed on air carriers at the Airport;
- f. Safety and security at the Airport will be maintained at levels that meet or exceed those at required by Federal regulations and comparable to peer commercial service airports;
- g. The adverse effects of noise from operations at the Airport will be mitigated to the same extent as at a public airport;
- h. Any adverse effects on the environment from Airport operations will be mitigated to the same extent as at a public airport; and
- i. Any collective bargaining agreement that covers employees of the Airport and is in effect on the date of the sale or lease of the Airport will not be abrogated by the sale or lease.

In addition to these requirements, the U.S. Secretary of Transportation must find that the transfer of the Airport to the Preferred Proposer will not result in unfair or deceptive trade practices or unfair methods of competition, and that the interests of general aviation users are not adversely affected. The Proposer should note that, should it be selected by the County for the transaction, the Preferred Proposer's cooperation will be required in supporting the County's application to the APPP.

Second, the term of the Lease Agreement is subject to municipal law. N.Y. Gen. Mun. Law § 352(5) which permits **a maximum 40-year lease of the Airport**. However, please *also see* Laws of Westchester County § 104.11(5), subsections (d) and (f). Please note that the 30-year limitation on leases in §104.11(5)(f) can be overcome by an amendment of this local law subsection to permit a longer term for this specific lease. Such an amendment, however, would require compliance with the rules for referendum on petition. *See* Laws of Westchester County §§209.171(7) and 209.181. Proposers should note the 60-day period from time of adoption of such a local law contained in §209.181 and should take it into consideration given the County's

objective to complete this privatization including all necessary approvals before the end of 2017. The Laws of Westchester County are available at: https://www.municode.com/library/ny/westchester_county/codes/code_of_ordinances.

Furthermore, Proposers should note that the Airport is subject to local regulations, including but not limited to the Terminal Use Regulations set forth in §712.462 of the Laws of Westchester County. Accordingly, Proposers should familiarize themselves with all local laws and regulations.

F. Minimum Responsibilities

The Preferred Proposer will be required to provide sufficient and appropriate staff to operate the Airport on-site during not less than its current hours of operation, with on-call availability seven-days-a-week, 24-hours-per-day. The Proposer's airport manager and staff shall have, at a minimum, full responsibility for all of the operation and maintenance of the Airport, including, but not limited to, the following list of services (the “Minimum Responsibilities”):

1. Coordinate and maintain airport security;
2. Maintain safety of runways and taxiways and provide Airport Rescue and Firefighting services;
3. Coordinate with the County and FAA regarding grant and operational matters and maintain full compliance with any grant assurance obligations that are assumed by, or entered into by, the Proposer;
4. Negotiate with airlines the terms and conditions of the Use Agreement and the Operating Standards in order to assure the fulfillment of their continuing vital interest in the safe, secure, economical and effective operation of the Airport. The Use Agreement and Operating Standards must be negotiated prior to the County’s submission of the Final Application to the FAA;
5. Supervise and perform all services such as airport facility and equipment maintenance and keeping of adequate airport records;
6. Coordinate any construction, maintenance, or other activities at the Airport to minimize interference with airport operations;
7. Enforce Airport regulations and other applicable statutes or rules;
8. Properly manage relations with the community and the County;
9. Coordinate with the County in working with surrounding counties, other municipalities, and various Federal and State agencies on matters relating to aid programs and operations, including firefighting, EMS, and other emergency services;

10. Provide general care of the Airport to assure cleanliness, good appearance, and efficient, safe operation;
11. Develop or revise Airport rules and regulations within the first 180 days after Lease Agreement commencement, for review and acceptance by the County and, if applicable, the FAA;
12. Develop required and appropriate emergency plans including coordination of off-airport resources;
13. Sole responsibility to provide contractual service(s) with third parties as necessary;
14. Furnish, operate and maintain all mechanical, plumbing, electrical, environmental, and communications systems as may be required to operate the Airport;
15. Arrange and pay for all water, sewer, storm-water, electricity, gas, telephone, and other utilities as may be necessary to operate the Airport;
16. Inasmuch as the FAA will require the County to take back the Airport in the event of a financial default by the Proposer, the Proposer must maintain separate financial accounting records in accordance with U.S. GAAP to record and categorize revenues properly by function on a basis prescribed by the County, safeguarding the assets being managed. The Proposer will submit to the County:
 - a. quarterly and year-to-date Statements of Operating Reports detailing Airport finances and revenues; and
 - b. annual reports of the state of the Airport.

The Proposer will permit inspection and/or audit of financial and operating records according to terms to be specified in the Lease Agreement;

17. Annually submit to the County a 5-year capital improvement program (“CIP”) addressing the operational needs of the Airport;
18. Assure that aviation fuel, aircraft maintenance and other aircraft services reasonably required to meet the needs of Airport users are provided on the Airport;
19. Obtain and maintain fire, casualty and flood, general liability (including aircraft liability and airport operator legal liability), automobile liability and workers’ compensation coverage as set forth in Attachment C;
20. Provide terminal concessions and any other consumer service activity related to Airport activity or customers that are not leased to a third party;

21. Properly manage any environmental and noise issues arising from the operation of the Airport;
22. Coordinate with the County on operation and maintenance of any on-Airport facilities remaining under the County's responsibility including items to be further identified in the draft Lease Agreement such as air traffic control tower facilities, County antennae and related equipment, police precinct space, and police helicopter space, but excluding FAA equipment; and
23. Comply with all applicable federal, state, and local laws, rules, ordinances and regulations.

Unless otherwise specified herein, the County does not intend to be held responsible for any existing contracts, leases, or other agreements after the P3 transaction contemplated in this RFP is completed. These contracts, leases, or other agreements will become the sole responsibility of the Preferred Proposer, except for those agreements involving ongoing County responsibilities, which are provided in the Data Room.

G. Additional Services and Considerations

During the in-market period, the County reserves the right to modify the list of minimum responsibilities and obligations as part of the negotiation of the final Lease Agreement.

H. Restricted Parties

Restricted Parties (as defined below), their respective directors, officers, partners, employees and person or legal entities related to them (as defined below) are not eligible to participate as Proposers, or advise any Proposer, directly or indirectly, or participate in any way as an employee, advisor, or consultant or otherwise in connection with any Proposer. Each Proposer will ensure that neither it, nor any of its controlling corporate entities, equity providers, airport operators, contractors or other constituent parties (collectively, its "Members") will use, consult, include or seek advice from any Restricted Party. The following Restricted Parties have been identified:

- Frasca & Associates, LLC
- GRA, Incorporated
- Paslay Management Group LP
- The Wicks Group, PLLC

Please see Section II.B.8 herein regarding communication with the airlines during the in-market period.

Additionally, Proposers should not contact the FAA during the RFP process. Any questions related to the APPP or other regulatory items should be sent to the County. The County will coordinate, as necessary, a response with the FAA.

The list of Restricted Parties may change during the RFP process. The County will post any such changes as Addenda to the RFP, but it is incumbent upon Proposers to ensure that the parties with whom they communicate and have dealings with relative to the project are not Restricted Parties.

II. INSTRUCTIONS/PROPOSAL FORMAT AND CONTENTS

A. Conditions

Please take notice, by submitting a Proposal in response to this RFP, a Proposer agrees to and understands that:

1. Any Proposal, attachments, additional information, etc. submitted pursuant to this RFP constitutes the desire and intent to negotiate with the County and does not constitute a bid under Section 103 of the New York State General Municipal Law;
2. Submission of a Proposal, attachments, and additional information shall not entitle the Proposer to enter into an agreement with the County for the required services;
3. By submitting a Proposal, the Proposer agrees and understands that the County is not obligated to respond to the Proposal, nor is it legally bound in any manner whatsoever by submission of same; and
4. Any and all counter-Proposals, negotiations or any communications received by a Proposer, its officers, employees or agents from the County, its elected officials, officers, employees or agents, shall not be binding against the County, its elected officials, officers, employees or agents unless and until the formal written agreement sought by this RFP is duly executed by both parties and approved by the Westchester County Board of Legislators, the Westchester County Board of Acquisition & Contract and the Office of the Westchester County Attorney.

In addition to the foregoing, by submitting a Proposal, the Proposer also understands and agrees that the County reserves the right, at its sole discretion, to exercise the following rights and options with respect to this RFP, except to the extent restricted by applicable law, including, but not limited to, the County's Procurement Policy, as amended:

1. To reject Proposals that do not conform in all material respects to the RFP or meet the minimum evaluation criteria;
2. To reject all Proposals;
3. To issue additional solicitations for Proposals and/or amendments to this RFP;
4. To waive any irregularities in Proposals received after notification to all Proposers;
5. To negotiate for amendments or other modifications to Proposals;
6. To conduct investigations with respect to the qualifications of each Proposer;
7. To exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluation of Proposals, and the negotiation and award of any contract;

8. To enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the Proposals with one or more of the Proposers;
9. To select the Proposal that best satisfies the interests of the County, and not necessarily on the basis of price or any other single factor in the evaluation criteria;
10. While this is an RFP and not request for bids, the County reserves the right to apply the case law under General Municipal Law § 103 regarding bidder responsibility in determining whether a Proposer is a responsible vendor for the purpose of this RFP process;
11. The County assumes no responsibility or liability of any kind for costs incurred in the preparation or submission of any Proposal;
12. The County is not responsible for any internal or external delivery delays which may cause any Proposal to arrive beyond the stated deadline. To be considered, Proposals MUST arrive at the place specified herein on the Proposal Due Date.

B. RFP Process and In-Market Period

1. Proposed Procurement Timeline

Presently, the County anticipates the following Procurement Timeline:

Milestone	Proposed Timeline
Issue RFP	April 3, 2017
Allow access to the Data Room and draft Lease Agreement	Upon acceptance of Proposer's Registration, Access Fee and receipt of NDA
Q&A and Due Diligence Process	Ongoing
Collaborative Dialogue Meetings and Airport site visits	Week of April 24, 2017 (Date of Subsequent CDMs TBD)
Initial Comments on draft Lease Agreement due	May 4, 2017
Final Comments on draft Lease Agreement due	June 8, 2017
Last day for submission of Requests for Clarification (RFCs)	June 20, 2017
Last day for County to issue substantive RFP addendum	June 23, 2017
Proposal Due Date	July 14, 2017 (at 4:00 PM E.D.T.)
Best and Final Offer (if necessary)	Week of July 31, 2017
Notification of Preferred Proposer	Week of August 21, 2017
Westchester County Board of Legislator Approval – Targeted Date	September 25, 2017
Submission of Final FAA APPP Application	Week of September 25, 2017
Execution of Lease Agreement	Week of November 27 (60 days after Board of Legislator Approval)
FAA Approval of Final APPP Application; Financial Close	December 2017

2. Proposal Security

Proposal Security is required to secure the commitment of the Preferred Proposer. The Proposal Security must be one or more letters of credit with a term effective for at least 180 days from and after the Proposal Due Date, in an aggregate amount equal to US\$17.5 million (Seventeen Million Five-Hundred Thousand US Dollars) and substantially in the form set out in Attachment F to the Agreement (or otherwise in form and content, and issued by an issuer, reasonably acceptable to the County prior to submission of such letter(s) of credit), to be held by the County for the sole purpose described below (“Proposal LOC”).

If the County gives written notice to the Preferred Proposer to execute the Lease Agreement, and the Preferred Proposer does not, within 5 business days (or such later date as agreed between the County and the Proposer), execute the Agreement and deliver to the County the Cash Deposit and/or the Closing LOC in the amount set forth in the Lease Agreement, then the County shall be entitled to draw immediately, without notice to the Preferred Proposer, the full amount of the Proposal LOC upon presentation of a sight draft and a certificate confirming that the County has the right to draw upon the Proposal LOC in the amount of such sight draft, and the County shall be entitled to retain all of the proceeds of the Proposal LOC, in either case, as the sole remedy or right of the County against the Proposer.

The right of the County to draw the Proposal LOC is intended to be, and shall be construed in accordance with applicable New York case law regarding bid security to reasonably compensate the County’s damages in the event that the Lease Agreement is not executed by the Preferred Proposer, including, but not limited to any costs related to a new RFP and/or lease negotiation with the next ranked Proposer, the difference between the Preferred Proposer’s offer and the next-ranked proposer’s offer, the cost of foregoing alternative opportunities and for other costs incurred by the County in reliance on the Preferred Proposer’s Proposal to enter into the transaction contemplated hereunder, and payment of the entire draw on the Proposal LOC to the County shall terminate all other rights and remedies of the County with respect to the Proposer.

The Parties acknowledge that the damages suffered by the County as a result of such termination would be impossible to ascertain and that the Proposal LOC is a reasonable estimate thereof and is not intended as a penalty.

Upon receipt by the County of the Lease Agreement duly executed by the Preferred Proposer and the Cash Deposit and/or Closing LOC contemplated by the Lease Agreement, the County will promptly return the Proposal LOC to all of the Proposers.

3. Data Room

A significant amount of data may be found on the County's website. In addition to information about the Airport (*see* link in Section I.B above), among other things, the County has:

- A searchable contracts database – <http://business.westchestergov.com/getting-and-doing-business/contract-search>
- Annual operating and capital budgets – <http://www3.westchestergov.com/county-budgets>; and
- Financial reports – [http://finance.westchestergov.com/documentation/annual-financial-reports-\(cafrs\)](http://finance.westchestergov.com/documentation/annual-financial-reports-(cafrs)).

However, the County recognizes that aggregating such public data together with certain confidential and proprietary information can assist Proposers in preparing their Proposals.

Accordingly, an electronic data room has been established to facilitate access to supporting and technical materials. Access to the Data Room is controlled and arrangements to provide Proposers with the appropriate authorization and access will be made subject to:

- a. Submission of the required Data Room Registration Form and an Access Fee of US\$150,000 (One Hundred Fifty Thousand US Dollars), which is refundable upon the determination by the County that it has received a compliant Proposal from the Proposer pursuant to section III.B of this RFP (see Attachment [E]); and
- b. The prior execution of a Non-Disclosure Agreement (“NDA”) (see Attachment [D]).

Proposers who register, remit the Access Fee and execute the NDA described above will receive an email with information that will allow them to access the Data Room. As the County is a public entity, its contracts, and many other documents, are accessible by the public under the New York State Freedom of Information Law (FOIL).

It is the Proposer's responsibility to ensure that it has reviewed all applicable documents in the Data Room prior to submission of the Proposal. Other than this RFP, including any Addenda thereto, and the draft Lease Agreement, all documents provided by the County in the Data Room are provided for reference only, and may not be relied upon by Proposers. The County will not be making any representations regarding the completeness of materials in the Data Room and Proposers must waive any claim therefore.

4. Addenda

The County may in its discretion amend the terms and conditions of this RFP. Addenda issued by the County and sent to Proposers are the only means of changing, amending or correcting this RFP. Any addenda to the RFP will be recorded in the Data Room. An e-mail will be sent to the identified contact for each Proposer that has registered with the County advising them that a new Addendum has been issued.

5. Request for Clarification (RFCs)

Proposers may submit, and the County will respond to, questions, requests for information, clarifications and comments regarding this RFP (each an “RFC”). Responses provided by the County (by e-mail or otherwise) will not amend this RFP and will not be considered part of this RFP unless they are issued as an Addendum. Any RFCs with respect to the RFP are to be made in writing by e-mail to the County’s Designated Contact Person pursuant to this RFP.

Proposers’ RFCs should be organized as follows:

<u>Page Number</u>	<u>Section Reference</u>	<u>Requested Clarification</u>

Where appropriate, Proposers may submit riders or redlines showing any specific language changes to this RFP requested by the Proposer.

Proposers may submit RFCs at any time prior to or on the deadline (and time) specified in the RFP Schedule, as may be amended. The County intends to issue to all Proposers multiple sets of written responses to RFCs at different times during the pre-selection phase. When consolidating questions and comments, the County may rephrase Proposers’ questions and comments as it deems appropriate and may consolidate similar Proposer questions and comments. When providing a question or comment and its related response, the County will use reasonable efforts not to disclose the identity of the Proposer who submitted the question or comment.

Responses to RFCs that are not subject to the confidence provisions outlined below will be posted in the Data Room. If the County determines that a question or response requires a change to the RFP, an addendum will be issued.

Proposers may request that an RFC be treated in confidence and that the RFC and its answer not be circulated to all Proposers. Upon receipt of such a request, and supporting justification, the County will assess, in its sole discretion, whether the RFC is confidential in nature. If the County agrees that the RFC should be treated in confidence, a confidential answer will be provided to the Proposer only. Alternatively, if the County determines that the RFC is not confidential, it will inform the Proposer in writing. The Proposer will have the opportunity to indicate its concurrence with the County’s determination, in which case the County will make the RFC and its answer available to all Proposers, or the Proposer may withdraw the RFC.

6. Collaborative Dialogue Meetings (CDMs)

During the period between County’s issuance of this RFP and the Proposal Due Date, a series of CDMs will be conducted with each Proposer on an individual basis with the intention of ensuring that Proposers are maintaining a path to submitting compliant proposals that best meet the County’s requirements and goals. CDMs will cover a broad range of topics, including

the plan for capital improvements, legal and finance terms, concession plan, O&M plan, asset management plan, transition plan and issues related to the airlines.

The intent of each CDM is:

- To allow each Proposer to raise technical, financial and legal questions and seek clarification; and
- To allow each Proposer to request feedback on its technical, business, finance or legal concepts with respect to developing its technical proposal and financial offer.

The County shall notify the Proposer in writing of the Proposer's schedule for CDMs. Such meetings shall be held at a location to be identified by the County in a future written communication. It is anticipated that the first CDM will include an overview of the competition process and expectations for Proposals, and the evaluation process, as well as a tour of the Airport.

No later than 48 hours prior to each scheduled CDM, the Proposer is requested to submit the following documents to the Designated Contact Person:

- a. A written agenda for the CDM; and
- b. A list of the Proposer's CDM attendees (including name, title and firm)

The CDMs will adhere to the following:

- a. Proposer shall give each person attending the CDM on behalf of Proposer notice of the rules and procedures that will apply to the CDM process;
- b. During CDMs, Proposers may ask questions, make observations, or suggest possible revisions to the pertinent documents, including the RFP and draft Lease Agreement. However, no negotiation or decision-making shall take place at the CDMs;
- c. The County, except as noted, will not discuss with any Proposer any information submitted as part of this procurement other than its own;
- d. Proposer shall not seek to obtain commitments from the County in the CDMs or otherwise seek to obtain an unfair competitive advantage over any other Proposer;
- e. No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers;
- f. Proposers cannot rely on statements made by the County and/or its representatives and advisors at these meetings, including statements regarding any changes or modifications to the draft documents provided by the County or statements regarding concepts discussed at the meeting. Any changes or modifications made to the documents provided by the County or to any other aspect of the procurement process shall be made solely in writing by the County;

- g. Any discussions or statements made by either party at a CDM shall not be binding on such party; and
- h. The County will not prepare a written summary of the discussions for circulation.

7. Review of Draft Lease Agreement

A draft Lease Agreement will be provided in the Data Room and will be an agenda item for CDMs during the in-market period.

Initial comments related to the draft Lease Agreement are to be provided to the Designated Contact Person by the date specified in the Procurement Timeline above. Following review of the initial comments and any discussion of the draft Lease Agreement through the CDM process, a second draft of the draft Lease Agreement reflecting any comments from Proposers that the County is prepared to accept will be posted to the Data Room.

A second opportunity to take into account all relevant comments from Proposers will be provided. Final comments on the draft Lease Agreement will be accepted for consideration prior to the date specified in the Procurement Timeline. Following review of final comments, the final draft Lease Agreement will be posted in the Data Room.

Proposers’ comments to the draft Lease Agreement should be organized as follows:

<u>Item Number</u>	<u>Section Reference</u>	<u>Text with Proposed Revision</u>	<u>Reason for Proposed Modification</u>	<u>Impact, if any, on the Proposal</u>

8. Communications with Airlines

During the period from issuance of this RFP to the Proposal Due Date, Proposers are prohibited from communicating with any of the airlines operating at the Airport regarding this RFP, except solely in accordance with the CDM process.

The County is in discussions with the airlines and anticipates posting to the Data Room a draft term sheet listing their requested provisions.

C. Proposal Document Submittal

Per the instructions on the cover pages of this RFP, the Proposal must consist of three documents:

- (i) The Technical Proposal (inclusive of items 1-8 in this Section C);
- (ii) The Financial Offer (item 9 in this Section C); and
- (iii) The Financial Model (item 10 in this Section C).

All materials other than graphics, brochures, plans and attachments should be submitted in an 8.5-inch by 11.0-inch format with a general text font of no less than 12-point size and page margins of at least one inch all around.

The County invites the submittal of Proposals from Proposers capable of performing the scope of services specified in this RFP. In order for a Proposal to be considered by the County, the following items should be addressed in the order specified below.

1. Cover Page and Proposer Letter (maximum of 3 pages)

The Cover Page shall include the name and number of this RFP, the title of the Proposal, and the name and address of the Proposer.

The Proposer Letter shall include the following:

- a. Identification of the entity submitting the Proposal, including the name and role of each participating firm, if more than one;
- b. An executive summary of the Proposal and highlights of the Proposer's qualifications and Proposal (not including specifications of the Financial Offer) demonstrating capacity to operate, maintain, and improve the Airport, understanding of the project and the scope of work, and suggested structure of the organization and management methods that will be used;
- c. A commitment to comply with the County's intent of entering into the Lease Agreement and participating in the APPP, This letter must include the following statement "By submitting this Proposal, the (name of entity submitting the Proposal) agrees to abide by all the terms and conditions set forth in the County's RFP.";
- d. The person authorized to act on behalf of the Proposer and his or her telephone number and email address;
- e. A statement confirming that by submitting a Proposal, the Proposer agrees to abide by all of the terms and conditions set forth in this RFP; and
- f. Signature of the senior executive of the Proposer empowered by the Proposer (or its Members) to respond to this RFP on its behalf.

2. Table of Contents

The Table of Contents should list Proposal sections and any Appendices in the order in which they appear in the Proposal document.

3. Notarized Statement of Corporate Authority and Letter of Commitment

The Proposal must include:

- a. A Letter of Commitment to Proposal declaring that the Proposer, if selected as the Preferred Proposer, agrees to be bound to the content of its Proposal; and
- b. A notarized statement (such as a Board Resolution, Shareholder Resolution, Statement of the Chief Executive Officer(s) of the Proposer or its Members, or other comparable empowering documents) declaring that the individual signing the Letter of Commitment to the Proposal is genuinely empowered to bind the Proposer to the content of its Proposal.

4. Certifications and Required Statements

The Proposal must include:

- a. Executed Proposer Certification (Attachment A) and Acknowledgement (Attachment B1), which should be notarized, and the appropriate Certificate of Authority (Attachments B2-B4) depending on the Proposer's business entity, which should also be notarized;
- b. A statement acknowledging compliance with U.S. Code Title 49 § 47134, including the terms and conditions provided therein;
- c. A statement summarizing evidence that the Proposer has the necessary capability to start performing airport management functions by not later than the end of 2017. Actual transition date will be mutually agreed to by all parties;
- d. A statement that the Proposer will comply with all applicable federal, state, and local statutes, ordinances (including without limitation the Terminal Use Procedures set forth in Westchester County Code of Ordinances § 712.462), rules, regulations and assurances concerning operation of airports, non-discrimination, and affirmative action in employment and public work, and non-discrimination in the conduct of the Proposer's business;
- e. A statement acknowledging that the County reserves the right to accept, reject, or negotiate modifications to any Proposal or draft Lease Agreement submitted as part of this competition that the County deems to be in its best interests;
- f. A statement of affiliations with organizations and persons engaged in aeronautical business activity at the Airport;

- g. A statement of disclosure of legal affairs where the Proposer should disclose:
 - i. A list of outstanding litigations, claims, or major unresolved client disputes involving the Proposer or its Members arising from the provision of the type of services requested by the County, including a brief description of the issue;
 - ii. A list of any civil or criminal penalties imposed on the Proposer, its Members, its directors or officers, or the directors or offices of its Members in the past 10 years by any government entity that are related to the provision of the type of services requested by the County, including a brief description of the reason(s) for the penalties;
 - iii. A description of all charges of unfair or deceptive practices or unfair methods of competition brought against the Proposer, its Members, and the Proposer's key personnel, for the past 10 years. The description should include the disposition or current status of each such proceeding; and
 - iv. If none of the above conditions applies, the Proposer should so indicate in writing.
- h. A statement confirming that the Proposal LOC has been included in the Proposal; and
- i. A statement confirming that the Proposer accepts the final form of the draft Lease Agreement other than immaterial amendments to incorporate party names/ details and execution mechanics.

5. Description of the Proposer (maximum of 5 pages)

The Description of the Proposer must include the elements listed below:

- a. Name and role of each corporate entity included in the Proposal, indicating Members of the Proposer;
- b. The form of each corporate entity included in the Proposal (Corporation, Partnership, etc.);
- c. An organization chart showing the priority and role of each Member of the Proposer, including lines of authority and approval, the relationship of the on-Airport management team to the Members, and proposed key staff;
- d. The percentage ownership and respective responsibilities of each Member of the Proposer;

- e. Name and address of any affiliated parent and/or subsidiary of the Proposer and/or its Members;
- f. The name, title, address, telephone number, and e-mail address of the Primary Contact for the Proposer. All information and notices will be sent to the Primary Contact;
- g. The name, title, address, telephone number, and e-mail address of an Alternative Contact should the Primary Contact be unavailable.

6. Approach to Meeting the County's Goals (maximum of 10 pages)

The Proposer shall provide a brief narrative describing its approach to achieving each of the County's goals for the transaction as stated in Section I.C of this RFP. For each goal, this narrative should include:

- a. The Proposer's general philosophy regarding how the goal would be achieved;
- b. The general and specific means by which it intends to achieve the goal;
- c. Measures or indicators for judging progress toward the goal as part of the Lease Agreement; and
- d. Three client or project references in which similar goals were achieved, including current name, position, organization, address, telephone number and email address of the person providing the reference. Accuracy of the current phone number and contact person is important.

The Proposer may refer to information provided elsewhere in its Proposal.

7. Proposer Technical Qualifications and Financial Capability (maximum 10 pages)

- a. Technical Qualifications: Proposers are required to demonstrate the technical capability to complete the transaction successfully and manage and operate the Airport to its highest and best use. The Proposer must show substantive experience in the provision of similar services under consideration:
 - i. Performance related to airport operations and management projects that are relevant to the future operation and management of the Airport; and
 - ii. Performance related to commercial and industrial public-use infrastructure facility operations and management projects that is relevant to the future operation and management of the Airport.

For each qualification, Proposer should include the following information:

- i. A description of management and operations experience including the following areas: technical and human resources, performance improvement, client relations and client satisfaction, tenant and customer management, employee and labor relations, regulatory compliance, and community and government relations;
- ii. A description of the facilities currently or previously under the operation and management of the Proposer with starting and ending dates of service provided;
- iii. If the Proposer is a newly formed entity, a description of the relevant experience of its constituent members and the planned management structure to integrate operational functions;
- iv. Project-based resumes for all key personnel proposed. Indicate their assigned rolls/duties/tasks, and include their office locations. Provide separate resumes for all Key Personnel. Resumes are limited to two (2) pages per person. Relevant licenses and registrations should be included in the resumes. Resumes shall include the following information for each project listed:
 - 1) Name of the project;
 - 2) Dates of work performed on the project; and
 - 3) A description of the role on the project and the work or services provided. If more than one role was played, identify the dates and duration of each role.
- v. Statement of Personnel Commitment - An express, written statement committing that the individuals designated in the RFP for the Key Personnel positions are available to serve in the positions so identified. The statement must be in the following form:

“[Key Personnel name] is currently employed by [organization] and is available for work on the project in the position identified as [.....]. The Proposer understands that requests by a Proposer to implement a change in any Key Personnel will be subject to the approval of the County in its reasonable discretion and that failure to obtain the County’s approval may result in the Proposal submitted by a Proposer being deemed non-responsive.”
- b. Financial Capability: Proposers are required to submit the following information and documents to demonstrate their financial capability to enter in the proposed transaction to operate, manage, and improve the Airport:
 - i. Audited financial statements (if any) for the last three years, and (if appropriate) Form 10K, submitted to the U.S. Securities and Exchange Commission for the past three years for the Proposer and/or its Members. If no 10K annual reports were filed, balance sheets, income statements and/or other appropriate representations of financial capacity prepared in accordance with Generally Accepted Accounting Principles must be included;
 - ii. Credit ratings, if available;

- iii. The level and type of financial backing that will be provided by its Members, and relevant financial information sufficient for the County to evaluate the Proposer's capacity to meet both the performance and investment criteria in this RFP and the specifics of their Proposal. The County reserves the right to request additional financial information in satisfaction of this requirement.

8. **Technical Response**

It is envisioned that the operation, maintenance, and improvement of the Airport will be divided into the following three (3) phases:

Part I – Airport Operation and Management Plan

Part II – Short-Term Improvement Plan

Part III – Strategic Enhancement of the Airport

The Technical Proposal should address the elements identified in Parts I, II and III as described below.

Part I refers to core Airport operations and management. It will be evaluated according to how well the Proposer demonstrates its competence and understanding of commercial and general aviation airport operations and management, especially through the Proposer's experience with facilities similar in size and function to the Airport, as well as the insight and innovation demonstrated in the Proposal with respect to improving the operations and management of the Airport.

Part II refers to short-term improvements (years 1-5) to the Airport that go beyond core operation and management of existing facilities. Proposals will be evaluated according to how well the Proposer demonstrates the feasibility of the proposed improvements, their value to the County, and the capacity of the Proposer to implement them.

Part III refers to the long-term vision for the Airport (year 6 of the Lease Agreement and beyond). Proposals will be evaluated according to how well the Proposer demonstrates the feasibility of its vision, its potential value to the County, and the capacity of the Proposer to implement its vision.

Part I – Airport Operation and Management Plan (maximum of 20 pages)

- a. Operations and Maintenance Plan: The Proposal must include an *Operations and Maintenance Plan* demonstrating that the Proposer understands the basic operating and maintenance requirements and ongoing needs of the Airport. The Operations and Maintenance Plan must include the items listed below:

- i. An organization chart for Airport operations, maintenance, management, and emergency response;
 - ii. Staffing levels and hours;
 - iii. A description of the system to be employed by the Proposer for the following:
 - 1. Ensuring adequate and proper routine and preventive maintenance;
 - 2. Identifying and completing major repairs and replacements; and
 - 3. Providing unplanned or emergency maintenance;
 - iv. A performance management system sufficient to ensure – and to demonstrate to the County through periodic reports -- that the Airport is consistently maintained in current or better-than-current condition for the term of the Lease Agreement;
 - v. Whatever innovative operations and maintenance systems, policies and procedures the Proposer plans to utilize at the Airport, particularly if those systems, policies and procedures have yielded demonstrable benefits at other facilities managed by the Proposer;
 - vi. A description of the Proposer’s capability of complying with the County’s existing grant assurances, including the assurance of compatible land use around the Airport; the protection of navigation aids, approach lights, runway safety areas, and runway protection zones; and the continuation and extension of navigation easements;
 - vii. A description of the Proposer’s plan to solicit and engage DBE/MBE/WBE and local business participation for contracting opportunities at the Airport;
 - viii. A description of the system that will be employed by the Proposer for ensuring responsiveness and high quality service to the needs of Airport tenants;
 - ix. Any other items that the Proposer believes appropriate to explain its approach to operations and maintenance of the Airport;
- b. Concession And Non-Aeronautical Revenue Generation Plan: The Proposal must include a *Concession And Non-Aeronautical Revenue Generation Plan* describing how the Proposer will optimize the generation of Concessions Revenues and Other Non-Airline Revenues, including:
- i. Improved terminal retail and food/beverage offerings;
 - ii. Proposer’s concession program mix and layout and key lease terms for terminal concession tenants;
 - iii. Compliance with Airport Concession Disadvantaged Business Enterprise (ACDBE) requirements;

- iv. Proposer's management plans for overseeing terminal concession operations and service levels.
 - v. Proposer's plan for parking and rental car operations at the Airport, including key lease terms for rental car tenants and customer rates and contract terms for management of the parking operations; and
 - vi. Detailed plan for introduction of any new and/or innovative sources of non-aeronautical revenue at the Airport that are compliant with existing laws and regulations.
- c. General Aviation Plan: The Proposal must include a *General Aviation Plan* describing how the Proposer will manage the General Aviation (GA) business at the Airport, including:
- i. Proposer's plan for GA operations at the Airport, including key lease terms for FBO and corporate hangar tenants; and
 - ii. Strategy for engaging the GA community in Airport policy decisions
- d. County, Tenant and Community Relations Plan: The Proposal must include a *County, Tenant and Community Relations Plan* describing how the Proposer will routinely interface with the entities listed below.
- i. The County's Board of Legislators;
 - ii. The County's Executive;
 - iii. The County's appointed designee for day-to-day liaison with the Proposer;
 - iv. Westchester County Department of Public Works and Transportation;
 - v. Airlines;
 - vi. Non-airline Airport tenants and tenant groups;
 - vii. The Federal Aviation Administration;
 - viii. The State of New York;
 - ix. The Westchester County Airport Advisory Board;
 - x. The immediately neighboring municipalities; and
 - xi. The local community and civic organizations.

Channels for stakeholder involvement and outreach should be defined and organized. It is in the Proposer's interest to cite one or more examples of where the practices or procedures included in the *County, Tenant and Community Relations Plan* were beneficially employed at another facility operated by the Proposer.

- e. Transition Plan: The Proposal must include a *Transition Plan* describing the prospective timetable and methods by which the Proposer will perform, at a minimum, the transition activities listed below.
 - i. Taking operational control of the Airport.
 - ii. Installing its planned new practices and systems.
 - iii. Interviewing, evaluating, training and incorporating existing Airport staff as appropriate.
 - iv. Assume day-to-day management duties.
 - v. Any other items that the Proposer believes appropriate to explain its approach to operations and management of the Airport.
 - vi. Any other items that the Proposer believes appropriate to explain its approach to the transition from public to private management of the Airport.

It is in the Proposer's interest to cite one or more examples of where these or similar transition practices were beneficially employed at another facility taken over by the Proposer.

- f. Airline Plan: The Proposal must include an *Airline Plan* describing the prospective approach to charging reasonable rates and charges to the airlines for operating, managing and improving the Airport, including the Proposer's strategy for interacting with the airlines over the term of the Lease Agreement. It must include the following:
 - i. A narrative on the Proposer's methodology for airline rates and charges.

The County will provide to Proposers a draft "term sheet" which lists certain basic provisions that the airlines would seek from the Preferred Proposer. This "term sheet" will be made available in the Data Room. For purposes of establishing a Financial Offer, these terms, along with any potential modifications anticipated by the Proposer, should be assumed for the agreement between the Proposer and the airlines. The Preferred Proposer will negotiate a final term sheet with the airlines.

The narrative must discuss the benefits of the Proposer's approach, including any modifications to the draft term sheet, and include an explanation of how the Proposer's proposed methodology for airline rates and charges complies with all applicable law, including FAA regulations, orders and policies, including but not

limited to the “FAA Policy Regarding the Establishment of Airport Rates and Charges”.

- ii. The Proposer’s approach to implementing efficient utilization of the Airport by the airlines, including through the allocation among the airlines and use of airline gates and hold rooms, ticket counters and kiosks, aircraft parking positions, aircraft maintenance areas and other Airport facilities, and the proposed management system that will govern the airlines with respect to operational budgeting, capital expenditures and other space use matters. Proposer will specify plans for allowing the airlines preferential rights, if any; and
- iii. The Proposer’s strategy for ongoing interface with the airlines, including committee structures and communication protocols that will ensure the highest level of communications, and constructive, collegial interactions during the term of the Lease Agreement

Part II – Short-Term Improvement Plan (maximum of 15 pages)

- a. Business Plan for Improvement of the Airport: Proposers must include in their Proposal a five-year *Business Plan* for the Airport articulating short term goals for improving the Airport’s financial performance, while enhancing passenger experience and airline operations and efficiencies, without the alteration of the Airport’s footprint and within any restrictions on capital development specified in the draft Lease Agreement.

It is in the Proposer’s interest to cite one or more examples of where the ideas or practices included in the Business Plan were beneficially employed at another facility developed and/or marketed by the Proposer.

- b. Near-Term Capital Plan and Financial Plan: Proposer must include a roster of proposed capital improvements including sources of funding for the first five years of the Lease Agreement, summarizing major repairs and/or replacements that the Proposer intends to implement within the first five years of operation, as well as identifying the level of financial commitment that the Proposer is willing to assume to complete such capital improvements.

Note that the County will seek to include the implementation of the Business Plan and Near-Term Capital Plan as a contractual obligation of the Lease Agreement. The specific language, terms and conditions of this obligation will be part of the negotiation of the Lease Agreement.

Part III – Strategic Enhancement of the Airport (maximum of 15 pages)

- a. Long-Term Improvement Strategy: The Proposal must include a Long-Term Improvement Strategy describing the Proposer’s vision for the Airport during the term of the Lease Agreement; i.e., the Proposer’s strategy and vision for improving the physical and commercial facilities of the Airport, as well as how it plans to market the Airport to prospective tenants and other users.

Proposers should demonstrate the economic and social value of the Long-Term Improvement Plan and Strategy. Where possible, the Proposal should cite demographic, economic, and industry information in support of the respective Proposer's Plan. In addition, the Proposer should address the risks and benefits to the County that are associated with the Plan.

It is in the Proposer's interest to cite one or more examples of where some of the ideas or practices included in the Strategy were beneficially employed at another facility developed and/or marketed by the Proposer.

Where major capital improvements are envisioned, the Long Term Improvement Strategy should include a description of the likely sources of financing for these major improvements, plus a basic demonstration (excerpted from the Financial Model) that the planned improvements could be supported by the cash flow of the Airport under the Proposer's management. This demonstration should discuss any target Airport activity levels, new improvements, events or conditions that may be required for feasibility or could interfere with feasibility.

- b. Lifecycle Maintenance Costs – Future Maintenance Expenditure: The Proposer shall provide a yearly projection of proposed future amounts showing lifecycle costs for overall maintenance, repair, refurbishment, and replacement of equipment at the Airport, including all landside and airside areas. The backup cost data shall be outlined, during the term of the Lease Agreement from year 1 until the end of the Lease Agreement term, and shall include a calculation of net present value of the lifecycle costs for overall maintenance, repair, refurbishment, and replacement of equipment at the Airport, including all landside and airside areas.
- c. Handback Requirements: The Proposer must discuss its approach to the asset handback requirements of the County, which require a minimum of five years of remaining useful life in all major terminal, airside and landside assets at the end of the Lease Agreement term. This approach should include a description of proposed handover procedures at the expiration of the Lease Agreement. The description of the approach shall, at a minimum:
 - i. Address the Terminal, airside and landside areas as a whole;
 - ii. Describe the manner in which overall performance management reporting will be achieved;
 - iii. Describe the process for achieving the County's Handback Requirements, including a description of proposed procedures for handover inspections, handover maintenance services plans, measuring and establishing the remaining service life of each system, on a system-by-system basis, and the preparation of operation and maintenance manuals; and
 - iv. Identify any areas of risk and describe appropriate mitigation measures.

9. Financial Offer (to be submitted with the Financial Model in a separate sealed envelope)

- a. Proposed Payment Schedule and Lease Agreement Terms: The following items must be addressed in the Financial Offer part of the Proposal as they will be required to fully explain the proposed payment schedule and Lease Agreement terms:
- i. The proposed term of the Lease Agreement, which may be a maximum of 40 years;
 - ii. The amount of an Up-front Payment, if any, to the County upon execution of the Lease Agreement;
 - iii. The percentage rate of the Share of Gross Revenues, if any, from all Airport operations and related businesses and the schedule of such payments, as well as any contingencies and exclusions from the Gross Revenue calculation (see item “vii” below);
 - iv. The Fixed Lease Payment amount or Minimum Guaranteed Lease Payment to the County, if any, including Payment Schedule and/or Escalation Formula;
 - v. The amount, if any, of regular and/or periodic payments to the County with respect to fees or other payments for the provision of County and municipal services to the Airport;
 - vi. Any other source of payment to the County; and
 - vii. Any conditions attached to any fixed or variable rates and amounts of payment previously specified.

The County assumes that the Proposer will reimburse it for all services the County provides the Airport during the term of the Lease Agreement.

Proposer should also consult the Draft Lease Agreement for provisions regarding fees associated with any permissible future assignment of the leasehold interest.

The County reserves the right to negotiate changes in the structure of a Proposer’s payment schedule that it deems to be in its best interest.

- b. Financing Plan: Provide an outline of the sources of funds and the terms of any financing that funds the Up-front Payment and any ongoing payments offered in the Proposal as well as the proposed funding of working capital and other liquidity to support the financial operations of the Airport. The Proposer must demonstrate that its proposed financing is feasible. The Financing Plan shall include:
- i. A description of the proposed capital structure at financial close;
 - ii. The equity capital which the Proposer will commit to the project;

- iii. The debt capital, if any for which the Proposer has received commitments in relation to the project, including the planned payback period and financing terms;
- iv. The weighted average cost of capital of the financing plan;
- v. Time line and schedule for the financing plan from the Proposal Submission Date to financial close;
- vi. One or more letters of support (each, a “Funding Letter of Support”) or, preferably, commitment letters, from proposed lenders, equity providers, and monoline insurers (if applicable) confirming the Lender’s best efforts intent to underwrite or provide the capital described in the Proposer’s Financing Plan and assumed in the Financial Model, and whether such provision of debt capital is subject to due diligence or other customary terms and conditions which will need to be satisfied prior to receipt of funds and, if so, a description of such terms and conditions. Commitment letters will be required from the Preferred Proposer, and such commitment letters must include evidence of authorization from the Lender’s/Equity Provider’s board or credit committee, as appropriate;
- vii. An opinion letter from the Proposer’s financial advisor (or if there is no financial advisor contemplated or one has not yet been appointed by the Proposer as of the Proposal Due Date, by the Proposer’s chief financial officer or an officer of the Proposer holding an equivalent position) indicating that, in its view, the Financing Plan is achievable and sufficient to fulfill the Proposer’s commitments as set out in the Proposal; and
- viii. A credit rating assumed by the Proposer for any proposed debt financing and a narrative describing the Proposer’s strategy to achieve financial results assumed in such rating. If the Financing Plan for the Preferred Proposer includes the issuance of securities on behalf of the Proposer, the Preferred Proposer will be required to provide an indicative credit rating letter from at least one (1) Major Rating Agency on the securities to be issued, including information on the assumptions used in establishing the rating.

10. Financial Model Submittal Requirements (*to be submitted with the Financial Offer in a separate sealed envelope*)

- a. General Financial Model Requirements: Proposers shall submit a Financial Model with the Proposal, which shall be delivered as described in Section I of the RFP. The format of the Financial Model must comply with the requirements herein.
- b. Financial Model Format Requirements
 - i. The Financial Model shall be compatible with Microsoft Excel Version 2007 (or higher version). The file name of the Financial Model shall clearly identify the

Financial Model version (e.g., HPN Financial Model_001.xls) and change with each subsequent version of the Financial Model issued, if any;

- ii. Each output sheet of the Financial Model shall identify the Financial Model's version and the date of issue;
- iii. The Financial Model shall be formatted to facilitate printing (e.g., row and column headers should be on every page of the printout);
- iv. Worksheet names shall be descriptive and not use spaces (e.g., titles such as "CashFlows" or "Cash_Flows" shall be used instead of "Cash Flows");
- v. A separate color coding scheme (e.g., blue font on yellow fill color) shall be consistently used for input cells and or cells that reference other worksheets. Other color coding can also be used, but should be fully explained in the Assumptions and Instructions Book; and
- vi. The Financial Model shall allow the County to run sensitivity analyses. The County requires that when any input variable is changed, the effect will flow through the model to all relevant outputs.

c. Financial Model Consistency

- i. The Financial Model shall have time periods across the columns and calculations down the rows. This shall be consistent in all sheets of the Financial Model;
- ii. A column shall be used for the same period in each of its occurrences in model worksheets; and
- iii. A row shall contain only one formula, copied across all columns. Cells which use a different formula should be clearly indicated (e.g., by color or label).

d. Financial Model's Integrity: All calculations shall be coded to provide exactly what they purport to represent (*i.e.*, no balancing figures). Use of a macro is acceptable provided it is fully documented in the model and the Assumptions and Instructions Book.

e. Financial Model's Linearity: The Financial Model shall calculate in one pass (*i.e.*, no circular references).

f. Financial Model's Organization: The Financial Model shall have three distinct elements:

- i. Input worksheets – which shall include all data and assumptions to be hard-coded but no calculations;

- ii. Calculation worksheets – individual calculations that support each line of all outputs and reports. There shall be no duplication of calculations nor shall input cells be hard-coded in calculations sheets; and
 - iii. Output worksheets – which shall be used to display and generate model outputs. No cells shall include hard-coded values or calculations except for simple formulae such as sums and check totals.
- g. Financial Model Inputs and Specifications: The Financial Model shall be developed with reference to the following key inputs and assumptions:
- i. Specific Project Dates – The Financial Model shall assume commencement of the Lease Agreement on January 1, 2018, and expiration of the Lease Agreement commensurate with the Proposer’s proposed lease term (but in no instance later than 40 years from commencement of the Lease Agreement as discussed in Section I of the RFP);
 - ii. Periods – The Financial Model shall be constructed on an annual basis, beginning at commencement of the Lease Agreement and continuing through the end of the Lease Agreement and shall use a December 31 reporting year end;
 - iii. Revenues – All revenue assumptions shall be clearly stated in the Financial Model, with supporting detail being provided in the Assumptions and Instructions Book, including any rates and charges, concession and other revenue studies or analyses undertaken by the Proposer. The level of detail in the Assumptions and Instructions Book shall be sufficient to enable independent verification of each individual revenue assumption. At a minimum, revenues shall be presented as follows:
 - 1) Forecast of revenues derived from rent received from tenant airlines (the “**Airline Revenues**”) as derived from supporting worksheets detailing each of the proposed elements of airline rates and charges;
 - 2) Forecast of revenues derived from retail tenants at the Passenger Terminal (the “**Concession Revenues**”) as derived from supporting worksheets detailing each of the proposed concession categories and associated spend/revenue rate on per passenger basis, as well as assumed Lease Agreement terms and other concession program charges that may be applicable;
 - 3) Forecast of revenues derived from general aviation and corporate aviation tenants and FBOs (the “**General Aviation Revenues**”) as derived from supporting worksheets detailing each of the proposed elements of the General Aviation Revenue (ground/hangar rent, fuel flowage fees, gross receipts charges, etc.);
 - 4) Forecast of revenues derived from Airport parking facilities and ground transportation (the “**Ground Transportation Revenues**”) as derived from supporting worksheets detailing each of the proposed elements of the Ground Transportation Revenue (parking revenue, ground transportation fees, etc.); and

- 5) Forecast of all other revenue derived from operation of the Airport (the “**Other Revenues**”) as derived from supporting worksheet(s) detailing each of the proposed Other Revenues.
- iv. Expenditures – All expenditure assumptions shall be clearly stated in the Financial Model, with additional detail being provided in the Assumptions and Instructions Book. The level of detail in the Assumptions and Instructions Book shall be sufficient to enable independent verification of individual cost assumptions. At a minimum, expenditures shall be presented as follows:
 - 1) Forecast of Proposal Development Costs;
 - 2) Forecast of operations and maintenance expenditures as derived from supporting worksheets detailing each of the proposed operation and maintenance expenditure components;
 - 3) Forecast of the design and construction expenditures, including contingencies, for the Near-Term Capital Improvements;
 - 4) Forecast of other capital expenditures (i.e., asset management plan) as derived from supporting worksheets detailing each of the proposed other expenditure components, consistent with the *Operations and Maintenance Plan*.
 - v. Contingencies and Profit Margins included in Proposal Development Costs – The Financial Model shall make clear where all contingencies and profit margins have been included and shall detail the amounts and assumptions supporting all direct and indirect payments or reimbursements or other transfers to the Proposer from:
 - 1) Funding sources; and
 - 2) Airline Revenues, Concession Revenues, General Aviation Revenues, Ground Transportation Revenues and Other Revenues (collectively, the “Airport Revenues”)

so that the evaluation can be based on an appropriate understanding of the levels of risk assumed by Proposers;
 - vi. Near-Term Capital Improvements Funding Sources – Assumptions and forecasts relating to amounts and timing of funding sources, including project company equity, AIP funding, PFC funding, and Airport revenue;
 - vii. Maintenance Funding Plans and Strategies – Funding plans and strategies for lifecycle maintenance costs and capital maintenance expenditures;
 - viii. Reserve Accounts – Assumptions relating to funding sources and timing of deposits and drawdowns of all reserve accounts;

- ix. Insurance – Insurance-related payments, including expected deductible levels, premiums (the premium paid for each insurance policy shall be separately identified) and expected tax payments for each coverage;
 - x. Macroeconomic assumptions – All macroeconomic assumptions used within the Financial Model shall be clearly stated;
 - xi. Inflation – All monetary figures will be expressed in nominal/year of expenditure Dollars (in reference to the Proposal Due Date). Proposers should use their own inflation forecasts, which must be fully specified in the Financial Model. If inflation indices other than CPI are used within the model (e.g., to inflate wages or construction costs) then these shall be clearly stated as separate inputs;
 - xii. Activity Forecast - Passenger traffic, commercial aircraft operations, and general aviation operations forecast for the Airport;
 - xiii. U.S. GAAP – The Financial Model shall be compliant with U.S. GAAP; and
 - xiv. Tax Rates – Accounting and federal, state and local tax assumptions pertaining to the Proposer. Projections in accounting statements (i.e., balance sheet and profit and loss statement) must be provided in accordance with all applicable federal, state and local tax regulations.
- h. Financial Model Outputs: The output worksheets to the Financial Model shall include:
- i. Financial statements (cash flow, sources and uses of funds, balance sheet and profit and loss) in nominal terms on an annual basis for each period;
 - ii. Annual Equity IRR in nominal terms on a cumulative basis on both pre-tax and post-tax bases;
 - iii. Projected payments (including direct and indirect variable and fixed amounts), fees and other distributions to be made to the Proposer, its Members or their affiliates during the term of the Lease Agreement, including but not limited to fees and payments made for operation of Airport, financing of payments to County, and/or design, construction, and financing of the Near-Term Capital Improvements;
 - iv. Projected airline cost per enplaned passenger, including any differentials in cost per enplaned passenger by airline or for different assumed categories of airline tenants;
 - v. As applicable, the proposed rents, payments and sharing of revenues to the County on an annual basis; and
 - vi. Appropriate reserves as determined by the proposer and/or required by bond covenants or lender term sheets (as applicable). The County will expect the Financial Model to incorporate the benefit of interest earned on all Proposer cash balances.

- i. Assumptions and Instructions Book: Proposers shall submit a comprehensive booklet of assumptions and instructions which at a minimum identifies and provides details of all assumptions used in the Financial Model (the “Assumptions and Instructions Book”), including:
 - i. The logical layout and structure of the Financial Model, including the names of all worksheets and a description of the color coding and/or labeling scheme(s);
 - ii. All assumptions that have been used to construct the Financial Model, the sources which constitute the basis of such assumptions and/or arguments about the adopted options for the construction of the Financial Model;
 - iii. Sufficient information and instruction regarding the operation of the Financial Model to ensure that the County will be able to read, use and modify the data contained therein and to allow the County to conduct detailed sensitivity analyses;
 - iv. A detailed description of the function and intended use of all macros (and each macro must be logically structured and well documented); and
 - v. Any third party reports developed to support the revenue and cost estimates used in developing the financial offer shall be appended to the Assumptions and Instructions Book.
- j. Verification: Each Proposer shall satisfy itself as to the revenues, costs and tax consequences of entering into the Lease Agreement. The County makes no representations or warranties, express or implied, and assumes no liability whatsoever, with respect to revenues, costs or the consequences of federal or state income tax treatment of the Proposer under the Lease Agreement or any other documents. Proposers are encouraged to structure their Proposal to obtain greatest tax efficiency in order to enhance financial results.

III. THE EVALUATION, SELECTION AND POST-SELECTION PROCESS

A. Proposal Review, Selection, and Negotiation

Proposals will be evaluated according to their completeness and adherence to the requirements of this RFP using the Evaluation Criteria set forth below. After determining the completeness of the Proposal to confirm its responsiveness to the RFP, the County will evaluate each Proposal.

The County reserves the right to interview one or more of the Proposers, seek clarifications of their Proposal(s) and/or visit and inspect any facilities currently operated by the Proposer(s). Other Proposers will not be notified of any such requests.

After evaluation and ranking, the County reserves the right to negotiate with one or more of the highest ranked Proposers to determine the final rankings of the Proposals. The County will then negotiate with the top ranked Proposer to execute the Lease Agreement. If, in the sole opinion of the County, these negotiations are unsuccessful or are not completed in a timely manner, then the County reserves the right to initiate negotiations with the next-ranked Proposer.

The County intends, but shall not be obligated, to qualify Proposers for further negotiation. The County reserves the right to reject or accept any or all Proposals and to waive technicalities, informalities and minor irregularities in the Proposals received.

If the RFP process ultimately results in an award from the County, all Proposers should be aware that the County reserves the right to make an award that is deemed to be in its best interest.

B. Proposal Compliance Evaluation

The County will review concurrently all Proposals submitted on the Proposal Due Date for their compliance with the RFP requirements.

1. Technical Proposal. In order for a Technical Proposal to be deemed compliant, it must be complete and include all documents and information required by Section II.C of this RFP, in the format and organizational structure specified therein; and
2. Financial Offer and Financial Model. Each Financial Offer and Financial Model will be evaluated only after a Proposer's Technical Proposal has been deemed compliant and the Proposer's Proposal Security satisfies the Proposal Security requirements in Section II.B of this RFP. In order for the Financial Offer and Financial Model to be deemed compliant, they must be complete and include all documents and information required by Section II.C of this RFP, in the format and organizational structure specified therein.

C. Evaluation Criteria

1. Technical Proposal

a General Considerations

- i The benefits of the Proposal for the Airport, the County and the community;
- ii The level of innovation, insightfulness, competence, and strategic vision demonstrated by the Proposal;
- iii The overall clarity and quality of the Proposal and its responsiveness to the stated goals and objectives of the County; and
- iv Any identifiable cost impacts that would accrue to the County as a result of the implementation of the Proposal.

b Experience of Proposer, Members and Key Personnel

- i Demonstrated technical and human resources capability to successfully and safely manage, operate and improve a commercial-service and general aviation airport such as the Airport;
- ii Record of performance improvement (operations, maintenance, facilities, costs, revenues, labor relations, marketing, administration, and/or economic development, etc.) at facilities, services and projects managed by the Proposer;
- iii Record of successful client relations and client satisfaction at facilities, services and projects managed by the Proposer;
- iv Record of successful tenant and customer management at facilities, services and projects managed by the Proposer;
- v Record of successful and positive employee and labor relations for facilities, services and projects managed by the Proposer;
- vi Record of successful relations, reputation and regulatory compliance with regional and/or national officials at the FAA and appropriate state governing bodies;
- vii Record of successful and positive community and city government relations for facilities and projects managed by the Proposer;
- viii Record of successful business development initiatives at facilities and projects managed by the Proposer;

- ix. Demonstrated participation in regional economic growth by facilities and projects managed by the Proposer;
 - x. Demonstrated participation in community development plans and initiatives by facilities and projects managed by the Proposer;
 - xi. Record of successful long-term development objectives at facilities and projects managed by the Proposer.
- c. Financial Capability
- i. Financial capacity for successfully managing, operating, and improving the Airport without material risk to the County; and
 - ii. Record of meeting contractual commitments at facilities, services and projects managed by the Proposer.

2. Financial Offer (to be submitted in a separate sealed envelope)

- a. The net present value of the proposed fixed and/or variable payments to the County and the cost of proposed County services, if any, taking into consideration any contingencies or conditions in the Financial Offer, and/or apparent risks that may affect the ultimate value to the County of the Financial Offer, if any;
- b. The likely economic value of the Proposal to the County and the State of any taxes and other fees for services that may be derived from the Airport and other Airport related businesses, if any, as a result of the implementation of the Proposer’s Proposal; and
- c. The ability of the annual value of the Proposer’s financial offer, including any ongoing payments or reimbursements to the County and the amortization of any upfront payment to the County, to offset the County expense budget related to services provided to the Airport throughout the proposed term of the Lease Agreement.

As noted above, after evaluation of the Proposals, the County reserves the right to negotiate with its highest ranked Proposers to determine the final rankings of the Proposers.

D. Proposer Costs and Reimbursement of County Costs

All costs and expenses incurred by the Proposer relating to the preparation of the Proposals will be borne by the Proposer. The County is not liable to pay any costs or expenses to Proposer under any circumstance including the rejection of any or all Proposals and/or the cancellation of this process.

Additionally, the Preferred Proposer will be required to pay County's expenses related to this procurement upon execution of the Lease Agreement, in an amount not to exceed US\$2,500,000 (Two Million Five Hundred Thousand US Dollars)..

E. Governing Law

The County has the right at its sole discretion to reject any and all of the Proposals, to accept any Proposal, and to elect not to proceed with this process.

This RFP does not constitute an offer of any nature or kind whatsoever by the County to any or all of the Proposers.

All Proposals and supporting materials, as well as correspondence relating to this RFP, become property of the County when received.

The Laws of the State of New York shall govern this RFP and the Lease Agreement sought by this RFP. Any disputes relating to this RFP or the Lease Agreement must be resolved accordingly. Exclusive venue for any lawsuits or disputes arising out of this RFP or the Lease Agreement negotiated pursuant thereto will be in a court of competent jurisdiction in New York and consistent with all applicable laws.

F. Clarification and Investigation of Proposal

The County reserves the right to request clarifications of the contents of any Proposal and further investigate its contents. The County may require some or all Proposers to submit supplemental information clarifying any matters contained in their Proposals. This supplemental information will be considered an integral part of the Proposal. The request from the County shall be in writing as shall all responses from Proposers. Requests from the County will come from the Designated Contact Person for this RFP defined on page 1.

The County may make such investigations as it deems necessary to determine the ability of the Proposer to perform, and the Proposer shall furnish to the County all such information and data for this purpose as the County may request. The County reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Proposer fails to satisfy the County that such Proposer is properly qualified to carry out the obligations of the Lease Agreement. The County also reserves the right to reject or accept any or all Proposals and to waive technicalities, informalities and minor irregularities in the Proposals received.

G. New York State Freedom of Information Law Notice

The New York State Freedom of Information Law as set forth in Public Officers Law, Article 6, Sections 84-90, mandates public access to government records. Proposers should familiarize themselves with this law. Proposals submitted in response to this RFP may contain technical, financial background or other data, public disclosure of which could cause substantial injury to the Proposer's competitive position or constitute a trade secret.

Proposers who have a good faith belief that information submitted in their Proposals is protected from disclosure under the New York Freedom of Information Law shall:

1. Insert the following notice in the front of its Proposal:

NOTICE

The data on pages__of this Proposal identified by an asterisk (*) contains technical or financial information constituting trade secrets or information the disclosure of which would result in substantial injury to the Proposer's competitive position. The Proposer requests that such information be used only for the evaluation of the Proposal, but understands that any disclosure will be limited to the extent that the County considers proper under the law. If the County enters into an agreement with this Proposer, the County shall have the right to use or disclose such information as provided in the agreement, unless otherwise obligated by law.

and;

2. Clearly identify the pages of the Proposals containing such information by typing in bold face on the top of each page " *** THE PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE STATE FREEDOM OF INFORMATION LAW.**"

The County assumes no liability for disclosure of information so identified, provided that the County has made a good faith legal determination that the information is not protected from disclosure under applicable law or where disclosure is required to comply with an order or judgment of a court of competent jurisdiction. The contents of the Proposal which are accepted by the County, except portions "Protected from Disclosure", may become part of any agreement resulting from this RFP.

IV. CONCLUSION

The County recognizes and appreciates the considerable effort your firm will undertake in developing your Proposal, and is committed to the conduct of an exceptionally fair, methodical and efficient process. The County welcomes your Proposal and looks forward to the successful conclusion of this promising competition.

V. ATTACHMENTS

The following attachments are provided:

- Attachment A – Proposer Certification;
- Attachment B1 – Sole Corporate Officer Acknowledgement
- Attachment B2 – Certificate of Authority – Corporation;
- Attachment B3 – Certificate of Authority – LLC;
- Attachment B4 – Certificate of Authority – Partnership;
- Attachment C – Insurance Requirements;
- Attachment D – Non-disclosure Agreement;
- Attachment E – Data Room Registration and Security Deposit Form; and
- Attachment F – Form of Proposal Letter of Credit

ATTACHMENT A

PROPOSER CERTIFICATION

The undersigned agrees and understands that this Proposal and all attachments, additional information, etc. submitted herewith constitute merely an offer to negotiate with the County of Westchester and is NOT A BID. Submission of this Proposal, attachments, and additional information shall not obligate or entitle the proposing entity to enter into an agreement with the County of Westchester. The undersigned agrees and understands that the County of Westchester is not obligated to respond to this Proposal nor is it legally bound in any manner whatsoever by the submission of same. Further, the undersigned agrees and understands that any and all Proposals and negotiations shall not be binding or valid against the County of Westchester, its directors, officers, employees or agents unless an agreement is signed by a duly authorized officer of the County of Westchester and approved by the Westchester County Board of Legislators, the Westchester County Board of Acquisition & Contract and by the Office of the County Attorney.

It is understood and agreed that the County of Westchester reserves the right to reject consideration of any and all Proposals including, but not limited to, Proposals which are conditional or incomplete. It is further understood and agreed that the County of Westchester reserves all rights specified in the Request for Proposals.

It is represented and warranted by those submitting this Proposal that except as disclosed in the Proposal, no officer or employee of the County of Westchester is directly or indirectly a party to or in any other manner interested in this Proposal or any subsequent agreement that may be entered into.

Proposer Name

By: _____
Name and Title

ATTACHMENT B4

CERTIFICATE OF AUTHORITY - PARTNERSHIP

I, _____,
(Partner other than Partner signing contract)

certify that I am a General Partner of _____,
(Name of Partnership)

a partnership duly organized under _____,
(Law under which partnership is organized)

and named in the foregoing Agreement; that _____,
(Partner Executing Agreement)

who signed said Agreement on behalf of the Partnership was, at the time of execution, a General Partner of said Partnership; that said Agreement was duly signed for and in behalf of said Partnership and as the act and deed of said Proposer for the purposes therein mentioned.

(Signature)

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On this _____ day of _____, in the year ____ before me, the undersigned, a Notary Public in and for said State, _____ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the General Partner described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at _____, and he/she is a general partner of said Partnership; that he/she is duly authorized to execute said certificate on behalf of said Partnership, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public

ATTACHMENT C

INSURANCE REQUIREMENTS

The Proposer shall provide and maintain at the Proposer's own expense, or cause to be maintained, during the Term and during any time period following expiration during which the Proposer is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring the Westchester County Airport Facility and all Westchester County Airport Facility Operations (the "Required Coverages").

Insurance Coverage Required

1. *Employment Practices Liability.* The Proposer shall maintain employment practices liability in a limit of not less than \$5,000,000 per occurrence. Any retroactive date on the policy shall be on or before the Effective Date. Policies written on a claims-made basis shall remain in force for at least three years beyond the date this Agreement terminates, through extended coverage, purchase of a tail or otherwise.
2. *Workers Compensation Insurance.* The Proposer shall maintain workers' compensation insurance in a limit of not less than \$1,000,000 per occurrence.
3. *Commercial General Liability (Primary and Excess).* The Proposer shall provide commercial general liability insurance or equivalent with limits of not less than \$200,000,000 per occurrence and \$250,000,000 aggregate for bodily injury (including death) and property damage liability. Coverage shall include the following: all premises and operations, products liability, host liquor liability, completed operations, explosion, collapse, underground, separation of insureds, defense, independent contractors, terrorism war liability, excess auto liability, hanger keepers liability, contingent control tower liability, baggage liability, cargo liability, non-owned aircraft liability, mobile equipment, contractual liability, personal injury and advertising injury with limits of not less than \$20,000,000 per occurrence and aggregate, incidental medical malpractice with limits of not less than \$20,000,000 per occurrence and aggregate and excess employers liability with limits of not less than \$20,000,000 per occurrence and aggregate. The County is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.
4. *Automobile Liability (Primary and Excess).* The Proposer shall provide or cause to be provided automobile liability insurance with limits of not less than \$1,000,000 per occurrence and \$5,000,000 aggregate for bodily injury and property damage for any owned, non-owned or hired autos/motor vehicles. The County is to be named as an additional insured on a primary, non-contributory basis.
5. *Builder's Risk.* When the Proposer undertakes any construction, maintenance or repairs to the Westchester County Airport Facility, including improvements and betterments pursuant to this Agreement, the Proposer shall provide or cause to be provided, all risk builder's risk insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the Westchester County Airport Facility. Customary sublimits and aggregated

sublimits for perils including flood and earthquake are permitted in amounts consistent with market practice at Comparable Public Airports. Coverage shall include the following: right to partial occupancy, boiler and machinery, earth movement, flood, water (including overflow), leakage, sewer backup, utility services, debris removal, testing, mechanical-electrical breakdown, resulting damage arising out of faulty or defective workmanship or material, business income (where an exposure exists and where the County has an insurable interest in such exposure), valuable papers and other consequential loss, when applicable. The County is to be named as an additional insured and, subject to the claims of any Leasehold Mortgagee, as a loss payee with respect to the property proceeds.

6. *Professional Liability.* When any architects, engineers, project managers, construction managers or other professional consultants perform work in connection with this Agreement, professional liability insurance covering acts, errors or omissions shall be maintained with limits of not less than \$5,000,000 per occurrence and \$5,000,000 aggregate; *provided, however,* that design and construction architects and engineers performing work with respect to any construction project undertaken by the Proposer pursuant to this Agreement must maintain limits of not less than the lesser of the completion cost of the construction project undertaken or \$10,000,000. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work in connection with this Agreement. A claims-made policy that is not renewed or replaced shall have an extended reporting period of two years.

7. *Property.* The Proposer shall obtain all risk property insurance coverage cost on a full replacement basis (no margin clause is to be included), covering all loss, damage or destruction to the Westchester County Airport Facility, including improvements and betterments. Occurrence limit of liability endorsement or equivalent, if included on property policy, must be amended to delete any limitation to stated property values. Coverage may not be limited to the statement of values provided to the insurance company. Coverage shall include the following: (i) such risks as may now or in the future be included under an all risk policy form of real property insurance (subject to standard policy terms, conditions and exclusions) as may now or in the future be prescribed by the County as of the effective date of the policy under which such insurance is provided and (ii) fire, smoke, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, equipment breakdown, flood, earth movement, collapse, water including overflow, leakage, sewer backup or seepage, utility interruption, debris removal, business ordinance or law for increased cost of construction, extra expense, boiler and machinery, valuable papers ingress and egress, civil and military authority and, if available, terrorism. Customary sublimits and aggregated sublimits for perils including flood and earthquake are permitted in amounts consistent with market practice at Comparable Public Airports. Coverage shall also include blanket business income coverage. In addition, the Proposer shall, during the Term, procure at its own expense comprehensive fire, theft and property damage all risk insurance for, and keep insured to the extent of the full replacement value thereof (if replaceable; otherwise, the value thereof), all personal property of the County in the care, custody and control of the Proposer, including materials, fixtures/contents, equipment, tools, supplies and art work. The Proposer shall be responsible for all loss or damage to personal property (including materials, fixtures/contents, equipment, tools, supplies and art work) of the Proposer unless caused by the County or its Representatives. The County is to be named as an additional insured on all property insurance policies. Subject to the claims of any Leasehold Mortgagee, the County and the Depositary are to be named as loss payees. The Proposer shall be responsible for any loss or

damage to County property at full replacement cost.

8. *Pollution Legal Liability.* Pollution legal liability insurance shall be provided covering third-party bodily injury, property damage and other losses caused by pollution occurrences during the Term with limits of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate. Coverage shall include environmental cleanup, remediation, transportation and disposal. When policies are renewed or replaced, the policy retroactive date shall, if practicable, coincide with or precede, start of work in connection with this Agreement. A claims-made policy which is not renewed or replaced shall have an extended reporting period of two years. The County is to be named as an additional insured.

9. *Business Interruption Insurance.* The Proposer shall obtain business insurance against interruption or loss of projected Revenues for at least six months from the occurrence of the risk, resulting from physical damage to the Airport; *provided*, that the limits of such coverage may be based on a maximum foreseeable loss analysis, subject to the County's approval of such maximum foreseeable loss analysis by an independent third party that is reasonably acceptable to the County, with such approval of the County not to be unreasonably withheld; and *provided further*, that the County and each Dependent Business shall be named as additional insureds thereunder.

10. *Owners' Contractors Protective Liability Insurance.* The Proposer shall obtain owners' contractors protective liability insurance or equivalent coverage with a limit of not less than \$2,000,000 per occurrence. Such insurance shall include coverage against any negligent acts or omissions of independent contractors or subcontractors of the Concessionaire, whether resulting in bodily injury or injury to property of third parties.

11. *Boiler & Machinery Insurance.* The Proposer shall maintain comprehensive boiler and machinery coverage or equipment breakdown coverage for completed structures housing pressure vessels, machinery, equipment and electrical systems with a total replacement value of \$25,000 or more. Such insurance shall (i) include a limit at least equal to the total replacement cost of the equipment, plus 10%; (ii) include business interruption insurance in an amount reasonably acceptable to the County; (iii) include the County as an insured and (iv) include law and ordinance coverage.

12. *Fiduciary Liability.* The Proposer shall maintain fiduciary liability in a limit of not less than \$3,000,000 per occurrence. Any retroactive date on the policy shall be on or before the Effective Date. Policies written on a claims-made basis shall remain in force for at least three years beyond the date this Agreement terminates, through extended coverage, purchase of a tail or otherwise.

Additional Requirements

Evidence of Insurance. The Proposer shall deliver or cause to be delivered to the County original certificates of insurance on the County's insurance certificate form or equivalent evidencing the Required Coverages on or before the Closing Date, and shall provide or cause to be provided, renewal certificates of insurance, or such similar evidence, if such coverages have an expiration or renewal date occurring during the Term. The receipt of any certificate does not

constitute agreement by the County that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the County to obtain certificates or other insurance evidence from the Proposer shall not be deemed to be a waiver by the County. Non-conforming insurance shall not relieve the Proposer of the obligation to provide insurance as specified herein. Except as otherwise expressly set forth herein, each Required Coverage may be reviewed by the County for compliance with the terms of this Agreement. Each Required Coverage shall be signed by the insurer responsible for the risks insured against or by the insurer's authorized representative. All Required Coverages shall be placed with insurers that, are licensed to do business in the State of New York, and, at a minimum, have a rating of A(VII) or better by A.M. Best Company or an equivalent rating by another Rating Agency (unless the County consents to waive this requirement).

Notice of Cancellation, Material Change or Violation. All Required Coverages shall provide for 30 days' (or in the case of cancellation for non-payment of premiums, 10 days') prior notice to be given to the County by the insurer in the event coverage is substantially changed, canceled or non-renewed. The County shall be permitted (but not obligated) to pay any delinquent premiums before the cancellation date specified by the insurer in any notice of cancellation for non-payment of premium in order to maintain such coverage in full force and effect and the Proposer shall reimburse the County for any delinquent premiums paid by the County on demand without any days of grace and without prejudice to any other rights and remedies of the County hereunder. The Proposer shall not cancel, terminate, materially change to the detriment of the County or replace any Required Coverage.

Deductibles. All Required Coverages may contain deductibles or self-insured retentions not to exceed amounts consistent with market practice at Comparable Public Airports. Any and all deductibles or self-insured retentions on Required Coverages shall be borne by the Proposer or its Contractors.

Inflation Adjustment. The amounts of coverage required by the Lease Agreement shall be Adjusted for Inflation each succeeding fifth anniversary of the Closing Date.

Waiver of Subrogation by Insurers. Each of the Required Coverages shall include a waiver by the insurer of its rights of subrogation against the County, its employees, elected officials, agents or representatives.

County's Right to Insure. If the Proposer fails to obtain and maintain or cause to be obtained and maintained the insurance required by the Lease Agreement, the County shall have the right (without any obligation to do so), upon two Business Days' notice to the Proposer in a non-emergency situation or forthwith in an emergency situation and without assuming any obligation in connection therewith, to effect such insurance and all costs and expenses of the County in connection therewith shall be payable by the Proposer to the County on demand without any days of grace and without prejudice to any other rights and remedies of the County hereunder. Such insurance taken out by the County shall not relieve the Proposer of its obligations to insure hereunder and the County shall not be liable for any loss or damage suffered by the Proposer in connection therewith.

No Limitation as to Proposer Liabilities. The Proposer expressly understands and agrees that any coverages and limits furnished by the Proposer shall in no way limit the Proposer's liabilities and responsibilities specified within the Agreement or by applicable law.

No Contribution by County. The Proposer expressly understands and agrees that any insurance or self-insurance programs maintained by the County shall not contribute with insurance provided by the Proposer under the Agreement.

Insurance Not Limited by Indemnification. The required insurance shall not be limited by any limitations expressed in any indemnification provisions contained in the Lease Agreement or any limitation placed on the indemnity therein given as a matter of applicable law.

Insurance Requirements of Contractors and Subtenants. The Proposer shall require in each contract with any Contractor or subtenant (where such Contractor or subtenant is not covered by the Required Coverages) that such Contractor or subtenant obtain coverages reasonably comparable to the Required Coverages that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract with the Contractor or subtenant. Such coverages shall insure the interests of the County, its employees, elected officials, agents and representatives, the Proposer and any other Contractors or subtenants in respect of the applicable work being performed and shall be subject to the same (or comparable) coverage and administrative requirements as are imposed on the Proposer pursuant to this Agreement. When requested to do so by the County, the Proposer shall provide or cause to be provided to the County certificates of insurance with respect to such insurance coverages or such other evidence of insurance, reasonably acceptable in form and content to the County. This provision shall not apply to any airline that is a party to the Use Agreement (or any subsequent use agreement with respect to the Westchester County Airport Facility), the obligations of which to obtain and maintain insurance shall be governed solely by the Use Agreement, or such subsequent amendment, modification or replacement thereof.

Joint Venture and Limited Liability Company Policies. If the Proposer or any Contractor required to obtain an insurance policy hereunder is a joint venture or limited liability company, all insurance policies required to be obtained by the Proposer or such Contractor shall specifically name the joint venture or limited liability company as a named insured.

Other Insurance Obtained by Proposer. If the Proposer or its Contractors or subtenants desire coverages in addition to the Required Coverages, the Proposer and each Contractor or subtenant shall be responsible for the acquisition and cost of such additional coverages. If the Proposer or its Contractors or subtenants obtain any property, liability or other insurance coverages in addition to the Required Coverages ("Additional Coverages"), then the Proposer or its Contractors shall notify the County as to such Additional Coverages and provide the County with any documentation relating to the Additional Coverages, including certificates of insurance, that the County reasonably requests.

Cooperation. The County and the Proposer shall do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance hereunder so as to expedite the release and dedication of proceeds of such insurance in the manner and for the purposes herein contemplated.

County's Right to Modify. The County shall have the right to modify, delete, alter or change insurance coverage requirements set forth in the Lease Agreement to reflect known material changes in insurance coverages for Comparable Public Airports or known material changes in insurance exposures associated with the Westchester County Airport Facility and the Proposer shall promptly comply therewith and shall not have any obligation to procure or maintain at its cost any additional insurance unless an independent insurance consultant shall have delivered to the Proposer its opinion to the effect that the additional coverages are required pursuant to the above-stated criteria and such additional coverages are commercially available at reasonable rates.

Commercial Availability. Notwithstanding anything to the contrary herein, if any insurance (including the limits or deductibles thereof) required to be maintained under this Agreement shall not be available at commercially reasonable rates, the Proposer shall have the right to request that the County consent to waive such requirement. Any such waiver shall be effective only so long as such insurance shall not be available at commercially reasonable rates; *provided* that during the period of such waiver, the Proposer maintains the maximum amount of such insurance otherwise available at commercially reasonable rates. The County shall reasonably consider a request by the Proposer for a waiver under the Lease Agreement if the request is supported by a determination by an internationally recognized independent insurance consultant (i) that such insurance is not available at commercially reasonable rates and (ii) of the amount of such insurance which is available at commercially reasonable rates. The County shall consult with the Signatory Airlines prior to granting any such waiver.

ATTACHMENT D

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT, made the ____ day of _____, 2017 by and between **THE COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (hereinafter the “County”) and _____
_____ (hereinafter the “Recipient”).

WITNESSETH:

WHEREAS, the County is providing to the Recipient, detailed information, more particularly described below and defined as Confidential Information, in order to assist Recipient with its Proposal in response to the County’s Request for Proposals seeking a Public-Private Partnership for the lease, management, operation, maintenance and improvement of Westchester County Airport; and

WHEREAS, the County and the Recipient desire to specify the terms and conditions that shall control the Recipient’s disclosure and use of Confidential Information.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. Confidential Information. “Confidential Information” means all, or any part of, and originals or copies of, any information, in whatever form embodied (*e.g.* oral, written, electronic) that the County has identified in writing (including electronic communication via email) as confidential at the time of disclosure. Specifically excluded is information (a) that at the time of disclosure was, or becomes, part of the public domain (through a source other than the Recipient); (b) lawfully obtained from a third party that was not under, and did not impose, an obligation of confidentiality with respect to such information; (c) that is independently developed by the Recipient; or (d) that was known by the Recipient prior to disclosure by the County. Confidential Information does not include any ideas, concepts or know-how.

2. Treatment of Confidential Information. The Recipient shall not disclose Confidential Information to third parties without the express written consent of the Commissioner of the Department of Public Works of the County. The Recipient agrees not to remove or obscure proprietary rights notices that appear on Confidential Information and copies thereof; and shall return or destroy, as the County may direct, all Confidential Information upon demand during the term of this Agreement and upon the termination or expiration of this Agreement. This paragraph shall survive the termination or expiration of this Agreement.

3. No license or conveyance. Nothing in this Agreement shall convey to the Recipient any right, title, interest or license in, or to, any Confidential Information.

4. Term. This Agreement shall commence on _____, 2017 and shall continue through December 31, 2017, unless sooner terminated.

5. Damages. In the event of a breach of this Agreement, the County shall have the right to seek

compensations for damages from the Recipient. Remedies available under the law allowing recovery of damages from the party breaching this Agreement, shall not be limited to monetary losses and punitive damages, but to any other legal remedies available, including but not limited to injunctive relief, including the cost of enforcement of the injunction. The Recipient acknowledges that any unauthorized disclosure or use of Confidential Information would cause immediate and irreparable injury or loss to County.

6. Miscellaneous. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement shall be brought in the County of Westchester.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

The Recipient shall not delegate or assign any of her rights or obligations under this Agreement.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. This Agreement shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

No delay or failure of either party to exercise any right or remedy available to it pursuant to this Agreement shall operate as a waiver of such right or remedy.

This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

IN WITNESS WHEREOF, the County of Westchester and the Recipient have caused this Non-Disclosure Agreement to be executed.

THE COUNTY OF WESTCHESTER

Signed: _____
Name: _____
Title: _____

RECIPIENT

Signed: _____
Name: _____
Title: _____

Approved as to form
and manner of execution:

County Attorney
County of Westchester

ACKNOWLEDGMENT

STATE OF)
) ss.:
COUNTY OF)

On the _____ day of _____ in the year 2017 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies) as _____, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

CERTIFICATE OF AUTHORITY
(CORPORATION)

I, _____,
(Officer other than officer signing contract)

certify that I am the _____ of
(Title)
the _____
(Name of Corporation)

a corporation duly organized and in good standing under the _____
(Law under which organized, e.g., the New York Business Corporation Law)

named in the foregoing agreement; that _____
(Person executing agreement)

who signed said agreement on behalf of the _____
(Name of Corporation)

was, at the time of execution _____
(Title of such person)

of the Corporation and that said agreement was duly signed for and on behalf of said Corporation by authority of its Board of Directors, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

(Signature)

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the _____ day of _____ in the year 20__ before me, the undersigned, a Notary Public in and for said State, _____ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the officer described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at _____, and he/she is an officer of said corporation; that he/she is duly authorized to execute said certificate on behalf of said corporation, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public

ATTACHMENT E

DATA ROOM REGISTRATION AND ACCESS FEE FORM

Please wire the Data Room Access Fee (\$150,000.00) to the County using the following wire transfer information:

- **Receiving Bank:**
 JP Morgan Chase
 Attn: Ed Meundell
 106 Corporate Park Drive
 White Plains NY 10604

- **Transit Routing Number: 021000021**

- **Account Number: 1120344**

- **Recipient:**
 County of Westchester:
 Attn: Mario Arena
 148 Martine Avenue
 White Plains, New York 10601

As described in the RFP, the Data Room Access Fee is refundable upon County determination that it has received a compliant Proposal from the Proposer. Please provide return wire instructions below.

Receiving Bank: _____

Transit Routing Number: _____

Recipient Account Number: _____

Recipient Name and Address: _____

DATA ROOM USERS ACCEPT THE DATA ROOM RULES AS SET OUT BELOW AT ALL TIMES.

Use of the Data Room

These rules (the Rules) govern the use of the Data Room by the Data Room users designated by the Proposer . The County and/or any of its advisors may amend these Rules at any time by notice.

To be able to register users and grant access to the Data Room, the user's family name, first name and email address are required. The County reserves the right, in its absolute discretion, to refuse, or deny access to the Data Room to any user.

Compliance

Data Room users shall comply with all applicable laws and regulations in accessing the Data Room and in further using or accessing the Confidential Information as defined in the Non-Disclosure Agreement. No user of the Data Room shall introduce any computer virus or other destructive code to the Data Room or the systems on which the Data Room is held.

Liability

The County does not warrant that the Data Room will be free of computer viruses and other destructive codes. The County accepts no liability for any damage caused by any destructive code transmitted through the access to the Data Room by the user. Data Room users acknowledge that it is their responsibility to implement sufficient procedures and virus checks to satisfy their particular requirements.

Security Precautions

The Data Room may not be accessed from any non-secure network, such as from an internet café or any other place where the public has access.

When a computer being used to access the Data Room is left (even for a short time), that computer should be locked using a password which is known or accessible only to the Data Room user and its relevant internal IT support department. At the end of each session accessing the Data Room, the browser window must be closed down.

Data Room users may only use the User ID and Password that have been allocated to them individually. Such User ID and Password may not be disclosed to others and no Data Room user may permit others to use its unique User ID and Password.

Security Requirements

Data Room users will not attempt to circumvent any of the security features of the site and will not enable or allow others to access the site using their authorization to the site. Failure to comply with this Security Requirement will be taken to be a breach of the Non-Disclosure Agreement and access to the Data Room may be immediately revoked and the Access Fee may be forfeited.

Provision and Update of the Data Room

The Data Room is intended to be available 24 hours a day, 7 days a week until the County announces a Preferred Proposer. It is not envisaged that the Data Room will require any downtime, although this cannot be guaranteed. The County may, for technical reasons, withdraw the Data Room at any time without notice to interested parties. No assurance is given that the Data Room will be available at any particular time or that any information can be accessed in any format, at any download rate or at all. The County may in their discretion provide alternative means for accessing the Data Room information.

Further documents may be added to the Data Room and existing documents on the Data Room may be updated at any time. It is the responsibility of each user to check the Data Room for updates. New documents will be tagged.

General Disclaimer

The County has taken all reasonable efforts to ensure that the information available in the Data Room is correct at the time of publication but the County makes no representation or warranties, express or implied, as to the quality, accuracy and completeness of the information in the Data Room, and the County assumes no liability in contract or in tort or breach of statutory duty or otherwise for or in respect of any indirect, incidental, consequential or exemplary loss or damage howsoever arising in respect of or in connection with the information contained in or from the inaccuracy, incompleteness, or omissions in the contents of the Data Room.

By signing below, Data Room users acknowledge that they have read, understand, and agree to the above rules. Employees, officers or directors of the Proposer declare to be aware that the terms and conditions as set out in the Non-Disclosure Agreement apply to them.

Data Room User 1

Last Name: _____
First Name: _____
Company: _____
Phone: _____
E-Mail: _____

Signature: _____
Date: _____

Data Room User 2

Last Name: _____
First Name: _____
Company: _____
Phone: _____
E-Mail: _____

Signature: _____
Date: _____

Data Room User 3

Last Name: _____
First Name: _____
Company: _____
Phone: _____
E-Mail: _____

Signature: _____
Date: _____

Data Room User 4

Last Name: _____
First Name: _____
Company: _____
Phone: _____
E-Mail: _____

Signature:

Date:

Data Room User 5

Last Name:

First Name:

Company:

Phone:

E-Mail:

Signature:

Date:

Data Room User 6

Last Name:

First Name:

Company:

Phone:

E-Mail:

Signature:

Date:

Data Room User 7

Last Name:

First Name:

Company:

Phone:

E-Mail:

Signature:

Date:

Data Room User 8

Last Name:

First Name:

Company:

Phone:

E-Mail:

Signature:

Date:

**ATTACHMENT F
FORM OF PROPOSAL LETTER OF CREDIT**

ISSUER:	[●]
PLACE FOR PRESENTATION OF DRAFT IN PROGRESS:	(Name and Address of Bank/Branch—MUST be CITY OF NEW YORK, NEW YORK Bank/Branch)
APPLICANT:	[●]
BENEFICIARY:	Westchester County, NY 148 Martine Avenue White Plains, NY 10601 Attn: Credit Manager
LETTER OF CREDIT NUMBER:	[●]
PLACE AND DATE OF ISSUE:	[●]
AMOUNT:	\$[●]
EXPIRATION DATE:	[●]

Issuer hereby issues in favor of Beneficiary this Irrevocable Standby Letter of Credit No. [] (this “Letter of Credit”), for the account of Account Party and on behalf of Applicant, available by draft at sight drawn on Issuer in an amount not to exceed [] (\$[●]) (the “Stated Amount”). This Letter of Credit is issued to Beneficiary in respect of the obligations of Applicant pursuant to the Request for Proposals Seeking A Public-Private Partnership For The Lease, Management, Operation, Maintenance And Improvement Of Westchester County Airport (the “RFP”). Subject to the provisions herein, Issuer shall make funds available to Beneficiary under this Letter of Credit against presentation to Issuer of a sight draft that identifies this Letter of Credit by the name of Issuer, the Letter of Credit number, amount, and place of issue, and certification by the County to Issuer that, pursuant to the terms of the RFP, the County is entitled to draw on this Letter of Credit.

This Letter of Credit shall be honored by Issuer if presented at [CITY OF NEW YORK, NEW YORK Bank/Branch—Name & Address] on or before [*fill in the date that is 180 days after the Proposal Due Date*] (the “Expiration Date”). If any request for payment hereunder is presented in compliance with the terms of this Letter of Credit to Issuer, payment by Issuer will be made within three (3) Business Days of receipt of such request for payment. A “Business Day” shall mean any day on which commercial banks are not authorized or required by law to close in New

²¹ Letter of credit provided by the Proposers should specify the applicable bracketed conditions as drawing conditions.

York, New York. The obligations of Issuer hereunder are primary obligations to Beneficiary and shall not be affected by the performance or non-performance by Applicant or Account Party under any agreement with Beneficiary or by any bankruptcy, insolvency or other similar proceeding initiated by or against Account Party or Applicant. Applicant or Account Party are not the beneficiaries under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon. This Letter of Credit shall terminate on the earlier of (i) 5:00 P.M. Eastern Time in New York, New York, on the Expiration Date, (ii) the date on which Issuer has honored one or more draws in the full amount of Stated Amount and (ii) the date this Letter of Credit is returned to Issuer for cancelation. This Letter of Credit may not be transferred by Beneficiary to any other person. Drawings by facsimile to facsimile number [●] are acceptable (each such drawing, a “Fax Drawing”); provided, however, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer’s receipt of such Fax Drawing by calling Issuer at telephone number [●]. Issuer will acknowledge Beneficiary’s presentment by e- mail to the e-mail address provided to Issuer in the Fax Drawing.

All banking charges, including any advising and negotiating bank charges, are for account of Account Party.

To the extent not inconsistent with the express provisions hereof, this Letter of Credit is subject to the rules of the International Standby Practices ISP98 (“ISP98”), as interpreted under the laws of the State of New York, and shall, as to matters not governed by the ISP98, be governed and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law.

With respect to any suit, action or proceedings relating to this Letter of Credit (“Proceedings”), each of Issuer, Applicant, Account Party and Beneficiary irrevocably: (i) submits to the exclusive jurisdiction of any New York State or U.S. Federal court sitting in the City and County of New York and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court and to any claim that such Proceedings have been brought in an inconvenient forum.

Issuer:	
By:	_____
Name:	[●]
Title:	[●]
	(Authorized Signatory of Issuer)

*** Please instruct your Issuer to have the Letter of Credit issued in the above format in “Draft” form and send to the County’s Designated Contact Person for approval **PRIOR** to issuance in “Original” form. **If the draft is not reviewed in advance, the Letter of Credit may be rejected.** If you are in need of further assistance, please contact the County’s Designated Contact Person.