

**COUNTY OF WESTCHESTER
NEW YORK**

DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

ADDENDUM NO. 1

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

The attention of the Proposers is directed to the following clarifications and amendments affecting the above-referenced RFP.

1. Changes Related to the Data Room Access Fee

Subparagraph “a” to the third paragraph of Section II.B(3) “Data Room” on page 15 of the RFP is hereby amended as follows:

Original Paragraph:

“Submission of the required Data Room Registration Form and an Access Fee of US\$150,000 (One Hundred Fifty Thousand US Dollars), which shall be deemed 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”

Amended Paragraph:

“Submission of the required Data Room Registration Form and an Access Fee of US\$150,000 (One Hundred Fifty Thousand US Dollars), which shall be deemed 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) or upon notification in writing by the Proposer to the County that it a) will not submit a proposal in response to this RFP, and b) will abide by the terms of the Non-Disclosure Agreement (“NDA”) (see Attachment D) and the rules set forth in the Data Room Registration and Access Fee Form (see Attachment E). The access fee will be refunded at the time a Preferred Proposer is selected or the County chooses to cancel this RFP.”

Additionally, the Data Room Registration and Access Fee Form (Attachment E to the RFP) is hereby likewise revised as shown on the attached version. Any Proposer that has already executed the previous version will be given the option of replacing it with the revised version.

2. Changes Related to the Collaborative Dialogue Meetings

The RFP timeline in Section II.B(1) on page 13 is amended to reflect that the initial Collaborative Dialogue Meetings (CDMs) and airport site visits will be scheduled May 2-4, 2017.

The County is also confirming that any prospective Proposer that has signed the NDA will be permitted to schedule and attend the first CDM.

3. Changes to the Non-Disclosure Agreement Form

The Non-Disclosure Agreement (Attachment D to the RFP) is hereby revised as shown on the attached version. Any Proposer that has already executed the previous version will be given the option of replacing it with the revised version.

COUNTY OF WESTCHESTER
DEPARTMENT OF PUBLIC WORKS AND
TRANSPORTATION

By: Vincent F. Kopicki, P.E.
Commissioner

Dated: April __, 2017
WHITE PLAINS, NEW YORK
Addendum No. 1

ATTACHMENT D – REVISED 4/21/17

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 or its affiliate’s 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 (“Commissioner”). Notwithstanding the foregoing, the Recipient may permit access to Confidential Information to those of its affiliates, and its and their respective employees, directors, officers, managers, agents, advisors, consultants and potential financing sources (“Representatives”) having a need to know and who shall be obligated through separate instrument between Recipient and Representatives to maintain the confidentiality obligations in this Agreement; provided that Recipient’s Representatives shall only include such entities that have received Confidential

Information. For purposes hereof, an “affiliate” of Recipient shall include the following: _____ . 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; provided, however, that Recipient may retain copies of any Confidential Information (including any electronic file back-up and other back-up media) that such party is required to record or maintain in its files by applicable statute, law or government rule or regulation or by any judicial governmental supervisory or regulatory body (“Required Document Retention Period”), which shall remain subject to the confidentiality provisions of this Agreement for the duration of the Required Document Retention Period, at the conclusion of which the Recipient shall destroy all such documents. Recipient shall advise the Commissioner in writing if it has a document retention period that exceeds the term of this agreement and if so by how long. This paragraph shall survive the termination or expiration of this Agreement.

Notwithstanding anything to the contrary herein, Recipient shall not be in violation of this Agreement with regard to a disclosure that was (i) in response to a valid order by a court, governmental body or securities exchange; or (ii) required pursuant to applicable law, rule, or regulation; provided that, unless prohibited by law or regulation or where such disclosure is required as a result of an examination by a regulatory or governmental agency, Recipient shall provide the County with prior written notice of such disclosure to permit the County to seek, at its sole expense, a protective order.

3. No license or conveyance. Nothing in this Agreement shall convey to the Recipient or any Representative 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 or when the Required Document Retention Period expires as set forth in section 2 above, if applicable, 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 , 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 its 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:

Signed: _____

Approved as to form
and manner of execution:

County Attorney

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 – REVISED 4/21/17

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 shall be deemed refundable upon County determination that it has received a compliant Proposal from the Proposer or upon notification in writing by the Proposer to the County that it a) will not submit a proposal in response to this RFP, and b) will abide by the terms of the NDA (see Attachment D) and the rules set forth in this Data Room Registration and Access Fee Form. The Access Fee will be refunded to all such Proposers at the time a Preferred Proposer is selected or the County chooses to cancel this RFP.

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:
