



Addendum No. 2

Revenue Contract Solicitation (RCS) AVN RCS 23-018

Northwest Air Cargo Development at Phoenix Sky Harbor International Airport

According to Section I – Introduction, Item M – Addendum to RCS, the City hereby amends the above-referenced RCS as follows:

DELETE AND REPLACE

1. Delete Section I – Introduction, Paragraph H – Lease Term and Contractual Relationship in its entirety and replace with the following:

The information in this RCS is not intended to completely define the proposed contractual relationship to be entered into by the City and the Successful Respondent. The Lease terms may be amended at the sole discretion of the City at any time during the RCS process and/or prior to execution of the Lease.

The Lease will be effective on the date of execution by the City (Effective Date). The Due Diligence Period will begin on the Effective Date and last for twelve (12) months or until successful completion of Environmental assessments, National Environmental Policy Act (NEPA) approval from the FAA, and any Archaeological requirements, whichever occurs first. The Construction Period will begin upon completion of the Due Diligence Period and last for twenty-four (24) months or until the Successful Respondent has obtained a Certificate of Occupancy for the Tenant Improvements on the Premises, identified in **Exhibit 2**, whichever occurs first.

The Term of this Lease will commence on the Beneficial Occupancy Date or thirty-six (36) months from the Effective Date, whichever occurs first (Term Commencement Date), and will be for forty (40) years (Term).

Respondents are advised to read the draft Lease included as **Exhibit 1**, to which the Successful Respondent and its Partners, as defined in Section I(P), shall be bound. See Exhibit 12 – Affidavit, Paragraph 12 of Assurances.

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2. Delete Section II – Scope Overview, Paragraph B – Project Requirements, Sub-Paragraph 1 – Environmental Requirements in its entirety and replace with the following:

Environmental Requirements: The Respondent will be required to complete Phase I and Phase II Assessments as part of the development via an on-call City consultant. The City will incur the costs for remediation of any pre-existing conditions found during the Phase II Environmental Site Assessment. The City and the Successful Respondent will agree on how to remediate. The Successful Respondent will also be responsible for lead and asbestos testing and abatement, if required, via an on-call City consultant. The Respondent will be responsible for developing and implementing with prospective tenants Spill Prevention and Control Countermeasures Plans and Storm Water Pollution Prevention Plans.

3. Delete Section II – Scope Overview, Paragraph C – Rent Upon Beneficial Occupancy in its entirety and replace with the following:

Successful Respondent will not pay rent under the Lease during the Due Diligence Period and the Construction Period (Development Period). The Term Commencement Date and Rent Commencement Date will begin on the Beneficial Occupancy Date or thirty-six (36) months from the Effective Date, whichever occurs first. All dates are subject to change at the discretion of the City.

4. Delete Exhibit 1 – Draft Lease in its entirety and replace with Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022)

ADD

5. Add Exhibit 19 – Airport Layout Plan, attached and incorporated herein by this reference.
6. Add Exhibit 20 – PHX Northwest Area Oil Water Separator Tracking Form, attached and incorporated herein by this reference.
7. Add Exhibit 21 – Phase I Environmental Site Assessment (ESA) – May 28, 1998, attached and incorporated herein by this reference.
8. Add Exhibit 22 – Phase I Environmental Site Assessment (ESA) – October 24, 2006, attached and incorporated herein by this reference.

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QUESTIONS AND ANSWERS

QUESTIONS AND ANSWERS	
The following questions were submitted by interested Respondents and are represented as they were received.	
Q1	What is the plan if you don't receive FAA grant funding for the upgraded taxiway?
Answer	The City of Phoenix (City) anticipates receiving FAA grant funding for the upgraded taxiway; however, if FAA grant funding is not received, the City intends to seek Phoenix City Council approval to fund the upgrade of Taxiway Alpha. This project is planned for FY2023-24.
Q2	Is the project site/intended development currently on the airport's ALP?
Answer	The project site is currently on the Airport Layout Plan (ALP) as Aero-Business/General Aviation; however, an intended development is not specified. The ALP dated March 2020 is attached to this Addendum No. 2 as Exhibit 19.
Q3	Powerpoint and attendee list will be posted? Correct?
Answer	The Pre-Response Meeting PowerPoint presentation and the Pre-Response Meeting Sign In Sheet have been posted at the following link: https://solicitations.phoenix.gov/Solicitations/Details/1342 .
Q4	Will the project require an EA?
Answer	The project site will require some form of NEPA approval (i.e. Environmental Assessment (EA) or Categorical Exclusion (CatEx)). The type of NEPA approvals will depend on the Successful Respondent's Response. NEPA approvals will be conducted in the Due Diligence Period and the Successful Respondent will coordinate with the Aviation Department's (Aviation) Planning and Environmental Division.
Q5	I am reaching out to kindly ask if this project includes the supply and installation of a new standby generator.
Answer	No. The City will not include the supply and installation of a new standby generator as part of this project.

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Q6	Section 4.1 – Please modify this section to allow Tenant to sublease the Premises to subtenants to operate an air cargo facility without the consent or approval of Landlord. This is a very typical standard in airport ground leases.
Answer	This Section will not be modified as this is standard language in all Phoenix Sky Harbor International Airport (Airport, PHX) ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants. Subleases are contemplated in the Lease and require the City’s prior written approval. See Section 17.3 of Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022).
Q7	Section 4.3 – In the first sentence, please replace “the general public” with “other airport users.” The general public, for example, does not have SIDA or AOA access.
Answer	Section 4.3 will not be modified as this is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants. The reference to access being the same as that of the general public indicates that Tenant access to/from the Airport is permitted via the existing public roadways (i.e. 24th Street, Air Lane, etc.).
Q8	Sections 4.09 and 4.10 – If there is a dispute, Landlord’s decision is unappealable. That seems unreasonable. We, therefore, ask that an alternative mechanism be added to reasonably resolve disputes.
Answer	Sections 4.9 and 4.10 will not be modified as this is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q9	Section 7.1 – Please add material allowing for an extension for matters beyond Tenant’s control, e.g., if there is material damage during construction or obtaining permits is delayed.
Answer	Section 7.1 will be modified to include Section 7.1.1 – Due Diligence Period and 7.1.2 – Construction Period. See Section I (H) of the RCS and Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) as amended in this Addendum No. 2. Such additional circumstances or conditions potentially causing delays will be addressed based on the specific circumstances when they arise. Also see Answer to Q59 and Q94.

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Q10	Section 7.3 – Please modify this to allow Tenant to exercise this option provided Tenant is not in default beyond any applicable cure period at the time such option is exercised. There should also be a specified time window in which Tenant may exercise this option, e.g., no later than six (6) months prior to the expiration of the initial term.
Answer	Section 7.3 of the Draft Lease has been deleted, and Section 7.2 has been amended to a forty (40) year Term. See Section I (H) of the RCS and Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) as amended in this Addendum No. 2.
Q11	Section 7.7 – In line 7, please change “at least ten (10) Days” to “at least thirty (30) Days.”
Answer	Section 7.7 (Section 7.6 in the revised Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022)) will be modified to allow either Party to terminate a month-to-month tenancy by giving the other Party at least thirty (30) Days prior Notice. See revised Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) attached to this Addendum No. 2.
Q12	<p>Article 8 – There are elements of this Article 8 that do not appear to be fair and, based on our experience, are off-market and run contrary to a successful partnership. To remedy these, we offer the following:</p> <p>a. Section 8.1 – Please add specific criteria around what triggers a possible termination, specifically on the language regarding “that is necessary for the efficient operation of the Airport or to preserve the public health or the environment.” Also, please change “ninety (90) Days” to one hundred and eighty (180) Days.”</p>
Answer	Section 8.1 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q13	<p>b. Section 8.2 – Like Section 8.1, please add specific criteria around what triggers a possible termination, specifically on the language regarding “If Landlord determines that it is necessary for the future expansion or development of the Airport.” At a minimum, this should be modified to include that any future expansion or development should be part of an approved Airport Layout Plan and an approved Master Plan. Also, please change “ninety (90) Days” to one hundred and eighty (180) Days.”</p>
Answer	Section 8.2 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.

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Q14	<p>c. Section 8.3 – On the second line, please change “ten (10) Days” to “ninety (90) Days.” Secondly, the compensation mechanism should be based on fair market value, including improvements and as a going concern, and not fair market value according to a straight-line depreciation schedule. The rationale here is that Tenant will be taking substantial risk in investing, developing, and operating the project and for the Airport to simply terminate the Lease without reasonable compensation is not fair and off market. In the last sentence, please change “twelve (12) months” to “thirty-six (36) months” as any such replacement facilities will need to be designed, permitted (including possible NEPA/FAA), financed and constructed and it is not conceivable that all of this can be accomplished in twelve (12) months.</p>
Answer	<p>Section 8.3 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.</p>
Q15	<p>d. Section 8.4 – Please see comment 7(c) above on Section 8.3 regarding fair market value. Also, please modify this to provide for compensation applying the same method if Tenant does not request an alternative site under Section 8.3.</p>
Answer	<p>Section 8.4 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.</p>
Q16	<p>Section 9.4 – Please clarify what “triple net” means in the context of this section and what is Tenant’s pro rata share of overall Airport expenses? As an example, is it intended that a portion of Airport LEO, ARFF, airfield operating expenses, etc., will be allocated to the Premises, and if so, what is Tenant’s pro rata share of these expenses? Also, the second sentence states that “Tenant shall pay all taxes to Landlord each month along with Net Rent.” Please clarify the type of taxes this is referring to and the methodology of assessing such amounts.</p>
Answer	<p>“Triple net” means the Tenant will pay all expenses of the Premises including, but not limited to, rent, utilities, insurance, maintenance, and taxes. Tenant will also pay all costs for the construction, operation and maintenance of the entire Premises.</p> <p>Rent for the ground lease will be initially \$1.05 per square foot. There is a City of Phoenix assessed privilege tax which is currently 2.9% of the rent paid. See Sections 9.1 and 10.1 of Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022). Respondents are advised to consult with a tax professional regarding applicable taxes.</p>

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Q17	Section 9.7 – There appears to be a small error on the third line in that “three-(3) year anniversary” should be “third.” Also, we recommend that any adjustment be based solely on CPI, with no minimum, and a cap of 6%.
Answer	Section 9.7 will not be modified as this is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q18	Section 9.8 – Please modify to specify that the fair market rental be determined without consideration of the improvements. That is, Tenant is leasing unimproved land and should not pay rent on the value of the land with improvements that Tenant constructs.
Answer	Section 9.8 will not be modified. Provisions within Section 9.8 of the Lease provide for Tenant to dispute the assessed value if it is felt that the Landlord’s appraisal was inaccurately assessed.
Q19	Section 9.13 – Given that the Net Rent is fixed throughout the term, it appears odd for Landlord to have audit rights. Regardless, please clarify that any audit period be at least one year.
Answer	Section 9.13 will not be modified as this is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q20	Section 12.3 – Please clarify that any adjustment in the Personal Guarantee can only be triggered by a Tenant default beyond any applicable cure period as the language as drafted is arbitrary.
Answer	Adjustment of the Performance Guarantee is not dependent upon a Tenant default and this provision will not be modified. As stated in Section 12.3, the Performance Guarantee may be increased for any reason Landlord deems appropriate, including (i) Tenant’s financial obligations under this Lease increase, (ii) Tenant failed to pay Net Rent, Additional Payments, or any other amount in full and when due, or (iii) Tenant’s financial condition changes to the extent that Landlord is concerned about Tenant’s ability to perform under this Lease.

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Q21	Article 13 – Please delete “or alleged to be caused” and insert “to the extent” after “except” at the top of page 20.
Answer	Article 13 will not be modified as it is standard City Indemnification language. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q22	Section 15.1 – Please clarify that a Phase II will only be required if a Phase I identifies the need for a Phase II. Also, please incorporate language that Tenant shall not be responsible for any pre-existing environmental conditions.
Answer	The City anticipates that the results of the Phase I ESA will require a Phase II Environmental Site Assessment (ESA) to be conducted. The City will incur the costs for remediation of any pre-existing conditions found during the Phase II ESA. Lead and asbestos remediation shall be the responsibility of the Successful Respondent. The City and the Tenant shall agree on how to remediate. See Section II(B)(1) of the RCS and Section 15.1 of Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) as amended in this Addendum No. 2.
Q23	Section 15.3 – In the third sentence, the 200% annual Net Rent and Additional Payments specified here as a penalty appears to be materially excessive, particularly given that Landlord has other remedies as specified elsewhere in the agreement.
Answer	Section 15.3 (Section 15.5 in the revised Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022)) will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligation requiring that it not discriminate with respect to its tenants.
Q24	Section 16.1 – Please modify the language to read, “Force Majeure means an unforeseen <u>event or circumstance that prevents a party’s performance hereunder and is not caused by that party, including but not limited to fire, hurricane, tornado . . .</u> ”
Answer	Section 16.1 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligation requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants. Such additional circumstances or conditions potentially causing delays will be addressed based on the specific circumstances when they arise.

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Q25	Section 16.2 – Please insert “and to recover therefrom” after “Force Majeure” on the third line.
Answer	Section 16.2 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q26	Section 17.1 – Please delete “mortgage” as that subject is addressed in Section 17.5.
Answer	Section 17.1 specifies when City prior written approval is required for mortgages. Section 17.5 addresses the criteria for an acceptable leasehold mortgage. Section 17.1 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q27	Section 17.3 – As mentioned in the comment above regarding Section 4.1, please modify to allow Tenant to sublease the Premises to Tenants to operate an air cargo facility, without the consent or approval of Landlord. This is a very typical standard in airport ground leases.
Answer	See answer to Q6.
Q28	Section 17.5(A) – Please delete the first sentence as it is incorrect as a leasehold mortgage is a lien or encumbrance on the Premises. The second sentence, we suggest, correctly states the idea.
Answer	Section 17.5(A) will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligation requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q29	Following Section 17.5(A), Sections 15.8, 15.9, 15.10, and 15.11 – Please note that the numbering here is not correct. It appears these should be labeled Section 17.8, 17.9, 17.10, and 17.11.
Answer	Numbering has been corrected in the Draft Lease. See revised Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) attached to this Addendum No. 2.

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Q30	Section 15.10 (as currently drafted without correct numbering) – Please modify the language to reflect that an Estoppel Certificate must be provided by Landlord or Tenant if requested, <i>i.e.</i> , its provision is mandatory for both parties, and should also include other reasonable and customary items, such as non-disturbance, etc.
Answer	Section 15.10 (Section 17.11 in the revised Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022)) will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants. It is expected the parties may be required to provide documents necessary for implementation of this project.
Q31	Section 15.11 – Please revise this to allow recording in any appropriate recorder’s office. Maricopa County may be the right one, but things can change. While the form at Exhibit H looks good, it would be preferable to allow some flexibility if items must be added or changed to accommodate the financing source.
Answer	Section 15.11 will not be modified as it is standard language in all Airport ground leases. Any issues related to recording of documents may be considered on a case-by-case basis. Standardization in leases enables the City to comply with its federal grant assurance obligation requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q32	Article 17 – Please incorporate language that requires notices of default to be given to any mortgagee.
Answer	The City accepts this request. Section 17.7 – Landlord’s Notice to Lender or Beneficiary has been added to the Draft Lease. See revised Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) attached to this Addendum No. 2.
Q33	Section 19.1 (D) – Please delete “or ceases to use and occupy” as if for some reason we lack a subtenant for thirty-one (31) days Tenant could lose the property as currently written.
Answer	The City accepts the revised Draft Lease Language to Section 19.1 (D) to satisfy this request. See revised Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) attached to this Addendum No. 2.

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Q34	Section Article 19.1 (F) – Please change “one (1) Day” to something more reasonable as one (1) day may not be sufficient to correct a deficiency.
Answer	Section 19.1 (F) will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of the Airport property at all times and not discriminate with respect to its tenants.
Q35	Section 19.1(G) – Please modify this to allow twenty (20) days and delete the last sentence as the intent here is to allow such a breach to be cured.
Answer	Section 19.1 (G) will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of the Airport property at all times and not discriminate with respect to its tenants.
Q36	Section 21.6 – Please delete the second sentence as Tenant is required to maintain and improve the Premises throughout the term of the agreement so Tenant should not be required to remove Tenant’s Improvements at Landlord’s request (particularly within 10 days) as written.
Answer	Section 21.6 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of the Airport property at all times and not discriminate with respect to its tenants.
Q37	Section 22.1 – Please remove the requirement for Landlord’s approval for the removal of trade fixtures. We suggest that is both atypical and impractical. Please delete the second sentence as it does not seem to apply with the above-requested modification to Section 21.6.
Answer	Section 22.1 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of the Airport property at all times and not discriminate with respect to its tenants.
Q38	Section 22.2 – Like with Section 22.1, please remove the requirement for Landlord’s approval for the removal of trade fixtures. We suggest that is both atypical and impractical.
Answer	Section 22.2 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of the Airport property at all times and not discriminate with respect to its tenants.

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Q39	Section 23.2 – Please modify to allow that the payment of any insurance proceeds to Landlord needs to be subordinated to a requirement for proceeds to be paid to the mortgagee.
Answer	Section 23.2 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q40	Article 23 – Please modify to include a provision that Tenant shall not be required to rebuild due to damage or destruction within the last five (5) years of the term.
Answer	Article 23 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q41	Sections 24.3, 24.4, and 24.5 – Please modify these to allow Tenant to recover at least its investment and cover debts on the leasehold.
Answer	Sections 24.3, 24.4 and 24.5 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q42	Section 27.1 – We urge modifying this to allow for notice by email.
Answer	This Section will not be modified as the Lease provides for Notice by email. Section 27.1 states “All notices, consents, approvals, and other communications (collectively, Notices) between Landlord and Tenant that are required under this Lease shall be in writing and given by ... (B) email with return receipt requested (read receipt)...”
Q43	Section 29.2 – The last sentence here is contrary to common practice. Please replace it with, “Except as otherwise expressly provided in this Lease, where Landlord’s approval or consent is required, Landlord shall reasonably and promptly give its consent and after the passage of fifteen (15) days, such approval or consent will be deemed given.”
Answer	Section 29.2 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of the Airport property at all times and not discriminate with respect to its tenants.

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Q44	Section 29.15 – Please delete this provision because trade fixtures on the Premises will not be Tenant’s but rather our subtenants.
Answer	The City may consider waiving this provision provided the Tenant agrees to double the amount required for the Tenant’s Performance Guarantee required in Article 12 of Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022).
Q45	Section 29.16 – Please modify to make this mutual.
Answer	Section 29.16 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants. Additionally, Phoenix City Code Sec. 42-18 prohibits the City from limiting its legal remedies.
Q46	Section 29.17 – Please appreciate that the idea that Landlord may just modify Tenant’s improvement is both atypical and likely to significantly discomfort financing sources. Thus, please delete this section as Landlord has other protections in the agreement in the event the Premises are needed for airport expansion.
Answer	Section 29.17 will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.
Q47	On page 1 of the RCS, the date under the Solicitation Deadline should be changed to January 25, 2023?
Answer	The Solicitation Deadline is January 30, 2023. See the Schedule of Events as amended in Addendum No. 1.
Q48	Section II – Scope Overview (B) (6) states that “the City will improve Taxiway Alpha from A3 to A5 intersections to ADG V aircraft through a capital improvement project”. At the Pre-Response meeting held on November 17, 2022, the City stated that the taxiway improvements will be subject to securing FAA funding for the project. What is the City’s plan for the taxiway improvements should FAA funding not be secured and how would this impact the project if this funding is not secured?
Answer	See answer to Q1.

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Q49	Are there real property taxes currently being assessed on the existing cargo facilities? If so, can you please provide: <ul style="list-style-type: none">• The name of the taxing authority• A list of the facilities currently being assessed and the current amounts• What is the assessment methodology
Answer	See answer to Q16.
Q50	Is the Northwest Air Cargo Development program currently identified on the airport's Airport Layout Plan (ALP) and can you please provide a copy of such ALP?
Answer	See answer to Q2.
Q51	What approvals will be required from the FAA (other than the Building Height Requirements as specified in the RCS) or other regulatory agencies before construction can begin and will the City (as the airport sponsor) or the Selected Respondent be responsible for securing such approvals?
Answer	The Successful Respondent will be required to develop the site following all FAA requirements for an airport development (i.e. advisory circular design standards). The Successful Respondent will be required to obtain all required FAA approvals, including but not limited to, Airport Environmental Review Process, under NEPA and Form FAA 7460-1 – Notice of Proposed Construction or Alterations. Approvals will be coordinated with Aviation's Planning and Environmental Division and Operations Division. The Successful Respondent is also required to obtain any and all required City of Phoenix building permits. Building permits review and approvals will be coordinated with Aviation's Design and Construction Services Division (DCS).
Q52	Who is the permitting authority or authority having jurisdiction for construction activities?
Answer	The City of Phoenix is the permitting authority with inspection oversight for the project site. Aviation through its DCS Division will assist the Tenant through Aviation's Tenant Improvement process. DCS will assist with submitting applications and documentation to the City of Phoenix Planning and Development Department for review and approvals. DCS will also assign a City certified inspector to the project.
Q53	Will airport operations or the ATCT allow the Air Cargo aircraft to be pushed back onto Taxiway A by GSE equipment?
Answer	Airport Operations and PHX's ATCT will oppose pushing aircraft into the movement area (Taxiway Alpha). The Premises should not be designed for this scenario.

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Q54	Please confirm the Airport supports meeting the “Standard” as outlined in FAA AC 150/5300-13B, paragraph 3.19.1 – <i>“Locate aircraft parking areas to preclude any part of a parked aircraft (tail, wingspan, nose, etc) from being within a ROFA or penetrating the OFZ.” and not the more restrictive “Recommended Practice” outlined in paragraph 3.19.2 “Locate aircraft parking positions in a manner to prevent exceeding the obstruction standards, as defined in Part 77”?</i>
Answer	The City will require FAA AC 150/5300-138, paragraph 3.19.1 to be met along with all other FAA Aviation Circular requirements or design standards.
Q55	Has the Airport submitted a Section 163 review to the FAA for this project yet? If so, were any additional NEPA actions identified by the FAA? Please provide any FAA responses.
Answer	No, the Airport has not submitted a Section 163 review with the FAA. A Section 163 review will be conducted in the Due Diligence Period and the Successful Respondent will coordinate with Aviation’s Planning and Environmental Division, if applicable.
Q56	We understand that the City currently has plans to implement taxiway improvements in and around the West Cargo area. Please describe the nature and timing of these improvements and how this will impact the current tenants in West Cargo Buildings A, B and C. Is it contemplated that any of these impacted tenants are candidates for the Northwest Air Cargo Development and if so please identify those tenants?
Answer	The City is currently at 20% design standards for the Taxiway Uniform project that will impact the West Air Cargo area. Impacts to current tenants within West Air Cargo will likely begin in the third quarter of 2023. Impacted tenants have been provided alternative locations as part of the project. Existing PHX air cargo facilities will remain at full capacity with a net loss of square footage due to the project. A list of PHX’s Air Cargo Community (current tenants) has been provided in Section I (A) of the RCS. The City advises Respondents to conduct their own outreach to current tenants to determine if any of them are candidates for the Northwest Air Cargo Development.
Q57	Are there any geotechnical or utility studies available for the Northwest Air Cargo Development site?
Answer	No, it is the Successful Respondent’s responsibility to conduct their own due diligence, including but not limited to, geotechnical and utility studies.

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Q58	Can you please provide the current rent rolls for the tenants located in the South Cargo and West Cargo areas?
Answer	Current Tenants within South Air Cargo and West Air Cargo pay Rent based on the Airport's Rates and Charges. See Exhibit 3 of the RCS. Rates and Charges are based on a cost recovery model, therefore future rate increases cannot be forecasted at this time. See Exhibit 4 – Current PHX Air Cargo Tenant Lease Areas of the RCS for the current tenant lease area, by location, square footage and agreement expirations.
Q59	The RCS states that the selected Respondent shall be responsible for various work streams associated with pre-development activities, required permitting and demolition of existing facilities, design and the permitting associated with the new facilities, and given the amount time it customarily takes to perform these types of activities, it appears unreasonable that the Selected Respondent should have to begin paying rent upon the earlier of the Beneficial Occupancy Date or 18 months from the Effective Date. The City should consider extending this period as the Selected Developer will have no revenue stream until the facilities are completed, and construction alone could take 18 months, after all requisite permits are obtained (particularly those permits outside our control)?
Answer	Section 7.1 will be modified to include Section 7.1.1 – Due Diligence Period and 7.1.2 – Construction Period. See Section I (H) of the RCS and Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) as amended in this Addendum No. 2. Such additional circumstances or conditions potentially causing delays will be addressed based on the specific circumstances when they arise. Also see Answer to Q9 and Q94.
Q60	Can you please provide a copy of the appraisal used to determine the Net Rent?
Answer	The City will not share the appraisal used to determine Net Rent in this solicitation. The appraisal, conducted in October 2020, identified fair market value for ground rent at \$1.05.
Q61	If soils are found to be contaminated, who is responsible for the remediation and the costs associated therewith?
Answer	The City will incur the costs for remediation of any pre-existing conditions found during the Phase II ESA. The City and the Tenant shall agree on how to remediate. See Section III(B)(1) of the RCS and Section 15.1 of Exhibit 1 - Draft Lease (Rev. Dec. 22, 2022) as amended in this Addendum No. 2.

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Q62	Is the perimeter or location of the Archaeological site identified?
Answer	<p>The Western half of the development site is within an archaeological site known as the Dutch Canal Ruin. The City will require the Successful Respondent to coordinate with the City of Phoenix Archaeology Office to develop an action plan during development of the site. Additional information can be found on the City website: https://www.phoenix.gov/parks/arts-culture-history/pueblo-grande/city-archaeology.</p> <p>The City may consider any archeological requirements that could exceed the Due Diligence Period on a case-by-case basis to allow for an extension of the Development Period.</p>
Q63	<p>The Definition section of the RCS describes Joint Venture as “an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity.” Section 3 requirements for the Cover Letter within Tab 1 – General Information seem to indicate the additional expectation that a JV partner has an ownership interest: “If Respondent is a joint venture, then indicate all partners and each partner’s percentage of ownership interest in the joint venture.” Please confirm that partnerships or associations between firms to deliver this project are not considered a JV unless there is a shared participation in ownership interest (partnerships and associations between firms may occur under the primary Respondent).</p>
Answer	<p>For any Respondent that is a joint venture (JV) or is made up of a JV, all parties to the JV must have an ownership interest to be considered the Respondent. The City does recognize there may be other entities that qualify as a JV where parties do not have an ownership interest (i.e., not the Respondent), but that assist with delivery of the project.</p>
Q64	Form of Response section of the RCS limits the response to fifty (50) double-sided (or one hundred (100) single-sided), letter-size pages typed in 12-point Arial font. Are the design and schematic renderings submitted on 11” x 17” paper considered one or two pages due to the letter-size limitation?
Answer	<p>Design and schematic renderings will not be counted towards the fifty (50) double-sided (or one hundred (100) single-sided) page limit. See Section III (E) of the RCS.</p>
Q65	<p>As with any partnership, in this instance between a developer and the Airport for the construction of a best-in-class air cargo facility, an equitable allocation of risks and costs between the parties is essential for the success of the project.</p> <p>An overallocation of risk onto the developer would limit the ability to attract cost competitive capital, and an over allocation of costs will result in uncompetitive facility rental rates, limiting the ability to create desired growth at the airport.</p>

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	<p>Similarly, an overallocation of risk or costs upon the Airport would likely result in the project not moving forward.</p> <p>This balance is particularly important in the context of air cargo, where carriers can reroute deliveries to other destinations offering better cost structures. From a more local perspective, operators considering space in the new cargo facility will look to pay rental rates commensurate to those paid by their competitors in other buildings at the airport, otherwise their operations would face a considerable competitive disadvantage.</p> <p>As such, a careful compromise between the parties is required to ensure the success and desired outcome of the project.</p> <p>Upon review of the ground lease, we have identified the following key items which we believe could compromise the success of the project. We would ask the airport to consider interactive negotiations of the ground lease to discuss resolutions to these items, again with the goal of ensuring a viable project result from this request for proposals:</p> <ol style="list-style-type: none"> a. Ground lease term and renewal options determine the period over which the project cost will be amortized, directly correlating to the rental rate charged to users. Ground lease term on recent projects of this scale have averaged closer to or exceeded 50 years. A term of only 30 years, coupled with the broad scope and high cost of the project would yield a significant rental premium for the facility that may stretch beyond a prospective user's ability to pay. Ground lease renewal options must be at the tenant's discretion, otherwise they cannot be relied upon to amortize the facility's cost.
Answer	Section 7.3 of the Draft Lease will be deleted, and Section 7.2 will be amended to a forty (40) year Term. See Section I (H) of the RCS and Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) as amended in this Addendum No. 2.
Q66	<ol style="list-style-type: none"> b. We hope to build upwards of 250,000 square feet of rentable warehouse area on the site, greatly exceeding current market demand. As such, the ground lease must include a mechanism to lease the land in phases. Phasing has been a successful strategy in several comparable cargo projects across the US.
Answer	In the Construction Period, the Successful Respondent may construct in multiple phases through completion of the construction of all Tenant Improvements within the Premises. However, the Term of the Lease will commence on the first Beneficial Occupancy Date or thirty-six (36) months from the Effective Date and Net Rent will not be prorated and will commence upon the Term Commencement Date. See Section I(H) and Section II(C) of the RCS as amended in this Addendum No. 2.

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Q67	<p>c. The commencement of rent must reflect a mutually agreed upon development schedule (which at this time cannot be determined) and include flexibility to account for uncontrollable approvals (i.e. NEPA and 7460) and unexpected delays such as archeological findings or remediation of pre-existing environmental contamination. Termination rights in the event these approvals are not obtained are standard.</p>
Answer	<p>The Rent Commencement Date will begin on the Beneficial Occupancy Date or thirty-six (36) months from the Effective Date, whichever occurs first. See Section II(C) of the RCS as amended in this Addendum No. 2.</p> <p>Such additional circumstances or conditions potentially causing delays will be addressed based on the specific circumstances when they arise. Also see Answer to Q9 and Q94.</p>
Q68	<p>d. Airports typically undertake significant enabling work at their expense on similar projects including but not limited to demolition of existing improvements on development sites, extension of utilities in sufficient quantities to the development lot's lines, remediation of any pre-existing environmental contamination, as well as any required off-site infrastructure work. Allocating all of these costs to the project results in an abnormally high rental rate when compared to competing facilities at the airport and other competing airports. Certainty for funding and timing of airport work, such as improvements to taxiways, is essential to plan and coordinate the project.</p>
Answer	<p>See answer Q1.</p>
Q69	<p>e. Customary provisions providing security for financing of the project, including but not limited to notice and cure periods and lien rights are needed, without which any developer will be unable to obtain external financing.</p>
Answer	<p>Article 17 contains provisions that address these questions. See Article 17 of Exhibit 1 - Draft Lease (Rev. Dec. 22, 2022).</p>
Q70	<p>f. Condemnation and other provisions with similar outcomes need to ensure the developer is compensated for the fair market value of the project per market custom, without which there is an unsurmountable financial risk to any third-party developer.</p>
Answer	<p>Article 8 – Landlord Right to Reclaim and Article 24 – Condemnation of Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) will not be modified as they are standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.</p>

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Q71	<p>g. The definition of Force Majeure is very narrow and does not include several customary unforeseen events. Notable omissions include permitting and government approvals, weather (including earthquakes), strikes, labor and material shortages, and pandemics. The tenant is given the benefit of Force Majeure delay for only 60 days after which the Landlord has the unilateral right to terminate the lease without any compensation to Tenant, again posing a risk likely too high for the project to proceed.</p>
Answer	<p>Article 16 - Force Majeure of Exhibit 1 – Draft Lease (Rev. Dec. 22, 2022) will not be modified as it is standard language in all City leases. Standardization in leases enables the City to comply with its federal grant assurance obligation requiring that it not discriminate with respect to its tenants. Such additional circumstances or conditions potentially causing delays will be addressed based on the specific circumstances when they arise.</p>
Q72	<p>h. The cure periods set forth throughout the lease are too short and are not consistent with market standards. As a result, the lease can be too easily terminated by Landlord. Tenant has only 10 days to cure non-monetary defaults instead of the usual 30 days and has no ability to continue the cure if it cannot be completed in 30 days even if Tenant is diligently working on such cure.</p>
Answer	<p>These provisions will not be modified as they are standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.</p>
Q73	<p>i. The ground lease contains an uncustomary cross default clause with no cure right for breaches of any other agreement with the City or for breaches of any permit or license with the City, including trivial permits such as a building permit for minor alterations. Similarly, there is an immediate default for failure to comply with law, with no cure period, which should be treated like any other non-monetary breach.</p>
Answer	<p>These provisions will not be modified as they are standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times not discriminate with respect to its tenants.</p>
Q74	<p>j. If the lease is terminated as a result of any casualty, insurance proceeds are divided in a way that does not take into account the terms of any leasehold mortgage and would likely also not represent a fair economic split based on the remaining value of Tenant's leasehold interest.</p>
Answer	<p>These provisions will not be modified as they are standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property at all times and not discriminate with respect to its tenants.</p>

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Q75	k. The ground lease should provide for mutual indemnity and should exclude matters arising due to the negligence (or at least gross negligence) and willful misconduct of the indemnified parties.
Answer	Phoenix City Code Sec. 42-18 prohibits the City from indemnifying other parties. This provision will not be modified as it is standard language in all Airport ground leases. Standardization in leases enables the City to comply with its federal grant assurance obligations requiring that it maintain control of Airport property and not discriminate with respect to its tenants.
Q76	To best assess the feasibility of the project and help tailor our response, can the airport share documents or shed light on the following elements: a. All as-built plans of the development site and improvements thereon in CAD (of the buildings and paved areas)
Answer	The City has 15 projects ranging from 1965 to 2008 with as-built plans for the development site. Since the majority of the development site was developed prior to the implementation/standardization of CAD, the City does not have CAD/DWG plans. The City will provide the available as-built plans to interested parties. Requests for as-built plans must be submitted to the Procurement Officer via email (avn.solicitations@phoenix.gov) and a non-disclosure agreement (NDA) must be signed by the Respondent. Once the signed NDA has been received, the City will provide an FTP link.
Q77	b. Geotechnical reports of the development site
Answer	See answer to Q57.
Q78	c. Environmental reports or analyses of the site, as well as details on historical uses
Answer	The City has limited environmental reports or analyses of the site. The City has two Phase I Reports and information on an oil water separator within the Premises. See Exhibits 20, 21, and 22, attached to this Addendum No. 2. The Premises is over Motorola 52 Street NPL site groundwater plume. See additional information at https://azdeq.gov/superfund/Motorola52ndStreet . The Successful Respondent will be required to conduct a Phase I ESA which will include historical uses.

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Q79	d. Utility plans of the development site and adjoining areas, as well as a list of providers
Answer	<p>It is the Successful Respondent's responsibility to conduct their own due diligence, including but not limited to utilities investigation. If utility information is not included in the provided as-built plans from Q76, it is the Respondents' responsibility to inquire with Arizona Blue Stake/Arizona811 (http://www.arizona811.com/), the City of Phoenix Streets Department central records (https://www.phoenix.gov/streets/cip-records-management-maps), and the individual utility providers. Utilities to the site are provided by:</p> <ul style="list-style-type: none">• Electrical: APS• Gas: Southwest Gas• Water and Sewer: City of Phoenix• Telecommunications: CenturyLink and possible other various providers.
Q80	e. Title report for the site, along with details on any covenants or restrictions
Answer	<p>The City has owned this site since 1935. The Warranty Deed for the property is available via the Maricopa County Recorder's website, https://recorder.maricopa.gov/recdocdata/#tabs=1. Search docket/book 290, page 519 (recording number 19350003033,). The property is believed to be free and clear title.</p>
Q81	f. Zoning report of the site
Answer	<p>Zoning reports can be obtained from the City of Phoenix Planning and Development Department (https://www.phoenix.gov/pdd/planning-zoning). The site is currently zoned A-1 Light Industrial.</p>
Q82	g. Archaeological reports of the development site and adjoining areas, as well as a brief description of any known archaeological findings
Answer	<p>See answer to Q62.</p>
Q83	h. Traffic study related to the site
Answer	<p>The Airport has not conducted a traffic study of the site or the surrounding major streets: South 24th Street and Air Lane. Respondents may contact the City of Phoenix Streets Department for available information (https://www.phoenix.gov/streets/cip-records-management-maps) .</p>
Q84	i. Part-77 contour analysis of the site
Answer	<p>The ALP references Part-77 contour analysis for PHX. The ALP dated March 2020 is attached to this Addendum No. 2 as Exhibit 19.</p>

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Q85	j. A building structure (canopy) on the eastern edge of the site extends beyond the proposed leased limits. Can the airport indicate the fate of this building?
Answer	The City, at its expense, will facilitate the removal of the building structure (covered tie down canopy) on the eastern edge of the site.
Q86	k. Can the airport expand on its expectations for environmental sustainability features including LEED certification, solar panels, etc.?
Answer	<p>The Airport is committed to incorporating sustainable principles and practices into its operation, management, and administrative processes and strengthening sustainability throughout the Airport. Aviation has set a building standard to achieve LEED Silver for all future Airport funded projects. Aviation desires that future tenants share similar environmental sustainability goals and strive to meet Aviation's goal of LEED Silver for their private development.</p> <p>As part of this solicitation the City is not requiring any minimum level of environmental sustainability features including a LEED certification, solar panels, etc. However, Respondents will be evaluated on the level of sustainability they propose within their response for the development of the Premises. The Successful Respondent's environmental sustainability proposal will be included within the final Lease as Exhibit I in accordance with Section 21.2.</p>
Q87	l. Is the response guarantee returned to candidates that cannot come to an agreement on the ground lease within a month of contract award?
Answer	Should the Successful Respondent fail to execute the Lease or furnish the Performance Guarantee instruments or insurance within 30 days from the date the Lease was sent, then the Successful Respondent's Response Guarantee will be forfeited as liquidated damages. See Section I (J)(1) of the RCS.
Q88	m. Can the airport please explain what constitutes as a material change to the ground lease?
Answer	A material change would be an exception or change to any requirement or provision of the Lease that would alter or change the meaning of that requirement or provision. See Section I (N) of the RCS. Deviations from the City's standard lease could subject the RCS to a challenge by an unsuccessful Respondent.
Q89	n. Please share information regarding city regulations and requirements for landside improvements, including but not limited to setback requirements.
Answer	See City Code for information and city regulations. Additional information can be found on the City website: https://www.phoenix.gov/pdd/devcode .

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Q90	o. Is any information available regarding roadway traffic modification requirements, deceleration lane requirements and turn signal requirements from Air Ln?
Answer	See City Code for information and city regulations. Additional information can be found on the City website: https://www.phoenix.gov/pdd/devcode .
Q91	p. Is the archeological area of concern concentrated over any specific area of the development site?
Answer	See answer to Q62.
Q92	q. In order to understand potential impacts to the construction timeline, can the airport share any background on additional preparation requirements and detail the typical process/timing if anything is found?
Answer	Please see Section II(B) of the RCS which identifies preparation requirements. The Successful Respondent will be responsible to conduct due diligence to identify any potential additional preparation requirements. In an effort to reduce impacts to the construction timeline, the City has amended the Development Term. See Section I(H) of the RCS as amended in this Addendum No. 2.
Q93	r. Would any archeological requirements extend the development timeline and correspondingly extend the lease commencement date?
Answer	See answer to Q62.
Q94	s. Would a delay in the performance of ground lease covenants exceeding 60 days caused by archeological findings lead to termination of the ground lease?
Answer	The City will not consider any delay caused by archeological findings to be a breach of the Lease as long as the Tenant is making good faith efforts to coordinate with the City of Phoenix's Archeological Office on how to address the findings. Such additional circumstances or conditions potentially causing delays will be addressed based on the specific circumstances when they arise.
Q95	t. Have restrictions posed by the newly constructed FAA RTR station been assessed including any setback limitations, improvement height restrictions, line of sight restrictions, etc.?
Answer	The height of the newly constructed FAA RTR station, known as FAA RT3A, was approved based on the of height of existing hangars to the east. The City is unaware of the station being built to consider taller structures in the area. The FAA will have the opportunity to review building heights as part of the Form FAA 7460-1 review process.

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Q96	u. Has a traffic impact study of Air Ln been performed by the airport?
Answer	See answer to Q83.
Q97	v. Where will the Airside VSR crossing the development parcel be relocated to?
Answer	The Object Free Zone (OFZ) for Taxiway Alpha and the Vehicle Service Road (VSR) will be south of the development parcel's southern boundary.
Q98	w. Will the development site be delivered at once and available for development in its entirety immediately?
Answer	It is the intent of the City to deliver the entire development site upon the successful execution of the Lease.
Q99	x. Understanding the rental rate charged for the new development will likely exceed that of the airport's facilities by a considerable margin, can the airport provide further insight into the operational plans of the Airport's existing cargo facilities including detailed rental terms and future rate increases, as well as details on any expansion and demolition initiatives?
Answer	See answers to Q56 and Q58.
Q100	y. Given the close proximity to the north runway and Part 77 restrictions on the site, will a variance to the Airport's landscape requirements along Air Ln be allowed?
Answer	The City will review any proposed variances to the Airport's landscape requirements. Favorable consideration is given based on whether the variance ensures Respondent's compliance with Part 77 restrictions.

In the event of any conflicts with the earlier answers or addenda, the final written answers and final addendum shall control.