

# Raleigh-Durham International Airport

## Land Lease Request for Proposals



September 8, 2017

**Proposals are due to the Authority Administrative Offices no later than 3:00 p.m. ET on October 9, 2017.**

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**NOTICE TO PROPOSERS**  
**Land Lease Request for Proposals**  
**Raleigh-Durham International Airport**

The Raleigh-Durham Airport Authority (the “Authority”) is seeking competitive proposals for the lease of one, two and/or three parcels of undeveloped land that is part of the Raleigh-Durham International Airport (the “Airport”) and located to the south of the Airport’s terminals. Request for proposals (RFP) documents and schedule are available at <https://www.rdu.com/do-business-with-rdu/business-opportunities/>.

All Proposals must be received no later than 3:00 PM (ET) on October 9, 2017 at the Administrative Offices of the Authority. Shipping packages should be sealed and marked on the outside “Land Lease RFP, Package #, Raleigh-Durham International Airport”, and have the name and address of the Proposer printed on the package. Proposals received after the time stated above will be returned unopened. The Authority, in its sole discretion, reserves the right to extend the response date for Proposals.

**Land Lease Request for Proposals  
Raleigh-Durham International Airport**

**SECTION I Overview**

**Background**

The Authority owns and operates the Airport. The Authority is a special purpose local government created by the General Assembly of North Carolina. The parcels available to lease (collectively, the “Parcels”) are shown in Figure 1, on page 2, and consist of:

Parcel 1: An approximately 105-acre tract of land located immediately north of the quarry currently owned and operated by Wake Stone Corporation and adjacent to Umstead State Park.

Parcel 2: An approximately 60-acre tract of land adjacent to Umstead State Park and located north of Parcel 1.

Parcel 3: An approximately 90-acre tract of land located near the southeast corner of the Authority’s property on the north side of Interstate Highway 40 and near to the northern terminus of Old Reedy Creek Road, and located immediately north of Parcel 2 and adjacent to Umstead State Park.

A Proposer may propose to lease one, two or all three Parcels.

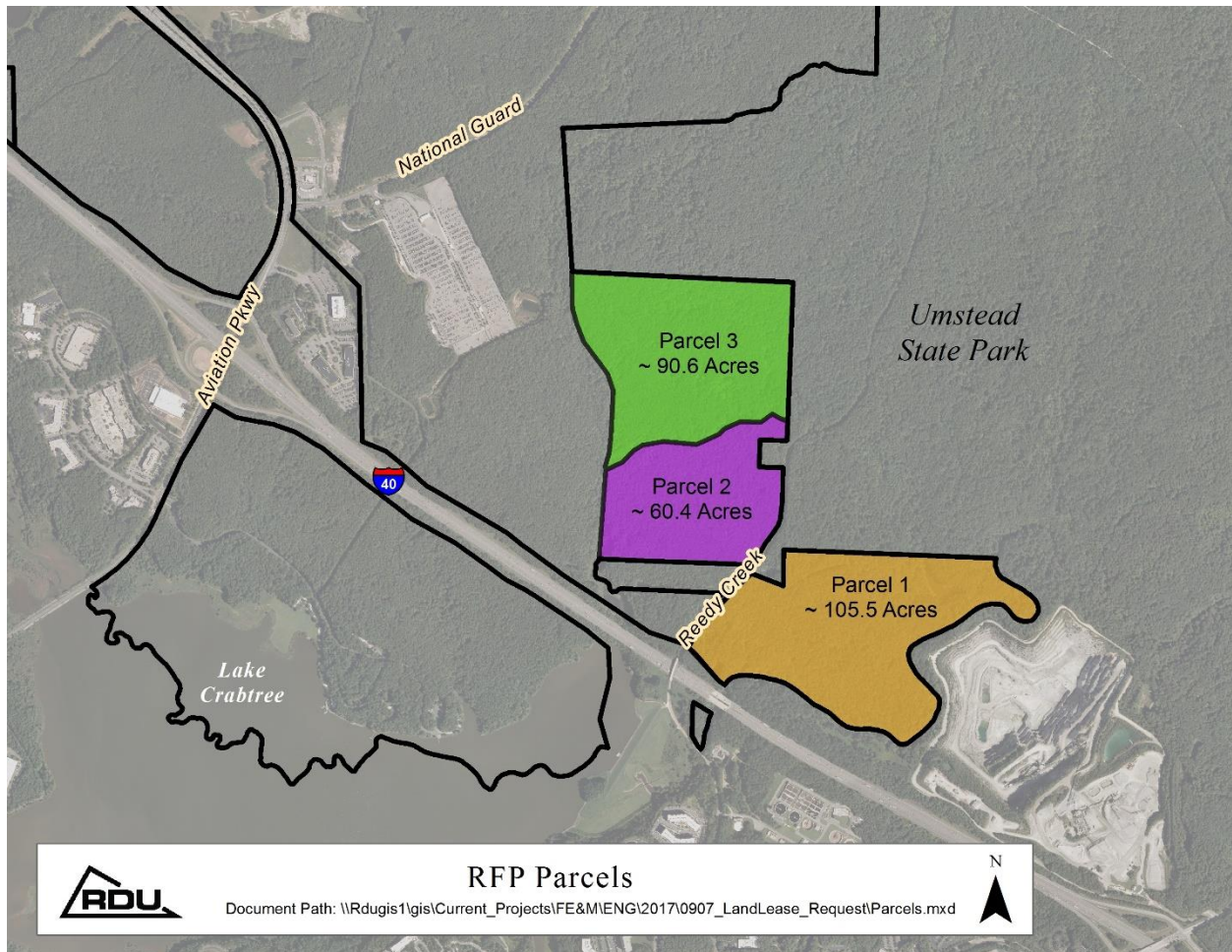


Figure 1

The Authority is seeking Proposals from all interested and qualified Proposers desiring to enter into long-term leases to occupy and manage one or more of the Parcels. It is the goal of the Authority to select the Proposal(s) that best meets the requirements of this Request for Proposals (hereinafter referred to as "RFP") to manage and use the Parcels in a manner that does not negatively affect the use, utility, safety or efficiency of the Airport and to pay at least fair market value for the land lease(s). The lease of the Parcel(s) shall be in accordance with a lease agreement, the minimum key terms of which are included in Appendix A of this RFP.

The following definitions apply to this RFP:

- A. Addendum - Written or graphic instrument issued prior to Proposal opening, which clarifies, corrects or changes the RFP or appendices thereto.
- B. Authority - The Raleigh-Durham Airport Authority, a municipal corporation, created by the General Assembly of North Carolina, and existing under and by virtue of Chapter 168 of the Public-Local Laws of 1939, as amended.

- C. Deadline - The deadline to submit proposals is **October 9, 2017 at 3:00 p.m. ET**.
- D. Lease Agreement – Refers to a lease agreement between a chosen Proposer and the Authority, minimum terms for which are set forth in Appendix A.
- E. Notice of Award - The written notice by the Authority to the Selected Proposer stating that, upon compliance with the conditions stated therein, the Proposer will be offered the opportunity to lease one or more of the Parcels.
- F. Parcel – One of the three parcels (Parcel 1, Parcel 2 or Parcel 3) available for lease pursuant to this RFP.
- G. Proposal Documents – The documents submitted by each Proposer pursuant to the terms of this RFP.
- H. Proposal Expiration Date - Proposals must remain in effect until a Lease Agreement is executed with the Selected Proposer or one-hundred eighty (180) days after the Deadline for Proposal submission, whichever comes first.
- I. Proposer - The individual, corporation, or company submitting a response to this RFP that incorporates all the elements of a valid Proposal for the opportunity to lease one or more of the Parcels.
- J. Raleigh-Durham International Airport (“Airport” or “RDU”) - The medium hub, commercial airport located in Wake County, North Carolina serving central and eastern North Carolina, northern South Carolina and southern Virginia.
- K. Selected Proposer - The individual, corporation, or company that provided the Proposal determined by the evaluation process to best fulfill the Authority’s goals and objectives.
- L. Term – The Lease Agreement will have a minimum term of 25 years, but no longer than 40 years. The effective date of the Lease Agreement shall be negotiated between the Authority and the Selected Proposer, but is expected to be on or before January 1, 2018.

## **SECTION II LEASE TERMS**

### **A. Use of Parcels**

Each of the Parcels is considered to be Airport property as depicted on an Federal Aviation Administration (“FAA”)-approved Airport Layout Plan (“ALP”) and is accordingly subject to various requirements imposed by the FAA. In particular, the Authority is prohibited by FAA Grant Assurance No. 29 from making any change at the Airport, including with regard to the Parcels, that “could adversely affect the safety, utility or efficiency of the airport.” Leases for the Parcels will accordingly include appropriate restrictions to ensure that the Authority maintains compliance with Grant Assurance No. 29 and all other FAA grant assurances, rules, regulations, orders, and guidance.

Additionally, a Lease Agreement may require an amendment to the ALP, which must be approved by the FAA. *Proposers are advised to be familiar with FAA regulations, orders and guidance documents that regulate use of Airport property.*

## **B. Lease Term Length**

The minimum term of the lease is 25 years. The maximum term of the lease is 40 years, and in no event can the lease exceed 40 years.

## **C. Lease Value**

FAA regulations mandate that the Airport receive at least fair market value for any property that it leases.

## **D. Required Lease Terms and Conditions**

**Appendix A** to this RFP provides a list of minimum required terms and conditions to be included in any lease that results from this RFP.

## **E. Proposer Minimum Qualifications**

Each Proposer must provide evidence that it has the necessary experience and capacity to fulfill the requirements of the Lease Agreement.

# **SECTION III GENERAL RFP INFORMATION**

## **A. RFP Schedule**

This RFP will follow the schedule shown below. The Authority reserves the right to modify the RFP schedule at its sole discretion.

<b>Dates</b>	<b>Events</b>
September 8, 2017	RFP Issued
September 20, 2017 at 3:00pm	Final Date for Submission of Questions
September 22, 2017	Final Responses to Questions Issued
October 9, 2017 at 3:00pm	Proposal Due Date
October 19, 2017	Anticipated Board Selection

## **B. Questions**

The Authority encourages all potential Proposers to review the RFP. Proposers who have questions concerning the RFP and/or Lease Agreement may submit these questions electronically as described in Section IV, Paragraph F, no later than September 20, 2017, at 3:00 p.m. local time. The Authority shall attempt to answer all questions received and

a written summary of the questions and answers shall be posted as an addendum to the RFP on the Authority's website.

### **C. Changes to the RFP**

Any changes in the requirements of this RFP or any of the attachments or exhibits thereto shall be made by addendum to the RFP. Questions will be answered in writing in an addendum. All addenda will be posted on the Authority's website. Proposers shall not rely upon any oral instructions given by the Authority. If there is a conflict between oral statements or responses made by the Authority and written statements or responses, the written statements or responses shall control. All addenda must be acknowledged by the Proposer in its proposal.

## **SECTION IV INSTRUCTIONS TO PROPOSERS**

It is essential that the information and requirements of this RFP be carefully studied and adhered to in the preparation and submission of Proposals. All Proposers must submit written Proposals in accordance with the instructions contained in this RFP. Failure to comply with the instructions of the RFP may be cause for rejection of Proposer's Proposal at the Authority's discretion.

### **A. Number of Proposals**

One original and four (4) bound copies of the Proposal (for a total of five (5) complete sets) must be prepared in the manner and detail specified in this RFP, signed by an authorized official of Proposer, enclosed in a sealed envelope or package, and mailed or hand delivered so as to be received **no later than October 9, 2017 by 3:00 p.m. local time** at the address shown below.

The original must be designated as such and must contain all original Proposal forms. Proposals or modifications received after the above date and time shall be considered late Proposals and will be handled according to Paragraph C below. Additionally, a complete, reproducible, electronic copy of the Proposal in portable document format (.pdf) must be submitted on a flash drive labeled with, at minimum, the Proposer's name.

### **B. Address**

Proposals and modifications thereof shall be submitted in sealed envelopes or packages:

1. Addressed as specified below;
2. Displaying the due date and time specified above for receipt; and
3. Displaying the name, address, and phone number of the Proposer.

The Proposal envelope or package must be clearly marked as follows:

Proposal:	To:
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Land Lease Proposal Package # <i>(Insert Correct Number, i.e. 1 of 1)</i> Raleigh-Durham International Airport	Chuck McFall, A.A.E. Senior Vice President and Chief Revenue Officer Raleigh-Durham Airport Authority P. O. Box 80001, 1000 Trade Drive RDU Airport, NC 27623-0001 Phone (919) 840-7700
	From: (Company Name) _____ (Address) _____ (Phone) _____

### C. Irregularities, Late Submissions, Modifications, and Proposal Withdrawals

1. A Proposal will be considered irregular and may be rejected at the Authority's sole discretion if it is improperly executed, contains omissions or alterations of form, additions not called for or otherwise specifically allowed, conditions, limitations, or unauthorized alternate proposals, fails to include any other certificates, statements, affidavits, or information required to be included with the Proposal, or contains other irregularities of any kind. Notwithstanding the foregoing, the Authority reserves the right, in its sole discretion, to waive any informalities or irregularities in a Proposal, except that the Authority:
  - a. Will not consider any Proposal which does not conform in all material respects to the terms of this Request for Proposals, including a commitment by the Proposer to execute the Lease Agreement with at least the minimum terms included herewith; and/or
  - b. Will not waive the requirement that a Proposal, complete in all material respects, be received by the Authority by the time and date specified for receipt thereof unless one of the criterion listed in paragraph 2, below, is met.
2. Any proposal received at the Administrative Office of the Authority after the exact time specified for receipt will not be considered unless it:
  - a. Was sent by registered or certified mail not later than five (5) calendar days before the date specified for receipt of offers (e.g., an offer submitted in response to this solicitation requiring receipt of offers by the 9th of the month must have been mailed by the 4th); or
  - b. Was sent by overnight express delivery service (i.e. FedEx, UPS, Airborne Express, U.S. Postal Service Express Mail, or other similar guaranteed delivery service) in time to have arrived prior to the date and time specified for receipt of offers.

3. Any modification or withdrawal of a Proposal, including a response to a request for "best and final" offer, is subject to the same conditions as in Paragraph 2 above.
4. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, Proposers should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
5. The only acceptable evidence to establish the time of receipt at the Administrative Offices of the Authority is the time/date stamp on the proposal wrapper or other documentary evidence of receipt maintained by the Authority.
6. Notwithstanding Paragraph 2 above, a late modification of an otherwise successful Proposal that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
7. Proposals may be withdrawn in person by a Proposer or its authorized representative if 1) done before the exact time set for receipt of proposals, 2) the identity of the person requesting withdrawal is established, and 3) that person signs a receipt for the Proposal.

#### **D. Public Records and Proprietary Data**

Under the laws of the State of North Carolina, any Proposal will be considered a public record and, except as noted below, will be available for inspection and copying by any person after the award and execution of the Lease Agreement. Prior to award and execution of the Lease Agreement, all Proposals will remain confidential and no portion of the Proposal will be disclosed outside the Authority; provided, however, general, non-proprietary, information about a Proposal that is included in reports to the Authority Board, or any committee thereof, may be disclosed. The Authority will make reasonable efforts to protect any information marked "Confidential," provided that such information is clearly marked and meets the criteria for information exempt from public disclosure under the North Carolina General Statutes, Chapter 132, Public Records.

Proposals that include confidential business information of the Proposer, such as commercial or financial information, that Proposer does not want disclosed outside the Authority must be marked on the title page with a legend that states:

**"This response includes data that shall not be disclosed outside the Raleigh-Durham Airport Authority without the permission of [insert**

**Proposer's name] and shall not be duplicated, used, or disclosed – in whole or in part – for any purpose other than to evaluate this response to the extent nondisclosure is allowed by applicable law, including North Carolina's public records laws. This restriction does not limit the Authority's right to use information contained in these data if it can be obtained from another source without restriction. The data subject to this restriction are contained in pages [insert numbers or other identification of pages]."**

Proposers shall mark only those pages containing restricted data with the following legend:

**"Use or disclosure of data contained on this page is subject to the restriction on the title page of this Proposal."**

**A blanket restriction applicable to the entire Proposal is not acceptable.** Moreover, the inclusion of this provision regarding the restriction on disclosure and use of data should not be construed to protect against the Authority's disclosure of concepts or information that has already been made public or does not qualify for nondisclosure pursuant to North Carolina's public records laws. In addition, the Authority may, after discussion with the Proposer, determine that some or all of the information encompassed by the restriction is not appropriately included within the restriction and that such information may be released outside the Authority.

Proposals and copies of Proposals (including the electronic copy or any duplicates made) shall not be returned to unsuccessful Proposers. The Authority shall have no liability for inadvertent or mandated disclosure of information submitted with a Proposal. Any proprietary or otherwise sensitive information contained in or with any Proposal is subject to potential disclosure.

## **E. Proposal Costs**

Any costs or expenses incurred in responding to this RFP, including, but not limited to, the development of a Proposal, the development of best and final offers, or the preparation and execution of an oral interview/presentation with/to the Authority, shall be borne entirely by the Proposer. Upon receipt by the Authority, submitted Proposals, including all attachments to the proposals, shall become the property of the Authority.

## **F. Communications with the Authority Prohibited**

From the date this RFP is issued until the date the Lease Agreement is awarded and executed, Proposer, or anyone representing Proposer, shall not communicate regarding this RFP or the Proposal with any Authority employee, representative or Board member, other than the persons who are designated in this RFP to receive communications regarding the RFP, the Lease Agreement, or related issues. All forms of communication are prohibited, including, but not limited to: verbal, written, and electronic forms of communication.

The designated point of contact for this solicitation is Chuck McFall, A.A.E., Senior Vice President and Chief Revenue Officer for the Authority.

Chuck McFall, A.A.E. Senior Vice President and Chief Revenue Officer Raleigh-Durham Airport Authority P. O. Box 80001, 1000 Trade Drive RDU Airport, NC 27623-0001 Phone (919) 840-7700 Fax (919) 840-0175 chuck.mcfall@rdu.com
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The Authority will endeavor to respond to all inquiries and provide all clarifications or modifications to the RFP by issuance of a written addendum, which will be posted on <https://www.rdu.com/do-business-with-rdu/business-opportunities/>.

#### **G. National Environmental Policy Act (NEPA)**

Any proposed use of the Parcels may be subject to review under the National Environmental Policy Act (NEPA). A successful Proposer will be solely responsible for the preparation of, and shall bear all costs associated with, any environmental studies necessary to complete the NEPA process and shall fully cooperate with the Authority and any other governmental entity to complete the NEPA process in a timely manner.

#### **H. Authority Reservations and Stipulations**

1. The Authority reserves the right to reject any Proposal that does not provide the information requested in the RFP. The Authority will consider the quality of the Proposal during evaluation as it is indicative of the capabilities of the Proposer.
2. The Authority reserves the right to award contracts and leases on the basis of the Proposals submitted and/or to negotiate with Proposers for modification to the selected Proposals, at the Authority's sole option.
3. The Authority may accept a Proposal that in the Authority's sole judgment best meets the RFP requirements. The Authority further reserves the right to reject any and all Proposals, to waive irregularities and technicalities in the Proposals, to re-advertise, to postpone the Proposal submittal due date, to withdraw this RFP or to proceed otherwise when it judges it to be in the best interest of the Authority.
4. By submission of its Proposal, the Proposer agrees to be legally bound thereby if the Authority accepts the submitted Proposal. The Authority shall not be obligated to respond to any Proposal submitted, nor shall it be legally bound in any manner whatsoever by the receipt of a Proposal.

5. The Authority reserves the right to modify and/or amend the RFP and/or minimum terms for the Lease Agreement without limitations.
6. The Proposal of any Proposer (or any member of a partnership, joint venture or other business arrangement submitting the Proposal) may be rejected if the Proposer is in default or arrears under any previous or existing agreement with the Authority, or if there are any unresolved monetary claims by the Authority against the Proposer.
7. Any and all agreements arising out of Proposals submitted hereunder (including any negotiations that follow) shall not be binding on the Authority, its officers, employees, or agents unless and until it is accepted and approved by the Authority, and then duly executed by the Authority in accordance with all applicable laws.
8. The Authority may, in its sole discretion, require the submittal of best and final offers by all Proposers, or by those Proposers judged solely by the Authority to be within a competitive range.

## **SECTION V – SUBMITTAL REQUIREMENTS**

### **A. Proposal Text Format**

Each Proposal shall be typewritten using a 12-point font on a standard 8½" x 11" format paper and accompanied by a cover letter on the Proposer's letterhead. Drawings in an 11" x 17" format may be included in the Proposal and must be bound within the Proposal. The maximum proposal length is 100 pages. This maximum length is not an indication that proposals are expected to be 100 pages long, but is an attempt to provide a generous maximum length. Proposers must organize their Proposals so that they address each of the elements stated in this Section in the same order as they are listed. Proposers shall mark each page with the appropriate page number and include a set of tabs to identify each part of the Proposal. Additionally, Proposers are required to provide the required hard copies as well as a reproducible electronic version of its Proposal and all attachments on a flash drive.

### **B. Non-compliance**

If a Proposer's Proposal is in material non-compliance with the requirements of the RFP, it may be considered non-responsive by the Authority and may be rejected without further consideration.

### **C. Submittal Sections**

Each Proposal shall include complete and detailed written responses to the following items in the order in which they are listed below. A set of tabs to identify each part of the Proposal shall be inserted to facilitate quick reference. Each section of the Proposal shall be clearly labeled as set forth below and shall be presented in the order presented below.

## Section 1 - Cover Letter

1. Proposer shall submit a one-to-two page cover letter stating the legal name of the Proposer as it would appear in the Lease Agreement. If the Proposer is a corporation, limited liability company, or other type of business entity, Proposer shall identify the state of incorporation or formation.
2. Include the name of Proposer's contact person and telephone number, email address, and include the legal notices address, and the name and title for the party who will execute the Lease Agreement.
3. Include a brief statement of experience, and any other general information Proposer desires to include as an introduction to the Proposal.
4. Identify which of the Parcels the Proposer is bidding on.
5. Include a brief overview of the intended use for the Parcel(s).

## Section 2 - Proposer Background and Land Management Experience

Proposers must demonstrate that they have significant experience managing or operating lands in the manner contemplated by the Proposal. Each Proposer shall submit the following information in its submittal:

1. Description of land-management experience over the past 10 years, and explanations of whether the relevant lands were owned, leased or operated under other contractual relationships by the Proposer.
2. Identification of the individual who will be primarily responsible for overseeing management of the Parcels and complying with Agreement terms, and a description of his or her past land management experience.
3. Names, addresses, and telephone numbers of at least 3 references regarding the Proposer's land management experience.

## Section 3 - Parcel Identification and Proposed Use

This section shall identify which of the Parcels the Proposer proposes to lease and shall include:

1. Detailed description of the intended use of each Parcel during the lease term.
2. Detailed description of any use restrictions the Proposer would intend to place on the Parcel.
3. Explanation regarding how the intended use is not inconsistent with and will not adversely affect the safety, efficiency or utility of the Airport.
4. Description of how the Proposer intends to maintain land use compatibility with the Airport and the federal regulations to which it is subject.

#### Section 4 – Rent or Consideration

This section shall provide the proposed rent or other financial terms for the Lease Agreement. It shall further describe and document the Proposer's basis for determining that the financial proposal is greater than or equal to fair market value for the relevant Parcel.

#### Section 5 – Financial Capability

Proposer must demonstrate the financial capacity to meet the obligations of the lease opportunity. Proposers shall submit the following information in its submittal.

1. Partnerships/Individuals: Balance sheet and income statements for the last two (2) fiscal years prepared in accordance with generally accepted accounting principles (GAAP), reflecting the current financial condition of the partners or individuals submitting the Proposal, also including an interim balance sheet and income statement of any significant financial events occurring subsequent to the closing date of the most recent financial statements. The two (2) most recent completed IRS tax returns.
2. Public Corporations: Previous two years' annual report for the proposing entity(ies).
3. Private Corporations: Previous two-years' CPA-prepared and reviewed financial statements.
4. DUNS number issued by Dun & Bradstreet, if a number has been assigned to one or more of the proposing entities that will satisfy the experience requirements.
5. Any additional information necessary to demonstrate the financial capacity of the Proposer to meet the obligations of the lease opportunity.

In addition, Proposers shall provide the following information:

1. A statement declaring whether Proposer has ever declared bankruptcy, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court and the status of each occurrence.
2. Names, addresses, and telephone numbers of at least three (3) credit references, including at least one (1) banking reference.

The Authority reserves the right to request additional financial information from any Proposer. If a Proposer submits financial statements for a parent company and is thereafter awarded a Lease Agreement, the parent company shall be required to also execute the Lease Agreement such that it is bound jointly with the Proposer to the obligations of the Lease Agreement. A parent company shall submit an acknowledgement of this obligation in the Proposal in the form of a resolution of the governing body of the parent company authorizing the obligations of the Lease Agreement to be awarded.

## Section 6 – Lease Terms

In this section, the Proposer shall:

1. Specify the proposed term length for the Lease Agreement including any unilateral options or extensions that could be exercised by the Proposer.
2. Include additional lease terms that the Proposer would propose to include in the lease for the relevant Parcel. Proposers may, but need not, include a draft lease. Proposers may, but need not, include a proposed draft lease. Proposer shall indicate which terms, if any, are material to the Proposal.
3. Acknowledge that: (a) the Proposer is willing to be bound by the minimum agreement terms included in Appendix A, and (b) the Authority is not required to accept or be bound by any lease terms proposed by the Proposer or any form of draft lease provided by the Proposer except for those terms designated by the Proposer as material.

## Section 7 - Properly Executed Proposal Form

Complete and attach the RFP/Addenda Acknowledgement Form and Proposal Declaration Form, included as Appendix B.

## **SECTION VI - AWARD PROCESS**

### **A. Evaluation of Proposal**

The Authority will review all proposals submitted that comply with the stated requirements. During this process, questions and/or requests for clarification or provision of supplemental information may be directed to Proposer. Based on evaluation of the submittals, the Authority may select a limited number of Proposers for further consideration and conduct interviews with these Proposers. The Authority reserves the right to request a “best and final” offer from each finalist.

### **B. Evaluation Criteria**

The evaluation criteria listed below are not of equal weight. Prior to beginning the evaluation at the Authority’s sole discretion, each Proposer’s background and experience, financial background, responsiveness to the RFP, and adherence to the Authority communications restriction requirements of the RFP will be considered on a pass/fail basis. Any Proposer that does not pass will have its Proposal deemed non-conforming and dropped from further consideration.

Proposers that pass will have their Proposals evaluated using the following criteria:



1. Parcel Use – Intended use of the Parcel that is consistent with Airport utility, safety and efficiency, and is compatible with Airport land use.
2. Financial Proposal – Rent or other consideration and demonstration that it is equal to or exceeds fair market value for the Parcel.
3. Lease Terms – Proposed lease terms designated as material and proposed draft lease, if provided.

## **C. Contract Award**

### Lease Agreement

After completion of the evaluation process and acceptance of the Proposal as it may have been modified as discussed herein during the RFP process, the Authority will notify Proposer of acceptance.

If, for any reason, a satisfactory Lease Agreement cannot be negotiated with the Selected Proposer, then discussions with that Proposer will be terminated. The Authority may negotiate with an alternate Proposer, or may terminate the RFP process.

### Authority Approval

After the Authority has received a partially executed Lease Agreement from the Proposer, the Lease Agreement will be presented to the Authority Board for consideration at a scheduled Board meeting. The Authority Board may approve or reject the Lease Agreement. No Lease Agreement is binding on the Authority without Authority Board approval.

### Failure to Contract

If the Selected Proposer fails to negotiate the Lease Agreement in good faith and in a timely manner, Proposer's Proposal shall be rejected.

## **APPENDIX A**

### **Minimum Required Lease Terms**

1. RESTRICTIONS.

- (a) The Property shall not be used in a manner that interferes with the present or future aeronautical or non-aeronautical uses of the Airport, and Lessee expressly agrees that it will not assert any right to any use of the Property in any manner which could or would restrict existing or future Airport operations or development.
- (b) In developing and using the Property, Lessee shall ensure that use thereof by Lessee, any of Lessee's invitees, licensees, contractors and sublessees, and any agencies or organizations over which Lessee exercises control shall in all respects be compatible with the current and future development, maintenance and operation of the Airport. Lessee further agrees, for itself and for all agencies and organizations over which it exercises control, that it will refrain from objecting to the future development of the Airport and will acknowledge its obligation to ensure that its use of the Property is compatible with the continued operation and development of the Airport.
- (c) Lessee represents that, notwithstanding any planned or permitted use of the Property by Lessee:
  - (1) The Property is not, and has never been, a significant park or recreation area pursuant to Section 4(f) of the Department of Transportation Act of 1966, as amended, and regulations and guidance promulgated thereunder (collectively, "Section 4(f)");
  - (2) No activities by Lessee shall de facto create a significant park or recreation area pursuant to Section 4(f); and
  - (3) No current or future activities of the Airport shall constitute an actual or constructive "use" of the Property, as that term is defined in Section 4(f).
- (d) Lessee shall not request, advocate for, or acquiesce in another person or entity's request or advocacy for Section 4(f) protections or processes to be applied to the Property at any point during the term of the Lease. Lessee shall indemnify Lessor against any claims that Section 4(f) protections or processes should be applied to the Property, or that the Property is a significant park or recreational area pursuant to Section 4(f). In the event that any person or entity requests or advocates for Section 4(f) protections or processes to be applied to the Property, Lessee shall take all reasonable actions to defend its representations contained herein.

2. RESERVED RIGHTS OF LESSOR.

- (a) Lessor reserves an unrestricted right of flight over and above the Property.
- (b) Lessor reserves an unrestricted right of entry into the Property for any purposes it deems necessary or convenient.
- (c) All rights not herein expressly granted or reasonably necessary to the exercise of the rights specifically granted to Lessee, are retained and reserved by Lessor.

3. COMPLIANCE WITH LAWS AND FEDERAL OBLIGATIONS.

Lessee acknowledges and agrees that during the term of this Lease it is subject to the Grant Assurances applicable to airport sponsors under applicable federal law and regulations of the Federal Aviation Administration, and is also subject to the following additional federal requirements:

- (a) Lessee and its transferee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program. In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:
  - i. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - ii. The period during which the airport sponsor or any transferee retains ownership or possession of the property.
- (b) During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest Lessee agrees as follows:
  - i. **Compliance with Regulations:** Lessee for itself and any contracted parties will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
  - ii. **Non-discrimination:** Lessee, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
  - iii. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Lessee of Lessee's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
  - iv. **Information and Reports:** Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
  - v. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-

discrimination provisions of this contract, Lessor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to withholding payments to the contractor under the contract until the contractor complies; and/or cancelling, terminating, or suspending a contract, in whole or in part.

- vi. **Incorporation of Provisions:** Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Lessee may request Lessor to enter into any litigation to protect the interests of Lessor. In addition, Lessee may request the United States to enter into the litigation to protect the interests of the United States.

(c) **Covenants Relating to Real Property**

- i. The Lessee for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree s a covenant running with the land that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- ii. In the event of breach of any of the above Nondiscrimination covenants (in Paragraph i), Lessor will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.
- iii. Lessee for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Acts And Authorities.
- iv. In the event of breach of any of the above nondiscrimination covenants (in Paragraph iii), Lessor will have the right to terminate this Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

- (d) **List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this contract, the

contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
  - ii. 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
  - iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - iv. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
  - v. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
  - vi. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
  - vii. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
  - ix. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).
- (e) **Fair Labor Standards Act (FLSA)**. This Lease incorporates by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Lessee has full responsibility to monitor compliance to the referenced statute or regulation and must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.
- (f) **OSHA**. All contracts and subcontracts shall incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Lessee must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Lessee retains full

responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Lessee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **APPENDIX B**

### **RFP/Addenda Acknowledgement Form and Proposal Declaration Form**



## RFP/Addenda Acknowledgement Form

Please enter the information below and return this form to the Authority via facsimile (919) 840-0175 or via email to [chuck.mcfall@rdu.com](mailto:chuck.mcfall@rdu.com) to acknowledge the receipt of this RFP and each Addendum to the RFP. Attach the final form in Section 7 of the Proposal.

**Company Name**

**Address**

**Phone Number**

**Email Address**

	Signature	Date
<b>RFP</b>	_____	_____
<b>Addenda No. 1</b>	_____	_____
<b>Addenda No. 2</b>	_____	_____
<b>Addenda No. 3</b>	_____	_____
<b>Addenda No. 4</b>	_____	_____
<b>Addenda No. 5</b>	_____	_____
<b>Addenda No. 6</b>	_____	_____
<b>Addenda No. 7</b>	_____	_____
<b>Addenda No. 8</b>	_____	_____
<b>Addenda No. 9</b>	_____	_____
<b>Addenda No. 10</b>	_____	_____

## Proposal Declaration Form

I, the undersigned, warrant that I have carefully examined the RFP and Minimum Required Lease Terms for land leases on the specified Raleigh-Durham International Airport parcels. Proposer guarantees that the Proposal submitted meets or exceeds specifications contained in the RFP document. Any exceptions are described in detail and all requested information has been submitted as requested. Proposer acknowledges that the Proposal may not be withdrawn for a period of one hundred eighty (180) days after the Proposal submittal due date. Except as otherwise expressly provided in the Proposal, the Proposal incorporates by reference, as if fully set forth in the Proposal, the full content of the RFP and Lease Agreement.

I further warrant that if this Proposal is accepted, Proposer will contract with the Raleigh-Durham Airport Authority with a Lease Agreement containing at least the minimum terms included herewith.

I affirm that I am duly authorized to execute the Lease Agreement and the Proposal Declaration Form; and that this company, corporation, firm, partnership, or individual has not prepared this Proposal in collusion with any other Proposer.

Name of Proposer: \_\_\_\_\_

Signature of Authorized Person: \_\_\_\_\_

Title of Signer: \_\_\_\_\_

Business Address of Proposer: \_\_\_\_\_

Business Phone: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary

(Seal)