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October 25, 2021

Mr. Brad Holm
Assistant Director/General Counsel
Director's Office
Phoenix Sky Harbor International Airport
2485 East Buckeye Road
Phoenix, Arizona 85034-4405

Dear Mr. Holm,

I hope that this finds you well.

I wanted to write to you regarding some recent developments to do with Sky Harbor Airport, the Arizona Coyotes, and our proposal to develop a professional sports venue and entertainment district in Tempe.

On September 10, 2021, I initiated a telephone call with Chad Makovsky, the new Sky Harbor Airport Director. During that call I informed Mr. Makovsky that, on behalf of Alex Meruelo and Bluebird Development LLC (an affiliate of the Coyotes), we had submitted a response to a City of Tempe RFP whereby the City seeks proposals for the development of 46 acres located at the NE corner of Priest Road and Rio Salado Drive.

I asked Mr. Makovsky if we could meet with him and whichever other Sky Harbor representatives Mr. Makovsky deemed appropriate. The purpose of my request was to permit us to make a comprehensive presentation to Mr. Makovsky and the Airport representatives that included not only basic information of Mr. Meruelo's vision for an arena and entertainment district but to also share the results of the engineering and technical analysis that had been conducted by our FAA experts, in coordination with our architects.

On Thursday, September 16, Xavier Gutierrez, the president and CEO of the Arizona Coyotes, and I, along with several other members of our team met at the airport offices with you, Mr. Makovsky, Mario Paniagua (Deputy City Manager), Jordan Feld, (airport land planner) and several other members of your team. During that meeting, we made a presentation of basics of the

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development plan that we submitted to the City of Tempe, together with the technical analysis that was done by our FAA experts.

As we indicated during that day, the building heights for the proposed arena and for all of the buildings envisioned by our RFP response not only comply with all of the airport height maps and “engine out procedure” maps but are actually well below those levels. Moreover, we committed to show your team how we will be in full compliance with all applicable FAA rules and regulations. For example, because of suggested FAA noise reduction regulations, our proposed project – like all of the 3,500 existing residential units along Tempe Town Lake that have been constructed since 2000 within the 65 dB noise contours established by the airport/FAA’s last study – would incorporate all necessary noise reduction materials into the residential buildings.

During that meeting, we also offered to have our engineers and FAA experts sit down with your engineers to review all of the applicable data and information used by our engineers and FAA experts as part of our comprehensive FAA analysis.

As we left that meeting, we were led to believe that our engineers and FAA experts would be available to meet with yours before any information would be shared with either the Airlines that service Sky Harbor Airport or anyone else. It was, and still is, important to us, that you possess all the applicable data before the airport releases, or communicates, any information about our project to anyone – not least to ensure accuracy on all sides. After all, this is a \$2 billion project and we have been determined from the very beginning that, if this project is approved by the City of Tempe, we will be in full compliance with both Sky Harbor’s height maps and engine out procedures, as well as all applicable Federal, State and local laws and regulations.

On Monday, September 20, 2021, we received the attached letter from Mr. Makovsky (see attachment “A”). In that letter, Mr. Makovsky thanks me for initiating contact with him and for making our presentation to the Sky Harbor team the previous Thursday. The letter also contains 10 Comments/Requests/Directives. We all discussed all 10 items at our meeting with you and your team on Thursday, September 16, 2021 and, except for item number 4, we agreed in principle to every one of them.

The only item in Mr. Makovsky’s letter that we cannot comply with is his request that we deliver to Sky Harbor a “complete copy of [your] proposal to Tempe, minus any confidential financial documents.” Until the City of Tempe makes its final decision with respect to the RFP, the City is prohibited, from releasing or disclosing the contents of our RFP response, under the Arizona State Procurement laws.

It would therefore be an inappropriate for us – even though you offered to execute a nondisclosure agreement (“NDA”) with us, in exchange for the delivery of these materials – to deliver that entire package (minus any confidential financial documents) to another city, while the City of Tempe is reviewing our proposal.

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Particularly, since we believe that Sky Harbor isn't subject to procurement laws in this instance, the NDA would not protect against a court forcing the airport to release that package to the public, pursuant to a Freedom of Information Act request. Frankly, we are surprised, and a bit confused, as to why you would require almost our entire RFP submittal when we shared with you, and provided you copies of, our FAA and height analysis, while also offering to have our engineers and other FAA experts sit down with your engineers and experts to thoroughly and methodically go through the technical analysis.

Sadly, as you know, rather than taking us up on our offer to meet with our engineers and FAA experts, Sky Harbor instead took the following troublesome actions, steps, without informing us either in advance or after the fact:

1. On Thursday September 24, 2021, Mr. Makovsky sent a letter to Lisa Goodman, the Procurement Officer for the City of Tempe, reflecting on a discussion that Ed Zuercher, the former Phoenix City Manager, had with the Andrew Ching, the Tempe City Manager (please see attachment "B"). We find distinctly concerning that:

- a. Neither I nor any Arizona Coyotes' or Bluebird Development representative was copied on that letter;
- b. Mr. Makovsky requested meetings between the City of Tempe and Sky Harbor representatives *without our participation* to discuss the contents of *our* RFP proposal which, as mentioned above, amounts to nothing less than a back door request by Mr. Makovsky for the City of Tempe to violate the law by having to disclose the contents of our RFP submittal; and
- c. Mr. Makovsky's discussion with Andrew Ching, the Tempe City Manager, was done knowing that, under the law, neither I nor any member of the Arizona Coyotes' or Bluebird Development may have a corresponding discussion with Mr. Ching because it would be an absolute violation of the "transparency clause" contained in the RFP that prohibits any and all such contact or discussions.

2. Mr. Makovsky placed our project on Phoenix Aviation Advisory Board's October 21, 2021 Agenda without our knowledge. We didn't find out about the hearing until after it had already taken place and we received questions about it from members of the press who had been invited to attend. It is beyond concerning that Mr. Makovsky, would not invite us to attend the hearing and permit us to make the same presentation to the Board that we had already made to Mr. Makovsky and your team on Thursday, September 16, 2021. The decision to exclude us from that public hearing, and the failure to even inform us of that hearing, runs contrary to all of the basic principles of due process, and good faith and fair dealing, that is a hallmark of the way that the City of Phoenix normally conducts business.

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Additionally, the maps presented by Mr. Feld during the October 21 meeting do not reflect the methodology or calculations of maximum permitted building heights used by the FAA during the approval process. It is also a serious misrepresentation for materials presented during that meeting to imply, via a depiction of Cpt. Sully Sullenberger/Tom Hanks, that our project could cause the downing of a plane from a bird strike after we specifically discussed in detail at the September 16 meeting that any extension of Tempe Town Lake is not within the RFP proposal.

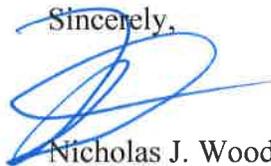
However, notwithstanding the fact that Mr. Makovsky and others appear to have conducted themselves in this troubling manner, we remain ready, willing and able to have our engineers and FAA experts meet with your engineers and to review all of the technical data. Once they do so, we are extremely confident that they will find data that proves that, if approved, our \$2 billion arena and entertainment district project obeys each and every applicable Federal, State and local law, rule and regulation.

As a result – and since we have a right to set the public record straight – we also respectfully and urgently request two items:

- That we be placed on the agenda of a “special hearing” of the Phoenix Aviation Advisory Board within the next two weeks.
- That your public webpage (<https://www.skyharbor.com/riosaladoproject>) be updated to accurately reflect that our team voluntarily reach out to your team to schedule the September 16th meeting to review a summary of our RFP response and that we committed to address issues and questions raised at that meeting which included the concerns that were circulated in Mr. Makovsky’s letter dated September 20, 2021.

Thank you for your assistance with this important matter.

Sincerely,



Nicholas J. Wood

NJW:/rr

Cc: *(Via Email)*

Xavier Gutierrez, President and CEO

Marina Carpenter, Esq., EVP and General Counsel

4885-7623-9872



City of Phoenix
AVIATION DEPARTMENT

September 20, 2021

Mr. Nicholas J. Wood
Snell & Wilmer
One Arizona Center
400 East Van Buren Street, Suite 1900
Phoenix, Arizona 85004-2202

Re: Tempe Arena Request for Proposals, no. 22-030 (Rio Salado Pkwy & Priest Dr);
Arizona Coyotes (IceArizona Hockey Co LLC) & Bluebird Development LLC's
Proposal

Dear Mr. Wood,

Thank you for reaching out to me and inviting the City of Phoenix to meet with you to discuss the Arizona Coyotes and Bluebird's Tempe Entertainment District (TED) proposal submitted in response to the City of Tempe's request for proposals. I very much appreciate the discussion we had with you, Mr. Gutierrez and the development team last Thursday regarding the details of your proposal.

The proposal covers development of Tempe land at Rio Salado Parkway and Priest Drive, approximately 10,000 feet due east from Phoenix Sky Harbor International Airport's center and south runways. As you may have guessed from our questions, the proposed development presents unique and significant challenges that may impair or altogether limit capacity at Phoenix Sky Harbor International Airport (Sky Harbor). It is critical that the Coyotes and Bluebird adequately address Sky Harbor's preliminary concerns, as well as any other challenges that may be identified through a more detailed analysis of data not yet available to Sky Harbor. We must ensure these challenges are addressed immediately so that they do not present a threat to local and regional air navigation in general and to Sky Harbor in particular.

Tempe's RFP requires the developer to comply with FAA-related regulations and Sky Harbor's Part 150 noise contours. To ensure proper implementation of these requirements, avoid creating an air-navigation hazard, and provide additional safety measures for the proposed development and for Sky Harbor, the Coyotes and Bluebird should address, at a minimum, the following concerns and recommendations. Given Sky Harbor does not have a copy of the Coyotes and Bluebird's written proposal, these recommendations are preliminary and not exhaustive:



1. The RFP mentions, and Sky Harbor insists, that the Coyotes and Bluebird strictly comply with 14 CFR Part 77 (requiring notice to FAA of proposed construction) and with 14 CFR Part 150 (noise mitigation standards for sensitive land uses).
2. Specifically, the Coyotes and Bluebird must ensure that the 7460-1 obstruction evaluation required under Part 77 is properly and carefully conducted and that the development itself does not create an air-navigation hazard, interfere with navigational aids, or constrain the current *or future* capacity of Sky Harbor. Additionally, before the property is further entitled and before construction documents are submitted for plan review, any proposed improvements and all related construction activity (cranes, etc) that may exceed 100 feet above ground level (AGL) must be reviewed with Sky Harbor and with major operators (e.g., American Airlines, Southwest, Delta, and FedEx) to ensure compatibility with all airspace requirements. This includes each operator's One Engine Inoperable (OEI) departure profiles, which may differ from federal airspace surfaces.
3. To avoid future disputes about air navigation on the airport's east side, Sky Harbor urges the Coyotes, Bluebird, and Tempe to execute an aviation easement (in form and content like that used in nearby developments) to Sky Harbor. This easement would protect the public's continued right to fly over (and in proximity to) the proposed development.
4. The proposed development is within Sky Harbor's formal 65 DNL noise contour, and consequently, the FAA deems residential development as an incompatible land use. Sky Harbor is obligated to oppose all incompatible land uses, including residential development, for the health and protection of prospective residents and the public in general.
5. The Coyotes and Bluebird—together with all other project developers—should include in all residential sales/lease contracts a copy of the statutory airport disclosure map.
6. In the Tempe Entertainment District as developed, the Coyotes and Bluebird must prohibit all use of lasers, fireworks, promotional spotlights, or similar activities that would create a hazard to air navigation attributable to brilliant light, glare, smoke, dust, or electromagnetic disturbance. We further request that the Coyotes and Bluebird coordinate with Sky Harbor and FAA to ensure that all TED development and venue lighting (e.g., marquees, dynamic light boards, electronic banners, etc.) does not create a safety hazard to flight.
7. At our meeting, the Coyotes and Bluebird agreed to prevent all future TED events and activities that would require implementation of federal Temporary

Flight Restrictions (TFR). We appreciate that consideration as we believe implementation of TFRs in such close proximity to Sky Harbor's southern two runways will likely significantly limit, if not altogether suspend, flight operations to the airport for the duration of such an event.

8. Given the proximity of the TED development to Sky Harbor runways, the Coyotes and Bluebird should prohibit all amateur or recreational drone use (unmanned aerial systems) in and around the development. We also urge the Coyotes and Bluebird to require any professional (institutional or commercial) drone use near the development to receive prior permission from Sky Harbor in addition to all required FAA approvals to ensure public safety and to prevent unintended deployment of law enforcement resources to reports of drone activity.
9. The Coyotes and Bluebird should submit to Sky Harbor and to the Phoenix Planning and Development Department all applications for Tempe General Plan Amendments and Rezoning requests filed for the site. We request the opportunity to review and comment on any submitted site plans and building elevations and to provide our review and comments to the Tempe Community Development Department. We ask the Coyotes and Bluebird to urge Tempe to formally consider and evaluate Sky Harbor's review and comments.
10. The Coyotes and Bluebird should contract with a wildlife biologist meeting FAA qualification standards to review master and block development plans for compliance with FAA wildlife-hazard mitigation criteria and best practices. Sky Harbor requests that the Coyotes and Bluebird comply with these criteria during the development's construction, operation, and maintenance. This requirement is critical given the Coyotes and Bluebird's desire to expand Tempe Town Lake west to Priest Drive.

We ask the Coyotes and Bluebird to provide Sky Harbor with a complete copy of their proposal to Tempe, minus any confidential financial documents. When we receive the proposal and the other documents promised at our meeting, Sky Harbor will be able to conduct a more detailed and informed analysis and provide you with more formal comments, and until then, we express no other opinion on the TED development or on the Coyotes and Bluebird's proposal. To emphasize our perspective, Sky Harbor is the region and state's largest economic engine. Based on our conversation yesterday, I am confident that we share the mutual objective of ensuring that Sky Harbor remains protected from incompatible development and uses so it may continue to support the economic vitality of the City of Tempe and the entire region.

Mr. Nicholas J. Wood
September 20, 2021
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We look forward to future meetings with you and your team to discuss these concerns and recommendations in more detail. Thank you in advance for your consideration and cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Chad R. Makovsky'.

Chad R. Makovsky, CM
Director of Aviation Services

c: Ed Zuercher, Phoenix City Manager
Andrew Ching, Tempe City Manager
Mario Paniagua, Phoenix Deputy City Manager
Alan Stephenson, Phoenix Planning & Development Director
Brad Holm, Phoenix Assistant Aviation Director
Jordan Feld, Phoenix Deputy Aviation Director
Airlines serving Phoenix Sky Harbor International Airport



City of Phoenix
AVIATION DEPARTMENT

September 24, 2021

Ms. Lisa Goodman, Procurement Officer
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

Re: Tempe Arena Request for Proposals, no. 22-030 (Rio Salado Pkwy & Priest Dr)

Dear Ms. Goodman,

This letter follows up on Ed Zuercher's (Phoenix City Manager) recent discussions with your city manager (Andrew Ching) regarding the City of Tempe's request for proposals to develop Tempe land at Rio Salado Parkway and Priest Drive. I write you as the procurement officer for this solicitation. While the RFP presents significant opportunities for Tempe, the proposed development may present unique challenges that could impair or may altogether limit capacity to Phoenix Sky Harbor International Airport (Sky Harbor). By this letter, I request more formal collaboration and dialog between Tempe and Sky Harbor. I hope this collaboration will enable us to develop amicable solutions to these potential challenges, so they do not present threats to local and regional air navigation in general and to Sky Harbor in particular.

I invite the appropriate Tempe officials to begin discussions with Sky Harbor about key features of the proposed development as set forth in the RFP. I am grateful the RFP clearly requires the developer to comply with FAA-related regulations and Sky Harbor's Part 150 noise contours. To ensure proper implementation of these requirements, avoid creating an air-navigation hazard, and provide additional safety measures for the proposed development and Sky Harbor, Tempe should address, at a minimum, the following concerns and recommendations identified by Sky Harbor staff. Because Sky Harbor staff does not yet have specific proposal details, these recommendations are preliminary and not exhaustive:

1. The RFP mentions, and Sky Harbor recommends, that the developer strictly comply with 14 CFR Part 77 (requiring notice to FAA of proposed construction) and with 14 CFR Part 150 (noise mitigation standards for sensitive land uses).
2. Specifically, the developer should ensure that the 7460-1 obstruction evaluation required under Part 77 is properly and carefully conducted and that the development itself does not create an air-navigation hazard, interfere with navigational aids, or constrain the current or *future* capacity of Sky Harbor. Additionally, before the property is further entitled and before construction documents are submitted for plan review, any proposed improvements and all related construction activity (cranes, etc.) that may exceed 100 feet above ground

level (AGL) must be reviewed with Sky Harbor and with major operators (e.g., American Airlines, Southwest, Delta, and FedEx) to ensure compatibility with all airspace requirements. This includes each operator's One Engine Inoperable (OEI) departure profiles, which may differ from federal airspace surfaces.

3. To avoid future disputes about air navigation on the airport's east side, Sky Harbor urges Tempe and the developer to execute an aviation easement (in form and content like that used in nearby developments) to Sky Harbor. This easement would protect the public's continued right to fly over (and in proximity to) the proposed development.
4. The proposed development is within Sky Harbor's formal 65 DNL noise contour and consequently, the FAA deems residential development as an incompatible land use. Sky Harbor is obligated to oppose incompatible land uses, including residential development, for the health and protection of prospective residents and the public in general.
5. All project developers should include in all residential sales/lease contracts a copy of the statutory airport disclosure map.
6. In the Tempe Entertainment District as developed, Tempe should prohibit all use of lasers, fireworks, promotional spotlights, or similar activities that would create a hazard to air navigation attributable to brilliant light, glare, smoke, dust, or electromagnetic disturbance. We further request that Tempe ensure the prospective developer coordinates with Sky Harbor and FAA to ensure development and venue lighting (e.g., marquees, dynamic light boards, electronic banners, etc.) do not create a safety hazard to flight.
7. Tempe should ensure the developer, and/or owner of the future arena, limit event activities to those not subject to implementation of federal Temporary Flight Restrictions (TFR). Implementation of TFRs in such close proximity to Sky Harbor's southern two runways would significantly limit, if not altogether suspend, flight operations to the airport for the duration of the event. Based on a meeting between the developer and Sky Harbor staff last Thursday, it appears the developer is agreeable to this important mitigation.
8. Given the close proximity of the development to Sky Harbor runways, Tempe should prohibit all amateur or recreational drone use (unmanned aerial systems) in and around the development. We also urge Tempe to require any professional (institutional or commercial) drone use near the development to receive prior permission from Sky Harbor in addition to all required FAA approvals to ensure

Ms. Lisa Goodman
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public safety and to prevent unintended deployment of law enforcement resources in response to drone activity.

9. The Tempe Community Development Department (and all Tempe staff overseeing the General Plan and municipal zoning) should include Sky Harbor and the Phoenix Planning and Development Department in the review distribution for any General Plan Amendment and Rezoning filed for the site. We also request the opportunity to review and comment on any submitted site plans and building elevations.
10. The developer should contract with a wildlife biologist who meets FAA qualification standards to review master and block development plans for compliance with FAA wildlife-hazard mitigation criteria and best practices. Sky Harbor requests that Tempe impose on the developer the obligation to comply with these criteria during the development's construction, operation, and maintenance. This requirement is critical given the developer's desire to expand Tempe Town Lake west to Priest Drive.

Sky Harbor is the region and state's largest economic engine. I am confident that Tempe shares with us the mutual objective of ensuring the airport remains protected from incompatible development and uses so that it may continue to support the economic vitality of the City of Tempe and our entire region. Ultimately, it is our goal to continue the beneficial relationship between Tempe, Phoenix, and Sky Harbor on air-navigation and airport matters. We look forward to future meetings with you and your team to discuss these concerns and recommendations in more detail. Thank you in advance for your support.

Sincerely,



Chad R. Makovsky, C.M.
Director of Aviation Services
City of Phoenix

- c: Ed Zuercher, Phoenix City Manager
Mario Paniagua, Phoenix Deputy City Manager
Alan Stephenson, Phoenix Planning & Development Director
Michael Greene, C.P.M., CPPO, Tempe Procurement Administrator
Donna Kennedy, Tempe Economic Development Director
Shelly Seyler, Tempe Interim Community Development Director
Ryan Levesque, Tempe Deputy Community Development Director – Planning
Donna Sullivan-Hancock, Tempe Interim Deputy Director – Community Development/Building Safety