

FIFTH AMENDMENT TO FIRST AMENDED AND RESTATED DUTY FREE CONCESSION AGREEMENT FOR THE FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT

This Fifth Amendment (“Fifth Amendment”) to the Agreement (hereinafter defined) between Broward County, a political subdivision of the State of Florida (“County”), and Broward Duty Free, LLC, a Florida limited liability company (“Concessionaire”) (collectively, the “Parties”), is effective on the date this Fifth Amendment is fully executed by the Parties (“Effective Date”).

RECITALS

A. County and Concessionaire entered into a First Amended and Restated Duty Free Concession Agreement with an effective date of December 3, 2013, to allow Concessionaire to operate a duty free merchandise concession at the Fort Lauderdale-Hollywood International Airport (“FLL”).

B. The First Amended and Restated Duty Free Concession Agreement was supplemented by an Addendum to the First Amended and Restated Duty Free Concession Agreement, dated December 19, 2013, and amended by a First Amendment, dated February 25, 2020, a Second Amendment, dated September 29, 2020, a Third Amendment, dated September 29, 2021, and a Fourth Amendment, dated June 1, 2022 (collectively, the First Amended and Restated Duty Free Concession Agreement as supplemented and amended is referred to herein as the “Agreement”).

C. The spread of COVID-19 resulted in a global pandemic impacting Broward County and FLL, including an unprecedented reduction in air traffic and airline passengers and associated impacts involving the services of concessionaires at FLL.

D. As part of an effort to ensure the provision of solvent concessionaires capable of resuming normal operations at FLL as the COVID-19 public health emergency gradually subsided, County and Concessionaire entered into the Second, Third, and Fourth Amendments to the Agreement to provide certain relief to assist Concessionaire in managing the impacts of COVID-19 on air travel and Concessionaire’s duty free merchandise concession at FLL.

E. Although air travel has largely recovered as the threat of COVID-19 subsided, international air travel has not rebounded as quickly or significantly as domestic air travel.

F. In recognition of the impact COVID-19 has had on international travel and the concessions at FLL reliant on such international travel, County has determined that it is in its best interest to provide additional relief to Concessionaire under the Agreement by permitting Concessionaire to make duty paid sales in addition to duty free sales at FLL.

G. The Parties desire to amend the Agreement accordingly and also, among other things, extend the Term of the Agreement, which is currently set to expire on December 31, 2024.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The foregoing Recitals are true and correct and incorporated herein.
2. Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect.
3. Amendments to existing language in the Agreement made pursuant to this Fifth Amendment are indicated herein by use of strikethrough text to indicate deletions and bold underlined text to indicate additions, unless otherwise indicated. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.
4. The Term of the Agreement is hereby extended by one (1) year, from December 31, 2024, through December 31, 2025 (“One Year Extension”).
5. Upon the expiration of the One Year Extension, the Agreement shall be automatically extended on a month-to-month basis through December 31, 2026, unless earlier terminated by the Director of Aviation by providing written notice to Concessionaire of County’s intent not to further extend the Agreement. If the Director of Aviation provides Concessionaire with written notice of intent not to further extend the Agreement, the Agreement shall terminate thirty (30) calendar days following the date of such notice, unless otherwise agreed in writing by the Parties.
6. Article I of the Agreement is amended to modify the definition of the term Concession, add definitions for the terms Duty Free Merchandise, Duty Paid Merchandise, and Duty Paid Merchandise Services, and to make other corresponding changes, as follows:

ARTICLE I
DEFINITIONS

...

1.16 Concession shall means the non-exclusive right to operate ~~a~~ **duty free concession and/or a duty paid concession** pursuant to the provisions and conditions of this Agreement.

...

1.25 Duty Free Merchandise shall mean merchandise sold to an international ticketed passenger without the payment of duties and/or taxes in compliance with Title 19, Code of Federal Regulations, Part 19, Sections 19.35 – 19.39.

1.26 Duty Free Merchandise Services shall mean the display, sale, and/or delivery of ~~Duty Free Merchandise~~ **to passengers departing Fort Lauderdale-Hollywood International Airport on international flights and eligible under U.S. Customs regulations to** ~~make such purchases~~ **purchase such Duty Free Merchandise.**

~~1.26~~ 1.27 Duty Paid Merchandise shall mean merchandise sold to a ticketed passenger with all duties and/or taxes applied to the purchase.

1.28 Duty Paid Merchandise Services shall mean the display, sale, and/or delivery of Duty Paid Merchandise to passengers at Fort Lauderdale-Hollywood International Airport.

1.29 Effective Date shall mean the date the Board approves this Agreement.

...

~~1.44~~ **1.47 Subconcessionaire** shall mean any person, firm, entity or organization entering into a subconcessionaire agreement with Concessionaire, with the prior written approval of the Aviation Department, for the sale of ~~Duty Free~~ **Merchandise** at Concession Locations.

...

All Sections appearing after Section 1.29 in Article I of the Agreement are hereby renumbered in consecutive order to conform with the above changes. All references in the Agreement to any section that has been renumbered shall be deemed references to the corresponding renumbered section.

7. Article III of the Agreement is amended as follows:

ARTICLE III
PRIVILEGES AND OBLIGATIONS OF CONCESSIONAIRE

- 3.1 Subject to the terms and conditions of this Agreement, the Concessionaire shall have the non-exclusive right, privilege and obligation to operate a ~~Duty Free Merchandise~~ Concession from the Assigned Areas as set forth on **Exhibit A**. Concessionaire shall obtain the prior written approval of the Aviation Department regarding any subsequent modifications to **Exhibit I** with respect to the types of operations, branding and concepts Concessionaire proposes to bring and operate within its Concession Locations. The Aviation Department shall have sole discretion to approve or disapprove Concessionaire's proposed modifications in operations, branding and/or concepts.
- 3.2 Concessionaire shall have the **non-exclusive** right and privilege to ~~sell~~ **provide Duty Free Merchandise Services in connection with the Duty Free Merchandise, and Duty Paid Merchandise Services in connection with the Duty Paid Merchandise, as delineated in** the product line categories **and brands** described on **Exhibit B (collectively referred to as "Approved Products")**, attached hereto ~~on a non-exclusive basis. Exhibit B indicates whether the Approved Products may be sold as Duty Free Merchandise, Duty Paid Merchandise, or both.~~ **Concessionaire shall not offer for sale any individually packaged food or beverages intended for consumption on-site unless such items are specifically listed and authorized for such sale on Exhibit B.** The ~~product line categories~~

Approved Products listed on **Exhibit B** may not be changed without the prior written consent of the Aviation Department. In the event the Aviation Department consents to any change in ~~permitted product line categories~~ **the Approved Products**, then Concessionaire and County shall execute an amendment to this Agreement, which shall set forth the change in ~~permitted product line categories~~ **the Approved Products**, the revised **Exhibit B**, and the prices related thereto, and the date on which the change shall be effective. The Director of Aviation shall be authorized, on behalf of the County, to execute any amendment pursuant to the provisions of this section.

- 3.3 ~~Concessionaire agrees to provide duty free merchandise for sale to international travelers only, and will not engage in the sale of any merchandise to United States domestic passengers or the public.~~ **Concessionaire shall have the non-exclusive right to provide Duty Free Merchandise Services in accordance with Exhibit B to international ticketed passengers in compliance with Applicable Laws and Regulations. Concessionaire shall deliver all Duty Free Merchandise to ticketed international passengers at the time they board the aircraft and in a manner that ensures the Duty Free Merchandise is not used or consumed until after the aircraft has departed the Airport.**
- 3.4 All items ~~carried in stock by Concessionaire, displayed, offered for sale, sold, received at, or delivered to persons at the Airport must be both:~~
- a. ~~Subject to duties levied or regulated by U.S. Customs Officials, and~~
 - b. ~~Duty free tax paid products.~~

Concessionaire shall have the non-exclusive right to provide Duty Paid Merchandise Services in accordance with Exhibit B to all passengers and other persons at the Airport, including Airport employees and visitors ("Duty Paid Customer"). Duty Paid Merchandise shall have all duties and/or taxes applied in compliance with Applicable Laws and Regulations and may be used and/or consumed by the Duty Paid Customer upon completion of the transaction.

...

- 3.21 On the second anniversary of the Commencement Date, and every other year thereafter, and at Concessionaire's expense, Concessionaire shall cause a recognized consumer survey company, as may be reasonably acceptable to the Aviation Department to conduct a survey of the preferences, likes, dislikes and needs of the traveling public frequenting the Terminals of the Airport in which the Concessionaire operates ("Product Survey"). The Product Survey's parameters shall include, but not be limited to: focus points relating to duty free concepts, the traveler's perception of the physical location of the duty free concepts within the Concession Locations in the Airport, and such other points as may be determined to be appropriate in consultation with the Aviation Department. The

Product Survey shall be completed no later than seventy-five (75) calendar days from the first calendar day of each Contract Year in which the Product Survey is due. Concessionaire and the Aviation Department shall review the Product Survey and mutually agree as to the types of duty free concepts to be provided, the location thereof, prices of ~~d~~D~~u~~~~t~~~~y~~ ~~f~~~~r~~~~e~~~~e~~ ~~m~~M~~e~~~~r~~~~c~~~~h~~~~a~~~~n~~~~d~~~~i~~~~s~~~~e~~ items offered for sale, and any other matters addressed by the Product Survey. In the event Concessionaire fails to complete the Product Survey, within the time period required herein, the Aviation Department, at its option and discretion, may complete such Product Survey by retaining a third party. Concessionaire agrees to reimburse the Aviation Department for the reasonable cost of the Product Survey completed by a third party retained by the County pursuant to this section.

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8. Article IV, Section 4.1 of the Agreement is amended as follows:

4.1 For the privilege of operating a non-exclusive ~~duty free merchandise c~~C~~o~~~~n~~~~c~~~~e~~~~s~~~~s~~~~i~~~~o~~~~n~~ at the Airport, Concessionaire agrees to pay County the Privilege Fees as described below.

...

9. Article VIII of the Agreement is amended as follows:

ARTICLE VIII
OPERATIONAL STANDARDS

8.1 Concessionaire agrees that it shall provide and make available at Concession Locations, only those goods set forth in Exhibit B, ~~Permitted Product Lines~~, and the services, as required by this Agreement. Concessionaire shall not change, remove, or modify any goods and /or services provided hereunder without the prior written consent of the Aviation Department. In addition, the Aviation Department may require the addition of certain goods and /or services that are in public demand.

...

8.18 The Aviation Department shall establish the times when, locations where, and in what manner merchandise may be delivered to the Airport. All vendors traveling on the apron or other non-public area, must be escorted by an employee or agent of Concession, which employee or agent has been approved by the TSA and Aviation Department. Concessionaire and all its vendors must comply with the requirements of TSA and with any Airport security plan promulgated by the Aviation Department. No delivery totes, boxes, or other containers shall be allowed to sit in public areas, unless they are being actively loaded or unloaded.

If at any time during the Term of this Agreement the Aviation Department implements a Central Receiving and Distribution Center ("CRDC") for the intake, processing, and distribution of goods for the Airport Terminals (operated by the Aviation Department or third parties), Concessionaire shall utilize the CRDC as directed in writing by the Aviation Department. Concessionaire's required utilization of the CRDC shall include, but not be limited to, requiring Concessionaire's suppliers to make all Airport deliveries to the CRDC (except where delivery to a third party is prohibited by law), unless otherwise approved in writing by the Aviation Department. Upon implementation of the CRDC, each concessionaire located at the Airport that is required to utilize the CRDC, including Subconcessionaires as applicable, shall pay to County the concessionaire's allocation of the operational and development costs related to use of the CRDC. The Aviation Department, in its reasonable discretion, shall allocate such costs to each concessionaire based on the amount and frequency of the intake and processing of goods at the CRDC and delivery of such goods to the Airport Terminals (the allocation for each concessionaire, a "CRDC Concessionaire Cost Allocation"). Upon determination of the CRDC Concessionaire Cost Allocation for Concessionaire, the Aviation Department shall provide written notice to Concessionaire of its CRDC Concessionaire Cost Allocation, accompanied by evidence supporting the manner in which the CRDC Concessionaire Cost Allocation was determined. Concessionaire shall pay the CRDC Concessionaire Cost Allocation in the manner and amount determined by the Aviation Department.

8.19 Concessionaire shall participate in all Airport-wide recycling programs for cardboard, paper, glass, and other products. In addition, Concessionaire shall seek to reduce waste produced by its operations through any commercially reasonable means. Any other recycling programs, such as for Convenience Items, or other recyclable materials as identified by Concessionaire, are encouraged by the Aviation Department.

8.20 Concessionaire shall not sell or provide for use on County property any expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173 of the Broward County Administrative Code.

10. **Exhibit B** (Permitted Product Lines) and **Exhibit E** (Nondiscrimination Requirements) of the Agreement are hereby deleted in their entirety and replaced with the revised **Exhibit B** (Approved Product List) and **Exhibit E** (Nondiscrimination Requirements) attached hereto and incorporated herein. As of the Effective Date, every reference in the Agreement to **Exhibit B** or **Exhibit E** shall be deemed to refer to the revised **Exhibit B** or **Exhibit E** attached hereto.

11. Concessionaire acknowledges that through the date this Fifth Amendment is executed by Concessionaire, Concessionaire has no claims against the County with respect to any of the matters covered by the Agreement, as amended, and Concessionaire has no right of set-off or counterclaims against any of the amounts payable under the Agreement.

12. In the event of any conflict or ambiguity between this Fifth Amendment and the Agreement, the Parties agree that this Fifth Amendment shall control.

13. Preparation of this Fifth Amendment has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

14. This Fifth Amendment may be executed in multiple originals, whether signed physically or electronically, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

15. The Agreement, as amended herein, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement as amended herein. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Fifth Amendment: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2024, and CONCESSIONAIRE, signing by and through its authorized representative.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

By: _____
Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor

____ day of _____, 2024

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Aviation Office
320 Terminal Drive, Suite 200
Fort Lauderdale, Florida 33315
Telephone: (954) 359-6100

Digitally signed by Keoki Baron
Date: 2024.11.20 08:59:46 -05'00'
By Keoki Baron
Keoki Baron (Date)
Assistant County Attorney

Digitally signed by Keoki Baron
Date: 2024.11.20 11:07:41 -05'00'
By Keoki Baron
Israel Fajardo (Date)
Senior Assistant County Attorney

KB/ch
Duty Free 5th Amendment
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**FIFTH AMENDMENT TO FIRST AMENDED AND RESTATED DUTY FREE CONCESSION
AGREEMENT FOR THE FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

CONCESSIONAIRE

Broward Duty Free, LLC

Philip Hancock
Digitally signed by Philip Hancock
Date: 2024-11-19 15:28:14

Authorized Signer

Philip Hancock, CFO

Print Name and Title

19th day of November, 2024

ATTEST:

Claudia Brea
Digitally signed by Claudia Brea
Date: 2024.11.19 15:31:34 -05'00'

Corporate Secretary or other person
authorized to attest

(CORPORATE SEAL OR NOTARY)

EXHIBIT B - APPROVED PRODUCT LIST

Duty Free	Duty Paid	Product Category	Type and Brand
Yes	No	Liquor	Spirits/All Brands
Yes	No	Liquor	Wine/All Brands
Yes	No	Tobacco	Loose Tobacco/All Brands
Yes	No	Tobacco	Cigarettes-E-Cigarettes/All Brands
Yes	Yes	Fashion and Accessories	Bags- Anne Klein Guess handbags Oakley Afa bags Robin Ruth - Orlando
Yes	Yes	Fashion and Accessories	Bags/Apparel/Desigual
Yes	Yes	Fashion and Accessories	Jewelry- Anne Klein jewelry Buckley Crislu Diamanti per Tutti Harry Potter Pilgrim Swarovski (plus earring spinner + incase)
Yes	Yes	Fashion and Accessories	Sunglasses- Alexander McQueen Arnette Balenciaga Bulgari Carolina Herrera Carrera Chiara Ferragni Dolce and Gabbana Dsquared Fossil Gucci Havianas Hugo Boss Isabel Marant Jimmy Choo Juicy Couture Kate Spade Marc Jacobs Maui Jim Michael Kors

Duty Free	Duty Paid	Product Category	Type and Brand
			Miu Miu Oakley Polaroid Prada Prive Revaux Puma RayBan Saint Laurent Tommy Hilfiger Versace Vogue
Yes	Yes	Fashion and Accessories	Travel Essentials- Barber Pro Cabeau Zippo
Yes	Yes	Fashion and Accessories	Watches- Anne Klein Armani Exchange Bulova Calvin Klein Casio Citizen Coach Diesel Emporio Armani Flik Flak Fossil Guess Hugo Boss Kate Spade Lacoste Longines Michael Kors Mvmt Olivia Burton Omega Puma Rado Sekonda Skagen Swatch Tissot

Duty Free	Duty Paid	Product Category	Type and Brand
			Tommy Hilfiger Tory Burch
Yes	Yes	Perfume and Cosmetics	Cosmetics- Benefit Biotherm Caudalie Dale Audrey Drunk Elephant Eve Lomg Fekkai Foreo Kiehl's LaMer Nudestix Sol De Janeiro
Yes	Yes	Perfume and Cosmetics	Perfume- Acqua di Parma Azzaro Burberry Bvlgari Cacharel Calvin Klein Carolina Herrera Chloe Dolce & Gabbana Emporio Armani Givenchy Gucci Hermes Hugo Boss Issey Miyake Jean Paul Gaultier Kilian Lacoste Loewe Marc Jacobs Mont Blanc Narciso Rodriguez Paco Rabanne Parfum De Marly Prada Ralph Lauren

Duty Free	Duty Paid	Product Category	Type and Brand
			Thierry Mugler Tiffany & Co Valentino Versace Viktor & Rolf
Yes	Yes	Perfume and Cosmetics	Perfume and Cosmetics- Chanel Christian Dior Clarins Clinique Diptyque Estee Lauder Fresh Giorgio Armani Jo Malone London Kylie Lancome L'Occitane MAC Mario Badescu Moroccanoil Rituals Shiseido Tom Ford YSL
Yes	Yes	Consumables Confection/Packaged Food Items – Travel Retail Items	Confection/Factory Packaged Consumables *Travel Retail Exclusives – No individually packaged snacks/consumables intended for on-site consumption. Anastasia Astor Bounty Cadbury Chupa Cups Coconut Island Ferrero Ghirardelli Godiva Haribo Hershey's Hoffman's Jelly Belly

Duty Free	Duty Paid	Product Category	Type and Brand
			Kinder KitKat Lindt M&M Mentos Milka Nutella Reese's Ritter Sport See's Candies Skittles Snickers Tic Tac Toblerone Wheatley

EXHIBIT E - NONDISCRIMINATION AND OTHER FEDERAL REQUIREMENTS

A. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest, agrees as follows:

1. *Compliance with Regulations*: Contractor (hereinafter includes Subcontractors) will comply with the **Title VI List of Pertinent Nondiscrimination Acts and Authorities** (“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 Agreement, and which include, but are not limited to, the following:

a. 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);

b. 49 C.F.R. Part 21 (Nondiscrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

c. 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);

d. 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 C.F.R. Part 27;

e. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);

f. Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

g. The Civil Rights Restoration Act of 1987 (P.L. 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, subrecipients, and contractors, whether such programs or activities are federally funded or not);

h. 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 U.S. Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;

- i. The Federal Aviation Administration's nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination 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;
 - k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, providing that 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); and
 - l. 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).
2. *Nondiscrimination:* Contractor, with regard to the work performed by it during the Agreement, 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. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices, when the Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment:* In all solicitations, either by competitive bidding or negotiation, made by Contractor 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 Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. *Information and Reports:* Contractor will provide all information and reports required by the Nondiscrimination Acts and Authorities, 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 Contractor is in the exclusive possession of another who fails or refuses to furnish the information, 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.

5. *Sanctions for Noncompliance:* In the event of Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments under the Agreement until Contractor complies; and/or
- b. Cancelling, terminating, or suspending the Agreement, in whole or in part.

6. *Incorporation of Provisions:* Contractor will include the provisions of Sections A.1 through A.6 above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto. Contractor 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 Contractor becomes involved in, or is threatened with litigation by a Subcontractor or supplier because of such direction, Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

B. Nondiscrimination - 14 C.F.R. Part 152 Requirements. During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest, agrees as follows:

1. Contractor agrees to undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to ensure that no person shall on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participation in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Contractor agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

2. Contractor agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. Part 152, Subpart E, as part of the affirmative action program, and by any federal, state, county, or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order, or similar mechanism. Contractor agrees that state or county affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 C.F.R. Part 152, Subpart E, only when they fully meet the standards set forth in 14 C.F.R. 152.409. Contractor agrees to obtain a similar assurance from its covered organizations, and to

cause them to require a similar assurance of their covered suborganizations, as required by 14 C.F.R. Part 152, Subpart E.

3. If required by 14 C.F.R. Part 152, Contractor shall prepare and keep on file for review by the FAA Office of Civil Rights an affirmative action plan developed in accordance with the standards in Part 152. Contractor shall similarly require each of its covered suborganizations (if required under Part 152) to prepare and to keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in Part 152.

4. If Contractor is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism providing for short- and long-range goals for equal employment opportunity under Part 152, then Contractor shall nevertheless make good faith efforts to recruit and hire minorities and women for its aviation workforce as vacancies occur, by taking any affirmative action steps required by Part 152. Contractor shall similarly require such affirmative action steps of any of its covered suborganizations, as required under Part 152.

5. Contractor shall keep on file, for the period set forth in Part 152, reports (other than those submitted to the FAA), records, and affirmative action plans, if applicable, that will enable the FAA Office of Civil Rights to ascertain if there has been and is compliance with this subpart, and Contractor shall require its covered suborganizations to keep similar records as applicable.

6. Contractor shall, if required by Part 152, annually submit to County the reports required by Section 152.415, and Contractor shall cause each of its covered suborganizations that are covered by Part 152 to annually submit the reports required by Section 152.415 to Contractor who shall, in turn, submit same to County for transmittal to the FAA.

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