



Concessions Rent and Fee Accommodation Agreement

Parties And Addresses:

Authority: Hillsborough County Aviation Authority
Post Office Box 22287
Tampa, Florida 33622
Telephone: 813-870-8700
Fax: 813-875-6670

COMPANY: HBF Tampa Partners JV, LLC

CONCESSIONS RENT AND FEE ACCOMMODATION AGREEMENT

The HILLSBOROUGH COUNTY AVIATION AUTHORITY (the “*Authority*”) and HBF TAMPA PARTNERS JV, LLC (“*Concessionaire*” and, with the Authority, collectively, the “*Parties*”) hereby enter into this Concessions Rent and Fee Accommodation Agreement (the “*Agreement*”) as of this ___ day of April, 2020 regarding a temporary and limited waiver of certain specified fees and rental charges that would have otherwise been required to be paid under the Lease and Concession Contract dated June 6, 2015 between the Authority and Concessionaire (“*Concessions Agreement*”).

REFERENCE IS MADE TO THE FOLLOWING FACTS:

WHEREAS, the worldwide COVID-19 pandemic has caused significant disruptions to domestic and international air travel;

WHEREAS, the Authority is the owner and operator of Tampa International Airport (the “*Airport*”) and is the “airport sponsor” of the Airport under federal law;

WHEREAS, all concessionaires operating at the Airport, including the Concessionaire, have experienced severe reductions in revenue which have resulted in near-term cashflow challenges for the Concessionaire;

WHEREAS, on March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the “*CARES Act*”) which provides, among other things, aid to U.S. airports consisting of direct grants; however, such CARES Act funds are not available to Concessionaire;

WHEREAS, 49 United States Code (U.S.C.) § 47107(a)(13) requires airport sponsors to be as self-sustaining as possible under the circumstances at that airport (*See also* Grant Assurance 24, *Fee and Rental Structure*);

WHEREAS, the Federal Aviation Administration’s (the “*FAA*”) *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999, (“*Revenue Use Policy*”) requires airport sponsors, including the Authority, when entering into agreements, to undertake reasonable efforts to be self-sustaining in accordance with 49 U.S.C. § 47107(a)(13);

WHEREAS, the FAA issued guidance dated April 3, 2020 entitled “Information for Airport Sponsors Considering COVID-19 Restrictions or Accommodations” (the “*FAA Guidance*”) and stated therein, consistent with the above that a core goal of airports should be “to keep the airport solvent to ensure that the airport can remain open”;

WHEREAS, the Authority has entered into various Trust Agreements under which its revenue bonds are outstanding, in which the Authority has covenanted to fix, revise from time to time when necessary, maintain and collect such fees, rates, rentals and other charges for the use of the products, services and facilities of the Airport System, or concessions granted in connection therewith, that will be sufficient to meet various deposit and coverage requirements before the next interest and principal payment date on October 1, 2020;

WHEREAS, after careful analysis and consideration, the Authority has determined that this Agreement is the best way to achieve the goals of maintaining the Authority’s financial self-sustainability and assisting Concessionaire in maintaining concessions services at the Airport as well as comply with its obligations under its Trust Agreements, Section 47107(a)(13) of U.S.C. Chapter 49, the Revenue Use Policy, Grant Assurance 24 and the FAA Guidance and to reasonably mitigate its concessionaire partners’ need to address near-term cashflow challenges;

WHEREAS, the Authority has offered the terms of this Agreement to Concessionaire, Concessionaire is current on its payments to the Authority through March 2020, and Concessionaire has opted to enter into this Agreement;

To that end, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, THE PARTIES AGREE AND STATE AS FOLLOWS:

1. The Authority will, in exchange for agreeing to the terms stated herein, not exercise its rights under the Concessions Agreement to levy and bill the amounts that would have been levied and billed as Concessionaire's Percentage Fee for the month of March 2020, and its MAPF, Premises Rent, Concessions Services Fee, Promotions Fee, and all other fees, excluding only utility fees (which remain payable), as defined and set forth in the Concessions Agreement (collectively, such amounts, the "*Concessions Rents and Charges*"), incurred by the Concessionaire for the month of April 2020 (the "*Accommodation Period*"). For the sake of clarity, Concessionaire shall continue to maintain records as required under the Concessions Agreement and provide its Monthly Gross Receipts Report to the Authority in a timely manner as provided in the Concessions Agreement for the Accommodation Period. This accommodation is conditioned upon Concessionaire (a) not otherwise being in arrears on amounts previously due through March 2020 and (b) continuing to operate at the Airport and pay the associated rates and charges applicable to the space Concessionaire was using as of March 1, 2020 through September 30, 2020.

2. The shortfall in funds in each of the relevant cost centers during the Accommodation Period that results from the waiver of the Concessions Rents and Charges granted in Section 1 above shall be made up via the use of certain unrestricted funds held by the Authority outside of the various Trust Agreements (the "*Temporary Concessions Cost Center Relief Funds*").

3. Payment of amounts due from Concessionaire for Concessions Rents and Charges attributable for its use of the Airport's facilities after April 30, 2020, shall be payable in accordance with the payment requirements set forth in the Concessions Agreement or as otherwise set forth in such invoices.

4. Beginning July 1, 2020, and for each of the three (3) months of July, August and September 2020 (the "*Recovery Period*"), the total Temporary Concessions Cost Center Relief Funds transferred to the cost centers on behalf of Concessionaire will be returned to the Authority's unrestricted cash in three (3) equal installments outside of the various Trust Agreements and the Authority will adjust the Concessions Rents and Charges payable by Concessionaire in each month during the Recovery Period to reflect such transfers (i.e. the increased amounts to be recovered in each cost center), net of any credits for payments above the Privilege Fee, if any, applied by the Authority to offset such amounts due.

5. For the sake of clarity, the Concessionaire consents to this cost recovery being part of its Percentage Fee, MAPF, Premises Rent, Concessions Services Fee, Promotions Fee, and all other fees, excluding only utility fees, as described in the Concessions Agreement, for the Recovery Period. For the sake of clarity, the Authority retains all rights under the Concessions Agreement for non-payment of such Concessions Rents and Charges.

6. All Concessionaire's Concessions Rents and Charges and other fees and payments due and unpaid before the Accommodation Period shall be paid as required in the Concessions Agreement.

7. Concessionaire shall continue to provide during the Accommodation Period as provided in the Concessions Agreement, as modified by any Authority amendments to Exhibit B thereto.

8. Except as specifically modified by this Agreement, the Concessions Agreement remains in full force and effect and is hereby confirmed and ratified by the Parties.

9. For avoidance of doubt, nothing herein is intended to be, or shall be construed to be, an extension of credit.

10. This Agreement shall be governed by the laws of the State of Florida and any suits and actions arising out of this Agreement shall be instituted in a court of competent jurisdiction in Tampa, Florida. This Agreement is subject and subordinate to any agreement between the Authority and the United States of America relating to the provision of grant funding for airport development. If any one or more of the covenants or agreements set forth in this Agreement should be determined by a court of competent jurisdiction to be contrary to applicable law, the Authority's Grant Assurances or Bond covenants, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement. Any amendment to this Agreement must be in writing and signed by the Parties. All prior understandings of the Parties relating to the subject matter of this Agreement are set forth herein and no prior understandings or accommodations shall be given effect or shall be valid. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original; but such counterparts shall constitute one and the same instrument. Signatures of the Parties transmitted or executed by facsimile or electronic mail shall be deemed to be their original signatures, duly and validly delivered and effective for all purposes.

AGREED AND CONSENTED TO

CONCESSIONAIRE:

HBF TAMPA PARTNERS JV, LLC

Signed in the Presence of:


BY: 
Signature

Karen Suttle
Witness

President
Title

Karen Suttle
Printed Name

Regynald Washington
Printed Name


Witness

1750 The Exchange
Printed Address

Jeff Flowers
Printed Name

Atlanta GA
City/State/Zip

HILLSBOROUGH COUNTY AVIATION AUTHORITY

Signed in the Presence of:

BY: _____
Signature

Witness

Title

Printed Name

Printed Name

Witness

Printed Address

Printed Name

City/State/Zip