

Hillsborough County Aviation Authority

**ARTIST SERVICES CONTRACT**

**ARTIST: CATHERINE WAGNER, LLC**

Board Date: March 5, 2020

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# HILLSBOROUGH COUNTY AVIATION AUTHORITY

## ARTIST SERVICES CONTRACT

This Contract for Artist Services (hereinafter referred to as Contract) is made and entered into this 5<sup>th</sup> day of March, 2020 between the Hillsborough County Aviation Authority, a public body corporate under the laws of the State of Florida whose post office address is Post Office Box 22287, Tampa, Florida 33622 (hereinafter referred to as Authority), and Catherine Wagner, LLC, a limited liability company, authorized to do business in the State of Florida, (hereinafter referred to as Artist), (collectively hereinafter referred to as the Parties).

For and in consideration of the mutual covenants hereof, the Parties do hereby agree as follows:

### ARTICLE 1

#### ARTIST'S SCOPE OF WORK

##### 1.01 Scope of Work

- A. Artist agrees to design, fabricate and install public art as set forth in Exhibit A, Artist's Scope of Work, which is attached hereto and made a part hereof (Artwork).
- B. The Parties may at any time during the Term of this Contract revise Exhibit A upon written approval of both Parties without formal amendment to this Contract.

1.02 The Parties agree that Authority plans to unveil the Artwork with the opening of the Blue Curbside, currently projected to be in Fall 2021.

##### 1.03 Risk of Loss

Prior to the final acceptance by Authority of the Artwork, as demonstrated by a completed Exhibit B, Certificate of Acceptance and Project Completion, which is attached hereto and made a part hereof, Artist will have all risk of loss relative to all Artwork and shall be responsible for insuring/protecting the Artwork against all physical loss or damage from fire, theft, or any external cause, covering all aspects of the Scope of Work required herein including the creation of the Artwork, preparation and transit of the Artwork to the Authority, and installation of the Artwork. If the Artwork is damaged or destroyed prior to final acceptance by Authority, Artist shall be responsible for repairing or recreating the Artwork. Artist bears the risk of loss or damage to the Artwork that results from Artist's or Artist's agents, personnel or subcontractors until final acceptance by the Authority at which time the risk of damage to or loss of the Artwork passes to Authority. Artist will not be held responsible for damages caused by the Authority or others after final acceptance of the Artwork by Authority.

- 1.04 Authority Contact Person  
Authority Executive Vice President of Marketing and Communications or designee will be Artist's primary contact for all Artwork under this Contract.

## ARTICLE 2

### TERM

- 2.01 Effective Date  
This Contract will become effective upon execution by Artist and approval and execution by Authority. This Contract may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.
- 2.02 Term  
The Term of this Contract will begin upon issuance to Artist of Notice to Proceed by Authority and will end upon final acceptance of the Artwork by Authority with execution of Exhibit B. Notwithstanding the foregoing, Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 15 shall survive the termination of this Contract.
- 2.03 Extension  
All Artwork is to be completed and delivered to Authority in accordance with the schedules contained in Exhibit A, unless an extension of time is approved in the sole and absolute discretion of the Authority Executive Vice President of Marketing and Communications.
- 2.04 Early Termination  
Authority may terminate this Contract, without cause, by giving 30 days' advanced written notice to Artist. In the event of early termination, Artist shall be compensated for Artwork performed and direct costs incurred up to the date of such early termination in accordance with the progress payment schedule contained in Exhibit A.

## ARTICLE 3

### FEES AND PAYMENTS

Artist agrees to the fees and payment terms as set forth in Exhibit B.

## ARTICLE 4

### INTELLECTUAL PROPERTY OWNERSHIP AND ARTIST'S GUARANTEE

#### 4.01 Ownership

Except as otherwise provided in this Contract, Artist retains all copyrights and other intellectual property interests in the Artwork and in the design, drawings, sketches, prototypes and other materials for the Artwork. Artist may place a copyright notice on the Artwork and may, at Artist's option and expense, register the copyright with the Library of Congress. Authority is not responsible for any third-party infringement of Artist's copyright, whether or not registered, and is not responsible for protecting the intellectual property rights and/or interests of Artist in the Artwork.

#### 4.02 Guarantee

The Artist warrants that: (A) the design and Artwork being commissioned are the original product of the Artist's own creative efforts and are not the subject of an existing patent or copyright owned by any other person or entity; and (B) the Artwork is original, that it is in an edition of one (1), and the Artist will not sell or reproduce the Artwork or allow others to do so. Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and will be free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for one (1) year after the date of final acceptance by Authority.

Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.

Artist represents and warrants that the Artwork information described in Exhibit A-1, Final Artwork Information & Maintenance Form, is the only Artwork information needed for maintenance of the Artwork.

#### 4.03 Reproductions

Along with the Transfer of Title detailed below in Section 6.01, Transfer of Title, Artist will grant to Authority the non-exclusive license to make, and to authorize the making of, photographs and other two-dimensional reproductions of the Artwork for any Authority-related purposes, including, but not limited to, educational, advertising, marketing, public relations, promotion, any documentation of Authority Public Art Program or other noncommercial purposes in print or electronic media. This license does not include the right to create three-dimensional works or to reproduce the Artwork for merchandising purposes. Any rights to reproduce the Artwork three-dimensionally or to merchandise the Artwork must be established pursuant to a separate contract with the Artist.

Additionally, because the agreement final form of the Artwork is unique, Artist shall not make any reproduction (including, but not limited to, 2-D or 3-D replication) of the

Artwork for commercial purposes, nor shall Artist grant permission for others to do so, for the lifetime of the Artwork, except upon the express written permission of the Authority.

## ARTICLE 5

### DEATH OR INCAPACITY OF ARTIST

In the event of the Artist's death or incapacity, as determined solely by Authority, rendering the Artist unable to complete the Artwork, Authority may elect to complete the Artwork and all payments made up to the point of death or incapacity will be retained by the Artist or the Artist's estate and all work performed by the Artist up to date of death or incapacity will be compensated. Any incomplete Artwork and any materials paid for by Authority included in such Artwork will become the property of Authority upon payment to compensate Artist or Artist's estate, for all work performed up to the date of incapacity or death. However, if the Artwork is substantially designed and/or completed, as determined solely by Authority, and it is feasible for the Artwork to be fully completed without undue delay, Authority may elect to proceed under the terms of this Contract and complete the Artwork with the consent of Artist, Artist's estate or Artist's legal representative. In such event, all remaining work to be completed in accordance with this Contract will be delegated to Authority Executive Vice President of Marketing and Communications.

## ARTICLE 6

### OWNERSHIP, INSPECTION AND REPAIR OF ARTWORK

#### 6.01 Transfer of Title

All right, title and interest in the Artwork, including, but not limited to, all documents, models, and/or drawings that constitute or are components of the Artwork, will pass to Authority upon final acceptance of the Artwork by Authority, and receipt by Artist of final payment as set out in Exhibit B. Authority shall provide approved transfer documentation that shall be attached to this Contract and incorporated herein by reference. All documents, models, and/or drawings that constitute or are components of the Artwork will be retained by Authority for archival and exhibition purposes.

#### 6.02 Inspection of Artwork

Authority shall have the right to preview and inspect the progress of the development of the Artwork at any time during Authority normal business hours. Additionally, if requested by Authority, Artist shall provide photographs documenting the development of the Artwork throughout the process.

#### 6.03 Maintenance, Repair, and Restoration

Upon completion and installation of the Artwork, the Artist shall prepare and submit Exhibit A-1, Final Artwork Information and Maintenance Form, attached hereto and incorporated herein by reference, to the Authority, which includes maintenance of the Artwork. Repairs, restorations, or conservation of the Artwork shall be the responsibility of the Artist for one year after final acceptance of the Artwork; provided, however, repairs to the Artwork that are necessary due to acts outside of the control of the Artist shall not be the responsibility of the Artist.

For the lifetime of the Artwork, which for purposes of this Contract is defined as no less than twenty-five (25) years, Authority will be responsible for the routine inspection and maintenance of the Artwork in accordance with Exhibit A-1. With the exception of minor repairs, Authority shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Artwork will be made. Authority will attempt to consult with Artist regarding repairs and restorations undertaken during Artist's lifetime as practicable. If the Artwork is a discrete object and not integral to the architecture of the Artwork Site as depicted on Exhibit A-2, Artwork Site, Authority may, in its sole and absolute discretion, offer Artist the opportunity to perform or supervise the repairs or treatments. Authority reserves the right to make minor and/or emergency repairs, as determined solely by Authority, without consulting Artist, provided such repairs are done according to Exhibit A-1. In the event the Artwork requires professional services in order to accomplish repairs, and Authority and Artist agree that such repairs should be made by Artist, Authority agrees to pay Artist a reasonable fee for such repairs to be negotiated at the time of such repairs. All repairs, no matter which Party performs them, shall be made in accordance with professionally recognized principles of conservation and in accordance with Exhibit A-1. The provisions of this Article shall not in any way affect Artist's obligations under the risk of loss outlined in Article 1.03 above.

#### 6.04 Modification, Relocation, Destruction or Removal of Artwork

- A. Authority shall notify Artist in writing of any proposed significant alteration of the Artwork Site, as determined solely by Authority, that would affect the intended character and appearance of the Artwork, including removal or relocation of the Artwork that might result in the Artwork being destroyed, distorted or modified. Authority shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. Authority shall make a reasonable effort to maintain the integrity of the Artwork during such alteration.
- B. The Artwork may be removed, relocated or destroyed by Authority should the Artist and Authority not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed ninety (90) days following written notice of such intended removal or relocation by Authority to the Artist. During such

ninety (90) day period, the Parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.

- C. In the event of changes in the use, structure or configuration of the building in which the Artwork Site is located that cause the Artwork to be in conflict with applicable building-codes, laws or other regulations, Authority may authorize the removal or relocation of the Artwork without the Artist's permission.
- D. If Authority reasonably determines, in its sole discretion, that the Artwork presents imminent harm or hazard to the public, other than as a result of the failure of Authority to maintain the Artwork as required under this Contract, Authority may authorize the removal or relocation of the Artwork without the Artist's permission.
- E. Authority shall have the right to sell the Artwork at any time. Before exercising this right, Authority, by written notice to Artist at Artist's last known address, agrees to give the Artist the opportunity to purchase the Artwork for the greater of the total amount paid to Artist as detailed in Exhibit B or the amount of any offer which Authority has received for the purchase of the Artwork, plus all costs associated with the removal of the Artwork from the Artwork Site, clean-up of the Artwork Site, and delivery to Artist. Artist shall have thirty (30) days from the date of Authority notice of intent to sell the Artwork to exercise Artist's option to purchase the Artwork.
- F. This clause is intended to replace and substitute for the rights of the Artist under the Visual Artist's Rights Act ("VARA") to the extent that any portion of this Contract is in direct conflict with VARA rights. The Parties acknowledge that this Contract supersedes that law to the extent that this Contract is in direct conflict with VARA.

## ARTICLE 7

### ARTIST'S LIABILITY

Approval by Authority shall not constitute nor be deemed a release of the responsibility and liability of Artist or Artist's employees, associates or assistants for the accuracy and competency of Artist's Artwork, nor shall such approval be deemed to be the assumption of such responsibility by Authority for any defect, error or omission in the Artwork performed by Artist or Artist's employees, associates or assistants.



## ARTICLE 8

### ARTIST REPRODUCTION CREDIT

#### 8.01 Label

A label, provided by Artist at Authority expense, identifying Artist, the title of the Artwork and the year it was completed will be publicly displayed in the area adjacent to the Artwork on a plaque of reasonable dimensions, as determined by Authority.

#### 8.02 Artist's Credit

Authority agrees that unless Artist requests to the contrary in writing, all references to the Artwork and all reproductions of the Artwork will credit the Artwork to Artist.

#### 8.03 Authority Credit

Artist agrees that all formal references to the Artwork will include the following credit line: "From the Tampa International Airport Public Art Collection."

## ARTICLE 9

### NON-EXCLUSIVE

Artist acknowledges that Authority has, or may hire, others to perform work similar to or the same as that which is within Artist's Scope of Work under this Contract. Artist further acknowledges that this Contract is not a guarantee of the assignment of any work and that the assignment of work to others is solely within Authority discretion.

## ARTICLE 10

### DEFAULT AND TERMINATION RIGHTS

#### 10.01 Events of Default

Artist will be deemed to be in default of this Contract upon the occurrence of any of the following:

- A. The failure or omission by Artist to perform its obligations under this Contract or the breach of any terms, conditions and covenants required herein.
- B. The conduct of any business or performance of any acts at the Airport not specifically authorized in this Contract or by any other agreement between Authority and Artist, and Artist's failure to discontinue that business or those acts within 30 days of receipt by Artist of Authority written notice to cease said business or acts.

- C. The appointment of a Trustee, custodian, or receiver of all or a substantial portion of Artist's assets.
- D. The divestiture of Artist's estate herein by operation of law, by dissolution, or by liquidation, not including a merger or sale of assets.
- E. The insolvency of Artist; or if Artist will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Artist of a voluntary petition of bankruptcy or the institution of proceedings against Artist for the adjudication of Artist as bankrupt pursuant thereto.
- F. Artist's violation of Florida Statute Section 287.133, concerning criminal activity on contracts with public entities.

#### 10.02 Authority Remedies

In the event of any of the foregoing events of default, Authority may immediately terminate Artist's rights under this Contract and Artist will remain liable for all damages suffered by Authority. The exercise of this remedy does not preclude the exercise of any other remedies provided by law.

No waiver by Authority at any time of any of the terms, conditions, covenants, or agreements of this Contract, or noncompliance therewith, will be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by Artist. No delay, failure, or omission of Authority to exercise any right, power, privilege, or option arising from any default nor subsequent acceptance of fees or charges then or thereafter accrued, if any, will impair any such right, power, privilege, or option, or be construed to be a waiver of any such default or relinquishment or acquiescence. No notice by Authority will be required to restore or revive time is of the essence hereof after waiver by Authority of default in one or more instances. No option, right, power, remedy, or privilege of Authority will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to Authority by this Contract are cumulative and that the exercise of one right, power, option, or remedy by Authority will not impair its rights to any other right, power, option, or remedy available under this Contract or provided by law.

#### 10.03 Artist's Remedies

Upon 30 days' written notice to Authority, Artist may terminate this Contract and all of its obligations hereunder, if Artist is not in default of any term, provision, or covenant of this Contract or in the payment of any fees or charges to Authority, but only upon or after the occurrence of any of the following events: the inability of Artist to use Airport for a

period of longer than 90 consecutive days due to war, terrorism, or the issuance of any order, rule or regulation by a competent governmental authority or court having jurisdiction over Authority preventing Artist from operating its business for a period of 90 consecutive days; provided, however, that such inability or such order, rule or regulation is not due to any fault or negligence of Artist. The rights granted to the Authority by the Artist under this Contract shall survive any termination by the Artist.

## ARTICLE 11

### INDEMNIFICATION

A. To the maximum extent permitted by Florida law, in addition to Artist's obligation to provide, pay for and maintain insurance as set forth elsewhere in this Contract, Artist will indemnify and hold harmless Authority, its members, officers, agents, employees, and volunteers from any and all liabilities, suits, claims, expenses, losses, costs, royalties, fines and damages (including but not limited to claims for attorney's fees and court costs) caused in whole or in part by the:

1. Presence on, use or occupancy of Authority property;
2. Acts, omissions, negligence (including professional negligence and malpractice), recklessness, intentional wrongful conduct, activities, or operations;
3. Any breach of the terms of this Contract;
4. Performance, non-performance or purported performance of this Contract;
5. Violation of any law, regulation, rule, order, decree, Advisory Circular or ordinance;
6. Infringement of any patent, copyright, trademark, trade dress or trade secret rights; and/or
7. Contamination of the soil, groundwater, surface water, storm water, air or the environment by fuel, gas, chemicals or any other substance deemed by the Environmental Protection Agency or other regulatory agency to be an environmental contaminant

by Artist or Artist's officers, employees, agents, volunteers, subcontractors, invitees, or any other person whether the liability, suit, claim, expense, loss, cost, fine or damages is caused in part by an indemnified party. This indemnity obligation expressly applies, and shall be construed to include, any and all claim(s) caused in part by the negligence, acts of omissions of the Authority, its members, officers, agents, employees, and volunteers.

B. In addition to the duty to indemnify and hold harmless, Artist will have the separate and independent duty to defend Authority, its members, officers, agents, employees, and volunteers from all suits, claims or actions of any nature seeking damages, equitable or injunctive relief expenses, losses, costs, royalties, fines or attorney's fees in the event the suit, claim, or action of any nature arises in whole or in part from the:

1. Presence on, use or occupancy of Authority property;
2. Acts, omissions, negligence (including professional negligence and malpractice), recklessness, intentional wrongful conduct, activities, or operations;
3. Any breach of the terms of this Contract;
4. Performance, non-performance or purported performance of this Contract;
5. Violation of any law, regulation, rule, order, decree, Advisory Circular or ordinance;
6. Infringement of any patent, copyright, trademark, trade dress or trade secret rights;
7. Contamination of the soil, groundwater, surface water, stormwater, air or the environment by fuel, gas, chemicals or any other substance deemed by the Environmental Protection agency or other regulatory agency to be an environmental contaminant

by Artist or Artist's officers, employees, agents, volunteers, subcontractors, invitees, or any other person directly or indirectly employed or utilized by Artist regardless of whether it is caused in part by Authority, its members, officers, agents, employees, or volunteers. This duty to defend exists immediately upon presentation of written notice of a suit, claim or action of any nature to Artist by a party entitled to a defense hereunder. This indemnity obligation expressly applies, and shall be construed to include, any and all claim(s) caused in part by the negligence, acts of omissions of the Authority, its members, officers, agents, employees, and volunteers.

- C. If the above indemnity or defense provisions or any part of the above indemnity or defense provisions are limited by Fla. Stat. § 725.06(2)-(3) or Fla. Stat. § 725.08, then with respect to the part so limited, Artist agrees to the following: To the maximum extent permitted by Florida law, Artist will indemnify and hold harmless Authority, its members, officers, agents, employees, and volunteers from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fee, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of Artist and persons employed or utilized by Artist in the performance of this Contract.
- D. If the above indemnity or defense provisions or any part of the above indemnity or defense provisions are limited by Florida Statute § 725.06 (1) or any other applicable law, then with respect to the part so limited the monetary limitation on the extent of the indemnification shall be the greater of the (i) monetary value of this Contract, (ii) coverage amount of Commercial General Liability Insurance required under this Contract or (iii) \$1,000,000.00. Otherwise, the obligations of this Article will not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

- E. In addition to the requirements stated above, to the extent required by FDOT Public Transportation Grant Agreement and to the fullest extent permitted by law, the Artist shall indemnify and hold harmless the State of Florida, FDOT, including the FDOT's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence recklessness or intentional wrongful misconduct of the Artist and persons employed or utilized by the Artist in the performance of this Contract. This indemnification in this paragraph shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida's and FDOT's sovereign immunity.
- F. Artist's obligations to defend and indemnify as described in this Article will survive the expiration or earlier termination of this Contract until it is determined by final judgment that any suit, claim or other action against Authority, its members, officers, agents, employees, and volunteers its fully and finally barred by the applicable statute of limitations or repose.
- G. Nothing in this Article will be construed as a waiver of any immunity from or limitation of liability Authority, or its members, officers, agents, employees, and volunteers may have under the doctrine of sovereign immunity under common law or statute.
- H. Authority and its members, officers, agents, employees, and volunteers reserve the right, at their option, to participate in the defense of any suit, without relieving Artist of any of its obligations under this Article.
- I. If the above Articles A - H or any part of Articles A – H are deemed to conflict in any way with any law, the Article or part of the Article will be considered modified by such law to remedy the conflict.

## ARTICLE 12

### ACCOUNTING RECORDS AND AUDIT REQUIREMENTS

#### 12.01 Authority Right to Perform Audits, Inspections, or Attestation Engagements

Upon written notice at any time or times during the Term of this Contract or within three years after the end of this Contract, Authority, or its duly authorized representative, will be permitted to initiate and perform audits, inspections or attestation engagements over Artist's records for the purpose of determining payment eligibility under this Contract or over selected operations performed by Artist under this Contract for the purpose of determining compliance with this Contract. Access will be granted to all of Artist's records directly pertinent to this Contract or any work order, as well as any sub-consultants or

subcontractors. If the records are kept at locations other than the Airport, Artist will arrange for said records to be brought to a location convenient to Authority auditors to conduct the engagement as set forth in this Article. In the event Artist maintains its accounting or Contract information in electronic format, upon request by Authority auditors, Artist will provide a download of its accounting or Contract information in a computer readable format acceptable to the Authority at no additional cost. Authority has the right during the engagement to interview Artist's employees, sub-consultants, and subcontractors, make photocopies, and inspect any and all records at reasonable times. Artist agrees to deliver or provide access to all records requested by Authority auditors within fourteen (14) calendar days of the request at the initiation of the engagement and to deliver or provide access to all other records requested during the engagement within seven (7) calendar days of each request. The Parties recognize that Authority will incur additional costs if records requested by Authority auditors are not provided in a timely manner and that the amount of those costs is difficult to determine with certainty. Consequently, the Parties agree that Authority may assess liquidated damages in the amount of one hundred dollars (\$100) per day for each record requested that is not received. Accrual of such damages will continue until specific performance is accomplished. If as a result of any engagement, it is determined that Artist has overcharged Authority, Artist will re-pay Authority for such overcharge and the Authority may assess interest of up to 18% on the overcharge from the date the overcharge occurred.

## ARTICLE 13

### INSURANCE

#### 13.01 Insurance

The following minimum limits and coverage will be maintained by the Artist, any contractors, subcontractors, installers, or any other party involved in the fulfillment of this Contract, throughout the Term of this Contract. In the event of default on the following requirements, Authority reserves the right to take whatever actions deemed necessary to protect its interests. Required liability and property insurance policies, other than Workers' Compensation/Employer's Liability, will provide that the Authority, members of the Authority's governing body, and the Authority officers, volunteers and employees are included as additional insured.

#### 13.02 Required Coverage – Minimum Limits

##### A. Commercial General Liability

The minimum limits of insurance (inclusive of any amounts provided by an umbrella or excess policy) without exclusion for independent contractors, XCU, or broad form property damage covering the work performed pursuant to this Contract will be the amounts specified herein. Coverage will be provided for liability resulting out of, or in connection with, ongoing operations performed by, or on behalf of, Artist under this

Contract or the use or occupancy of Authority premises by, or on behalf of, Artist in connection with this Contract. Coverage shall be provided on a form no more restrictive than ISO Form CG 00 01. Additional insurance coverage shall be provided on a form no more restrictive than ISO Form CG 20 10 10 01.

	Contract Specific
Each Occurrence	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Products and Completed Operations	\$1,000,000

**B. Workers’ Compensation and Employer’s Liability Insurance**

The minimum limits of Workers' Compensation/Employer's Liability insurance (inclusive of any amount provided by an umbrella or excess policy) are:

Part One (Workers’ Compensation)	Florida Statutory
Part Two (Employer’s Liability)	
Each Accident	\$1,000,000
Disease – Policy Limit	\$1,000,000
Disease – Each Employee	\$1,000,000

**C. Business Automobile Liability Insurance**

Coverage will be provided for all owned, hired and non-owned vehicles. Coverage shall be provided on a form no more restrictive than ISO Form CA 00 01.

The minimum limits of Business Auto Liability insurance (inclusive of any amounts provided by an umbrella or excess policy) are:

Each Occurrence – Bodily Injury and Property Damage combined	\$1,000,000
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**D. Umbrella Liability Insurance or Excess Liability Insurance** may be used to reach the limits of liability required for the General Liability and the Business Automobile Policy. If applicable, the amounts specified as Contract specific will be an initial layer of coverage which will be applicable only to claims arising out of, or in connection with, the work performed or the use or occupancy of Authority premises in connection with this Contract and will not be reduced or diminished in any manner by claims resulting from other than the work performed or the use or occupancy of Authority premises in connection with this Contract. The amounts specified as total limits will be the total minimum limits required, including the initial layer.

**E. Waiver of Subrogation:** Artist, for itself and on behalf of its insurers, to the full extent permitted by law without voiding the insurance required hereunder, waives all rights against Authority and members of Authority governing body, Authority officers, volunteers and employees, for damages or loss to the extent covered and paid for by any insurance maintained by the Artist.

All insurance policies and evidence of coverage required herein shall include the following language:

*“Hillsborough County Aviation Authority, members of the Authority's governing body and the Authority's officers, volunteers, and its employees are all additional insureds for all liability policies described above, other than workers compensation and professional liability (if required by contract). A waiver of subrogation applies in favor of Hillsborough County Aviation Authority, members of the Authority's governing body, and the Authority's officers, volunteers and employees for damages or loss to the extent covered and paid for by any insurance maintained by the company.”*

### 13.03 Conditions of Acceptance

The insurance maintained by Company throughout the Term must conform at all times with Exhibit C, Standard Procedure, Contractual Insurance Terms and Conditions, which is attached hereto and made a part hereof and may be amended from time to time.

## ARTICLE 14

### NON-DISCRIMINATION

During the performance of this Contract, Artist, for itself, its assignees and successors in interest, agrees as follows:

14.01 Artist will comply with the regulations relative to non-discrimination in federally assisted programs of the Department of Transportation (DOT) Title 49, Code of Federal Regulations, Part 21, as amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Contract.

14.02 Civil Rights. Artist, with regard to the work performed by it under this Contract, 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. Artist will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. During the performance of this Contract, Artist, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

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 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);
- 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 CFR 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 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- G. 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);
- 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 Department of Transportation regulations at 49 CFR parts 37 and 38;
- I. 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);
- 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, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, Artist must take reasonable steps to ensure that LEP persons have meaningful access to Artist’s programs (70 Fed. Reg. at 74087 to 74100); and

- L. Title IX of the Education Amendments of 1972, as amended, which prohibits Artist from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
- 14.03 In all solicitations either by competitive bidding or negotiation made by the Artist for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier must be notified by Artist of Artist's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- 14.04 Artist will provide all information and reports required by the Regulations or directives issued pursuant thereto and must permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Artist is in the exclusive possession of another who fails or refuses to furnish this information, Artist will so certify to Authority or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 14.05 In the event of Artist's non-compliance with the non-discrimination provisions of this Contract, Authority will impose such contractual sanctions as it or the FAA may determine to be appropriate, including, but not limited to, withholding of payments to Artist under this Contract until Artist complies, and/or cancellation, termination or suspension of this Contract, in whole or in part.
- 14.06 Artist will include the provisions of Paragraphs 14.01 through 14.05 in every subcontract and subconsultant contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued thereto. Artist will take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event Artist becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Artist may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Artist may request the United States to enter into such litigation to protect the interests of the United States.
- 14.07 Artist assures that, in the performance of its obligations under this Contract, it will fully comply with the requirements of 14 CFR Part 152, Subpart E (Non-Discrimination in Airport Aid Program), as amended from time to time, to the extent applicable to Artist, to ensure, among other things, that no person will be excluded from participating in any activities covered by such requirements on the grounds of race, creed, color, national origin, or sex. Artist, if required by such requirements, will provide assurances to Authority that Artist will undertake an affirmative action program and will require the same of its subconsultants.

## ARTICLE 15

### AUTHORITY APPROVALS

Except as otherwise specifically indicated elsewhere in this Contract, wherever in this Contract approvals are required to be given or received by Authority, it is understood that the Chief Executive Officer, or designee, is hereby empowered to act on behalf of Authority.

## ARTICLE 16

### DISPUTE RESOLUTION

#### 16.01 Claims and Disputes

- A. A claim is a written demand or assertion by one of the Parties seeking, as a matter of right, an adjustment or interpretation of this Contract, payment of money, extension of time or other relief with respect to the terms of this Contract. The term claim also includes other matters in question between Authority and Artist arising out of or relating to this Contract. The responsibility to substantiate claims will rest with the party making the claim.
- B. If for any reason Artist deems that additional cost or Contract time is due to Artist for work not clearly provided for in this Contract, or previously authorized changes in the work, Artist will notify Authority in writing of its intention to claim such additional cost or Contract time. Artist will give Authority the opportunity to keep strict account of actual cost and/or time associated with the claim. The failure to give proper notice as required herein will constitute a waiver of said claim.
- C. Written notice of intention to claim must be made within ten (10) days after the Artist first recognizes the condition giving rise to the claim or before the work begins on which Artist bases the claim, whichever is earlier.
- D. When the work on which the claim for additional cost or Contract time is based has been completed, Artist will, within ten (10) days, submit Artist's written claim to Authority. Such claim by Artist, and the fact that Authority has kept strict account of the actual cost and/or time associated with the claim, will not in any way be construed as proving or substantiating the validity of the claim.
- E. Pending final resolution of a claim, unless otherwise agreed in writing, Artist will proceed diligently with performance of this Contract and maintain effective progress to complete the Artwork within the Contract time(s) set forth in the Contract.
- F. The making of final payment for this Contract may constitute a waiver of all claims by Authority except those arising from:

1. Claims, security interests or encumbrances arising out of this Contract and unsettled;
2. Failure of the work to comply with the requirements of this Contract; or
3. Terms of special warranties required by this Contract;
4. Latent defects.

#### 16.02 Resolution of Claims Disputes

- A. Authority will review claims and may (1) request additional information from Artist which will be immediately provided to Authority, or (2) render a decision on all or part of the claim. Authority will notify Artist in writing of the disposition of the claim within 21 days following the receipt of such claim or receipt of the required additional information.
- B. If Authority decides that the work relating to such claim should proceed regardless of Authority disposition of such claim, Authority will issue to Artist a written directive to proceed. Artist will proceed as instructed.
- C. Any action initiated by either party associated with a claim or dispute will be brought in the Circuit Court in and for Hillsborough County, Florida.

#### ARTICLE 17

##### WAIVER OF CLAIMS

Artist hereby waives any claim against the City of Tampa, Hillsborough County, State of Florida and Authority, its officers, Board members, agents, or employees, for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Contract or any part thereof, or by any judgment or award in any suit or proceeding declaring this Contract null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

#### ARTICLE 18

##### COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES, RULES

Artist, its officers, employees, agents, subcontractors, and those under its control, will at all times comply with applicable federal, state, and local laws and regulations, Airport Rules and Regulations, policies, procedures and operating directives as are now or may hereinafter be prescribed by Authority, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or Authority including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other

operational matters related to the operation of Airport. Artist, its employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Artist or Authority by the Federal Aviation Administration (FAA) or Transportation Security Administration (TSA). If Artist, employees, agents, subcontractors or those under its control will fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against Authority, then, in addition to any other remedies available to Authority, Artist will be responsible and will reimburse Authority in the full amount of any such monetary penalty or other damages. This amount must be paid by Artist within 15 days from the date of the invoice or written notice.

## ARTICLE 19

### COMPLIANCE WITH PUBLIC RECORDS LAW

**IF ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ARTIST’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (813) 870-8721, [ADMCENTRALRECORDS@TAMPAAIRPORT.COM](mailto:ADMCENTRALRECORDS@TAMPAAIRPORT.COM), HILLSBOROUGH COUNTY AVIATION AUTHORITY, P.O. BOX 22287, TAMPA FL 33622.**

Artist agrees in accordance with Florida Statute Section 119.0701 to comply with public records laws including the following:

- A. Keep and maintain public records required by Authority in order to perform the services contemplated by this Contract.
- B. Upon request from Authority custodian of public records, provide Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract Term and following completion of this Contract.
- D. Upon completion of this Contract, keep and maintain public records required by Authority to perform the services. Artist shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Authority, upon request from Authority custodian of public records, in a format that is compatible with the information technology systems of Authority.

ARTICLE 20

NOTICES AND COMMUNICATIONS

All notices or communications whether to Authority or to Artist pursuant hereto will be deemed validly given, served, or delivered, upon receipt by the Party by hand delivery, or three days after depositing such notice or communication in a postal receptacle, or one day after depositing such notice or communication with a reputable overnight courier service, and addressed as follows:

**TO AUTHORITY:**

(MAIL DELIVERY)

HILLSBOROUGH COUNTY AVIATION AUTHORITY  
TAMPA INTERNATIONAL AIRPORT  
P.O. Box 22287  
TAMPA, FLORIDA 33622-2287  
ATTN: CHIEF EXECUTIVE OFFICER

**TO ARTIST:**

(MAIL DELIVERY)


**OR**

(HAND DELIVERY)

HILLSBOROUGH COUNTY AVIATION AUTHORITY  
TAMPA INTERNATIONAL AIRPORT  
4160 GEORGE J. BEAN PARKWAY  
SUITE 2400, ADMINISTRATIVE OFFICES BUILDING  
2<sup>ND</sup> LEVEL, RED SIDE  
TAMPA, FLORIDA 33607  
ATTN: CHIEF EXECUTIVE OFFICER

(HAND DELIVERY)


or to such other address as either Party may designate in writing by notice to the other Party delivered in accordance with the provisions of this Article.

If notice is sent through a mail system, a verifiable tracking documentation such as a certified return receipt or overnight mail tracking receipt is encouraged.

ARTICLE 21

SUBORDINATION OF AGREEMENT

It is mutually understood and agreed that this Contract will be subordinate to the provisions of any existing or future agreement between Authority and the United States of America, its Boards, Agencies, Commissions, and others, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of

federal funds for the development of the Airport, and this Contract will be subordinate to the license or permit of entry which may be granted by the Secretary of Defense.

ARTICLE 22

SUBORDINATION TO TRUST AGREEMENT

This Contract and all rights of Artist hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by Authority to secure financing. This Contract is subject and subordinate to the terms, covenants, and conditions of the Trust Agreement, made by Authority, authorizing the issuance of bonds by Authority. Conflicts between this Contract and the documents mentioned above will be resolved in favor of such documents.

ARTICLE 23

ASSIGNMENT AND SUBCONTRACTING

Artist will not assign or subcontract this Contract without the prior written consent of Authority. If subcontracting is approved, Artist will be solely responsible for ensuring that its subcontractors perform pursuant to and in compliance with the terms of this Contract.

ARTICLE 24

APPLICABLE LAW AND VENUE

This Contract will be construed in accordance with the laws of the State of Florida. Venue for any action brought pursuant to this Contract will be in Hillsborough County, Florida, or in the Tampa Division of the U.S. District Court for the Middle District of Florida.

ARTICLE 25

RELATIONSHIP OF THE PARTIES

Artist is and will be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Authority will in no way be responsible therefore.

ARTICLE 26

TIME IS OF THE ESSENCE

Time is of the essence for this Contract.

ARTICLE 27

AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if Artist is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said State, or is a foreign

corporation, then in any such event Artist does designate the Secretary of State, State of Florida, as its agent for the purpose of service of process in any court action between it and Authority arising out of or based upon this Contract, and the service will be made as provided by the laws of the State of Florida, for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that if for any reason service of such process is not possible, and Artist does not have a duly noted resident agent for service of process, as an alternative method of service of process, Artist may be personally served with such process out of this State, by the registered mailing of such complaint and process to Artist at the address set out hereinafter in this Contract and that such service will constitute valid service upon Artist as of the date of mailing and Artist will have 30 days from date of mailing to respond thereto. It is further expressly understood that Artist hereby agrees to the process so served, submits to the jurisdiction of the court, and waives any and all obligation and protest thereto, any laws to the contrary notwithstanding.

#### ARTICLE 28

##### INVALIDITY OF CLAUSES

The invalidity of any part, portion, article, paragraph, provision, or clause of this Contract will not have the effect of invalidating any other part, portion, article, paragraph, provision, or clause thereof, and the remainder of this Contract will be valid and enforced to the fullest extent permitted by law.

#### ARTICLE 29

##### HEADINGS

The headings contained herein, including the Table of Contents, are for convenience in reference and are not intended to define or limit the scope of any provisions of this Contract. If for any reason there is a conflict between content and headings, the content will control.

#### ARTICLE 30

##### COMPLETE CONTRACT

This Contract represents the complete understanding between the Parties, and any prior agreements or representations, whether written or verbal, are hereby superseded. This Contract may subsequently be amended only by written instrument signed by the Parties hereto, unless provided otherwise within the terms and conditions of this Contract.

#### ARTICLE 31

##### ORDER OF PRECEDENCE

The documents listed below are a part of this Contract and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:



- A. Terms and conditions as contained in this Contract;
- B. RFP No. 19-534-004, Tampa International Airport Public Art for Master Plan Phase 2 Projects SkyCenter Atrium, Red and Blue Curbsides and Main Terminal, dated October 7, 2019, and all its addenda;
- C. Artist's response to RFP No. 19-534-004, Tampa International Airport Public Art for Master Plan Phase 2 Projects SkyCenter Atrium, Red and Blue Curbsides and Main Terminal, and any subsequent information submitted by Artist during the evaluation process.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and corporate seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**HILLSBOROUGH COUNTY AVIATION  
AUTHORITY**

ATTEST: \_\_\_\_\_  
Jane Castor, Secretary

Address: PO Box 22287  
Tampa FL

WITNESS: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

BY: \_\_\_\_\_  
Gary W. Harrod, Chairman

Address: PO Box 22287  
Tampa FL

**Approved as to form for legal sufficiency:**

BY: \_\_\_\_\_  
David Scott Knight, Assistant General Counsel

**HILLSBOROUGH COUNTY AVIATION AUTHORITY**  
STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Gary W. Harrod, in the capacity of Chairman of the Board of Directors, and Jane Castor, in the capacity of Secretary of the Board of Directors, HILLSBOROUGH COUNTY AVIATION AUTHORITY, a public body corporate under the laws of the State of Florida, on its behalf. They are personally known to me and they did not take an oath.

Stamp or Seal of Notary

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Printed Name

Date Notary Commission Expires (if not on stamp or seal)

Signed in the Presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

BY:

\_\_\_\_\_  
Artist Signature

\_\_\_\_\_  
Artist Printed Name

\_\_\_\_\_  
Artist Printed Address

\_\_\_\_\_  
Artist City/State/Zip

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by

\_\_\_\_\_ in the capacity of \_\_\_\_\_,

of \_\_\_\_\_ a \_\_\_\_\_  
(Name of organization or company, if any) (Corporation / Partnership / Sole Proprietor / Other)

on \_\_\_\_\_ behalf. \_\_\_\_\_  
(Its / His / Her) (They are / He is / She is) (Personally known to me /not personally known to me)

\_\_\_\_\_ and \_\_\_\_\_ take an oath.  
and has produced a document of identification (they / he / she) (did / did not)

Stamp or Seal of Notary

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date Notary Commission Expires (if not on stamp or seal)

EXHIBIT A  
ARTIST'S SCOPE OF WORK

Artist shall provide or cause to be provided the scope of work as described below:

1. Description of Artwork

This concept is informed by the observation of plant life in situ, and it oscillates between abstraction and representation. While researching indigenous plants of Tampa, the Artist identified twelve native species of palm trees, such as the Royal Palm (*Roystonea regia*) and the Florida Silver Palm (*Coccothrinax argentata*), as well as a wealth of smaller native plants including Spanish moss and the Gloriosa lily. These plants speak to the specificity of place; they are critical components of Tampa's ecosystems, and they symbolize tropical paradise to Floridians and visitors alike.

The Artwork's physical site is designated as a rectangle. However, the Artist has chosen to work with an undulating geometric shape, comprised of anodized aluminum panels that function like a shaped canvas. The green trapezoidal forms represent palm trunks, and the white triangles between them denote voids. These shapes are formed by negative spaces and emulate the filtered light and glimpses of sky viewed through palm trees and plant life. While the physical materials are static, the work suggests the dynamic movement of plants in nature and the filtration of light. Although the airport's architecture will bifurcate the piece, the Artwork has been carefully considered to offer engaged and intimate viewpoints whether viewed from the ground floor or upper level.

The Artist will make several trips to Tampa to photograph native plants at arboretums and botanical gardens. These original photographs will be laser etched onto green anodized aluminum panels and cut into the geometric forms, as illustrated in the rendering. The anodized surface is extremely hard and thus preserves and extends the life of the aluminum product. Anodized aluminum is archival, environmentally safe, low maintenance and highly durable.

The etching process will remove the green dye from the aluminum oxide substrate to reveal a photographic image of the plants. The substrate itself has a silver luminosity that will draw people in; its luster and durability is perfectly suited to the indirect light and high volume of traffic in the curbside area. The voids created by the tiling of shapes will create apertures and opportunities within the work; they may be filled with the existing white wall color, or with a light background wash of sky blue.

The Artwork will be flush with the wall, with a ½" reveal around its edges. The edges themselves will likely be folded aluminum. Ensuring seamlessness and the integrity of the shape.

2. Location of Artwork

A. The Artwork will be located as depicted on Exhibit A-2, Artwork Site, which is attached to this Contract.

- B. The exact Artwork location will be dependent upon the site conditions and the Artist will adapt the Artwork as necessary to the site conditions. All adaptations are subject to the prior approval of the Public Art Committee or its designated representatives.

3. Progress Payments and Deliverables

The Artist will be paid by Authority in accordance with the set percentages of the total not to exceed amount of \$285,000 upon completion of the terms of the deliverables noted below. This not to exceed amount includes Artist travel, installation, shipping and handling, correspondence, and meeting and materials.

<u>% Paid</u>	<u>Deliverable</u>
A. 10%	Upon approval by the Authority of the Contract.
B. 20%	Upon approval by Authority of final design, including such items as orientation, building attachment mounting method, and lighting plan.
C. 20%	Upon approval by Authority of a detailed written progress report which shall include digital photos reflecting all sides of the Artwork or other acceptable documentation as deemed by the Authority, demonstrating that the development of the Artwork is 30% completed.
D. 20%	Upon approval by Authority of a detailed written progress report which shall include digital photos reflecting all sides of the Artwork or other acceptable documentation as deemed by the Authority, demonstrating that the development of the Artwork is 50% completed. The Authority will determine if a site visit is required to confirm 50% completion.
E. 10%	Upon approval by Authority of a detailed written progress report, to be submitted no later than August 2021, which shall include digital photos reflecting all sides of the Artwork or other acceptable documentation as deemed by the Authority, demonstrating that the Artwork is substantially complete. Authority reserves the right to perform an onsite inspection prior to approval. Any minor corrective work that may be required shall be made by the Artist within 30 days of the Authority's notice.
F. 20%	Upon completion of any corrective work as approved by the Authority, installation of the Artwork and receipt by Authority of a completed Exhibit A-1, Final Artwork Information & Maintenance Form, this Exhibit B, Certificate of Acceptance and Project Completion, and any applicable Vendor/Suppliers Warranty Specifications Sheets.

4. Project Schedule/Timeline

Artwork substantially complete: August 2021

Begin Artwork installation: Fall 2021

Artwork installation substantially complete: Fall 2021

5. General Requirements

- A. Artist will be required to make as many visits as necessary to and from the Airport to perform or provide the Scope of Work.
- B. Artist will be responsible for the transportation of the Artwork to the Airport and to the specific location, as depicted on Exhibit A-2, Artwork Site, inside the building, and for any other services to be performed to the reasonable satisfaction of the Authority and the Public Art Committee.
- C. Artist will be required to furnish all supplies, materials and equipment as is necessary for the handling, storage and shipping of the Artwork.
- D. At a date and time to be determined by the Parties, Artist will attend a pre-installation meeting at the Airport with Authority.

ARTIST RENDERING  
Catherine Wagner  
*Remember the Gardens*

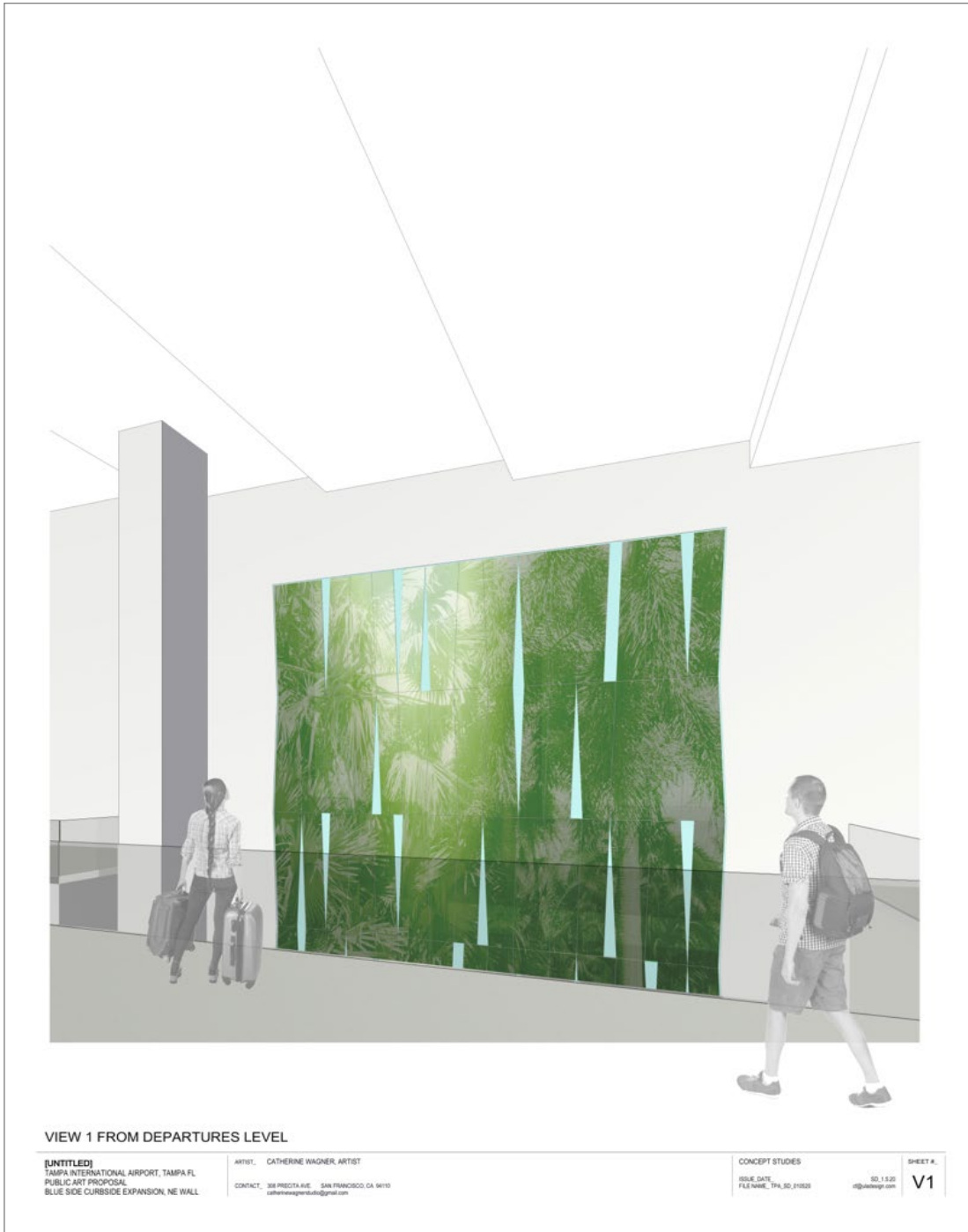


Exhibit A-1  
Final Artwork Information & Maintenance Form

Artist:

Title of Work:

Date Created/Completed:

Dimensions:

Medium:

Materials:

Location:

**CONCEPTUAL INFORMATION**

1. Conceptual information on the Artwork, including subject and source of inspiration. This information will be used for educational purposes or as Public Art promotional material:
2. A brief statement to be used on the wall label for the Artwork:

**MEDIUM AND TECHNIQUE**

1. Describe in detail the principal materials used in fabrication, such as specific metal, brand name, source, or manufacturer and supply brand names of materials used when possible:
2. If applicable, description of any electrical components used, their operation and supplier. Attach manufactures specification sheets and warranties:
3. List vendors/contractors used in the construction:

**FINAL WORK METHODS**

1. Detailed description of work method such as cast, welded, carved, modeled, thrown, painted and assembled:
2. If the Artwork has been cast, specify how many have been and/or will be produced and the location of the molds:



3. Description of how final surface/patina was achieved:
4. Protective coating method and material of application:
5. Location where Artwork was completed to include the name of studio, foundry, address, and phone number:
6. Length of time the Artwork was in process:

### **INSTALLATION**

1. Special installation considerations such as viewing height and measured distance from relative objects:
2. Installation instructions and photographs or sketches if the Artwork is comprised of more than one piece requiring special assembly:

### **DESIRED APPEARANCE**

1. Description in specific terms and, if necessary, with drawings or photographs, of the physical qualities for which the Authority should strive in order to maintain the Artist's intent such as matte rather than glossy luster or color of patina. Acceptable alteration in form, surface, texture, coloration as related to natural aging of materials:
2. If the Artwork is site-specific, a description in detail of the particular relationship of the Artwork to its site, including any significant physical aspects of the site which, if altered, would significantly alter the intended meaning and/or appearance of the Artwork:

### **MAINTENANCE/CONSERVATION INSTRUCTIONS**

1. Instructions regarding the methods and frequency of maintenance for the Artwork with observations regarding permanency/durability of materials and techniques:
2. Description of routine maintenance such as removal of dust, dirt, maintenance of protective surfaces, tightening, adjusting, oiling, etc.:
3. Description of cyclical maintenance that is less frequent and more extensive preventive measures such as disassembly and inspection, reapplication of protective sealers, and repainting:

## **SPECIAL CONSIDERATION**

1. Detailed information and drawings about the Artwork, such as any electrical, mechanical, structural and/or other unique or contemporary materials:
2. Listing of electrical components such as lights, motors, transformers, and photovoltaic, or mechanical such as, bearings, springs, and universal joints, or unique materials such as resins, plastics, and expanded polystyrene:
3. Detailed schematics of electrical components or mechanical drawings and names of manufacturers as well as detailed information of where these components were purchased:  **The schematics or drawings and the detailed information are attached.**
4. Frequency and in what ways these components should be maintained such as tighten connections, replace bulbs, check timers, and replace batteries:
5. Other pertinent information for the care of the these components as well as location of electrical power disconnect, if applicable:

Exhibit A-2  
Artwork Site | Blue Curbside EAST

Blue Side Curb Expansion – “Remember the Gardens”

VERTICAL SPACE & PRIOR LANDSCAPE CHARACTER

**BCEX 1 & BCEX 2**

Wall mounted: Digital or Static

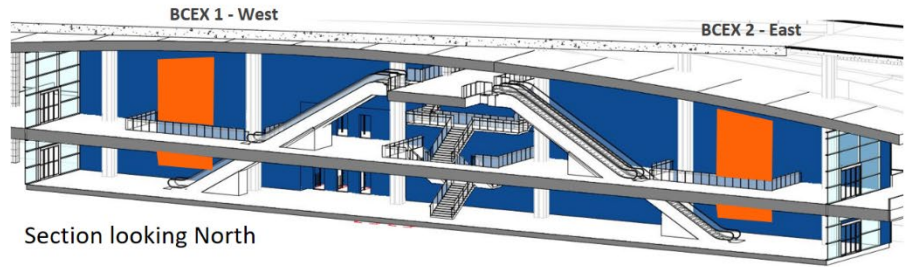
28ft w x 2ft d x 34ft h

Max Top: Align with Transfer level floor

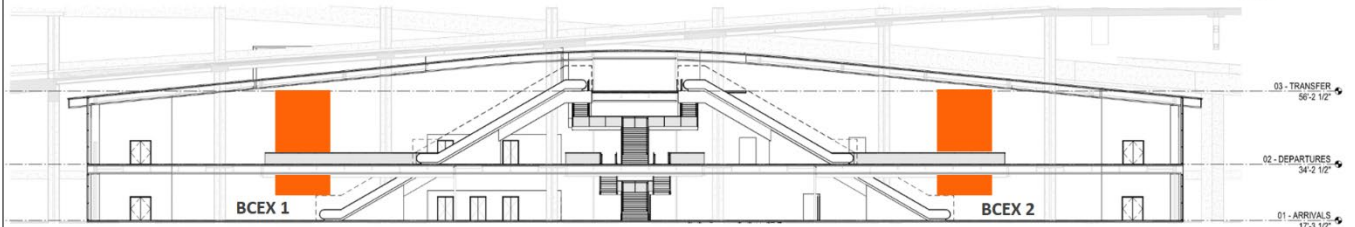
Min Bottom: Arrivals level 4 ft off

Budget: \$300,000 & 285,000

Install: Fall 2021



Section looking North



East / West Section

**Exhibit B, Certificate of Acceptance and Project Completion**

DELIVERABLE	% OF TOTAL PAID	AMOUNT PAID TO ARTIST	ARTIST'S ACCEPTANCE DELIVERABLE COMPLETION		AUTHORITY ACCEPTANCE OF TASK COMPLETION	
			Signature	Date	Signature	Date
Upon approval by the Authority of the Contract.	10%	<u>\$28,500.00</u>				
Upon approval by Authority of final design, including such items as orientation, building attachment mounting method, and lighting plan.	20%	<u>\$57,000.00</u>				
Upon approval by Authority of a detailed written progress report which shall include digital photos reflecting all sides of the Artwork or other acceptable documentation as deemed by the Authority, demonstrating that the development of the Artwork is 30% completed.	20%	<u>\$57,000.00</u>				
Upon approval by Authority of a detailed written progress report which shall include digital photos reflecting all sides of the Artwork or other acceptable documentation as deemed by the Authority, demonstrating that the development of the Artwork is 50% completed. The Authority will determine if a site visit is required to confirm 50% completion.	20%	<u>\$57,000.00</u>				
Upon approval by Authority of a detailed written progress report, to be submitted no later than the date identified in Item 3 (D) on Exhibit A, Artist's Scope of Work, which shall include digital photos reflecting all sides of the Artwork or other acceptable documentation as deemed by the Authority, demonstrating that the Artwork is substantially complete. Authority reserves the right to perform an onsite inspection prior to approval. Any minor corrective work that may be required shall be made by the Artist within 30 days of the Authority's notice.	10%	<u>\$28,500.00</u>				
Upon completion of any corrective work as approved by the Authority, installation of the Artwork and receipt by Authority of a completed Exhibit A-1, Final Artwork Information & Maintenance Form, this Exhibit B, Certificate of Acceptance and Project Completion, and any applicable Vendor/Suppliers Warranty Specifications Sheets.	20%	<u>\$57,000.00</u>				

**Total Amount Paid to Artist \$285,000.00**

Exhibit C  
Standard Procedure  
Contractual Insurance Terms and Conditions

**PURPOSE:** To establish the insurance terms and conditions associated with contractual insurance requirements. This Standard Procedure is applicable to all companies with Authority contracts, and to the extent required by Florida Department of Transportation Public Transportation Grant Agreement, every contractor, subcontractor, consultant, and sub-consultant at each tier. Unless otherwise provided herein, any exceptions to the following conditions or changes to required coverages or coverage limits must have prior written approval from the General Counsel and Executive Vice President of Legal Affairs or designee.

**INSURANCE COVERAGE:**

A. Procurement of Coverage:

With respect to each of the required coverages, the company will, at the company's expense, procure, maintain and keep in force the types and amounts of insurance conforming to the minimum requirements set forth in the applicable contract. To the extent required by Florida Department of Transportation Public Transportation Grant Agreement, company shall further require that all contractors, subcontractors, consultants, and sub-consultants at each tier satisfy and meet all the requirements of the applicable contract, including the terms and conditions of this Standard Procedure. Coverage will be provided by insurance companies eligible to do business in the State of Florida and having an AM Best rating of A- or better and a financial size category of VII or better. Utilization of non-rated companies, companies with AM Best ratings lower than A-, or companies with a financial size category lower than VII must be submitted by the company to the Authority Director of Risk Management for approval prior to use. The Authority retains the right to approve or disapprove the use of any insurer, policy, risk pooling or self-insurance program.

B. Term of Coverage:

Except as otherwise specified in the contract, the insurance will commence on or prior to the effective date of the contract and will be maintained in force throughout the duration of the contract and for any period of extended coverage required in the contract. If a policy is written on a claims-made form, the retroactive date must be shown and this date must be before the earlier of the date of the execution of the contract or the beginning of contract work, and the coverage must respond to all claims reported within three years following the period for which coverage is required unless a longer period of time is otherwise stated in the contract.

C. Reduction of Aggregate Limits:

If the general or aggregate limit for any policy is exhausted, the company, and to the extent required by Florida Department of Transportation Public Transportation Grant Agreement, all of the company's contractors, subcontractors, consultants, and sub-consultants at each tier, will immediately take all possible steps to have it reinstated. The commercial general liability policies and any excess or umbrella policies used to provide the required amount of insurance shall include a per project designated aggregate limit endorsement providing that the limits of such insurance specified in the contract shall apply solely to the work under the contract without erosion of such limits by other claims or occurrences.

1. Cancellation Notice

Each insurance policy will be specifically endorsed to require the insurer to provide written notice to the Authority at least 30 days (or 10 days prior notice for non-payment of premium) prior to any cancellation, non-renewal or adverse change, initiated by the insurer, and applicable to any policy or coverage described in the contract or in this Standard Procedure. The endorsement will specify that such notice will be sent to:

Hillsborough County Aviation Authority  
Attn.: Chief Executive Officer  
Tampa International Airport  
Post Office Box 22287  
Tampa, Florida 33622

Additionally, to the extent required by Florida Department of Transportation Public Transportation Grant Agreement, the workers' compensation, commercial general liability and railroad protective insurance (if required) of every contractor, subcontractor, consultant, and sub-consultant at each tier shall be specifically endorsed to require the insurer to provide the Florida Department of Transportation notice within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described in the contract or this Standard Procedure.

D. No waiver by approval/disapproval:

The Authority accepts no responsibility for determining whether the company or any contractor, subcontractor, consultant, or sub-consultant at each tier is in full compliance with the insurance coverage required by the contract. The Authority's approval or failure to disapprove any policy, coverage, or Certificate of Insurance does not relieve or excuse the company of any obligation to procure and maintain the insurance required in the contract or in this Standard Procedure, nor does it serve as a waiver of any rights or defenses the Authority may have.

E. Future Modifications – Changes in Circumstances:

1. Changes in Coverages and Required Limits of Insurance

The coverages and minimum limits of insurance required by the contract are based on circumstances in effect at the inception of the contract. If, in the opinion of the Authority, circumstances merit a change in such coverage or minimum limits of insurance required by the contract, the Authority may change the coverage and the minimum limits of insurance required, and the company will, within 60 days of receipt of written notice of a change in the coverage and/or the minimum limits required, comply with such change and provide evidence of such compliance in the manner required by the contract. Provided, however, that no change in the coverages or minimum limits of insurance required will be made by the Authority until at least two years after inception of the contract or two after any change by the Authority in the coverages or minimum limits of insurance required in the contract unless extreme conditions warrant such change and are agreeable to both parties. To the extent required by Florida Department of Transportation Public Transportation Grant Agreement, any such change or modification in coverage or limits shall also apply to the contractors, subcontractors, consultants, and sub-consultants at each tier.

If, in the opinion of the Authority, compliance with the insurance requirements is not commercially practicable for the company, its contractors, subcontractors, suppliers, consultants, or subconsultants at each tier, at the written request of the company, the Authority may, at its sole discretion and subject to any conditions it deems appropriate, relax or temporarily suspend, in whole or in part, the insurance requirements which would otherwise apply to the company. Any such modification will be subject to the prior written approval of the Authority's General Counsel and Executive Vice President of Legal Affairs or designee, and subject to the conditions of such approval.

F. Proof of Insurance – Insurance Certificate:

1. Prior to Work, Use or Occupancy of Authority Premises

The company and, to the extent required by Florida Department of Transportation Public Transportation Grant Agreement, the company's contractors, subcontractors, consultants, and sub-consultants at each tier will not commence work, or use or occupy Authority's premises in connection with the contract until the required insurance is in force, preliminary evidence of insurance acceptable to the Authority has been provided to the Authority, and the Authority has granted permission to the company to commence work or use or occupy the premises in connection with the contract.

2. Proof of Insurance Coverage

As preliminary evidence of compliance with the insurance required by the contract, the company will furnish the Authority with an ACORD Certificate of Liability Insurance (Certificate) reflecting the required coverage described in the contract and this Standard Procedure.

The Certificate must:

- a. Be signed by an authorized representative of the insurer. Upon request of the Authority, Company will furnish the Authority with any specific endorsements effecting coverage required by the contract. The endorsements are to be signed by a person authorized by insurer to bind the coverage on the insurer's behalf;
- b. State that: "Hillsborough County Aviation Authority, members of the Authority's governing body and the Authority's officers, volunteers, and its employees are additional insureds for all policies described above other than workers' compensation and professional liability (if required by contract)";
- c. To the extent required by Florida Department of Transportation Public Transportation Grant Agreement, state that the Florida Department of Transportation is an additional insured for commercial general liability;
- d. Indicate that the insurers for all required policies shown on the Certificate have waived their subrogation rights against the Authority, members of the Authority's governing body, and the Authority's officers, volunteers, agents, and employees;



- e. Indicate that the Certificate has been issued in connection with the contract;
- f. Indicate the amount of any deductible or self-insured retention applicable to all coverages; and
- g. Identify the name and address of the Certificate holder as:

Hillsborough County Aviation Authority  
Attn.: Chief Executive Officer  
Tampa International Airport  
Post Office Box 22287  
Tampa, Florida 33622;

If requested by the Authority, the company will, within 15 days after receipt of written request from the Authority, provide the Authority, or make available for review, a certified complete copy of the policies of insurance. The company may redact those portions of the insurance policies that are not relevant to the coverage required by the contract. The company will provide the Authority with renewal or replacement evidence of insurance, acceptable to the Authority, prior to expiration or termination of such insurance.

G. Deductibles, Self-Insurance, Alternative Risk or Insurance Programs:

- 1. All deductibles, as well as all self-insured retentions and any alternative risk or insurance programs (including, but not limited to, the use of captives, trusts, pooled programs, risk retention groups, or investment-linked insurance products), must be approved by the General Counsel and Executive Vice President of Legal Affairs or designee. The company agrees to provide all documentation necessary for the Authority to review the deductible, self-insurance or alternative risk or insurance program.
- 2. The company will pay on behalf of the Authority, any member of the Authority's governing body, and/or any officer, volunteer, agent, or employee of the Authority, any deductible, self-insured retention (SIR), or difference from a fully insured program which, with respect to the required insurance, is applicable to any claim by or against the Authority, or any member of the Authority's governing body, or any officer, volunteer, agent, or employee of the Authority.

3. The contract by the Authority to allow the use of a deductible, self-insurance or alternative risk or insurance program will be subject to periodic review by the Director of Risk Management. If, at any time, the Authority deems that the continued use of a deductible, self-insurance, or alternative risk or insurance program by the company should not be permitted, the Authority may, upon 60 days' written notice to the company, require the company to replace or modify the deductible, self-insurance, or alternative risk or insurance program in a manner satisfactory to the Authority.
4. Any deductible amount, self-insurance, or alternative risk or insurance program's retention will be included and clearly described on the Certificate prior to any approval by the Authority. This is to include fully insured programs as to a zero deductible per the policy. Authority reserves the right to deny any Certificate not in compliance with this requirement.
5. To the extent required by Florida Department of Transportation Public Transportation Grant Agreement, the commercial general liability may not be subject to a self-insured retention. Subject to approval by the Authority under sub-paragraphs 1-4 above, the commercial general liability may contain a deductible, provided that such deductible shall be paid by the named insured.

#### H. Company's Insurance Primary:

The insurance required by the contract will apply on a primary and non-contributory basis. Any insurance or self-insurance maintained by the Authority will be excess and will not contribute to the insurance provided by or on behalf of the company.

To the extent required by Florida Department of Transportation Public Transportation Grant Agreement, the company will ensure that the insurance provided by all contractors, subcontractors, consultants, and subconsultants at each tier will apply on a primary basis as to any other insurance available and shall not be more restrictive than the coverage afforded to the named insured.

#### I. Incident Notification:

In accordance with the requirements of Standard Procedure S250.02, the company will promptly notify the Airport Operations Center (AOC) of all incidents involving bodily injury or property damage occurring on Authority-owned property, tenant owned property or third party property.

J. Customer Claims, Issues, or Complaints:

In addition to complying with all terms outlined in Standard Procedure S250.02, all customer claims, issues, or complaints involving property damage or bodily injury related to the company will be promptly handled, addressed and resolved by the company.

The company will track all customer claims, issues, or complaints involving property damage or bodily injury and their status on a Claims Log available for review, as needed, by Risk Management. The Claims Log should include a detailed report of the incident along with the response and/or resolution. Risk Management has the option to monitor all incidents, claims, issues or complaints where the Authority could be held liable for injury or damages.

K. Applicable Law:

With respect to any contract entered into by the Authority with a value exceeding \$10,000,000, if any required policy or program is: (i) issued to a policyholder outside of Florida or (ii) contains a “choice of law” or similar provision stating that the law of any state other than Florida shall govern disputes concerning the policy, then such policy or program must be endorsed so that Florida law (including but not limited to Part II of Chapter 627 of the Florida Statutes) will govern any and all disputes concerning the policy or program in connection with claims arising out of work performed pursuant to the contract.

L. Waiver of Subrogation:

The company, for itself and on behalf of its insurers, to the fullest extent permitted by law without voiding the insurance required by the contract, waives all rights against the Authority, members of the Authority’s governing body and the Authority’s officers, volunteers, agents, and employees, as well as the State of Florida, Department of Transportation, including the Department’s officers and its employees, for damages or loss to the extent covered and paid for by any insurance maintained by the company. The company shall require all contractors, subcontractors, suppliers, consultants and subconsultants at each tier for themselves and their insurers, to the fullest extent permitted by law without voiding the insurance required by the contract, to waive all rights against the Authority, members of the Authority’s governing body and the Authority’s officers, volunteers, agents and its employees, as well as the State of Florida, Department of Transportation, including the Department’s officers and its employees, for damages or loss to the extent covered and paid for by any

insurance maintained by the company to the extent covered and paid for by any insurance maintained by the company's contractors, subcontractors, suppliers, consultants and subconsultants at each tier. The company shall further require that all contractors, subcontractors, suppliers, consultants, and subconsultants at each tier include the following in every contract and on each policy:

"Hillsborough County Aviation Authority, members of the Authority's governing body and the Authority's officers, volunteers, agents, and its employees, as well as the State of Florida, Department of Transportation, including the Department's officers and its employees, are additional insureds for the coverages required by all policies as described above other than workers compensation and professional liability."

M. Company's Failure to Comply with Insurance Requirements:

1. Authority's Right to Procure Replacement Insurance

If, after the inception of the contract, the company fails to fully comply with the insurance requirements of the contract, in addition to and not in lieu of any other remedy available to the Authority provided by the contract, the Authority may, at its sole discretion, procure and maintain on behalf of the company, insurance which provides, in whole or in part, the required insurance coverage.

2. Replacement Coverage at Sole Expense of Company

The entire cost of any insurance procured by the Authority pursuant to this Standard Procedure will be paid by the company. At the option of the Authority, the company will either directly pay the entire cost of the insurance or immediately reimburse the Authority for any costs incurred by the Authority, including all premiums, fees, taxes, and 15% for the cost of administration.

a. Company to Remain Fully Liable

The company agrees to remain fully liable for full compliance with the insurance requirements in the contract. To the extent that there is any exclusion, deficiency, reduction, or gap in a policy which makes the insurance more restrictive than the coverage required, the company agrees to remain responsible and obligated to make the Authority whole as if the company and all of its contractors, subcontractors, consultants,

and sub-consultants at each tier fully met the insurance requirements of the contract.

b. Authority's Right to Terminate, Modify, or Not Procure

Any insurance procured by the Authority is solely for the Authority's benefit and is not intended to replace or supplement any insurance coverage which otherwise would have been maintained by the company or by any of its contractors, subcontractors, consultants, or sub-consultants at each tier. Authority is not obligated to procure any insurance pursuant to these requirements and retains the right, at its sole discretion, to terminate or modify any such insurance which might be procured by the Authority pursuant to this Standard Procedure.

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