

Hillsborough County Aviation Authority

ARTIST SERVICES CONTRACT

ARTIST: _____

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 5th 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 _____, a _____, 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 _____, currently projected to be in _____.

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

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, 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
2ND 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)