

**TRIPARTITE MAINTENANCE AND LICENSE AGREEMENT
FOR
MEMORIAL HIGHWAY & VETERANS EXPRESSWAY U-PATH CORRIDOR**

THIS TRIPARTITE MAINTENANCE AND LICENSE AGREEMENT FOR MEMORIAL HIGHWAY & VETERANS EXPRESSWAY U-PATH CORRIDOR ("Agreement"), is made and entered into as of the _____ day of _____, 202____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, ("Department"), the CITY OF TAMPA, a municipal corporation of the State of Florida, existing under the Laws of Florida, ("City"), and the HILLSBOROUGH COUNTY AVIATION AUTHORITY, an independent special district existing under the laws of the State of Florida, ("Authority") (hereinafter individually and collectively referred to as the "Party" or "Parties").

WITNESSETH:

WHEREAS, the Department controls right-of-way known as State Road 60, Memorial Highway, and the Veterans Expressway (collectively referred to as "Right-of-way"), consisting of roadway improvements and adjacent shoulder areas located in the vicinity of Tampa International Airport ("Airport"); and

WHEREAS, the Authority is the fee simple owner of the land underlying portions of the Right-of-way and has granted easement rights to the Department pursuant to those certain agreements as recorded in Official Record Book 6748, Page 0910 and Official Record Book 13418, Page 1781, of the public records of Hillsborough County, Florida, including any amendments or subsequent restatements thereof (collectively referred to as "Highway Easements"), incorporated herein by reference and made a part hereof; and

WHEREAS, the Department has constructed an asphalt pavement service road bounded by grass areas and security fencing ("Improvements") within the Highway Easements located between Fish Creek and Cypress Street, and between Skyway Park and Courtney Campbell Causeway, as generally depicted on Exhibit "A" dated February 22, 2012 and entitled U-Path Location map, attached hereto and by this reference made a part hereof, which serves as a service road and utility corridor ("U-Path Corridor"); and

WHEREAS, the U-Path Corridor provides ingress and egress to the Authority and the Federal Aviation Administration ("FAA") to other Authority property, and to utility providers maintaining utilities within the Highway Easements; and

WHEREAS, the City desires to utilize and maintain the U-Path Corridor to provide pedestrian connection to other pavement improvements outside the Highway Easements; and

WHEREAS, the Department considers pedestrian use of the U-Path Corridor to be appurtenant to the rights granted in the Highway Easements; and

WHEREAS, the Parties recognize the need to enter into this Agreement to designate and set forth the terms and conditions for the City's use and maintenance of the Improvements and the U-Path Corridor; and

WHEREAS, the Department is authorized pursuant to Section 334.044(7), Florida Statutes to enter into contracts and agreements; and

WHEREAS, the City and Authority have authorized their officers to execute this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter contained, the Parties enter into this Agreement and agree as follows:

1. The above recitals are true and correct and are incorporated herein.
2. The Department grants the City a non-exclusive license for the right to access, use, and maintain the U-Path Corridor for the specific purposes described herein. This Agreement conveys no interest in real property in the U-Path Corridor but only a non-exclusive license to use the U-Path Corridor for the specific purposes stated herein.
3. This Agreement will become effective upon execution by all Parties ("Effective Date").
4. The Term of this Agreement will commence on the Effective Date and will expire on the last day of the tenth year following the Effective Date. This Agreement will have two, five-year options to extend upon written agreement by Parties, to all parties and without the need for formal amendment to this Agreement. This Agreement will automatically terminate at such time as either of the Highway Easements terminate, at such time as the U-Path Corridor is no longer used by the City for the specific purposes described herein, or at such time as the Authority provides the Department and the City 60 calendar days written notice of the Authority's intent to conduct environmental studies to construct an additional runway to the west of runway 1L-19R.
5. The U-Path Corridor may be used for non-motorized pedestrian purposes. However, nothing herein shall be construed to limit, impede or interfere with the City, Authority, FAA, Department, or utility providers' use of the U-Path Corridor, including vehicular use and use of motorized equipment. Department and Authority specifically reserve for themselves and for FAA and utility providers the right to temporarily close the U-Path Corridor for highway, Airport or utility purposes.
6. The City will be notified prior to planned closures of the U-Path Corridor. Unscheduled closures in response to unanticipated incidents may be done without delay and the City will be notified as soon as possible.
7. At the City's own expense, the City agrees to:
 - (a) install removable bollards at the Cypress Street, Fish Creek, Skyway Park, and Courtney Campbell entrances for the purpose of prohibiting vehicular access to the U-Path Corridor by the public. Upon the termination or early expiration of this Agreement, any improvements made by the City shall belong to the City; and

- (b) maintain the Improvements in accordance with the maintenance plan, attached hereto as Exhibit "B" and by this reference made a part hereof ("Maintenance Plan"); and
- (c) provide emergency police and emergency medical services within the U-Path Corridor; and
- (d) obtain the Authority and Department's prior written approval before modifying the Improvements or the Maintenance Plan.

The Department and the Authority assume no responsibility for security of the U-Path Corridor at any time.

8. With prior written approval of the Department and Authority, the City shall be entitled to install waste receptacles and emergency telephones along the U-Path Corridor. Should City install any type of radio transceiver or other wireless communications equipment, the City will provide frequency protection within the aviation air/ground VHF frequency band and the UHF frequency band in accordance with restrictions promulgated by the FAA for the vicinity of FAA transmitter or receiver facilities. Frequency protection will also be provided for all other frequency bands operating in the vicinity of the City's equipment. Should interference occur as a result of City's installation, Authority reserves the right to block the City's transmissions until appropriate remedies to the interference are made by City. Such remedies may include relocation to another site. The cost of all such efforts to remedy the interference will be solely at City's expense.

9. The U-Path Corridor shall be subject to periodic inspections by the Department. In the event that any of the aforementioned maintenance responsibilities are not carried out, the Department may terminate this Agreement in accordance with paragraph 17(a) below.

10. The Department's Tampa Area Maintenance Office shall be advised of the City's schedule for maintenance activities. Unscheduled maintenance activities in response to unanticipated incidents shall be performed without delay and the Department's Tampa Area Maintenance Office shall be notified immediately.

11. The City will not interfere or permit interference with the use, operation, or maintenance of the Airport and will not engage in any activity prohibited by Authority's existing or future noise abatement procedures, Airport Zoning Regulations, or its Rules and Regulations and Operating Directives. The City further agrees to comply with all applicable rules and regulations of the Department.

12. The Parties agree the rights and obligations granted pursuant to this Agreement are subject to and subordinate to the Highway Easements and any instruments and documents under which the Authority acquired the land or any existing or future agreement between the Authority and the United States of America or any of its agencies relative to the operation and maintenance of the Airport.

13. The City acknowledges and recognizes that future development plans for the Airport include the construction of an additional runway to the west of runway 1L-19R ("West Runway"). The City specifically agrees that the U-Path Corridor is primarily for Department, Authority, FAA, and utility purposes and any pedestrian use is temporary and incidental to the primary use. The City also

acknowledges and recognizes such pedestrian use does not constitute a major purpose under 23 Code of Federal Regulations Part 774, also referred to as Section 4(f) evaluation. The City further agrees not to dedicate the U-Path Corridor as a park or recreational area. The Authority shall provide 60 calendar days written notice as provided in paragraph 17 (d) below to the City and the Department of its intention to conduct environmental studies to construct the West Runway and terminate this Agreement. The City shall, within the time provided by the Authority and at its sole cost, remove any City owned structures it maintains under this Agreement and fully mitigate or minimize any adverse impacts or harm to the U-Path Corridor, including relocation of the pedestrian use, if any.

14. The Department recognizes that the City must comply with Section 166.241, *Florida Statutes*. This Agreement shall not be construed to modify in any way the City's obligations under that statute.

15. The Department and the City recognize that the Authority must include and incorporate certain required FAA and Florida Statutory language into this Agreement which is attached hereto as Exhibit "C", entitled Required Language, and which by this reference is made a part hereof ("Required Language").

16. The Department's District Secretary shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement between Department and City, the prosecution or fulfillment of the service hereunder, and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be final and conclusive upon the Department and City.

17. This Agreement may be terminated under any one of the following conditions:

- (a) By the Department if the City, following 15 business days written notice, fails to perform its maintenance responsibilities under this Agreement.
- (b) By the City following 60 calendar days written notice.
- (c) By the Department following 60 calendar days written notice.
- (d) By the Authority following 60 calendar days written notice.

Copies of all notices pursuant to this paragraph will be provided to the Hillsborough County Aviation Authority in accordance with Paragraph 20 below.

18. To the extent provided by law, the City shall indemnify, defend and hold harmless the Authority and all of its officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any act, error, omission, or negligent act by the City, its agents or employees, occasioned by the City's use of the U-Path Corridor, except that neither the City, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost or expense arising out of any act, error, omission, or negligent act by the Authority or any of its officers, agents or employees occasioned by the Authority's use of the U-Path Corridor. When the Authority receives a notice of claim for damages that may have been caused by the City as a result of the City's use of the U-Path Corridor, the Authority will immediately forward the claim to the City. The Authority and the City will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss

options for defending the claim. After reviewing the claim, the Authority will determine whether to require the participation of the City in the defense of the claim or to require that the City defend the Authority against such claim as described in this paragraph. The Authority's failure to promptly notify the City of a claim shall not act as a waiver of any right herein to require the City's participation in or the defense of the claim by the Authority. The Authority and the City will each pay their own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial. The City shall promptly repair any damage to the U-Path Corridor caused by the City's use thereof. In such event, the City agrees to restore the U-Path Corridor to its original condition and grade.

Nothing in this indemnity shall be deemed as a waiver of the limitations of liability in favor of either party as set forth at Section 768.28, Florida Statutes, or as otherwise preventing either party from asserting any defense, privilege or immunity it may enjoy under the doctrine of sovereign immunity or other Florida law in connection with any claim arising under this Agreement.

19. The Department and the City expressly agree that the Authority reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the U-Path Corridor together with the right to cause in said airspace such noise, disturbance, spray, vibration, fumes, dust, fuel particles and other fallout and effects as may be inherent in the safe and proper operation of aircraft operating upon, over or near the U-Path Corridor, now known or hereinafter used for navigation of or flight in the said airspace; and a right to use said airspace for landing on, taking off from or operating on the Airport. The Department and the City further agree to prevent any use of the U-Path Corridor which would interfere with or adversely affect the operation or maintenance of the Airport, otherwise constitute an Airport hazard, or violate any federal or Authority aviation or zoning regulations.

20. All notices, demands, requests or other instruments shall be given by depositing the same in the U.S. Mail, postage prepaid, registered or certified with return receipt:

- (a) If to the Department, address to Tampa Area Maintenance Engineer, Florida Department of Transportation, 2810 Leslie Road, Tampa, Florida, 33619, or at such other address as the Department may from time to time designate by written notice to the Parties; and
- (b) If to the City, address to Service Area Manager, City of Tampa Parks & Recreation, 3402 E. Columbus Drive, Tampa, Florida 33607, or at such other address as the City may from time to time designate by written notice to the Parties; and
- (c) If to the Authority, address to Hillsborough County Aviation Authority, Attn: Chief Executive Officer, P. O. Box 22287, Tampa, FL 33622, or at such other address as the Authority may from time to time designate by written notice to the Parties.

All time limits provided hereunder shall run from the date of receipt of all such notices, demands, requests and other instruments.

21. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

(Remainder of page intentionally left blank)

HILLSBOROUGH COUNTY AVIATION AUTHORITY

ATTEST: _____
Mary Baltzell, Executive Assistant

BY: _____
Joseph W. Lopano, Chief Executive Officer

WITNESS: _____
Signature

Print Name

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 by means of physical presence or online notarization, this ____ day of _____, 2023, by Joseph W. Lopano, in the capacity of Chief Executive Officer, and Mary Baltzell, in the capacity of Executive Assistant to the Chief Executive Officer, 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 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)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF TAMPA

A municipal corporation
of the State of Florida

BY: Jane Castor
Jane Castor
Mayor of the City of Tampa

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION

BY: Francis Lewis
Francis Lewis, P.E.
Director of Transportation Operations
District Seven

ATTEST:

Shirley Fox-Heades
City Clerk/Deputy City Clerk (SEAL)

ATTEST:

Consencia J. Gladde
Executive Secretary (SEAL)

The execution of this document was
Authorized by Resolution No. 2023- 210

APPROVED AS TO FORM:

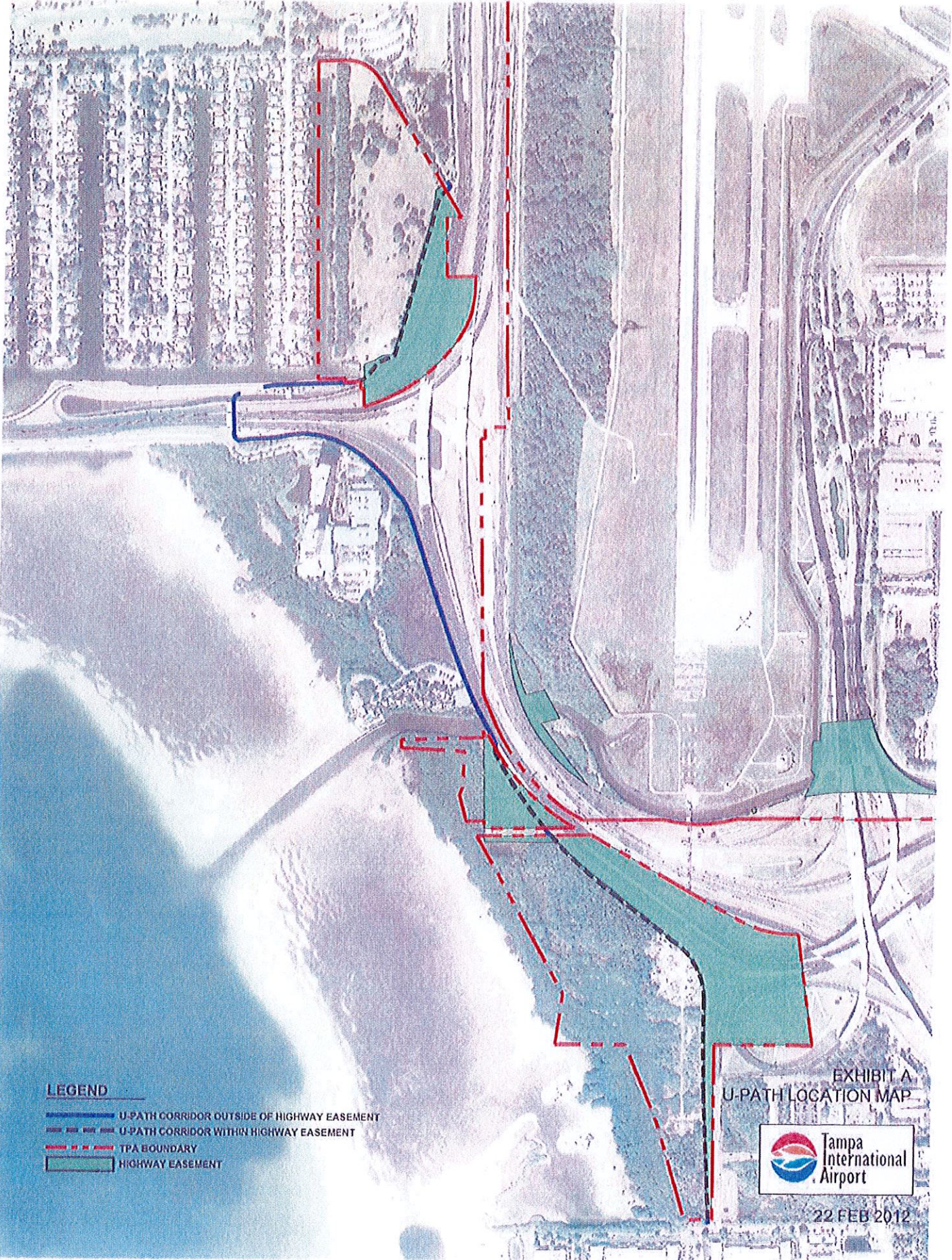
Ron Wigginton
Ron Wigginton, Assistant City Attorney

LEGAL REVIEW:

Martin D. Henry
Office of the General Counsel, District 7

EXHIBIT "A"

FILE NAME: Q:\ENGINEERING PROJECTS\EXHIBITS\SITE LEGAL AND LEASED\TAMPA\TPA_PROPERTY_MAP_SET_101405.U-PATH.DWG



LEGEND





-  U-PATH CORRIDOR OUTSIDE OF HIGHWAY EASEMENT
-  U-PATH CORRIDOR WITHIN HIGHWAY EASEMENT
-  TPA BOUNDARY
-  HIGHWAY EASEMENT

EXHIBIT A
U-PATH LOCATION MAP



22 FEB 2012

EXHIBIT "B" - MAINTENANCE PLAN

The City shall at all times maintain the U-Path improvements in a reasonable manner and with due care. Specifically, the City agrees to:

- (a) Install and maintain signage, bollards and the integrity of the structural supports and fence fabric for all U-Path fencing. Signage shall provide emergency telephone contact numbers for the City as well as prohibit access by unauthorized vehicles;
- (b) Pick up litter and trash a minimum of twice monthly and prior to each mowing cycle;
- (c) Mow, edge, and provide weed control for the fenced areas of the path a minimum of twice per month from May to October and once per month for the balance of the year;
- (d) Maintain a pavement surface free from residue accumulation, algae, debris, or other slip or trip hazards;
- (e) Provide herbicide treatment for plant growth in any joints in path pavements or in abutting walls;
- (f) Remove graffiti from pavement surfaces, signs, walls and fences on and abutting the path;
- (g) Provide Police and EMS response.

EXHIBIT C
REQUIRED LANGUAGE

1. CHAPTER 119, FLA.STATUTE REQUIREMENTS

IF THE DEPARTMENT OR CITY HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THEIR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(813) 870-8721, ADMCENTRALRECORDS@TAMPAAIRPORT.COM, HILLSBOROUGH COUNTY AVIATION AUTHORITY, P.O. BOX 22287, TAMPA FL 33622.

Department and City each agree 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 the Authority in order to perform the services contemplated by the Agreement.
- b. Upon request from the Authority's custodian of public records, provide the 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 the Agreement Term and following completion of the Agreement.
- d. Upon completion of the services, keep and maintain public records required by the Authority to perform the services. Department and City each shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Authority, upon request from the Authority's custodian of public records, in a format that is compatible with the information technology systems of the Authority.

2. NON-DISCRIMINATION

These provisions apply to all work performed under the Agreement. Failure to comply with the terms of these provisions may be sufficient grounds to:

- A. Terminate the Agreement;
- B. Seek suspension/debarment of Department and/or City; or
- C. Take any other action determined to be appropriate by Authority or the FAA.

2.01 Civil Rights – General – 49 USC § 47123

A. Compliance:

Department and City each agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefitting from Federal assistance. If Department and/or City transfer its obligation to another, the transferee is obligated in the same manner as Department and/or City.

B. Duration:

1. This provision obligates Department and City for the period during which the property is owned, used or possessed by Department and City and the Airport remains obligated to the FAA. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
2. This provision also obligates Department and City or their transferee for the period during which Federal assistance is extended to the Airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of, personal property, real property or interest therein, structures or improvements thereon. In these cases, the provision obligates Department and City or any transferee for the longer of the following periods:
 - (a) The period during which the property is used by Authority or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - (b) The period during which Authority or any transferee retains ownership or possession of the property.

2.02 Civil Rights – Title VI Assurances

A. Compliance with Non-Discrimination Requirements:

During the performance of the Agreement, Department and City, for themselves, their assignees, successors in interest, subcontractors and consultants agrees as follows:

- (1) Compliance with Regulations: Department and City will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of the Agreement.

- (2) Non-Discrimination: Department and City, with regard to the work performed by each during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Department and City will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including but not limited to those listed at Section 2.02(B) below, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Department or City for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by Department or City of their obligations under the Agreement and the Acts and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: Department and City will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Acts, Regulations, and directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Department and City will so certify to Authority or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- (5) Sanctions for Non-compliance: In the event of Department's or City's non-compliance with the non-discrimination provisions of the Agreement, Authority will impose such Agreement sanctions as it or the FAA may determine to be appropriate, including, but not limited to, cancelling, terminating, or suspending this Agreement, in whole or in part.
- (6) Incorporation of Provisions: Department and City will include the provisions of paragraphs one through five of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Department and City will take 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, that if Department or City become involved in, or is threatened with, litigation by a subcontractor or supplier because of such direction, Department or City may request Authority to enter into any litigation to

protect the interests of Authority. In addition, Department or City may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Non-Discrimination Authorities:

During the performance of the Agreement, Department and City, for themselves, their assignees, and successors in interest agree to comply with the following non-discrimination statutes and authorities:

- (1) 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);
- (2) 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);
- (3) 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);
- (4) 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;
- (5) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- (6) 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);
- (7) 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);
- (8) 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;

- (9) The FAA's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination 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);
- (11) 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, Department and City each must take reasonable steps to ensure that LEP persons have meaningful access to each of their programs (70 Fed. Reg. at 74087 to 74100); and
- (12) Title IX of the Education Amendments of 1972, as amended, which prohibits Department and City each from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

C. Duration:

Department and City each must comply with this section during the period during which Federal financial assistance is extended to Authority, except where the Federal financial assistance is to provide, or is in the form of, personal property or real property, or interest therein, or structures or improvements thereon, in which case this provision obligates Department and City for the longer of the following periods:

- (1) So long as the Airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- (2) So long as Authority retains ownership or possession of the property.