

HILLSBOROUGH COUNTY AVIATION AUTHORITY

CONTRACT FOR SPECIAL LEGAL SERVICES

KAPLAN, KIRSCH & ROCKWELL, LLP

Board Date: August 6, 2020

CONTRACT FOR SPECIAL LEGAL SERVICES

THIS CONTRACT is made and entered into effective as of August ____, 2020, by and between the HILLSBOROUGH COUNTY AVIATION AUTHORITY, a public body corporate under the laws of the State of Florida (hereinafter referred to as "Authority"), and KAPLAN, KIRSCH & ROCKWELL, LLP (hereinafter referred to as "Special Counsel").

WITNESSETH:

WHEREAS, Authority wishes to retain a law firm to provide certain legal services on behalf of the Authority; and

WHEREAS, Special Counsel has been selected to provide the desired services in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, the existing Contract for Special Legal Services with Special Counsel dated November 5, 2015, as amended on February 6, 2020, will terminate upon the effective date of this Contract.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereby agree as follows:

Article 1 Term

- 1.1 Effective Date. The effective date of this Contract is August 6, 2020.
- 1.2 Term. The Term shall be for three years, with two, one-year renewal options at the discretion of the Authority General Counsel or Assistant General Counsel (hereinafter referred to collectively as "General Counsel"), unless terminated earlier as provided herein.
- 1.3 Termination. This Contract may be terminated by Authority, with or without cause, upon 30 days' written notice to Special Counsel. This Contract may be terminated by Special Counsel, with or without cause, if Special Counsel is not in default of any terms of this Contract, upon 30 days' written notice to Authority; except, however, Special Counsel may not terminate this Contract without Authority approval until any and all existing projects or assignments are complete.
- 1.4 Notwithstanding, the Indemnification provisions of this Contract will survive termination of this Contract, as will the Authority obligation to make payment to Special Counsel for work performed up to the effective date of termination of this Contract.

Article 2
Scope of Services

- 2.1 **Authority Lead Attorney.** The Authority General Counsel will act as the lead attorney on behalf of the Authority and will serve as the Authority general contact person.
- 2.2 **Special Counsel Lead Attorney.** Peter Kirsch will act as the co-lead attorney on behalf of Special Counsel with regard to legal services provided to Authority in the area of Airport Law and related matters. Eric Smith will act as the co-lead attorney on behalf of Special Counsel with regard to legal services provided to the Authority in the area of Airport law, and as lead attorney on behalf of Special Counsel with regard to legal services provided to the Authority in the areas of Bankruptcy Law and Civil Rights. Eric Pilsk will act as the lead attorney on behalf of Special Counsel with regard to legal services provided to the Authority related to the PFC appeal, and additional attorneys, as previously authorized by Authority General Counsel, may provide legal services associated with the matters specified above; however, Mr. Kirsch will serve as Special Counsel's general contact person. Mr. Kirsch will be responsible for supervising the specified matters on behalf of Special Counsel and for filing all required bills, reports, plans and budgets with the Authority. Special Counsel recognizes that it has been selected by the Authority to provide the legal services hereunder based on the experience of Mr. Kirsch, Mr. Smith and Mr. Pilsk and Special Counsel may not change its lead attorney or other authorized additional attorneys without prior written approval from General Counsel.
- 2.3 **Scope of Services.** Special Counsel shall perform for and on behalf of Authority legal services in the area of Airport Law, Bankruptcy Law, Civil Rights, and related legal matters, and consult with General Counsel concerning how to best advise the Authority in those regards.
- 2.4 **Performance of Services.** This Contract shall be performed in accordance with the following provisions:
- A. Special Counsel shall act as lead or co-counsel during any arbitration, litigation or administrative proceedings, if any, associated with the Scope of Services described above on behalf of the Authority as General Counsel may direct. Mr. Smith shall act as lead counsel on any Bankruptcy or Civil Rights proceedings. Mr. Pilsk shall act as lead counsel on any appellate proceedings related to PFCs. General Counsel may elect to serve as co-counsel and will sign all pleadings and/or have his/her name listed as co-counsel, as appropriate.
 - B. Upon request, Special Counsel shall provide consultation to the General Counsel, including requirements for legal representation, changes to procedural and substantive laws and regulations that govern the Scope of Services described above.

- C. When circumstances dictate, Special Counsel shall provide the same services described above in settlement, mediation or other dispute resolution forums.
- D. Special Counsel shall provide such additional legal services related to commercial law as General Counsel may subsequently determine are necessary.
- E. Upon request, after receipt of an initial assignment from the Authority, Special Counsel shall provide an initial budget and return it to General Counsel along with the initial report. The initial budget will set forth a good faith estimate of the fees and costs associated with representation for the assignment. As necessary, or when requested by General Counsel, the initial budget may be reviewed and, where circumstances require, the budget may be amended, as approved by General Counsel.
- F. After the initial report, Special Counsel shall provide Authority with a status update periodically, as the assignment may require and as agreed to by General Counsel. The status update will include a summary of developments since the last report (or confirmation that there has been little or no activity) together with a brief explanation of the significance of such developments to the overall assignment. Special Counsel shall also include in the status update recommendations for further activities, a budget update showing actual charges incurred during the billing period for each budget category, as well as total charges to date and original budgeted amounts for each budget category.
- G. In utilizing Special Counsel for litigation, it is the intention of the Authority to have its General Counsel participate in all strategic decisions and review all papers before service, submission, or delivery. General Counsel shall be notified of all deadlines and key dates.
- H. In appropriate circumstances, work may be delegated to an approved partner/shareholder, associate attorney, law clerk, or paralegal to achieve this goal. Duplication of effort is not billable, and Special Counsel will avoid having more than one person involved in a task that can be professionally handled by one person (such as review of documents, performing legal research, or attendance at meetings, status conferences, depositions, or hearings). The Authority will not pay for the time of summer associates, interns or other attorneys-in-training whose presence is primarily for the purpose of instruction.
- I. Special Counsel shall make every effort to maintain continuity of personnel for Authority work, and General Counsel must approve, in advance, any changes or additions to staffing affecting Authority work.
- J. In order that the Authority may conduct a review of the file whenever it chooses to do so, retention of all materials relating to the representation is required,

including but not limited to, daily time slips, pre-bills and receipts. The file will be made available to the Authority promptly upon request.

- K. The parties acknowledge and agree that this is a contract for personal services. This Contract may not be assigned and none of Special Counsel obligations hereunder may be subcontracted to or performed by any third party without the express written approval of General Counsel, which approval may be granted or withheld by General Counsel in his/her sole discretion.
- L. At the completion of an assignment or upon termination or expiration of this Contract, Special Counsel will surrender to the Authority any memoranda, notes, records, drawings, manuals and other documents or materials and public records pertaining to services provided hereunder by Special Counsel for the Authority and otherwise comply with all public records laws, including Florida Statute Section 119.0701.

Article 3
Compensation

3.1 **Fees.** In consideration for the services described in Article 2 above, Special Counsel may charge hourly rates as follows:

- A. Airport Law/Civil Rights/PFC Matters/
Airline/Concessions/Federal Regulatory Rates
Peter Kirsch/Eric Smith/David Bannard/Eric Pilsk
Partner/Shareholder \$420.00
Associates/Of Counsel \$270.00
Paralegals \$125.00 (non-clerical billing only; work that would otherwise be performed by an attorney)
- B. Bankruptcy Consortium Matters Rates
Partner/Shareholder \$650.00
Senior Associates/Of Counsel \$495.00
Junior Associates/Of Counsel \$350.00
Paralegals \$175.00
- C. Bankruptcy Non-Consortium Matters Rates
Partner/Shareholder \$420.00
Associates/Of Counsel \$270.00
Paralegals \$125.00 (non-clerical billing only; work that would otherwise be performed by an attorney)

3.2 **Not-to-Exceed.** The amounts to be paid under this Contract shall not exceed \$300,000.

3.3 Billing Practices. Special Counsel will submit bills to the General Counsel on a monthly basis in accordance with the following:

- A. General Counsel reserves the right to evaluate the reasonableness of fees and expenses and will reduce or strike any charges inconsistent with the plan, budget, this Contract, and/or any other understandings, and will explain the reason for any such actions.
- B. Special Counsel's bills will display the assignment number and Special Counsel's tax identification number. Bills will also specify: (1) the date the work was performed, (2) a description of the work, (3) the person(s) who performed the work, (4) the actual time spent on a daily basis documented to the nearest tenth of an hour, (5) the hourly rate, and (6) the actual fee (time spent times hourly rate). Note that the bills are public records and may be subject to disclosure via public records request. Vague or overly broad charges such as "research" or "preparation" may not be accepted for payment.
- C. Bills from outside service vendors in amounts less than five hundred dollars (\$500.00) will be paid by Special Counsel and included as disbursements in the monthly bill to the Authority. Bills from outside service vendors in excess of five hundred dollars (\$500.00) will be approved by General Counsel prior to incurring the expense and then shown as a disbursement on Special Counsel's monthly bill. Receipts for all disbursements by Special Counsel must be provided to the Authority. Any charge for computerized legal research or research exceeding one hour must be pre-approved by General Counsel.
- D. The Authority will not pay fees or costs arising out of unnecessary repetitive tasks. The Authority will be billed for only one attorney's attendance at depositions, hearings and meetings, unless the presence of an additional attorney is necessary for effective representation and the attendance of an additional attorney has been approved in advance by General Counsel. Similarly, the Authority will not be billed for routine intra-office conferences or meetings or reviewing the status of a matter with colleagues, except where conferences are required to address substantive legal issues.
- E. The Authority will pay a reasonable fee for photocopying and outgoing faxes. Expert witness or investigator fees and any expenses other than unit priced costs, such as photocopying, that are not provided in the approved budget must be pre-approved by General Counsel.
- F. The Authority will not pay travel time and costs, except in accordance with Authority Policy P412.

Article 4
Indemnification

4.1 Indemnification.

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

1. Presence on, use or occupancy of Authority's 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 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 Special Counsel or Special Counsel'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.

B. In addition to the duty to indemnify and hold harmless, Special Counsel will have the separate and independent duty to defend the Authority, its members, officers, agents, employees, and volunteers from all suits, claims or actions of any nature seeking damages, expenses, losses, costs, 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's 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 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 Special Counsel or Special Counsel's officers, employees, agents, volunteers, invitees, or any other person directly or indirectly employed or utilized by Special Counsel regardless of whether it is caused in part by the 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 Special Counsel by a party entitled to a defense hereunder.

- 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, Special Counsel agrees to the following: To the maximum extent permitted by Florida law, the Special Counsel will indemnify and hold harmless the 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 the Special Counsel and persons employed or utilized by Special Counsel 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), 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. Special Counsel'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 the Authority, its members, officers, agents, employees, and volunteers is fully and finally barred by the applicable statute of limitations or repose.
- F. Nothing in this Article or Contract will be construed as a waiver of any immunity from or limitation of liability the Authority, or its members, officers, agents, employees, and volunteers may have under the doctrine of sovereign immunity under common law or statute.

- G. The 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 Special Counsel of any of its obligations under this Article.
- H. If this Article or any part of this Article is 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 5
Insurance

5.1 Insurance Terms and Conditions.

Special Counsel must maintain the following limits and coverages uninterrupted or amended through the Term of this Contract. In the event the Special Counsel becomes in default of the following requirements, the Authority reserves the right to take whatever actions deemed necessary to protect its interests. Required liability policies other than Workers' Compensation/Employer's Liability and Professional Liability will provide that the Authority, members of the Authority's governing body, and the Authority's officers, volunteers and employees are included as additional insured.

5.2 Required Coverage – Minimum Limits.

A. Commercial General Liability Insurance.

The minimum limits of insurance (inclusive of any amounts provided by an umbrella or excess policy) 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, Special Counsel under this Contract or the use or occupancy of Authority premises by, or on behalf of, Special Counsel 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 and CG 20 37 10 01.

	<u>Contract Specific</u>
General Aggregate	\$1,000,000
Each Occurrence	\$1,000,000
Personal and Advertising Injury Each Occurrence	\$1,000,000
Products and Completed Operations Aggregate	\$1,000,000

B. Workers' Compensation and Employer's Liability Insurance.

The minimum limits of insurance (inclusive of any amount provided by an umbrella or excess policy) are:

Part One	"Statutory"
Part Two	
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 insurance (inclusive of any amounts provided by an umbrella or excess policy) covering the work performed pursuant to this Contract will be:

Each Occurrence – Bodily Injury and Property Damage combined	\$1,000,000
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D. Professional Liability. The minimum limits of Professional Liability insurance covering all work of Special Counsel without any exclusions unless approved in writing by Authority will remain in force for a period of three years following termination of this Contract. The minimum limits of coverage are:

Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000

E. Waiver of Subrogation.

Special Counsel, for itself and on behalf of its insurers, to the fullest extent permitted by law without voiding the insurance required by this Contract, waives all rights against the Authority, members of Authority's governing body, Authority's officers, volunteers and employees, for damages or loss to the extent covered and paid for by any insurance maintained by the Special Counsel.

5.3 Conditions of Acceptance.

The insurance maintained by Special Counsel must conform at all times with Authority Standard Procedure S250.06, Contractual Insurance Terms and Conditions, as may be amended from time to time.

Article 6
Notices and Communications

6.1 Delivery of Notices and Communications. All notices or communications whether to Authority or to Special Counsel 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, FL 33622-2287
Attn: General Counsel

To Special Counsel:
(Mail Delivery)
Kaplan, Kirsch & Rockwell, LLP
1634 I St NW #300
Washington, DC 20006
Attn: Eric T. Smith

Or

(Hand Delivery)
Hillsborough County Aviation Authority
Tampa International Airport
Landside Building
Floor, Blue Side
Tampa, Florida 33607
Attn: General Counsel

Kaplan, Kirsch & Rockwell, LLP
1634 I St NW #300
Suite 300
Washington, DC 20006
Attn: Eric T. Smith

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.

6.2 Form of Notices and Communications. All notices and communications will display the Authority project number. Non-urgent communications will be sent by regular mail, e-mail, telephone, or other economical means. Overnight couriers will be used only when reasonably necessary. The Authority encourages the use of e-mail to reduce costs and facilitate quick transmission of documents. However, the Authority is subject to the Florida Sunshine Law and Florida Public Records Act and this will be considered before initiating any communication with the Authority.

Article 7

Permits, Licenses and Taxes

Special Counsel will obtain and maintain throughout the Term of this Contract all permits, licenses, or other authorizations required in connection with this Contract. Special Counsel will bear, at its own expense, all costs of operating its business including all applicable sales, use, intangible and ad valorem taxes of any kind.

Article 8
Civil Rights/Non-Discrimination

Subject to the applicability criteria noted in the specific Contract provisions, these Contract provisions apply to all work performed on this Contract. Failure to comply with the terms of these Contract provisions may be sufficient grounds to:

1. Withhold progress payments or final payment,
2. Terminate this Contract,
3. Seek suspension/debarment, or
4. Any other action determined to be appropriate by the Authority or the FAA.

8.1 Civil Rights – General - 49 USC §47123.

A. Special Counsel agrees that it will 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

B. Duration.

1. This provision binds Special Counsel from the bid solicitation period through the completion of this Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
2. This provision also obligates Special Counsel 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 the party or any transferee for the longer of the following periods:
 - i. The period during which the property is used by the 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
 - ii. The period during which the Authority or any transferee retains ownership or possession of the property.

8.2 Civil Rights – Title VI Assurances.

A. Compliance with Nondiscrimination Requirements.

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

1. Compliance with Regulations. Special Counsel (hereinafter to include subcontractors and consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.

2. Non-discrimination. Special Counsel, with regard to the work performed by it during 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. Special Counsel will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when this Contract 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 Special Counsel 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 Special Counsel of Special Counsel's obligations under this Contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. Information and Reports. Special Counsel 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 the Authority or the FAA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of Special Counsel is in the exclusive possession of another who fails or refuses to furnish the information, Special Counsel will so certify to the 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 Special Counsel's noncompliance with the Non-discrimination provisions of this Contract, the Authority will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding payments to Special Counsel under this Contract until Special Counsel complies; and/or
- b. Cancelling, terminating, or suspending this Contract, in whole or in part.

6. Incorporation of Provisions. Special Counsel will include the provisions of paragraphs one through five in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Special Counsel will take action with

respect to any subcontract or procurement as the Authority or the FAA may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, that if Special Counsel becomes involved in, or is threatened with, litigation by a subcontractor or supplier because of such direction, Special Counsel may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, Special Counsel 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 this Contract, Special Counsel, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

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 special counsels, 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 Federal Aviation Administration’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, which ensures 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, Special Counsel must take reasonable steps to ensure that LEP persons have meaningful access to Special Counsel’s programs (70 Fed. Reg. at 74087 to 74100); and

12. Title IX of the Education Amendments of 1972, as amended, which prohibits Special Counsel from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et. seq.).

C. Duration.

Special Counsel must comply with this section during the period during which Federal financial assistance is extended to the 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 Special Counsel 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 the sponsor retains ownership or possession of the property.

Article 9
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.

Special Counsel hereby waives any claim against the Authority, and 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 hereof, 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 10
Compliance with Public Records Law

IF SPECIAL COUNSEL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SPECIAL COUNSEL'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.

Special Counsel 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. Special Counsel 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 11
Data Security

Special Counsel will establish and maintain safeguards against the destruction, loss or alteration of Authority data or third party data that Special Counsel may gain access to or be in possession of in providing the services of this Contract. Special Counsel will not attempt to access, and will not allow its personnel access to, Authority data or third party data that is not required for the performance of the services of this Contract by such personnel.

Special Counsel and its employees, vendors, subcontractors, and sub-consultants will adhere to and abide by the security measures and procedures established by Authority and any terms of service agreed to by Authority with regards to data security. In the event Special Counsel or Special Counsel's subcontractor (if any) discovers or is notified of a breach or potential breach of security relating to Authority data or third party data, Special Counsel will promptly:

- A. Notify Authority of such breach or potential breach; and
- B. If the applicable Authority data or third party data was in the possession of Special Counsel at the time of such breach or potential breach, Special Counsel will investigate and cure the breach or potential breach.

Article 12 **Headings**

The headings contained herein 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 13 **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 14 **Relationship of the Parties**

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

Article 15 **Miscellaneous Provisions**

This Contract constitutes the entire contract between the parties, and may be amended only upon written amendment, unless otherwise provided. Time is of the essence of this Contract.

[The remainder of this page was intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have set their hands and corporate seals on this _____ day of August, 2020.

HILLSBOROUGH COUNTY AVIATION AUTHORITY

ATTEST:

BY:

Jane Castor, Secretary

Gary W. Harrod, Chairman

Address: PO Box 22287
Tampa FL

Address: PO Box 22287
Tampa FL

WITNESS:

Signature

Printed 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 this ____ day of August, 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 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)

KAPLAN, KIRSCH & ROCKWELL, LLP

Signed in the Presence of:

BY:

Witness

Signature

Printed Name

Title

Witness

Printed Name

Printed Name

Printed Address

KAPLAN, KIRSCH & ROCKWELL, LLP

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by

_____ in the capacity of _____
(Individual's Name) (Individual's Title)

at _____, a _____, on its behalf _____
(Company Name) (He is / She is)

_____ known to me and has produced _____
(Personally / Not Personally) (Form of Identification)

Stamp or Seal of Notary

Signature of Notary

Printed Name

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