



November 27, 2019

TO: Mayor Jerry L. Demings
and the Board of County Commissioners

FROM: Carrie Mathes, Manager, Procurement Division

CONTACT: Terry Devitt, Acting Deputy Director, Convention Center
(407) 685-9867

SUBJECT: Approval of Contract Y19-810, Design Services for the Orange County
Convention Center Phase V Multipurpose Venue and Grand Concourse
Concourse Improvements

ACTION REQUESTED:

Approval of Contract Y19-810, Design Services for the Orange County Convention Center Phase V Multipurpose Venue and Grand Concourse Improvements, with Populous + C.T. Hsu a Joint Venture, LLC, in the total contract award amount of \$38,389,062.15.

PROCUREMENT:

The Architectural/Engineering Design Team shall provide design and engineering services for the above referenced project. Depending on the scope, composition, and complexity of the project, various professional services may include, but not necessarily be limited to, architectural, mechanical, electrical, plumbing, fire protection, civil, low voltage, cost estimating, and structural as required to assist in the development of the construction documents by the Architectural/Engineering Design Team.

APPROVALS:

The Convention Center Capital Planning Division concurs with this recommendation.

REMARKS:

On August 6, 2019, the Board selected Populous + C.T. Hsu a Joint Venture, LLC and authorized the Procurement Division to commence contract negotiations. At the conclusion of negotiations on November 25, 2019, Populous + C.T. Hsu a Joint Venture, LLC, provided a best and final offer of \$38,389,062.15.

Following the conclusion of negotiations, staff conducted due diligence efforts in an attempt to further validate the final price. Based on analysis and review of Populous + C.T. Hsu a Joint Venture, LLC's existing contract and other like contracts with local agencies, staff determined that the best and final offer is fair and reasonable.

POPULOUS + C.T. HSU a JOINT VENTURE

Contract Y19-810: Design Services for the OCCC Phase V Multi-Purpose Venue and Grand Concourse Improvements

Total Negotiated Budget: \$38,389,062.15

Total Fixed Labor Fee: \$37,128,064.55

Total Reimbursable Amounts: \$1,260,997.60

	M/WBE Subconsultant/ Project Team Member	Total Subconsultant Fee (M/WBE)	Prime's Total Fixed Fee	Allocated Percentage	Projected M/WBE Percentage (RFP)	Increase/Decrease
	C.T. Hsu	\$ 6,814,348.84	\$ 38,389,062.15	17.75%	21.00%	-3.25%
	MLM	\$ 1,321,018.42	\$ 38,389,062.15	3.44%	3.50%	-0.06%
	TJNG	\$ 772,570.39	\$ 38,389,062.15	2.01%	2.00%	0.01%
	Ramski	\$ 379,834.90	\$ 38,389,062.15	0.99%	1.00%	-0.01%
	BASE	\$ 1,122,371.00	\$ 38,389,062.15	2.92%	3.00%	-0.08%
	Brindley	\$ 356,180.44	\$ 38,389,062.15	0.93%	0.96%	-0.03%
	SGM	\$ 1,602,565.00	\$ 38,389,062.15	4.17%	4.25%	-0.08%
	AVCON	\$ 382,944.39	\$ 38,389,062.15	1.00%	1.02%	-0.02%
	WBQ	\$ 986,205.59	\$ 38,389,062.15	2.60%	2.00%	0.60%
	John B. Webb	\$ 81,000.10	\$ 38,389,062.15	0.21%	0.20%	0.01%
	Coyle Caron	\$ 430,942.25	\$ 38,389,062.15	1.12%	1.00%	0.12%
	Eco Preserve	\$ 189,971.94	\$ 38,389,062.15	0.49%	0.50%	-0.01%
	Anderson & Associates, Inc.	\$ 190,576.84	\$ 38,389,062.15	0.50%	0.50%	0.00%
	American Bluprinting dba American Graphix (Reproduction costs)	\$ 129,000.00	\$ 38,389,062.15	0.3%	0.30%	0.04%
Total:		\$ 14,769,630.10	\$ 38,389,062.15	38.47%	41.23%	-2.76%

Note: the overall proposed M/WBE allocation decreased by approximately 2.76% due to staffing allocations during negotiation.

	SDV Subconsultant/Project Team Members	Total Subconsultant Fee (SDV)	Prime's Total Fixed Fee	Allocated Percentage	Letter of Intent (SDV)	Increase/Decrease
	GATOR	\$ 128,983.04	\$ 38,389,062.15	0.34%	0.34%	0.00%
	Drummond	\$ 75,963.88	\$ 38,389,062.15	0.20%	0.20%	0.00%
	Blue Cord	\$ 241,963.41	\$ 38,389,062.15	0.63%	0.64%	-0.01%
	Roger Repstein	\$ 113,951.04	\$ 38,389,062.15	0.30%	0.30%	0.00%
	RDC + EA, LLP	\$ 68,627.52	\$ 38,389,062.15	0.18%	0.18%	0.00%
Total:		\$ 629,488.89	\$ 38,389,062.15	1.64%	1.66%	-0.02%

Note: the overall proposed Registered SDV allocation decreased by approximately .02% due to staffing allocations during negotiation.

CONTRACT

Y19-810

THIS CONTRACT made and entered into this _____ day of DEC 17 2019 20____,
by and between the:

ORANGE COUNTY, FLORIDA
201 S. Rosalind Avenue
Orlando, Orange County, Florida

a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and:

POPULOUS + C.T. HSU A JOINT VENTURE, LLC
820 IRMA AVE.
ORLANDO, FLORIDA 32803
FEDERAL I. D. # 84-2771259

hereinafter referred to as "CONSULTANT".

RECITALS

WHEREAS, the COUNTY desires to retain professional consulting services for DESIGN SERVICES FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS

WHEREAS, the COUNTY desires to employ the CONSULTANT in connection with the services required, upon the terms and conditions hereinafter set forth, and the CONSULTANT is desirous of obtaining such employment and of performing such services upon said terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

I SCOPE OF SERVICES/SPECIAL PROVISIONS

The CONSULTANT shall diligently and in a timely manner perform professional services for Orange County in connection with the DESIGN SERVICES FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS. The scope of services/special provisions is described in Exhibit A, Scope of Services, entitled, "DESIGN SERVICES FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS", which is attached to this Contract, and incorporated by reference herein. Any and all scope of services/special provisions hereto which vary from the general provisions shall have precedence. Any and all drawings shall have precedence over written specifications.

II
PAYMENT

- A. **FEES:** The COUNTY agrees to pay the CONSULTANT for the services described in Exhibit A, a fee not to exceed **\$38,389,062.15** said compensation to be paid as set forth herein. Payment shall be based upon method(s) established at time of award.
- B. **PAYMENTS:** The COUNTY shall pay the CONSULTANT in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes.

Progress payments shall be due and payable monthly in proportion to the percentage of work approved and accepted, in writing, by the COUNTY. All invoices shall be prepared in the format prescribed by the COUNTY. When an invoice includes charges from a subconsultant, the subconsultant's invoice/backup shall accompany the CONSULTANT'S invoice. A separate Pay Item Breakdown sheet for the CONSULTANT and each subconsultant shall accompany each invoice. The CONSULTANT'S Pay Item Breakdown sheet shall include, in aggregate, the CONSULTANT'S and subconsultant's pay items. All requests for payment must be accompanied by a narrative description of the scope of services from Exhibit A performed by the CONSULTANT and subconsultants during the period covered by the invoice. The narrative shall also describe the work to be performed during the next billing period. See additional requirements regarding M/WBE subconsultants specified in Article XIII-D.

- C. **SUSPENSION OF PROGRESS PAYMENTS BY COUNTY:** In the event the CONSULTANT falls fifteen (15%) percent behind the Project completion schedule submitted in conformance with Article XI, Paragraph B of this Contract, no further progress payments will be made until the CONSULTANT brings the Project back on schedule or a revised schedule is submitted and approved or until all work has been completed and accepted the COUNTY.
- D. **PAYMENT IN EVENT OF TERMINATION BY COUNTY:** In the event this Contract is terminated or canceled prior to completion, payment shall be made in accordance with the provisions of Article VII.
- E. **CHANGES WITHIN SCOPE; ALLOWANCE OF ADDITIONAL COMPENSATION:** If instructed to do so by the COUNTY, the CONSULTANT shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the CONSULTANT, the CONSULTANT may be entitled to additional compensation. In all disputes arising over the right to additional compensation, the COUNTY shall determine whether substantial acceptable work has been done on documents such that changes, revisions or preparation of additional documents should result in additional compensation to the CONSULTANT. The Consultant's Proposals for additional compensation shall be based on the fee schedule set forth in Exhibit B. A written modification to the Contract shall be executed by both parties to reflect the additional services and cost of same, prior to commencement of performance.

F. **TRAVEL AND PER DIEM:** Travel and per diem charges shall not exceed the limits as set forth in Section 112.061 Florida Statute, and Exhibit C, attached.

G. **FEE LIMITATION CLAUSE:** The CONSULTANT shall utilize the same hourly rates and multiplier in fee negotiations for subsequent phases of this project, except as provided by Article II, paragraph I, Price Adjustment. The number of hours required to complete each subsequent phase shall be negotiated at such time as the COUNTY initiates fee negotiations for that phase.

H. **MULTIPLIERS**

The following multipliers are applicable to this contract and shall remain in effect and unchanged for the duration of the contract, including any extensions thereto:

1.	Prime Consultant Populous + C.T. Hsu A Joint Venture, LLC	Multiplier 2.95 & 2.69
2.	Sub-Consultants American Graphix Solutions Anderson and Associates AVCON, Inc. Base Consultants Blue Cord Design & Construction Brindley Pieters & Associates Cini Little International Coyle & Caron CTG Lighting Design Drummond Carpenter ECO Preserve Gator Engineering Howe Engineers, Inc. Hunton Brady Architects John B. Webb & Associates, Inc. Lerch Bates MLM-Martin Architects Ramski & Company RDC+EA, LLLP Rider Levett Bucknall Roger A. Repstien SGM Engineering Inc. Studio 08 Consultants TJNG Partners TLC Engineering Solutions Walter P. Moore WBQ Design & Engineering, Inc.	Multiplier Price List 2.99 2.87 2.98 2.39 2.94 2.99 2.53 2.80 2.45 2.78 2.87 2.71 2.75 2.99 2.99 2.98 2.97 2.82 2.92 Fixed Hourly Rate 2.62 2.78 2.99 2.99 2.99 2.99

I. **PRICE ADJUSTMENT**

Written request for a price adjustment may be made only under the following conditions:

- i. If a project specific contract's performance period exceeds three years a price adjustment may be requested not more than 60 days after the end of the three year period and for each annual period thereafter or for the remaining period of the contract if less than one year.
- ii For continuing contracts with a performance period that exceeds three years, an adjustment may be requested not more than 60 days after the end of three years.
- iii Retroactive requests for price adjustments will not be considered.

The provisions of this clause shall not apply to contracts with fees based on ranges. Retroactive requests for price adjustments will not be considered.

Any request for a price adjustment will be subject to negotiation and must be approved by the Manager, Procurement Division. Any request for such increase shall be supported by adequate justification to include Consumer Price Index (CPI) documentation. The CPI documentation shall be based on the All Items, CPI-U, U.S. City Average, not seasonally adjusted index. The prevailing CPI in the month when the contract was executed by the County shall be the base period from which changes in the CPI will be measured for the initial request for a price adjustment. Any subsequent requests for a price adjustment shall be based on the CPI prevailing in the month when an amendment effecting a previous price adjustment was executed by the County. The maximum allowable increase shall not exceed the percent change in the CPI from the base period (either the month when the contract was executed by the County or the month when an amendment effecting a price adjustment was executed by the County) to the CPI prevailing at time of request for a price adjustment and in no case shall it exceed 4%. Any price adjustment shall only be effective upon the execution of a written amendment to the contract executed by both parties.

III

DESIGN WITHIN FUNDING LIMITATIONS

- A. The CONSULTANT shall accomplish the design services required under this Contract, when applicable, so as to permit the award of a contract (using standard Orange County procedures for the construction of the facilities) at a price that does not exceed the estimated construction contract price as set forth in paragraph C below. When bids or Proposals for the construction contract are received that exceed the estimated price, the CONSULTANT shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this Contract.

However, the CONSULTANT shall not be required to perform such additional services at no cost to the COUNTY if the unfavorable bids or Proposals result from conditions beyond the CONSULTANT'S reasonable control. The COUNTY shall exercise reasonable commercial judgment in making the controlling determinations as to whether such conditions are within the reasonable control of the CONSULTANT.

- B. The CONSULTANT will promptly advise the COUNTY if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the COUNTY will review the CONSULTANT'S revised estimate of construction cost. The COUNTY may, if it determines that the estimated construction contract price set forth in this Contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph C below, or the COUNTY may adjust such estimated construction contract price via amendment to this Contract. When bids or Proposals are not solicited or are unreasonably delayed, the COUNTY shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or Proposals to determine compliance with the funding limitation.
- C. The A/E Design Team and Owner Project Team will reconcile an estimated construction value together at 30% Schematic Drawing Level to be our Baseline Construction Cost Budget. Should design document changes be required to establish the Baseline Construction Cost Budget, the County agrees to provide compensation for such changes to the A/E Consultant.
- D. THE CONSULTANT and its subsidiaries or affiliates who designed the project shall be ineligible for the award of the construction contract for that project.

IV RESPONSIBILITY OF THE CONSULTANT

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the CONSULTANT under this Contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. The CONSULTANT shall perform its services consistent with the professional skill and care ordinarily provided by CONSULTANTS practicing in the same or similar locality under the same or similar circumstances, and shall perform its services as expeditiously as is consistent with such skill and care

- B. The Senior Architect and the Senior Designer must be two separate individuals. The Senior Architect must be currently employed by the Prime Consultant, and must be a Professional Licensed Architect registered in the State of Florida. The Senior Designer must be a Professional Licensed Architect or a Professional Licensed Engineer registered in the State of Florida.
- C. Substitution of the Senior Architect, Senior Designer or Other Key Personnel: The CONSULTANT shall not substitute any key personnel without the prior written approval of the Manager of the Procurement Division. Any such requests shall be supported by comprehensive documentation outlining the reason(s) for the proposed substitution to include the specific qualifications of the proposed substitute. Approval of the request shall be at the discretion of the COUNTY. Further, the COUNTY, in lieu of approving a substitution, may initiate other actions under the contract, including termination.
- D. Neither the COUNTY'S review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the COUNTY in accordance with applicable law for all damages suffered directly or indirectly by the COUNTY caused by the CONSULTANT'S negligent performance of any of the services furnished under this Contract. The rights and remedies of the COUNTY provided for under this Contract are in addition to any other rights and remedies provided by law.
- E. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- F. The COUNTY may require in writing that the CONSULTANT remove from the Work any of the CONSULTANT'S personnel that the COUNTY determines to be incompetent, careless or otherwise objectionable. No claims for an increase in Contract Amount or Contract Time based on the COUNTY'S use of this provision will be valid. CONSULTANT shall indemnify and hold the County harmless from and against any claim by CONSULTANT'S personnel on account of the use of this provision.
- G. For contracts requiring design services, the CONSULTANT shall comply with the following requirements:
- i. Concurrent with submission of the 90% design submittal to the user division, the CONSULTANT shall provide a copy to the Procurement Division, 400 E. South St., 2nd Floor, Orlando, FL 32801
 - ii. Concurrent with the submission of the 100% design submittal to the user division, the CONSULTANT shall submit a complete breakdown of the subcontracting opportunities for the project based on traditional industry practices and their expertise to the Business Development Division, 400 E.

South St., Orlando, FL 32801. This information will identify subcontracting elements such as electrical, trucking, sodding, surveying, etc. with the estimated percentage of the total project represented by each subcontracting element.

- iii. Direct Purchases: For projects for which construction is valued at \$10,000,000, or for lesser amounts as determined by the COUNTY, the COUNTY may, at its discretion, use the direct purchase method for large dollar value equipment and materials. The CONSULTANT shall, for those projects meeting this criterion, identify all items to be incorporated into the work for which the estimated cost is \$100,000 or more, for potential direct purchase by the COUNTY. A separate listing of these items with quantities and estimated cost shall be provided with the 90% design documents to the user division and to the Procurement Division at address shown above.

V

COUNTY'S RIGHTS AND RESPONSIBILITIES

The COUNTY shall:

- A. Furnish the CONSULTANT with existing data, plans, profiles, and other information necessary or useful in connection with the planning of the program that is available in the COUNTY'S files, all of which shall be and remain the property of the COUNTY and shall be returned to the COUNTY upon completion of the services to be performed by the CONSULTANT.
- B. Make COUNTY personnel available on a time-permitting basis, where required and necessary to assist the CONSULTANT. The availability and necessity of said personnel to assist the CONSULTANT shall be determined solely within the discretion of the COUNTY.

VI

COUNTY'S 'DESIGNATED' REPRESENTATIVE

It is understood and agreed that the COUNTY designates the COUNTY Orange County Convention Center Capital Planning Division, or designated representative, to represent the COUNTY in all technical matters pertaining to and arising from the work and performance of this Contract. The COUNTY Orange County Convention Center Capital Planning Division, or designated representative, shall have the following responsibilities:

- A. Examination of all reports, sketches, drawings, estimates, Proposals, and other documents presented by the CONSULTANT and rendering, in writing, decisions indicating the COUNTY'S approval or disapproval within a reasonable time so as not to materially delay the work of the CONSULTANT.
- B. Transmission of instructions, receipt of information, and interpretation and definition of COUNTY policies and decisions with respect to design, materials and other matters pertinent to the work covered by this Contract.

- C. Prompt written notice by the COUNTY to the CONSULTANT whenever the COUNTY observes, or otherwise becomes aware of, any defects or changes necessary in the Project.

VII **TERMINATION OF CONTRACT**

A. TERMINATION FOR DEFAULT:

The County may, by written notice to the CONSULTANT, terminate this contract for default in whole or in part (task authorizations, if applicable) if the CONSULTANT fails to:

1. provide products or services that comply with the specifications herein or fails to meet the County's performance standards
2. deliver the supplies or to perform the services within the time specified in this contract or any extension.
3. make progress so as to endanger performance of this contract
4. perform any of the other provisions of this contract.

Prior to termination for default, the County will provide adequate written notice to the CONSULTANT through the Manager, Procurement Division, affording him/her the opportunity to cure the deficiencies or to submit a specific plan to resolve the deficiencies within ten (10) days (or the period specified in the notice) after receipt of the notice. Failure to adequately cure the deficiency shall result in termination action. Such termination may also result in suspension or debarment of the CONSULTANT in accordance with the County's Procurement Ordinance. The CONSULTANT shall be liable for any damage to the County resulting from the Consultant's default of the contract. This liability includes any increased costs incurred by the County in completing contract performance.

In the event of termination by the County for any cause, the CONSULTANT will have, in no event, any claim against the County for lost profits or compensation for lost opportunities. After a receipt of a Termination Notice and except as otherwise directed by the County the CONSULTANT shall:

1. Stop work on the date and to the extent specified.
2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work
3. Transfer all work in process, completed work, and other materials related to

the terminated work as directed by the County.

4. Continue and complete all parts of that work that have not been terminated.

If the CONSULTANT'S failure to perform the contract arises from causes beyond the control and without the fault or negligence of the CONSULTANT, the contract shall not be terminated for default. Examples of such causes include (1) acts of God or the public enemy, (2) acts of a government in its sovereign capacity, (3) fires, (4) floods, (5) epidemics, (6) strikes and (7) unusually severe weather.

B. TERMINATION FOR CONVENIENCE:

The County, by written notice, may terminate this contract, in whole or in part, when it is in the County's interest. If this contract is terminated, the County shall be liable only for goods or services delivered and accepted. The County Notice of Termination shall provide the Consultant thirty (30) days prior notice before it becomes effective. A termination for convenience may apply to individual purchase orders or to the contract in its entirety.

C. PAYMENT IN EVENT OF TERMINATION:

If this Contract is terminated before performance is completed, the CONSULTANT shall be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs, not to exceed an amount that is the same percentage of the Contract price as the amount of work satisfactorily completed is a percentage of the total work called for by the Contract. Any additional costs incurred by the COUNTY as a result of such termination shall be deducted from the amount due the CONSULTANT, in the event the Contract termination is for cause as described herein.

D. TERMINATION NOTICE

The Manager, Procurement Division, shall issue any and all notices involving termination of this contract.

VIII
INDEMNITY/INSURANCE AND SAFETY REQUIREMENTS

The CONSULTANT shall procure and maintain on a primary basis and at its sole expense during the life of this Contract, insurance of the types and limits including endorsements described herein. The requirements contained herein, as well as County's review or acceptance of insurance maintained by CONSULTANT is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the CONSULTANT under the Contract. Insurance carriers providing coverage must be authorized and/or eligible to do business in the State of Florida and must possess a current A.M. Best's

Financial Strength Rating of A- Class VIII.

(Note: State licenses can be checked via www.floir.com/companysearch/ and A.M. Best Ratings are available at www.ambest.com)

Required Coverage:

1. Workers' Compensation - The CONSULTANT shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$1,000,000 each incident of bodily injury or disease for Employers' Liability

Required Endorsements:

- Waiver of Subrogation- WC 00 03 13 or its equivalent

2. Commercial General Liability - The CONSULTANT shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$5,000,000 per occurrence. CONSULTANT further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Severability of Interests. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.

Required Endorsements:

- Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.
Note: CG 20 10 must be accompanied by CG 20 37 to include products/completed operations

- Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.
Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.

3. Business Automobile Liability - The CONSULTANT shall maintain coverage for all owned; non owned and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than \$1,000,000 per accident. In the event the CONSULTANT does not own automobiles the CONSULTANT shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Required Endorsements:

- MCS-90- for operations governed by the Sections 29 & 30 of the Motor Carrier Act of 1980

4. Professional Liability- The CONSULTANT shall maintain professional liability (errors and omissions) coverage as outlined below.

- a) CONSULTANTS Populous and C.T. HSU shall maintain professional liability coverage with total limits of not less than \$15,000,000 per claim and in aggregate with each joint venture member responsible for the following limits:
 - 1. Populous to provide not less than \$10,000,000 per claim and in aggregate
 - 2. C.T. HSU to provide not less than \$5,000,000 per claim and in aggregate
- b) CONSULTANTS shall include Populous + C.T. HSU a Joint Venture, LLC as named insureds on each of their respective professional liability policies
- c) CONSULTANT shall deliver to the COUNTY a certificate of insurance Evidencing Professional Liability coverage at least once each year.
- d) CONSULTANT must immediately notify COUNTY of the erosion of limits, which exceeds Fifty Percent (50%) of the minimum limits.
- e) Any applicable deductible or self-insured retention (SIR) is the sole responsibility of the CONSULTANT
- f) CONSULTANT shall not have a deductible or self-insured retention (SIR) greater than \$100,000 each claim unless approved by the COUNTY
- g) CONSULTANT shall maintain professional liability coverage for the duration of this Agreement and 10 (ten) years after Substantial Completion of the Project.
- h) All design subconsultants will have Professional Liability coverage with limits of liability of not less than \$1,000,000 for the duration of this agreement and 3 (three) years after Substantial Completion of the Project.

When a self-insured retention or deductible exceeds \$100,000 the COUNTY reserves the right to request a copy of CONSULTANT'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis the CONSULTANT agrees to maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract the CONSULTANT agrees to purchase the SERP with a minimum reporting period of not less than two years. Purchase of the SERP shall not relieve the CONSULTANT of the obligation to provide replacement coverage.

By entering into this contract CONSULTANT agrees to provide a Waiver of Subrogation in favor of the County for each policy as required herein. When required by the insurer or should a policy condition not permit the CONSULTANT to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONSULTANT agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others endorsement.

CONSULTANT agrees to endorse the COUNTY as an Additional Insured with a CG 20 26

Additional Insured – Designated Person or Organization endorsement (Exhibit A), or its equivalent to all commercial general liability policies. The additional insured shall be listed in the name of Orange County Board of County Commissioners.

Prior to execution and commencement of any operations/services provided under this contract the CONSULTANT shall provide the COUNTY with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance the CONSULTANT shall also provide a blanket or specific additional insured endorsement for the CGL policy. For continuing service contracts renewal certificates shall be submitted upon request by either the COUNTY or its certificate management representative. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY. Failure of the COUNTY to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the COUNTY to identify a deficiency from evidence provided will not be construed as a waiver of the CONSULTANT'S obligation to maintain such insurance. Certificates shall specifically reference the respective contract number. The certificate holder shall read:

Orange County, Florida
c/o Procurement Division
400 E. South Street
Orlando, Florida 32801

The CONSULTANT shall be responsible for the acts and omissions of its employees, sub consultants of every tier, their agents and employees, and other persons performing any portion of the CONSULTANT'S obligations under this contract. Failure of the CONSULTANT to maintain adequate insurance coverage for itself or for any other persons or entities for whom it is responsible, or to ensure that its sub consultants of every tier maintain adequate insurance coverage, shall not relieve the CONSULTANT of any contractual responsibility or obligation.

Except in the case of gross negligence or intentional misconduct and provided CONSULTANT maintains (or causes to be maintained) the professional liability insurance required by this Contract, it is expressly understood and agreed that the liability of CONSULTANT and its subconsultants and their respective agents, servants, employees, officers and directors, for claims, demands, costs, losses or damages, incidental or consequential, caused by, arising out of or resulting from, in whole or in part (a) the professional negligence of CONSULTANT; or (b) the failure of CONSULTANT or subconsultant to comply with the reasonable standard of care (whether such failure is asserted as an action in tort or breach of contract) shall be limited to not more than the amount of insurance proceeds paid under all professional liability insurance policies of CONSULTANT, not to exceed, however a maximum of Ten Million Dollars (\$10,000,000) per claim and annual aggregate for Populous and Five Million Dollars (\$5,000,000) per claim and annual aggregate for C.T. HSU. COUNTY, if it elects to procure an OPPI, shall

also obtain from the OPPI underwriter a waiver of subrogation in favor of CONSULTANT and its subconsultant and written recognition of this Limitation of Liability.

Indemnification:

The CONSULTANT to the extent permitted in Section 725.08, Florida Statutes shall defend, indemnify and hold harmless the COUNTY and its officers and employees from liabilities damages, losses, and costs (including attorney's fees) to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and persons employed or utilized by the CONSULTANT in the performance of this Contract. The remedy provided to the COUNTY by this paragraph shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise and shall survive the termination of this Contract.

SAFETY AND PROTECTION OF PROPERTY (for services provided on the premises of Orange County)

The Consultant shall at all times:

- Initiate, maintain and supervise all safety precautions and programs in connection with its services or performance of its operations under this contract.
- Take all reasonable precautions to prevent injury to employees, including County employees and all other persons affected by their operations.
- Take all reasonable precautions to prevent damage or loss to property of Orange County, or of other vendors, consultants or agencies and shall be held responsible for replacing or repairing any such loss or damage.
- Comply with all ordinances, rules, regulations, standards and lawful orders from authority bearing on the safety of persons or property or their protection from damage, injury or loss. This includes but is not limited to:
 - Occupational Safety and Health Act (OSHA)
 - National Institute for Occupational Safety & Health (NIOSH)
 - National Fire Protection Association (NFPA)
 - American Society of Heating, Refrigeration & Air-Conditioning Engineers (ASHRAE)
- The Consultant must also comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address listed below:

<http://www.orangecountyfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>

IX

TRUTH IN NEGOTIATION AND MAINTENANCE AND EXAMINATION OF RECORDS

- A. The Consultant hereby represents, covenants and warrants that wage rates and other factual unit costs supporting the compensation provided for in this Contract are accurate, complete and current as of the date of contracting. It is further agreed that the Contract price shall be adjusted to exclude any amounts where the County determines the Contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.
- B. The Consultant shall keep adequate records and supporting documents applicable to this Contract. Said records and documentation shall be retained by the Consultant for a minimum of five (5) years from the date of final payment on this contract. If any litigation, claim or audit is commenced prior to the expiration of the five (5) year period, the records shall be maintained until all litigation, claims or audit findings involving the records have been resolved.
- C. If applicable, time records and cost data shall be maintained in accordance with generally accepted accounting principles.

This includes full disclosure of all transactions associated with the contract. Also, if applicable, all financial information and data necessary to determine overhead rates in accordance with Federal and State regulatory agencies and the contract shall be maintained.

- D. Consultant's "records and supporting documents" as referred to in this Contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, invoices, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the County's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract document. Such records and documents shall include (hard copy, as well as computer readable data, written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence; change order files (including pricing data used to price change proposals and documentation covering negotiated settlements); back-charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Consultant records which may have a bearing on matters of interest to the County in connection with the Consultant's dealings with the County (all foregoing hereinafter referred to as "records and supporting documents") to the extent necessary to adequately permit evaluation and verification of:
 - 1) Consultant compliance with contract requirements; or
 - 2) Compliance with provisions for pricing change orders; or
 - 3) Compliance with provisions for pricing invoices; or

- 4) Compliance with provisions regarding pricing of claims submitted by the Consultant or his payees; or
 - 5) Compliance with the County's business ethics; or
 - 6) Compliance with applicable state statutes and County Ordinances and regulations.
- E. Records and documents subject to audit shall also include those records and documents necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Contract. In those situations where Consultant's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), Consultant agrees to provide the County's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats.
- F. The County and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the County deems necessary throughout the term of this contract and for a period of five (5) years after final payment. Such activity shall be conducted during normal business working hours. The County, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying.
- G. The County, during the period of time defined by the preceding paragraph, shall have the right to obtain a copy of and otherwise inspect any audit made at the direction of the Consultant as concerns the aforesaid records and documentation.
- H. Records and documentation shall be made accessible at the Consultant's local place of business. If the records are unavailable locally, it shall be the Consultant's responsibility to insure that all required records are provided at the Consultant's expense including payment of travel and maintenance costs incurred by the County's authorized representatives or designees in accessing records maintained out of the county. The direct costs of copying records, excluding any overhead cost, shall be at the County's expense.
- I. Consultant shall require all payees (examples of payees include sub Consultants, insurance agents, material suppliers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Consultant and payee. Such requirements include a flow-down right of audit provisions in contracts with payees, which shall also apply to Sub Consultants and Sub-sub Consultants, material suppliers, etc. Consultant shall cooperate fully and shall cause all aforementioned parties and all of Consultant's sub Consultants (including those entering into lump sum subcontracts and lump sum major material purchase orders) to cooperate fully in furnishing or in making available to the County from time to time whenever requested in an expeditious manner any and all such records, documents, information, materials and data.
- J. The County's authorized representatives or designees shall have reasonable access to the Consultant's facilities, shall be allowed to interview all current or former

employees to discuss matters pertinent to the performance of this Contract and shall have adequate and appropriate work space, in order to conduct audits in compliance with this article.

- K. Even after a change order proposal has been approved, Consultant agrees that if the County later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the Contract regarding pricing of change orders, then an appropriate contract price reduction will be made. Such post-approval contract price adjustment will apply to all levels of Consultants and/or sub Consultants and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.
- L. If an audit inspection or examination by the County, or its designee, in accordance with this article discloses overpricing or overcharges (of any nature) by the Consultant to the County in excess of one-half of one percent (.5%) of the total contract billings, the reasonable actual cost of the County's audit shall be reimbursed to the County by the Consultant. Any adjustments and /or payments that must be made as a result of any such audit or inspection of the Consultant's invoices and/or records and supporting documents shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the County's findings to the Consultant.

X OWNERSHIP OF DOCUMENTS

It is understood and agreed that all documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the CONSULTANT in connection with its services hereunder and are the property of the COUNTY upon acceptance of same by the COUNTY.

XI WORK COMMENCEMENT/PROGRESS/DELAYS

- A. **COMMENCEMENT AND TERM OF JOB:** The services to be rendered by the CONSULTANT shall be commenced subsequent to the execution of this Contract and upon written notice to proceed from the Department Director or designee. The Design phase shall be completed within 379 calendar days after Notice to Proceed. The Construction phase shall be completed within 1,366 calendar days the Notice to Proceed.
- B. **JOB SEGMENT DEADLINES:** A detailed segment completion schedule has been approved by the COUNTY. Said segment completion schedule is attached hereto as Exhibit D and made a part hereof by this reference. The purpose of this schedule is to:

1. Provide job segment deadlines for the CONSULTANT upon which the COUNTY may rely;
 2. Provide guidance for the COUNTY in honoring the CONSULTANT'S monthly invoices for progress payments called for in Article II(B) hereof; and
 3. Provide a framework against which the COUNTY may suspend progress payments as provided in Article II C hereof.
- C. **CONFERENCES**: The COUNTY will be entitled at all times to be advised, at its request, as to the status of work being done by the CONSULTANT and of the details thereof. Coordination shall be maintained by the CONSULTANT with representatives of the COUNTY, or of other agencies interested in the Project on behalf of the COUNTY. Either party to the Contract may request and be granted a conference.
- D. **DELAYS NOT FAULT OF CONSULTANT; DISCRETIONARY EXTENSIONS OF COMPLETION TIME BY COUNTY**: In the event there are delays on the part of the COUNTY as to the approval of any of the materials submitted by the CONSULTANT, or if there are delays occasioned by circumstance beyond the control of the CONSULTANT which delay the Project Schedule completion date, the COUNTY may grant to the CONSULTANT, by "Letter of Approval of Project Schedule" an extension of the Contract time or revision to the Project Schedule, equal to the aforementioned delays, provided there are no changes in compensation or scope of work. It shall be the responsibility of the CONSULTANT to ensure at all times that sufficient Contract time remains within which to complete services on the Project. In the event there have been delays which would affect the Project completion date, the CONSULTANT shall submit a written request to the COUNTY which identifies the reason(s) for the delay and the amount of time related to each reason.

The COUNTY will review the request and make a determination as to granting all or part of the requested extension.

E. **SUSPENSION OF WORK BY COUNTY**:

- i. Right of COUNTY to Suspend Work and Order Resumption – The performance of CONSULTANT'S services hereunder may be suspended by the COUNTY at any time. However, in the event the COUNTY suspends the performance of CONSULTANT'S services hereunder, it shall so notify the CONSULTANT in writing, such suspension becoming effective upon the date of its receipt by CONSULTANT. The COUNTY shall promptly pay to the CONSULTANT all fees which have become due and payable to the CONSULTANT prior to the effective date of such suspension. COUNTY shall thereafter have no further obligation for payment to the CONSULTANT unless and until the COUNTY notifies the CONSULTANT that the services of the CONSULTANT called for hereunder are to be resumed. Upon receipt of written notice from the COUNTY that CONSULTANT'S services hereunder are to be resumed, CONSULTANT shall complete the services

of CONSULTANT called for in

This Contract and CONSULTANT, shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to him under this Contract, same to be payable in the manner specified herein.

In no event will the compensation or any part thereof become due or payable to CONSULTANT under this Contract unless and until CONSULTANT has attained that stage of work where the same would be due and payable to CONSULTANT under the provision of this Contract.

- ii. Renegotiation by CONSULTANT; Right to Terminate – If the aggregate time of the COUNTY'S suspension or suspension of CONSULTANT'S services exceeds one hundred twenty (120) days, then CONSULTANT and COUNTY shall, upon request of CONSULTANT, meet to assess the services remaining to be performed and the total fees paid to CONSULTANT hereunder.

The parties shall then have the opportunity of negotiating a change in fees to be paid to the CONSULTANT for the balance of the services to be performed hereunder. No increase in fees to the CONSULTANT shall be allowed unless based upon clear and convincing evidence of an increase in CONSULTANT'S costs attributable to the aforesaid suspensions. If an increase in the CONSULTANT'S cost is demonstrated by clear and convincing evidence and the COUNTY refuses to increase said fees, CONSULTANT may terminate this Contract by delivering written notice thereof to the COUNTY within ten (10) days after the COUNTY has given notice of its refusal to increase said fees.

XII STANDARDS OF CONDUCT

- A. The CONSULTANT represents that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract and that he has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Contract.
- B. The CONSULTANT shall comply with all Federal, State and local laws and ordinances in effect on the date of this Contract and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, religion, sex, sexual orientation and gender expression/identity, color, age, disability or national origin in the performance of work under this Contract.
- C. The CONSULTANT hereby certifies that no undisclosed conflict of interest exists with respect to the present Contract, including any conflicts that may be due to representation of other clients, other contractual relationships of the CONSULTANT, or any interest in property which the CONSULTANT may have. The CONSULTANT further certifies that any apparent conflict of interest that arises

during the term of this Contract will be immediately disclosed in writing to the COUNTY. Violation of this section will be considered as justification for immediate termination of this Contract under the provisions of Article VII.

- D. The CONSULTANT and its subsidiaries or affiliates who designed the project, shall be ineligible for the award of the construction contract for that project.

XIII

MINORITY/WOMEN EMPLOYMENT PARTICIPATION

- A. The CONSULTANT shall be responsible for reporting Minority/Women Business Enterprise (M/WBE) subconsultant Contract dollar amount(s) for the M/WBE subconsultant(s) listed in this document, by submitting the appropriate documents, which shall include but not limited to fully executed sub-contract agreements and/or purchase orders evidencing contract award of work, to the Business Development Division. Submittal of these sub-contract agreements/purchase orders is a condition precedent to execution of the prime contract with the County. Quarterly updated M/WBE utilization reports and Employment Data, Schedule of Minorities and Women reports are to be submitted every quarter during the term of the contract. Additionally, the Consultant shall ensure that the M/WBE participation percentage proposed in the Consultant's Proposal submitted for this Contract is accomplished.
- B. Subsequent amendments to this contract shall be submitted with the appropriate documentation evidencing contractual change or assignment of work to the Business Development Division, with a copy to the COUNTY'S designated representative, within ten (10) days after COUNTY'S execution.
- C. The CONSULTANT shall be responsible for reporting local minority/women employment percentage levels within the firm and the minority/women employment percentage levels that the firm anticipates utilizing to fulfill the obligations of this Contract. The report(s) shall be submitted to the Business Development Division, on a quarterly basis during the life of the Contract.
- D. The awarded prime consultant shall furnish written documentation evidencing actual dollars paid to **all sub-consultants** utilized by the prime consultant on the project. This will include, but not limited to: copies of cancelled checks, approved invoices, and signed affidavits certifying the accuracy of payments so that the County may determine actual MWBE participation achieved by the Prime Consultant prior to the issuance of final payment.
- E. The awarded prime consultant shall not substitute, replace or terminate any M/WBE firm without prior written authorization from the Business Development Manager. In the event a certified M/WBE sub-consultant's sub-contract is terminated for cause, the CONSULTANT shall justify the replacement of that sub-consultant with another certified M/WBE firm, in writing to the Business Development Division, accompanied by the Senior Architect's recommendation.

- F. It is the intent of the COUNTY to insure prompt payment of all sub-consultants working on COUNTY projects. The CONSULTANT shall:
1. Submit copies of executed contracts between the CONSULTANT and all of its M/WBE sub-consultants to the Business Development Division.
 2. The County may at its discretion require copies of subcontracts/purchase orders for the non-M/WBE's listed on Form B and or utilized on the project. However, if this option is not exercised the awarded Proposer shall provide a list of all non-M/WBE subconsultants certifying that a prompt payment clause has been included in that contract or purchase order.
 3. The Consultant must include in the subcontract agreement:
 - i. Prompt Payment Clause to the M/WBE subconsultant to state: **"Payment will be made to the sub-consultants/suppliers within 72 hours of receipt of payment from the County."**
 - ii. The following statement: **"It is the M/WBE responsibility to submit the required payment verification reports to the prime consultant quarterly and the Final M/WBE payment verification form directly to Business Development Division."**
 - iii. Termination Clause to state: **"The awarded prime consultant shall not substitute, replace or terminate any M/WBE firm without prior written authorization from the Business Development Division Manager, nor shall the prime reduce the scope of work or monetary value of the overall contract value of a sub-consultant without written authorization of the Business Development Division Manager.**
- The M/WBE's failure to submit the required documents could negatively impact their M/WBE certification.**

- G. By entering into this contract, the CONSULTANT affirmatively commits to comply with the M/WBE subcontracting and Joint Venture requirements submitted with his/her Proposal. The failure of the CONSULTANT to comply with this commitment during the Contract's performance period may be considered a breach of Contract.

The County may take action up to and including termination for default if this condition is not remedied within the time period specified by the Manager, Procurement Division.

XIV **ASSIGNABILITY; EMPLOYMENT OF SPECIALISTS**

- A. The CONSULTANT shall maintain an adequate and competent professional staff and may associate with such staff, professional specialists for the purpose of ensuring and enlarging its services hereunder, without additional cost to the

COUNTY. Should the CONSULTANT desire to utilize such specialists, the CONSULTANT is fully responsible for satisfactory completion of all work within the scope of this Contract.

- B. The CONSULTANT shall be responsible for the integration of all CONSULTANT's specialists or outside professional work into the documents and for all payments to such specialists or consultants from the fee heretofore stated. Services rendered by the CONSULTANT in connection with coordination of the services of the aforementioned personnel shall be considered within the scope of the basic Contract and no additional fee will be due the CONSULTANT for such work.
- C. All final plans and documents prepared by the CONSULTANT must bear the endorsement of a person in the full employ of the CONSULTANT and be duly registered as a Professional Engineer/Architect in the State of Florida.
- D. The CONSULTANT shall not assign any interest in this Contract, and shall not transfer any interest in the same without prior written approval of the COUNTY, provided that claims for the money due or to become due the CONSULTANT from the COUNTY under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the COUNTY.

XV

INDEMNIFICATION FOR TORT ACTIONS/LIMITATION OF LIABILITY

- A. The provisions of Florida Statute 768.28 applicable to Orange County, Florida apply in full to this Contract. Any legal actions to recover monetary damages in tort for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the COUNTY acting within the scope of his/her office or employment are subject to the limitations specified in this statute.
- B. No officer, employee or agent of the COUNTY acting within the scope of his/her employment or function shall be held personally liable in tort or named as a defendant in any action for any injury or damage suffered as a result of any act, event, or failure to act.
- C. The COUNTY shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of his/her employment. This exclusion includes actions committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

XVI
EQUAL OPPORTUNITY

It is hereby declared that equal opportunity and nondiscrimination shall be the County's policy intended to assure equal opportunities to every person, regardless of race, religion, sex, sexual orientation and gender expression/identity, color, age, disability or national origin, in securing or holding employment in a field of work or labor for which the person is qualified, as provided by Section 17-314 of the Orange County Code and the County Administrative Regulations.

Further, the CONSULTANT shall abide by the following provisions:

- (a) The CONSULTANT shall represent that CONSULTANT has adopted and maintains a policy of nondiscrimination as defined by applicable County ordinance throughout the term of this contract.
- (b) The CONSULTANT shall allow reasonable access to all business and employment records for the purpose of ascertaining compliance with the nondiscrimination provision of the contract.
- (c) The provisions of the prime contract shall be incorporated by the CONSULTANT into the contracts of any applicable sub-consultants.

XVII
CONTROLLING LAWS

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the provisions of this Contract will be held in Orange County, Florida. Venue for any litigation involving this contract shall be the Ninth Circuit Court in and for Orange County, Florida.

XVIII
REGISTERED SERVICE-DISABLED VETERAN PARTICIPATION

- A. The CONSULTANT shall be responsible for reporting Registered Service-Disable Veteran (SDV) sub-consultant Contract dollar amount(s) for the registered SDV SUBCONSULTANT(s) listed in this document, by submitting the appropriate documents, which shall include but not limited to fully executed sub-contract agreements and/or purchase orders evidencing contract award of work, to the Business Development Division. Submittal of these sub-contract agreements/purchase orders is a condition precedent to execution of the prime contract with the County. Quarterly updated SDV utilization reports and Schedule of Minorities and Women reports are to be submitted every quarter during the term of the contract. Additionally, the Consultant shall ensure that the SDV participation percentage proposed in the Consultant's Proposal submitted for this Contract is accomplished.

- B. Subsequent amendments to this contract shall be submitted with the appropriate documentation evidencing contractual change or assignment of work to the Business Development Division, with a copy to the COUNTY'S designated representative, within ten (10) days after COUNTY'S execution.
- C. The awarded prime consultant shall furnish written documentation evidencing actual dollars paid to **all sub-consultants** utilized by the prime consultant on the project. This will include, but not limited to: copies of cancelled checks, approved invoices, and signed affidavits certifying the accuracy of payments so that the County may determine actual SDV participation achieved by the Prime Consultant prior to the issuance of final payment.
- D. The awarded prime consultant shall not substitute, replace or terminate any M/WBE firm without prior written authorization from the Business Development Division Manager. In the event a registered SDV sub-CONSULTANT's sub-contract is terminated for cause, the CONSULTANT shall justify the replacement of that sub-CONSULTANT with another registered SDV firm, in writing to the Business Development Division, accompanied by the Senior Architect's recommendation or consent to termination.
- E. It is the intent of the COUNTY to insure prompt payment of all sub-consultants working on COUNTY projects. The CONSULTANT shall:
 - 1. Submit copies of executed contracts between the CONSULTANT and all of its SDV sub-consultants to the Business Development Division.
 - 2. The County may at its discretion require copies of subcontracts/purchase orders for the non-SDV's listed on Form B and or utilized on the project. However, if this option is not exercised the awarded Proposer shall provide a list of all non-SDV subconsultants certifying that a prompt payment clause has been included in that contract or purchase order.
 - 3. Incorporate a prompt payment assurance provision and payment schedule in all contracts between the CONSULTANT and sub-consultants (including those with non-SDV's) stating that payment will be made to the sub-consultant within 72 hours of receipt of payment from the COUNTY. The CONSULTANT shall pay each sub-consultant for all work covered under an invoice within the 72 hour time frame.

The Proposer shall contact the Business Development Division Liaison at 407 836-8363 for any questions and/or concerns as it relates to Registered Service Disabled Veterans.

- F. By entering into this contract, the CONSULTANT affirmatively commits to comply with the SDV subcontracting requirements submitted with his/her Proposal. The failure of the CONSULTANT to comply with this commitment during the Contract's

performance period may be considered a breach of Contract. The County may take action up to and including termination for default if this condition is not remedied within the time period specified by the Manager, Procurement Division.

XIX CONTRACT CLAIMS

“Claim” as used in this provision means a written demand or written assertion by one of the contracting parties seeking as a matter of right, the payment of a certain sum of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

Claims made by a Consultant against the County relating to a particular contract shall be submitted to the Procurement Division Manager in writing clearly labeled “Contract Claim” requesting a final decision. The Consultant also shall provide with the claim a certification as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Consultant believes the County is liable; and that I am duly authorized to certify the claim on behalf of the Consultant.”

Failure to document a claim in this manner shall render the claim null and void. Moreover, no claim shall be accepted after final payment of the contract.

The decision of the Procurement Division Manager shall be issued in writing and shall be furnished to the Consultant. The decision shall state the reasons for the decision reached. The Procurement Division Manager shall render the final decision within sixty (60) days after receipt of Consultant’s written request for a final decision. The Procurement Division Manager’s decision shall be final and conclusive.

The parties shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal or action arising under the contract and shall comply with any final decision rendered by the Manager of the Procurement Division.

XX AVAILABILITY OF FUNDS

The obligations of Orange County under this Contract are subject to availability of funds lawfully appropriated for its purpose by the Board of County Commissioners, or other specified funding source for this contract.

XXI PROHIBITION AGAINST CONTINGENT FEES

The Consultant warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this

Contract and that they have not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Contract. For the breach or violation of this provision, the County shall have the right to terminate the Contract at its sole discretion, without liability and to deduct from the Contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

XXII
TOBACCO FREE CAMPUS

All Orange County operations under the Board of County Commissioners shall be tobacco free. This policy shall apply to parking lots, parks, break areas and worksites. It is also applicable to Consultants and their personnel during contract performance on county-owned property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.

XXIII
VERIFICATION OF EMPLOYMENT STATUS

Prior to the employment of any person performing services under this contract, the CONSULTANT shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all employees within the State of Florida that are hired by the CONSULTANT after the execution of the contract who are providing labor under the contract during the contract term; and, (b) all employees within the State of Florida of any of the CONSULTANT'S sub-consultants that are hired by those sub-consultants after the execution of the contract who are providing labor under the contract during the contract term. Please refer to USCIS.gov for more information on this process.

Only those employees determined eligible to work within the United States shall be employed under the contract.

Therefore, by submission of a proposal in response to this solicitation, the CONSULTANT confirms that all employees in the above categories will undergo e-verification before performing labor under this contract. The CONSULTANT further confirms his commitment to comply with the requirement by completing the E-Verification certification, contained in this solicitation.

XXIV
ASBESTOS FREE MATERIALS

For contracts for design services, CONSULTANT shall provide a written and notarized

statement on company letterhead to certify and warrant that the project was designed with asbestos free materials. Such statement shall be submitted with the final payment request. Final payment shall not be made until such statement is submitted. CONSULTANT agrees that if materials containing asbestos are subsequently discovered at any future time to have been included in the design, CONSULTANT shall be liable for all costs related to the redesign or modification of the construction of the project so that materials containing asbestos are removed from the design, plans or specifications or construction contract documents, and, in addition, if construction has begun or has been completed pursuant to a design that includes asbestos containing materials, the CONSULTANT shall also be liable for all costs related to the abatement of such asbestos.

XXV

DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:

By executing this agreement the Bidder affirms that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

XXVI

FLORIDA CONVICTED/SUSPENDED/DISCRIMINATORY COMPLAINTS:

By executing this agreement the Bidder affirms that it is not currently listed in the Florida Department of Management Services Convicted/Suspended/Discriminatory Complaint Vendor List.

XXVII

PUBLIC RECORDS COMPLIANCE (APPLICABLE FOR SERVICE CONTRACTS)

Orange County is a public agency subject to Chapter 119, Florida Statutes. The Consultant agrees to comply with Florida's Public Records Law. Specifically, the Consultant shall:

1. Keep and maintain public records required by Orange County to perform the service.
2. Upon request from Orange County's custodian of public records, provide Orange County 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 this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by

law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to Orange County.

4. Upon completion of the contract, Consultant agrees to transfer at no cost to Orange County all public records in possession of the Consultant or keep and maintain public records required by Orange County to perform the service. If the Consultant transfers all public record to Orange County upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Orange County, upon request from Orange County's custodian of public records, in a format that is compatible with the information technology systems of Orange County.
5. A Consultant who fails to provide the public records to Orange County within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.

6. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT :

400 E. South Street, 2nd Floor, Orlando, FL 32801
407-836-5897
ProcurementRecords@ocfl.net

POPULOUS + C.T. HSU A JOINT VENTURE, LLC
ORLANDO, FLORIDA



Signature


SENIOR PRINCIPAL/MANAGER

Title

MICHAEL LOCKWOOD

Name Typed or Printed

BOARD OF COUNTY COMMISSIONERS
ORANGE COUNTY, FLORIDA



Carrie Mathes, MPA, CFCM, CPPO, C.P.M.
CPPB, APP, Manager, Procurement Division

1-6-2020

Date (for County use only)

Byron W. Brooks

Signature

County Administrator

Title

BYRON W. BROOKS

Name Typed or Printed

