

**DUPLICATE**

**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND  
POPULOUS, INC.  
FOR  
CONCEPTUAL PLANNING & DESIGN SERVICES FOR THE SAN  
DIEGO STADIUM REPLACEMENT PROJECT**

**CONTRACT NUMBER: H156549**

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## NON-DESIGN CONSULTANT SHORT FORM AGREEMENT EXHIBITS

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - Consultant Certification for a Drug-Free Workplace
- Exhibit E - Equal Benefits Ordinance Certification of Compliance
- Exhibit F - Regarding Information Requested under the California Public Records Act
- Exhibit G - Americans With Disabilities Act (ADA) Compliance Certification
- Exhibit H - Contractor Standards Pledge of Compliance

**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND POPULOUS, INC.  
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Populous, Inc. [Consultant] for the Consultant to provide Professional Services to the City on Conceptual Planning & Design Services for the San Diego Stadium Replacement Project [Project].

**ARTICLE I  
CONSULTANT SERVICES**

**1.1 Scope of Services.** The Consultant shall perform the Professional Services as set forth in the written Scope of Services [Exhibit A] at the direction of the City.

**1.2 Competitive Bidding.** If applicable, the Consultant shall comply with the following: Consultant shall ensure that any plans, specifications, studies, or reports prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall prepare such plans, specifications, studies, or reports so that procurement of services, labor or materials are not available from only one source, and shall not prepare plans, specifications, studies, or reports around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Consultant shall submit this written justification to the City prior to beginning work on such plans, specifications, studies, or reports. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

**ARTICLE II  
DURATION OF AGREEMENT**

**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or June 30, 2016 whichever is the earliest but not to exceed five years; unless approved by City ordinance.

**2.2 Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services is set forth in the Time Schedule [Exhibit C].

**2.3 City's Right to Terminate for Convenience.** The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Consultant. The Consultant shall be entitled to fair and reasonable compensation for the Professional Services performed by the Consultant before the effective date of termination.

**2.4 City's Right to Terminate for Default.** If the Consultant fails to satisfactorily perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. A Default includes the Consultant's failure to adhere to the Time Schedule. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

### **ARTICLE III COMPENSATION**

**3.1 Amount of Compensation.** The City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, a total contract amount not exceeding \$49,000. The compensation for the Scope of Services shall not exceed \$49,000, and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed zero dollars.

**3.2 Additional Services.** The City may require that the Consultant perform additional Professional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Consultant's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule. The City will pay the Consultant for the performance of Additional Services in accordance with Section 3.3.

**3.3 Manner of Payment.** The City shall pay the Consultant in accordance with the Compensation and Fee Schedule [Exhibit B]. For the duration of this Agreement, the Consultant shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Consultant shall include with each invoice a description of completed Professional Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

**3.4 Eighty Percent Notification.** The Consultant shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services appears that it may be greater than the maximum compensation for this Agreement.

#### **ARTICLE IV CONSULTANT'S OBLIGATIONS**

**4.1 Industry Standards.** The Consultant agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent Conceptual Planning and Design firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

**4.2 Maintenance of Records.** The Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of the Professional Services for the Project, throughout the performance of the Professional Services and for a period of ten years following completion of the Professional Services for the Project. The Consultant further agrees to allow the City to inspect, copy, and audit such books, records, documents and other evidence at all reasonable times.

**4.3 Insurance.** The Consultant shall not begin the Professional Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates and endorsements reflecting evidence of all insurance required in Article IV, Section 4.3.1; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required by Article IV, Section 4.3.3; and (c) confirmed that all policies contain the specific provisions required in Article IV, Section 4.3.4. Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

**4.3.1 Types of Insurance.** At all times during the term of this Agreement, the Consultant shall maintain insurance coverage as follows:

**4.3.1.1 Commercial General Liability.** Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1 million** per occurrence and subject to an annual aggregate of **\$2 million**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**4.3.1.2 Commercial Automobile Liability.** For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$1 million** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

**4.3.1.3 Workers' Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of **\$1 million** of employers' liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

**4.3.1.4 Professional Liability.** For all of the Consultant's employees who are subject to this Agreement, the Consultant shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of **\$1 million** per claim and **\$2 million** annual aggregate. The Consultant shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Professional Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Professional Services or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss.

**4.3.2 Deductibles.**

All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the City at the time the evidence of insurance is provided.

**4.3.3 Acceptability of Insurers.**

**4.3.3.1** Except for the State Compensation Insurance Fund, all insurance required by this Agreement shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

**4.3.3.2** The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

#### **4.3.4 Required Endorsements.**

The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

##### **4.3.4.1 Commercial General Liability Insurance Endorsements.**

**ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

**PRIMARY AND NON-CONTRIBUTORY COVERAGE.** The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Consultant's insurance and shall not contribute to it.

##### **4.3.4.2 Automobile Liability Insurance Endorsements**

**ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Consultant.

##### **4.3.4.3 Worker's Compensation and Employer's Liability Insurance Endorsements**

**WAIVER OF SUBROGATION.** The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

**4.3.5 Reservation of Rights.** The City reserves the right, from time to time, to review the Consultant's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Consultant for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

**4.3.6 Additional Insurance.** The Consultant may obtain additional insurance not required by this Agreement.

**4.3.7 Excess Insurance.** All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**4.4 Drug-Free Workplace.** The Consultant agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit D].

**4.5 Non-Discrimination Requirements.**

**4.5.1 Compliance with the City's Equal Opportunity Contracting Program.** The Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its Subcontractors.

**4.5.2 Non-Discrimination Ordinance.** The Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Consultant shall provide equal opportunity for Subcontractors to participate in subcontractor opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions. This language shall be in contracts between the Consultant and any Subcontractors, vendors and suppliers.

**4.5.3 Compliance Investigations.** Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Consultant for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

**4.5.4 ADA Certification.** The Consultant hereby certifies [Exhibit G] that it agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.

**4.6 Conflict of Interest.** The Consultant is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

**4.7 RESERVED.**

## **ARTICLE V CITY'S OBLIGATIONS**

**RESERVED**

## **ARTICLE VI INDEMNIFICATION**

**6.1 Indemnification and Hold Harmless Agreement.** With respect to any liability, including but not limited to claims asserted or costs, losses, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising out of any services performed under this Agreement, the Consultant agrees to indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all such liability.

## **ARTICLE VII MEDIATION**

**RESERVED**

## **ARTICLE VIII MISCELLANEOUS**

**8.1 Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

**8.2 Independent Contractors.** The Consultant and any Subcontractors employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Professional Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

**8.3 Compliance with Controlling Law.** The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

**8.4 Jurisdiction and Venue.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be the County of San Diego, State of California.

**8.5 Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

**8.6 Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: Public Works Department, c/o Kris Shackelford, MS 908A, 525 B Street, Suite 600, San Diego, CA 92101, and notice to the Consultant shall be addressed to: Populous, Inc., 300 Wyandotte, Kansas City, MO 64105.

**8.7 Exhibits Incorporated.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

**8.8 Ownership of Documents.** Once the Consultant has received any compensation for the Professional Services performed under this Agreement, all documents, including but not limited to, original plans, maps, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Scope of Services or Professional Services, shall be the property of the City.

**8.9 Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

**8.10 Equal Benefits Ordinance.** This Agreement is subject to the Equal Benefits Ordinance [EBO]. All consultants are required to complete the Equal Benefits Ordinance Certification of Compliance included herein as Exhibit E. Effective January 1, 2011, any contract awarded from this solicitation is subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC].

In accordance with the EBO, Consultant must certify it will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract [SDMC §22.4304(f)]. Failure to maintain equal benefits is a material breach of the contract [SDMC §22.4304(e)]. Consultant must notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.

Consultant also must give the City access to documents and records sufficient for the City to verify the Consultant is providing equal benefits and otherwise complying with EBO requirements. Full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at [www.sandiego.gov/purchasing/](http://www.sandiego.gov/purchasing/) or can be requested from the Equal Benefits Program at (619) 533-3948.

**8.11 Public Records.** This contract is public document subject to the California Public Records Act, and as such may be subject to public review per Exhibit F (Regarding Information Requested under the California Public Records Act).

**8.12 Contractor Standards.** This Agreement is subject to the Contractor Standards clause of the Municipal Code Chapter 2, Article 2, Division 30 adopted by Ordinance No. O-20148. All consultants are required to complete the Contractor Standards Pledge of Compliance included herein as Exhibit H. The Contractor Standards are available online at [www.sandiego.gov/purchasing/vendor/index.shtml](http://www.sandiego.gov/purchasing/vendor/index.shtml) or by request from the Purchasing & Contracting Department by calling (619) 236-6000.

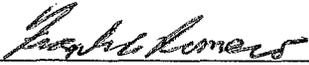
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# DUPLICATE

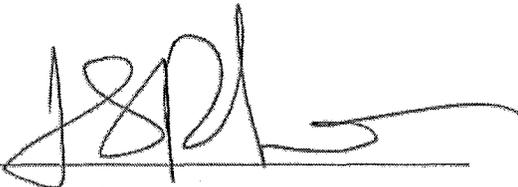
IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to San Diego Municipal Code 22.3207 authorizing such execution, and by the Consultant pursuant to Corporate Authority.

Dated this 7<sup>th</sup> day of August, 2015.

THE CITY OF SAN DIEGO  
Mayor or Designee

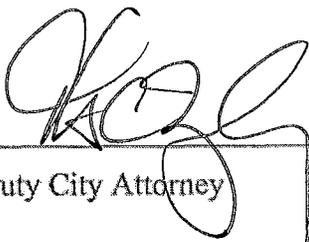
By:   
Frank A. Romero  
Senior Contract Specialist  
Public Works Department

I HEREBY CERTIFY I can legally bind Populous, Inc. and that I have read all of this Agreement, this 7<sup>th</sup> day of AUGUST, 2015.

By   
Scott Radecic  
Senior Principal

I HEREBY APPROVE the form of the foregoing Agreement this 7<sup>th</sup> day of August, 2015.

JAN I. GOLDSMITH, City Attorney

By   
Deputy City Attorney

**NON-DESIGN CONSULTANT SHORT FORM**  
**AGREEMENT EXHIBITS**

## SCOPE OF SERVICES

- Task 1 – Develop and/or identify the basic programmatic elements of the stadium.
- Seating capacity, number and type of premium seating, expansion for Super Bowl, other event, etc.
- Task 2 – Develop and/or identify the basic parameters of the site.
- Site boundaries, topography, site constraints, environmental issues, utilities, etc.
- Task 3 – Develop and/or identify the basic programmatic elements of the site.
- Stadium, parking, river park, etc.
- Task 4 – Articulate the vision for the new stadium.
- Identify the major goals & objectives for the project.
  - Create the design story.
- Task 5 – Develop stadium conceptual design.
- Site plan(s), stadium plans, stadium sections.
  - Investigate and determine the various views for the stadium renderings.
- Task 6 – Finalize stadium conceptual design
- Develop final site plan(s), stadium plans, stadium sections
  - Complete renderings
  - Complete animation

### DELIVERABLES

1. Conceptual Site Plan(s)
2. Conceptual Stadium Plans & Sections
3. 3D renderings to convey design intent.
4. 10 - 12 conceptual architectural renderings with entourage for marketing purposes.
5. Video Animation.

## COMPENSATION AND FEE SCHEDULE

BASIC FEE- inclusive of expenses.

Compensation inclusive of direct expenses incurred by Populous for these services will be performed for the sum of:

**Forty Nine Thousand Dollars (\$49,000).**

## TIME SCHEDULE

### SCHEDULE

The Preliminary Project Schedule shall commence upon execution and shall be completed no later than June 30, 2016.



**EQUAL BENEFITS ORDINANCE**  
**CERTIFICATION OF COMPLIANCE**

**EQUAL BENEFITS ORDINANCE  
CERTIFICATION OF COMPLIANCE**



For additional information, contact:  
**CITY OF SAN DIEGO**  
**EQUAL BENEFITS PROGRAM**  
 202 C Street, MS 9A, San Diego, CA 92101  
 Phone (619) 533-3948 Fax (619) 533-3220

Company Name: Populous, Inc.	Contact Name: Laura McIntosh
Company Address: 300 Wyandotte Street, Suite 200, Kansas City, MO 64105	Contact Phone: 816-329-4467
	Contact Email: Laura.McIntosh@Populous.com

Contract Title: Conceptual Planning & Design Services for the San Diego Stadium Replacement Project	Start Date:
Contract Number (if no number, state location): H156549	End Date:

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
  - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.
  - Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.
- Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.
- Contractor shall submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at [www.sandiego.gov/administration](http://www.sandiego.gov/administration).

Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.

- I affirm **compliance** with the EBO because my firm (*contractor must select one reason*):
  - Provides equal benefits to spouses and domestic partners.
  - Provides no benefits to spouses or domestic partners.
  - Has no employees.
  - Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.
- I request the City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.

Laura McIntosh HE Director      *Laura McIntosh*      8/6/15  
 Name/Title of Signatory      Signature      Date

FOR OFFICIAL USE ONLY

Receipt Date:      EBO Analyst:       Approved       Not Approved – Reason:

**REGARDING INFORMATION REQUESTED UNDER THE CALIFORNIA PUBLIC RECORDS ACT**

The undersigned duly authorized representative, on behalf of the named Contractor declares and acknowledges the following:

**The contents of this contract and any documents pertaining to the performance of the contract requirements/Scope of Services resulting from this contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.**

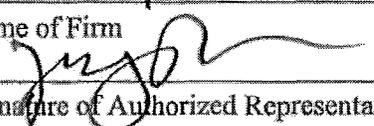
If a Contractor submits information **clearly marked** confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the **responsibility of the Contractor** to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, the Contractor must provide a **specific and detailed legal basis, including applicable case law that clearly establishes** the requested information is exempt from the disclosure requirements of the California Public Records Act.

If the Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the **Contractor will hold the City harmless** for release of this information.

It will be the **Contractor's obligation to defend**, at Contractor's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the Contractor's request. Furthermore, the Contractor shall **indemnify** the City and **hold it harmless** for any claim or liability, and **defend any action** brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at Contractor's request.

Nothing in this Agreement creates any obligation for the City to notify the Contractor or obtain the Contractor's approval or consent before releasing information subject to disclosure under the California Public Records Act.

Populus, Inc.  
Name of Firm  
  
Signature of Authorized Representative  
ZACHARY S. RUBMAN  
Printed/Typed Name  
8-6-15  
Date

# CONSULTANT CERTIFICATION

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## AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

Conceptual Planning & Design Services for the San Diego Stadium Replacement Project H156549

PROJECT TITLE: \_\_\_\_\_

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-4 regarding the Americans With Disabilities Act (ADA) outlined in Article IV, "ADA Certification", of the Agreement, and that;

Populous, Inc.

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(Name under which business is conducted)

has in place workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the subcontractor's agreement to abide by the provisions of the policy as outlined.

Signed Laura McIntosh  
Printed Name Laura McIntosh  
Title Human Resources Director

City of San Diego  
**CONTRACTOR STANDARDS**  
**Pledge of Compliance**

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a bidder or proposer has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Respondents must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render the bid or proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

**A. BID/PROPOSER/SOLICITATION TITLE:**

Conceptual Planning & Design Services for the San Diego Stadium  
Replacement Project: Contract Number H156549

**B. BIDDER/PROPOSER INFORMATION:**

Populous, Inc.			
Legal Name	300 Wyandotte, Ste. 300	City	DBA
	Kansas City	MO	64105
Street Address	City	State	Zip
	816-221-1500	816-221-1578	
Contact Person, Title	Phone	Fax	

**C. OWNERSHIP AND NAME CHANGES:**

1. In the past five (5) years, has your firm changed its name?  
 Yes       No

If Yes, use Attachment "A" to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?  
 Yes       No

If Yes, use Attachment "A" to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

**D. BUSINESS ORGANIZATION/STRUCTURE:**

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment "A" if more space is required.

Corporation Date incorporated: 12/07/99 State of incorporation: Missouri

List corporation's current officers: President: Earl E. Santee  
 Vice Pres: \_\_\_\_\_  
 Secretary: Zachary S. Rudman  
 Treasurer: George A. Valenti

Is your firm a publicly traded corporation?  Yes  No

If Yes, name those who own ten percent (10 %) or more of the corporation's stocks:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Limited Liability Company Date formed: \_\_\_/\_\_\_/\_\_\_ State of formation: \_\_\_\_\_

List names of members who own ten percent (10%) or more of the company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Partnership Date formed: \_\_\_/\_\_\_/\_\_\_ State of formation: \_\_\_\_\_

List names of all firm partners:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sole Proprietorship Date started: \_\_\_/\_\_\_/\_\_\_

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Joint Venture Date formed: \_\_\_/\_\_\_/\_\_\_

List each firm in the joint venture and its percentage of ownership:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note: To be responsive, each member of a Joint Venture must complete a separate *Pledge of Compliance*.

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?  
 Yes  No

If Yes, use Attachment "A" to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?  
 Yes  No

If Yes, use Attachment "A" to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?  
 Yes       No

If Yes, use Attachment "A" to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?  
 Yes       No

If Yes, use Attachment "A" to explain specific circumstances.

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors? NO
6. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: Bank of America

Point of Contact: Mack Bowen

Address: P.O. Box 219038, Kansas City, MO 64121

Phone Number: 816-292-4248

7. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

#### F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?  
 Yes       No

If Yes, use Attachment "A" to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?  
 Yes       No

If Yes, use Attachment "A" to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?  
 Yes       No

If Yes, use Attachment "A" to explain specific circumstances.

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

Yes  No

If Yes, use Attachment "A" to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

Yes  No

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

Yes  No

If Yes, use Attachment "A" to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Company Name: Buffalo Bills

Contact Name and Phone Number: Russ Brandon (COO) 716-312-8604

Contact Email: Russ.Brandon@bills.nfl.net

Address: One Bills Drive, Orchard Park, NY 14127

Contract Date: January 2012

Contract Amount: \$4,000,000

Requirements of Contract: Master planning, architectural design, interior design, graphics/wayfinding, landscape architecture

Company Name: Pittsburgh Steelers

Contact Name and Phone Number: Heidi Edwards 412-697-7733

Contact Email: EdwardsH@Steelers.nfl.com

Address: 900 Art Rooney Avenue, Pittsburgh, PA 15233

Contract Date: September 2014

Contract Amount: \$740,000

Requirements of Contract: Architectural design, interior design

Company Name: Jacksonville JaguarsContact Name and Phone Number: Mark Lamping 904-633-6213Contact Email: lampingm@mail.jaguars.comAddress: One EverBank Field Drive, Jacksonville, FL 32202Contract Date: June 2013Contract Amount: \$800,000Requirements of Contract: Architectural design, interior design, graphics,  
wayfinding**G. COMPLIANCE:**

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?

Yes       No

If Yes, use Attachment "A" to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?

Yes       No

If Yes, use Attachment "A" to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

**H. BUSINESS INTEGRITY:**

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

Yes       No

If Yes, use Attachment "A" to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

Yes       No

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

Yes       No

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

I. WAGE COMPLIANCE:

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws? Yes  No  If Yes, use Attachment "A" to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

J. STATEMENT OF SUBCONTRACTORS:

Please provide the names and information for all subcontractors used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment "A" if additional pages are necessary. If no subcontractors will be used, please write "Not Applicable."

Company Name: Not Applicable

Contact Name and Phone Number: \_\_\_\_\_

Contact Email: \_\_\_\_\_

Address: \_\_\_\_\_

Contract Date \_\_\_\_\_

Sub-Contract Dollar Amount: \_\_\_\_\_

Requirements of Contract: \_\_\_\_\_

What portion of work will be assigned to this subcontractor: \_\_\_\_\_

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES  NO

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

Company Name: \_\_\_\_\_

Contact Name and Phone Number: \_\_\_\_\_

Contact Email: \_\_\_\_\_

Address: \_\_\_\_\_

Contract Date \_\_\_\_\_

Sub-Contract Dollar Amount: \_\_\_\_\_

Requirements of Contract: \_\_\_\_\_

What portion of work will be assigned to this subcontractor: \_\_\_\_\_

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES  NO

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

## K. STATEMENT OF AVAILABLE EQUIPMENT:

List all necessary equipment to complete the work specified. Use *Pledge of Compliance Attachment "A"* if additional pages are necessary. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response when, in its opinion, the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

If no equipment is necessary to complete the work specified, please write "Not Applicable."

Equipment Description: Not Applicable

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: \_\_\_\_\_

Year, Make & Model: \_\_\_\_\_

Explanation: \_\_\_\_\_

Equipment Description: \_\_\_\_\_

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: \_\_\_\_\_

Year, Make & Model: \_\_\_\_\_

Explanation: \_\_\_\_\_

Equipment Description: \_\_\_\_\_

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: \_\_\_\_\_

Year, Make & Model: \_\_\_\_\_

Explanation: \_\_\_\_\_

## L. TYPE OF SUBMISSION: This document is submitted as:

Initial submission of Contractor Standards Pledge of Compliance

Update of prior Contractor Standards Pledge of Compliance dated     /    /    .

City of San Diego  
CONTRACTOR STANDARDS  
Pledge of Compliance Attachment "A"

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed. Print in ink or type responses and indicate question being answered.

Paragraph F, Question 3:

Populous performed services as a sport specific design subconsultant under contract with a local prime architect on the University of South Carolina Baseball Stadium project which opened in 2009. In 2012 settlement cracks were noticed in the northwest corner, and the University ultimately expended money to repair and remediate the foundation system. Subsequent to their expenditure, the University made a claim against all design team parties (5 parties), contractor parties (2 parties) and the University's Quality Assurance consultant. Included in the claims was a claim for breach of contract against all parties. The allegations did not name Populous specifically (as Populous had no role in the foundation), other than identifying Populous as a Sports Design consultant as part of the Design Team respondents. The claim was amicably settled by all parties without admission of liability or fault during mediation with a confidential settlement agreement entered into by all parties.

I have read the matters and statements made in this Contractor Standards Pledge of Compliance and attachments there to and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

ZACHARY S. RUDMAN / CHIEF  
Print Name, Title  
LEGAL OFFICER

  
Signature

9-6-15  
Date