

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Engineering and Construction Management

**AGENDA DATE:** November 27, 2012

**CONTACT PERSON NAME AND PHONE NUMBER:** R. Alan Shubert, P.E., Project Engineer – El Paso Ballpark (X4423)

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

That the City Manager be authorized to sign an Agreement for Professional Services by and between the City of El Paso and Populous, Inc., a Missouri Corporation, for a project known as "El Paso Ballpark – Design Services" for an amount not to exceed Two Million Nine Hundred Twenty One Thousand Five Hundred and No/00 Dollars (\$2,921,500.00), plus reimbursables not to exceed One Hundred Twenty Three Thousand Eight Hundred Seventy and No/00 Dollars (\$123,870.00); and that the City Engineer be authorized to approve up to \$50,000.00 in additional services, for a total contract amount not to exceed Three Million Ninety Five Thousand Three Hundred Seventy and No/00 Dollars (\$3,095,370.00); and that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this agreement.

**BACKGROUND / DISCUSSION:**

On September 18, 2012, City Council acted to approve the Ballpark Development agreement between the City of El Paso (City) and the Mountainstar Sports Group (Club). One of the requirements in the agreement is that the City and the Club agree on and procure the services of a Project Architect to design the ballpark. This item addresses this requirement. The Architect was selected through the City's Architect/Engineer selection process. Three submissions were received. Two firms were short listed, and Populous was selected with mutual concurrence by the City and the Club.

**PRIOR COUNCIL ACTION:**

Approved by City Council on September 18, 2012 of the Ballpark Development Agreement.

**AMOUNT AND SOURCE OF FUNDING:**

\$3,045,370.00; DeptId 190, Division 99998, Fund 4735, Account 580270, PCP13STADIUM1, Baseball Stadium Construction.

**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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(If Department Head Summary Form is initiated by Purchasing, client department should sign also)  
Information copy to appropriate Deputy City Manager

# RESOLUTION

## BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an Agreement for Professional Services by and between the City of El Paso and Populous, Inc. a Missouri Corporation, for a project known as "El Paso Ballpark – Design Services", for an amount not to exceed Two Million Nine Hundred Twenty One Thousand Five Hundred and No/00 Dollars (\$2,921,500.00), plus reimbursables not to exceed One Hundred Twenty Three Thousand Eight Hundred Seventy and No/00 Dollars (\$123,870.00); and that the City Engineer be authorized to approve up to \$50,000.00 in additional services, for a total contract amount not to exceed Three Million Ninety Five Thousand Three Hundred Seventy and No/00 Dollars (\$3,095,370.00); and that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this agreement.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2012.

CITY OF EL PASO:

\_\_\_\_\_  
John F. Cook, Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
R. Alan Shubert, P.E.  
Project Engineer – El Paso Ballpark



2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.

2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.

2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five working days time period.

### **ARTICLE III. CONSULTANT FEES AND PROJECT BUDGET**

3.1 **PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed **TWO MILLION NINE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,921,500.00)** for all basic services performed pursuant to this Agreement, plus reimbursables. Reimbursables shall not exceed **ONE HUNDRED TWENTY THREE THOUSAND EIGHT HUNDRED SEVENTY AND NO/00 DOLLARS (\$123,870.00)**. The Consultant's fee proposal for the performance of all Basic Services and reimbursables is attached hereto as **Attachment "B"**. Payments to the Consultant shall be made pursuant to the schedule enumerated within **Attachment "D"**.

3.2 **CONSULTANT'S SERVICES.** The Basic Services to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C"**. If authorized by the City Engineer, prior to the performance of such services, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed \$50,000.00. Additional Services exceeding \$50,000.00 must have prior approval by City Council through written amendment to this Agreement. Owner shall make payment for such Basic and Additional Services at the rates established by Consultant within **Attachment "B" and "C"**.

3.3 **CONSULTANT'S INVOICES.** The Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in **Attachment "D"**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.

**3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.

**3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

**3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget for this Project allocates **THIRTY FIVE MILLION AND 00/100 DOLLARS (\$35,000,000.00)** for the award of a construction contract base bid, which is to include all features essential to the operation of the Project for its intended use as described in the Scope of Services and Project Budget in **Attachment "A"**. The Consultant does hereby agree to design the Project such that the Consultant's final agreed cost opinions for the construction of the Project, including all features essential to its intended use, is within the above budgeted amount for the base bid. If the cost opinions exceed the Project Budget at any time, the Consultant shall make recommendations to the Owner to adjust the Project's size or quality and the Owner shall cooperate with the Consultant to adjust the scope of the Project. It is recognized, that neither the Consultant nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiation conditions. Accordingly, the consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project Budget or from any cost opinion prepared or agreed to by the Consultant. If all responsible bids exceed the City approved final cost opinions by more than **ten percent (10%)**, the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations. Notwithstanding the foregoing or anything within this Agreement to the contrary, the Consultant shall be entitled to compensation, as an Additional Service for changes to Contract Documents that result from (1) scope changes directed by the Owner that materially impact costs, (2) market fluctuation in the price of construction goods and services that could not have been reasonably anticipated by Consultant, (3) revisions to the Contract Documents directed by the Owner that resulted in an increase in the Project Budget, or (4) matters beyond the reasonable control of Consultant.

The Owner and Consultant acknowledge that the Project will be designed, bid and constructed according to a "Fast Track" schedule. Fast Track scheduling is being utilized to obtain beneficial occupancy of the Project at the earliest feasible time and requires the Consultant's issuance of

portions of the Contract Documents for bidding, contracting and constructing portions of the work prior to completion of remaining portions of the Contract Documents. The Owner acknowledges that Fast Track scheduling precludes overall coordination and completion of each portion of the Contract Documents at the time of their issuance, may require subsequent revisions to the Contract Documents to effect their overall coordination and completion and may require corresponding construction Changes Orders adjusting the construction sum. A reasonable contingency in the amount of 5% of the construction cost should be included in Owner's estimate and budget for Change Order amounts so required.

**3.5 COSTS NOT ENUMERATED.** Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

#### **ARTICLE IV. PERIOD OF SERVICE AND TERMINATION**

**4.1 PERIOD OF SERVICE.** The services called for by each phase shall begin upon the issuance of a Notice to Proceed from the City Engineer. The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachment "D"**.

**4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.

**4.3 TERMINATION.** This Agreement may be terminated as provided herein.

**4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is

determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

**4.3.2 TERMINATION BY EITHER PARTY.** It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

**4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

## **ARTICLE V. INSURANCE AND INDEMNIFICATION**

**5.1 INSURANCE.** The Consultant shall have **seven (7) calendar days** from date of award to obtain sufficient insurance as required herein. Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

**5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

“The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the Owner, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured.”

**5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:

- a) **COMMERCIAL GENERAL LIABILITY**
  - Personal Injury or Death**
    - \$1,000,000.00 for one person or occurrence
    - \$1,000,000.00 for two or more persons or occurrences
  - Property Damage**
    - \$1,000,000.00 per occurrence
  - General Aggregate**
    - \$1,000,000.00
  
- b) **AUTOMOBILE LIABILITY**
  - Combined Single Limit**
    - \$1,000,000.00 per accident

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.

**5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.

**5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.

**5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate. Further, the Consultant agrees that the insurance covered by this certificate shall not be canceled and there shall be no change in coverage or deductibles, except after thirty (30)

consecutive calendar days written notice of intent to cancel or change said insurance has been provided to the City of El Paso.

**5.2 INDEMNIFICATION.** To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

To the extent allowed by state law, the Owner will be responsible for its own actions.

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident.

## **ARTICLE VI. FEDERAL PROVISIONS**

**6.1 COMPLIANCE WITH APPLICABLE LAWS - FEDERAL FUNDING REQUIREMENTS.** Consultant, at Consultant's sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county

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and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal funds.

Specifically, and not in limitation of the foregoing, Consultant agrees that to the extent required by any agreement between the Owner and any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project, **including but not limited to:**

--The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.

--The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.

--The Federal Aviation Administration through a Grant Agreement or Cooperative Agreement with the Owner.

Copies of grant assurances will be made available to Consultant. However, provided copies shall in no way be a limitation on the Consultant's obligation to comply with any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

**6.1.1 CONTRACT ASSURANCE.** The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**6.1.2 DBE GOOD FAITH EFFORTS.** The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal of 0.0% has been established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the

work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

**6.2 TERMINATION FOR CANCELLATION OF GRANT.** Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Consultant of the cancellation by certified mail-return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Consultant will be paid for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

## **ARTICLE VII. GENERAL PROVISIONS**

**7.1 CONTRACT TIME.** Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.

**7.2 CONSULTANT'S QUALITY OF WORK.** The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project and in accordance with the time periods established in **Attachment "D"** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner. Services

provided by the Consultant under this Agreement shall be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar circumstances.

**7.3 COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

**7.4 AUDITING RECORDS FOR THE SPECIFIC PROJECT.** Consultant's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places.



**7.12 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

**(Signatures begin on following page)**

**WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:**

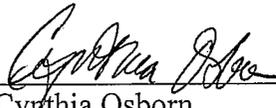
**CITY OF EL PASO:**

\_\_\_\_\_  
Joyce A. Wilson,  
City Manager

**CONSULTANT:  
POPULOUS, INC.**

\_\_\_\_\_  
Joseph E. Spear,  
Sr. Principal

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
R. Alan Shubert, P.E.  
Project Engineer – El Paso Ballpark

**(Acknowledgements on following page)**

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**ACKNOWLEDGEMENTS**

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF EL PASO §**

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2012,  
by **Joyce A. Wilson, as City Manager of the City of El Paso, Texas.**

\_\_\_\_\_  
**Notary Public, State of Texas**

**My commission expires:**

\_\_\_\_\_

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF EL PASO §**

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2012,  
by **Joseph E. Spear as Sr. Principal of Populous, Inc.**

\_\_\_\_\_  
**Notary Public, State of Texas**

**My commission expires:**

\_\_\_\_\_

Attachment A

**El Paso AAA Ballpark**  
DESIGN PHASE DELIVERABLES AND PROCESS

**EXHIBIT A**

A. DESIGN REVIEW AND CONFORMATION

1. The Architect shall meet with the City of El Paso and Tenant Team to review the design documents previously provided under a separate contract. Modifications will be made as necessary and distributed to the City and Team for approval. This information will form the basis of the Schematic Design.

B. SCHEMATIC DESIGN

1. The Architect shall work with the Construction Manager to identify budgetary constraints and review with the City and Team. Any inconsistencies between program requirements and budget limitations will be identified.
2. The Architect shall prepare and submit materials, attend meetings and make presentations required to obtain City and Team design approval.
3. As a result of (1) above, prepare schematic design studies resulting in a design concept. The Architect shall prepare schematic design documents including the following:
  - a. Plans – 1/8" or 1/16" scale Floor Plans
    - 1) Showing space relationships
    - 2) Identification of rooms/spaces with room size
    - 3) Identification of mechanical spaces
    - 4) Overall dimensions
    - 5) Roof plans showing equipment location, access, drainage and pitch
    - 6) Identification of proposed structural systems
  - b. Elevations
    - 1) All exterior elevations showing fenestration
    - 2) Material identification and color
    - 3) Interior elevations of special spaces
    - 4) Building perspective drawings
  - c. Sections
    - 1) Building section
    - 2) Typical wall sections to show materials, relationships and construction intent
  - d. Site Plan
    - 1) Ballpark location and orientation
    - 2) Walkway and hardscape
    - 3) Landscape areas including preliminary plant identification
  - e. Narrative Specifications
    - 1) Proposed Mechanical and Structural system descriptions
    - 2) Special systems descriptions
    - 3) Proposed materials descriptions
  - f. Construction Cost Estimate - If estimate is not within budget,

Items shall be identified that will bring cost down to budget for review and approval. The cost estimate shall be performed by the Construction Manager or Estimator and submitted with the schematic drawings.

- g. Code Analysis - Identify occupancy and use. Propose strategies for exiting and egress. Identify unique code conditions.
4. After completion of the schematic design, Architect shall submit schematic design review sets to the City and Team.
5. The design team, including consultants, will participate in reviews of schematic design documents with the City and Team.
6. LEED directives will be presented and reviewed by the LEED consultant and a LEED scorecard will be distributed. The preliminary energy model will be reviewed.
7. The MEP engineer or LEED consultant will work with the Owner to create an Owner's Project Requirement (OPR) document.

#### C. DESIGN DEVELOPMENT

1. Based on the approved SCHEMATIC DESIGN, the Architect shall prepare design development documents sufficiently annotated and detailed to adequately convey the size and character of the project and further define the finish materials, structural, mechanical, electrical and any special systems. In addition, color boards of room finish materials will also be presented. The Design Development submittal should include the following:
  - a. Plans – 1/8" = 1'-0" scale unless noted
    - 1) Floor plans showing partition, doors, windows and columns
    - 2) Enlarged plans at 1/4" = 1'-0" scale of special areas.
    - 3) Enlarged toilet room plans at 1/4" = 1'-0" scale showing fixtures and accommodations for the disabled
    - 4) Reflected ceiling plans showing lighting layout and mechanical diffusers
    - 5) Roof plan(s) showing equipment, drain, and hatches
    - 6) Mechanical plans showing main (primary) duct distribution and equipment schedules
    - 7) Structural plans(s) showing major framing members and columns, column grid, typical floor and roof construction details, and design live and dead load calculations
    - 8) Electrical plans showing power distribution, fixture and equipment schedule, special systems diagrams, including telephone and data systems
    - 9) Plumbing plans showing plumbing fixture and equipment schedule, water, waste and vent riser diagrams with pipe sizes
    - 10) Foundation plan, with footing and foundation sizes, reinforcing and elevations
  - b. Elevations – 1/8" = 1'-0" scale
    - 1) Same elevations as called for in Schematic Design phase, but showing (identifying) all materials, colors, light fixtures, louvers, roof mounted equipment, penthouses, downspouts, etc

- 2) Interior elevations of special areas. Interior elevations shall show all materials and pertinent vertical dimensions.

c. Sections

- 1) Typical section through solid exterior walls at  $\frac{1}{2}'' = 1'-0''$  scale
- 2) Typical exterior wall section through window/store front construction at  $\frac{1}{2}'' = 1'-0''$ . Wall sections shall show materials, bond beams, lintels, flashing, masonry coursing, beam bearing, roof construction, sill and head conditions and floor foundation connection
- 3) Cross section and longitudinal Building sections at  $\frac{1}{8}'' = 1'-0''$  showing roof and floor construction, ceiling height and major duct space

d. Site Plan

In addition to Schematic Design information, provide:

- 1) Grading and drainage
- 2) Utility service entrance points
- 3) Landscape plan/Irrigation plan
- 4) Site lighting; including submittal of light fixture cut sheets
- 5) Pavement sections, pedestrian walkways, apron access ways, and similar improvements

e. Specifications

- 1) Supplementary General Conditions or Project Procedures and Details
- 2) Index of final specifications
- 3) Technical specifications
- 4) General baseball specific requirements

- f. Construction Cost Estimate- If the estimate is not within budget, items shall be identified that will bring cost down to budget for review and approval. The cost estimate shall be performed by the Construction Manager or Estimator and submitted with the schematic drawings.

2. After completion of the design development documents, the Architect shall submit design development review sets, with specification, to the City and Team.
3. Interior finishes and materials will be presented for review and comment. Final selections will be made in the Construction Document phase.
4. Graphics and Way finding signage will be presented for review and comment. Final selections will be made in the Construction Documents phase.
5. The design team, including sub-consultants will participate in reviews of design development documents with the City and Team.
6. The City shall review and incorporate any requirements of their insurance carriers.
7. The LEED consultant will present and review the LEED scorecard. Draft versions of the design phase submittal will be reviewed.

#### D. CONSTRUCTION DOCUMENTS-

Based on approved DESIGN DEVELOPMENT, the Architect shall further develop the drawings as necessary for permitting and bidding. Addendums will be issued incorporating the AHJ's comments as well as changes to the drawings resulting from bidder's questions and clarifications. At the end of the bidding/permitting phase, a reconciled FOR CONSTRUCTION SET of documents will be prepared incorporating all the changes. The construction team will build the project using the for construction set. To meet scheduling demands, two early procurement packages are proposed to be released prior to the remainder of the drawings. The content of these packages and the release date will need to be coordinated with the CM.

1. Early Package 1 will include drawings and specifications for the following scope, all remaining information (apart from Early Package 2) will be provided at the conclusion of the CD phase.
  - a. Civil- Rough grading and utility installation. Utility work to include installation of Sanitary and Storm Sewer, Water service, and Gas. Dry utility design and installation including electrical, phone, cable, fiber, will be by others
2. Early Package 2 will include drawings and specifications for the following scope, all remaining information will be provided at the conclusion of the CD phase.
  - a. Structural- All framing members, floors/roofs, foundations, precast concrete, and cast in place concrete.
  - b. Under Slab Services- Primarily plumbing, but may also include electrical and other dry services. The scope is required to complete the structural slab installation.
3. The Architect shall provide the Construction Manager with Construction Documents to file with all governmental authorities having jurisdiction over the project. This shall include City of El Paso Plan Review and other City Departments as required. It shall be the Architects responsibility to comply with all Federal, State and local codes in effect at the time the drawings, plans and specifications are approved.
4. The Architect shall coordinate the preparation of the technical specifications with the City of El Paso standard General Conditions for format and content consistency.

#### BIDDING PHASE SERVICES

- A. During the bidding phase, the Architect shall address AHJ's questions and provide assistance to the Construction Manager in answering bidder's questions and providing clarifications regarding the drawings and specifications. The Architect shall develop and provide all required project addenda during the project bidding phase.
- B. The Architect shall attend and participate in the project pre-bid conference. The Architect shall attend the pre-bid conference to address technical questions posed by prospective contractors.

#### CONSTRUCTION PHASE SERVICES

- A. The Architect shall attend the pre-construction conference as scheduled by the Construction Manager.

- B. The Architect shall review all shop drawings, samples and other submittals to determine compliance with the drawings and specifications. The Architect shall note approval or disapproval on the submittals. The Architect, Construction Manager, and City will discuss strategies to minimize the amount of printed material and maximize the amount of digitally exchanged information.
- C. The Architect shall provide a written response to all requests for clarification and interpretation by the contract documents during construction.
- D. The Architect shall attend periodic jobsite meeting and provide written reports of on-site observations of the work to the City.
- E. The Architect shall make periodic site visits for the purpose of determining general compliance with the approved project drawings, plans, and specifications. The frequency of the visits shall be determined in advance with the City. Deviations in work from the plans and specifications shall be brought to the attention of the City in writing.
- F. If required, the Architect will review and approve pay applications submitted by the Construction Manager.
- G. At the conclusion of the work, the Architect will review the work and issue a certificate of substantial completion. The Architect will also review the completed work for compliance with the construction documents and issue a punch list identifying work that needs to be corrected. Two subsequent reviews will be made to assure that the work has been corrected and is acceptable to the City and Team.
- H. The Architect will monitor project close out procedures including the transfer of equipment maintenance manuals, training as required in the specifications, and systems start up. At the end of construction the Architect will assist in reviewing the application for final payment.
- I. Prior to the expiration of the one year standard warranty period, the Architect will visit the site and conduct a review focusing on equipment function and performance. Under performing or in operable equipment will be noted and a report will be distributed identifying these areas as well as the overall condition of the facility. Other deficient conditions such as roof and window leaks and coating failures will also be included in the report.



**El Paso AAA Ballpark**  
**FEE SCHEDULE**

**EXHIBIT D**

Construction cost	
	\$35,000,000.00
Design Team fee percentage	8.49% (8.35% without scope contingency)
Design Team fee	<b>\$2,971,500.00</b>

<u>Discipline</u>	<u>Fee</u>
Architectural	\$2,025,000.00
Structural (1)	\$325,000.00
MEP/FP (1)	\$350,000.00
Civil	\$101,500.00
Landscape Designer	\$50,000.00
TAS Review	\$5,000.00
Audio Visual	\$65,000.00
Food Service	\$0.00
<b>Sub Total</b>	<b>\$2,921,500.00</b>
Fee Contingency	\$50,000.00
Reimbursables (2)	---
<b>Grand Total</b>	<b>\$2,971,500.00</b>

(1) Consultant Fee based on construction cost. May be adjusted if construction cost increases or decreases.

(2) Reimbursable expenses including travel, printing, materials, etc, to be reimbursed by the Owner at actual cost and the anticipated amount is \$123,870.00 (which is above and beyond the grand total of \$2,971,500.00).

## Attachment C

### **EI Paso AAA Ballpark DESIGN TEAM BASIC SERVICES**

### **EXHIBIT B**

#### ARCHITECTURAL DESIGN

- Building Plans, Sections, Elevations, Details, Schedules
- Design Specifications
- Interior Design
- Site Planning including grading and hardscape to the curb line
- TAS review by independent Architect
- Participation in selecting the public arts artist

#### STRUCTURAL ENGINEERING

- Frame Design including floors, columns, beams, bracing
- Structural Concrete design including floors, retaining walls
- Precast Concrete Design including seating bowl and suite level tubs
- Structural Design for Batter's eye, scoreboard

#### MECHANICAL ELECTRICAL PLUMBING FIRE PROTECTION

- HVAC Design and energy modeling
- Electrical design including site electrical
- Plumbing design
- Foodservice utility distribution plans including portable services
- LEED paperwork- create and submit (not commissioning)
- Fire Protection design to include areas to be sprinkled and alarmed (actual working drawings showing head locations, etc will be completed by the Fire Protection contractor)
- Playing Field Lighting Design
- Provide in wall conduit (with pull string) and j box for IT. Providing services to the MDF room, providing and installing IT equipment, routing cable, and installing terminations is by others

#### LANDSCAPE ARCHITECT

- Plant selection for landscape areas within the ballpark
- Plant design for streetscape outside the fence line
- Irrigation design to support planted areas

#### CIVIL ENGINEER

- Review grading design by Architect
- Utility extension from point of service to 5' from building for sewer, water, and gas. Dry utility coordination and design will be by the City/Others
- Lift Station design
- Grease interceptor design (outside of building)

- Fire Hydrant relocate and new
- Street Light relocate and new
- Curb design

#### AUDIO VISUAL DESIGNER

- Sound System Design
- Television camera location and pathway design
- Press box layout
- Scoreboard design
- Video Replay System
- Broadcast Cabling design
- Acoustic study

#### PLAYING FIELD DESIGNER

- Design layout of the playing field
- Design the playing field profile
- Specify the appropriate species of turf
- Design the irrigation system
- Design the drainage system
- Design the irrigation system for berm areas adjacent to the playing field

#### CODE REVIEW

- Provide egress plans, code report, and smoke study
- Life safety evaluation will be provided by others

#### GRAPHICS AND WAYFINDING

- Room Signage
- Directional Signage
- Mapping graphics
- Specialty graphics
- Seating Bowl graphics

Attachment C

**El Paso AAA Ballpark**  
ADDITIONAL SERVICES

**EXHIBIT C**

The following are not a part of the standard design phase services as referenced in Exhibit A. Where possible, fees for additional services have been provided; otherwise fees will be determined if the Owner elects to perform the services.

**Fountain Design**

**Fee: TBD**

The initial design includes a cascading fountain at the outfield wall. It is unknown whether or not this element will be included in the final design but the proposed services include showing the fountain in a schematic level only. The MEP engineer can provide a water source and electrical service for the fountain but the actual design and documentation will need to be performed by a specialty fountain consultant.

**Playground Design**

**Fee: TBD**

The initial design includes an option for a children's playground in the outfield. It is assumed that the equipment provider will furnish the design services and documentation if the playground is part of the final design.

**Railroad Deck**

**Fee: TBD**

Initial design includes bridging over the adjacent railroad tracks. The bridging element may be one large deck or a series of smaller decks, depending on the final design. Currently, it is anticipated that the deck will be constructed of concrete and function as a large open air group assembly space.

**Railroad Retaining Wall**

**Fee: TBD**

The existing railroad tracks adjacent to the ballpark are flanked by concrete retaining walls. One of these walls is on the boundary of our site. It is understood that these walls are structurally sound and adequate to support the loads imposed by the ballpark. No design work is anticipated to be performed on this wall, or included in the base fee; the intent is to leave it as is.

**Food Service**

**Fee: approx. \$45,000**

The Owner has elected to not include the food service design in the design team's scope of work. The Owner will include the food service design as part of the solicitations for the food service provider. The design team will endeavor to coordinate spatial requirements with the food service provider, but if that is not available will provide common to similar facilities. If provided in a timely basis, the MEP engineer will coordinate with the food service provider to generate utility distribution plans for the food service equipment. The design team will include a "warm shell" space including finishes, front counter, floor drains, and roll down shutters. The design team will also include roof mounted exhaust fans and welded duct for the cooking hood(s).

**Special Inspections**

**Fee: TBD**

Special Inspections as required by the building code for structural and other disciplines will be provided as part of the Owner furnished testing scope.

**Life Safety Evaluation**

**Fee: TBD**

Periodically, the local authority having jurisdiction requests a life safety evaluation be performed. While this evaluation is referenced in the building code, it is operational in nature and defines emergency

situations and scenarios. The Architect can furnish background drawings, but this evaluation will require the Team, City of El Paso emergency services, and a specialty consultant versed in assembling these reports.

**LEED Commissioning**

**Fee: TBD**

Basic services will include targeting LEED Silver certification. LEED Commissioning or enhanced commissioning is a prerequisite for achieving LEED Silver certification and will be provided by the Owner and will be independent of the design team efforts.

**Mechanical, Electrical, Plumbing**

Security design including video surveillance and access control

Fee: \$25,000

Telecommunications Infrastructure including voice and data cabling only

Fee: \$18,000

Telecommunications Network Systems including routers, switches, network Security devices, wireless access points and access point controllers, call managers (VoIP) or PBX/KSU head-end (digital telephone); and handsets.

Fee: \$20,000

**Civil**

Traffic Control Plans including the following:

Fee: \$12,000

- Survey Review- Engineer will review the site survey to be prepared by the surveyor to ensure coordination and compliance with project goals.
- Existing Conditions Review- Engineer will review the study area to determine existing conditions, identifying geometrics of the surrounding street, traffic controls at intersections, and locations of bus stops.
- Future Improvement Coordination- Engineer will review City of El Paso plans for future traffic control in the area, including signing and lane marking.
- Background Drawings- Engineer will prepare an existing layout based on information gathered in the field and the site plan provided by the Architect.
- Traffic Control Plan Documentation- Engineer will prepare traffic control plans to incorporate closure of the lanes on streets affected by the utility construction as may be required. Pedestrian crosswalks will be delineated for temporary use during the demolition and construction phases of the project. It is possible that traffic signal modifications may be required to accommodate the demolition/construction activities; however traffic signal modifications are not included in the scope of services.
- Permit Assistance- Engineer will provide copies of the plans for use in applying for permits for demolition and subsequent construction of the improvements.

Subdivision Plat Review and Approval

Fee: \$6,000

- Survey Plat Review- Engineer will review the subdivision plat to be prepared by the surveyor to endeavor to ensure coordination and compliance with project goals.
- City Planning Commission- Engineer will represent owner at City Planning Commission meetings involving plat approvals as required.
- Additional Documentation- Engineer will prepare additional schematic documentation to assist in staff review per city ordinance.

- Plat Filing Assistance- Engineer will coordinate with owner and the owner's surveyor to acquire the necessary information required for plat approval and filing.

Stakeholder Coordination

Fee: \$10,000

**Squatter's Meetings**

Fee: TBD

While there will certainly be coordination meetings with the City, team, and other design team members, most consultants experienced with squatter's meetings feel there is an inordinate amount of down time when their presence is not needed and their time is not being used efficiently.

**Retail Design**

Fee: TBD

Team stores selling merchandise and apparel for the ball club is included in the base fee. However, the design of outside retail entities residing within the ballpark is excluded.

**Record Drawings**

Fee: TBD

At the conclusion of the project, the design team will provide final drawings incorporating their changes that have been made during the construction period as part of the base fee. Incorporating contractor's mark ups or notes will be an additional service.

Attachment D

**El Paso AAA Ballpark**  
SCHEDULE AND EARLY DELIVERABLES

**EXHIBIT E**

Given the fast track schedule, it is understood that design reviews and cost estimating will be performed concurrent with the design process. Therefore it is agreed that these tasks will be expedited so as to not delay the design and documentation process.

<u>Phase</u>	<u>Duration</u>	<u>Estimated Start</u>	<u>Estimated Finish</u>
Schematic Design	6 weeks	10/16/2012	11/30/2012
Design Development	*10 weeks	12/3/2012	2/8/2013
Construction Documents	14 weeks	2/11/2013	5/17/2013
Bidding/Permitting	4 weeks	5/20/2013	6/14/2013
Construction Administration	48 weeks	6/17/2013	5/16/2014

Populous offices are closed between Christmas and New Year's. Not counted in duration.

The following early deliverable packages are included in the base fee:

Early Deliverable GMP 1 to include:

- Remaining Demolition
- Rough Grading
- Utility Installation

Early Deliverable GMP 2 to include:

- Structural
- Plumbing (for under slab plumbing design)

**ACORD**<sup>TM</sup>

Attachment E  
**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
12/31/2012 8/9/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies, LLC-1 Kansas City 444 W. 47th Street, Suite 900 Kansas City 64112-1906 (816) 960-9000	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Vigilant Insurance Company	20397
	INSURER B: Great Northern Insurance Company	20303
	INSURER C: St. Paul Fire and Marine Insurance Company	24767
	INSURER D:	
	INSURER E:	
	INSURER F:	

INSURED  
132434 POPULOUS, INC.  
300 Wyandotte  
Suite 200  
Kansas City MO 64105

COVERAGES POPGR01 PG CERTIFICATE NUMBER: 11949541 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	Y	35857092	12/31/2011	12/31/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Comp.ded.\$1K <input checked="" type="checkbox"/> Coll Ded.\$1K	Y	N	73560158	12/31/2011	12/31/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE	Y	N	QK08001492	12/31/2011	12/31/2012	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						\$ XXXXXXXX
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	NOT APPLICABLE			WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
EL PASO AAA BALLPARK. THE CITY OF EL PASO IS INCLUDED AS AN ADDITIONAL INSURED AS RESPECTS GENERAL, AUTO AND UMBRELLA LIABILITY AS REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION APPLIES TO GENERAL LIABILITY WHERE ALLOWED BY STATE LAW AND AS REQUIRED BY WRITTEN CONTRACT.

**CERTIFICATE HOLDER**

**CANCELLATION**

<p>11949541</p> <p>CITY OF EL PASO ATTN: CITY MANAGER 2 CIVIC CENTER PLAZA EL PASO TX 79901</p>	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p>
	<p>AUTHORIZED REPRESENTATIVE</p> <p align="center"><i>Ronald J. Foster</i></p>

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

12/15/2012 DATE (MM/DD/YYYY) 8/9/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies, LLC-1 Kansas City 444 W. 47th Street, Suite 900 Kansas City 64112-1906 (816) 960-9000
CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURER(S) AFFORDING COVERAGE NAIC #
INSURER A: Lloyds of London 38253
INSURER B:
INSURER C:
INSURER D:
INSURER E:
INSURER F:

COVERAGES POPGR01 PG CERTIFICATE NUMBER: 11949544 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include General Liability, Automobile Liability, Umbrella Liab, Workers Compensation, and Arch. & Eng. Prof. Liab.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 104, Additional Remarks Schedule, if more space is required)
EL PASO AAA BALLPARK.

CERTIFICATE HOLDER: 11949544, CITY OF EL PASO, ATTN: CITY MANAGER, 2 CIVIC CENTER PLAZA, EL PASO TX 79901
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: [Signature]



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
08/09/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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<b>PRODUCER</b> MARSH USA INC. 600 RENAISSANCE CENTER, SUITE 2100 DETROIT, MI 48243 Attn: Brad.J.Vandenbroeck@marsh.com / F:313-393-6950	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Populous, Inc 300 Wyandotte, Suite 200 Kansas City, MO 64105	<b>INSURER A:</b> New Hampshire Insurance Company NAIC # 23841	
	<b>INSURER B:</b> National Union Fire Ins Co Pittsburgh PA 19445	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:** CHI-004468944-03      **REVISION NUMBER:** 3

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE  <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	WC4801009 (AOS)	03/01/2012	03/01/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
B	Y/N <input checked="" type="checkbox"/> N    N/A			WC20342351 (CA)	03/01/2012	03/01/2013	E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 RE: El Paso AAA Ballpark  
 Workers' Compensation does not apply to monopolistic states (ND, OH, WA, & WY), Puerto Rico, or the Virgin Islands. As respects WC, a Waiver of Subrogation is applicable in favor of the Certificate Holder as required by written contract or agreement.

<b>CERTIFICATE HOLDER</b>  City of El Paso Attn: City Manager 2 Civic Center Plaza El Paso, TX 79901	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. John C Hurley
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## A/E SELECTION SUMMARY

<b>Project Name:</b>	<b>El Paso Ballpark</b>		
<b>Department Requesting Service:</b>	Engineering and Construction Management	<b>District / Representative:</b>	District 8 / Cortney Niland

### SHORTLIST

<b>RFQ Notification Date:</b>	Thursday, August 30, 2012	<b>RFQ Due Date:</b>	Thursday, September 13, 2012
Shortlist Committee		A/E Firms that Submitted RFQ package	
Joshua Hunt, Owner's Representation	1	Populous	2
Allan Ledford, Owner's Representation	3	Root Architects	
Juan Gonzales-Garza, Owner's Representation			
Alan Shubert, City Engineer			
<b>Scoring sheets issued / due date:</b>	Tuesday, September 13, 2012 / Wednesday, September 19, 2012		
<b>Final Ranking Date:</b>	Wednesday, September 19, 2012		
<b>Firms Notified Date:</b>	Wednesday, September 19, 2012		

### FINAL SELECTION

Presentation Committee		Finalists	
Joshua Hunt, Owner's Representation	1	Populous	2
Allan Ledford, Owner's Representation			
Juan Gonzales-Garza, Owner's Representation			
Bill Studer, Deputy City Manager			
Alan Shubert, City Engineer			
Matthew McElroy, City Development			
Irene Ramirez, Assistant City Engineer			
Sean McGlynn, MCADD			
<b>Presentation Date:</b>	Thursday, October 04, 2012	<b>Selected Consultant:</b>	Populous
<b>Firms Notified Date:</b>	Thursday, October 04, 2012		



# El Paso Ballpark Design Services Contract



November 27, 2012



## **Scope:**

- Procure the services of a Project Architect to design the ballpark.

## **Action Requested:**

- Authorize the City Manager to sign Agreement for Professional Services for a project known as the “El Paso Ballpark – Design Services”



## Ballpark Description

- Natural turf, open air per major and minor leagues
- Seating: 7,000 - 9,000 seats, 20-30 luxury boxes, and 250-500 club seats
- Concession Facilities
- Team Facilities
- Team Store
- Programming for Kitchen Equipment
- Press Facilities including A/V
- Scoreboard and Video Board Design
- Graphics and Signage
- Team Office Space



## Ballpark Requirements

- LEED Silver or Green Globes Certification
- Ballpark must follow Smart Growth and CNU guidelines, including pedestrian facilities
- Respect existing downtown architecture



## **Main Architect: Populous**

Subcontracting with several local firms, including:

- WP Moore
- R. Navarro
- MNK Architects



## Team of Consultants

- Populous, Inc. (Kansas City, MO) - Principal Architect
- MNK Architects (El Paso, TX) - Local Architect /LEED Accredited Professional
- W. P. Moore (El Paso, TX) - Civil, Traffic, Structural
- Robert Navarro (El Paso, TX) - Structural
- Henderson Engineering (Lenexa, KS) – Mechanical, Electrical, Plumbing
- Wrightson, Johnson, Haddon & Williams (Dallas, TX) – Audio/Visual
- Ovations (Pleasanton, CA) - Food Service
- Dover, Kohl & Partners (Coral Gables, FL) - Design



## Survey Work

- Traffic study – complete
- Geotechnical analysis – complete
- Asbestos survey – complete
- Environmental survey - complete



S E R V I C E   S O L U T I O N S   S U C C E S S





## **Funding Source: Baseball Stadium Construction**

- Contract Value: \$ 2,921,500
- Reimbursables: \$ 123,870 (To be paid actual cost)
- Total Value           \$ 3,045,370

Consultant's Information:  
Populous, Inc., Missouri Corporation

Selection Type: Architect Engineer Selection Procurement  
(Qualification based)

Request for Qualifications (RFQ) were sent to all pre-qualified firms.



# *Questions/Comments*

