

**FORTY NINERS STADIUM MANAGEMENT COMPANY LLC
PROFESSIONAL SERVICES AGREEMENT
ARCHITECTURAL AND ENGINEERING SERVICES**

This Agreement is made and entered into as of the **Fifteenth day of November, 2021** (the "Effective Date"), by and between the Forty Niners Stadium Management Company LLC, a Delaware limited liability company ("Stadium Manager") and Populous, Inc., a Missouri corporation having an address at 4800 Main Street, Suite 300, Kansas City, MO 64112 ("Consultant"). Stadium Manager and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. Stadium Manager is managing Levi's Stadium, which is owned by the Santa Clara Stadium Authority, a joint exercise of powers entity, created through Government Code sections 6500 et seq. and is in need of professional services for the following project:

Professional architectural and engineering services at Levi's Stadium, 4900 Marie P. DeBartolo Way, Santa Clara, CA 95054 (the "Stadium") as part of a multi-year on-call service agreement, including, but not limited to, programming, schematic design, design development, construction documents, construction administration services in connection with construction projects, large repair projects and other projects at the Stadium as identified in subsequently issued task orders (hereinafter referred to as the "Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services on the Project. Consultant desires to perform and assume responsibility for the provision of certain professional services required by Stadium Manager on the terms and conditions set forth in this Agreement and in the task order(s) to be issued pursuant to this Agreement ("Task Order").

C. The Parties desire by this Agreement to establish the terms for Stadium Manager to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the Stadium Manager with the services described in the Scope of Services attached hereto as Exhibit "A." The services shall be more particularly described in the individual Task Order issued by the Stadium Manager or its designee. No services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C".

2. Compensation.

a. Consultant shall receive compensation, including authorized reimbursements, for all services rendered under this Agreement at the rates set forth in the Schedule of Charges attached hereto as Exhibit "B" and incorporated herein by this reference.

b. The maximum compensation for services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. Each Task Order shall set forth the total aggregate compensation paid to Consultant for the services set forth in the Task Order and a separate not-to-exceed amount for all printing and other reimbursable expenses (as defined in Exhibit "B" attached hereto). The Stadium Manager will not pay for any printing or other reimbursable expenses incurred in excess of the not-to-exceed amount set forth in the Task Order.

c. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the Stadium Manager, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the Stadium Manager by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the Stadium Manager and executed by both Parties before performance of such services, or the Stadium Manager will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by Stadium Manager.

5. Time of Performance.

The term of this Agreement shall be five (5) years from **November 15, 2021 to November 14, 2026**, unless earlier terminated as provided herein. Consultant shall complete the services within the term of this Agreement, and shall meet any other established schedules and deadlines set forth in each individual Task Order issued by the Stadium Manager. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

6. Delays in Performance.

a. Neither Stadium Manager nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; pandemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the Stadium Manager, as requested, in obtaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the Stadium Manager, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of Stadium Manager. No employee or agent of Consultant shall become an employee of Stadium Manager.

The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from Stadium Manager as herein provided.

11. Insurance. Consultant shall not commence work for the Stadium Manager until it has provided evidence satisfactory to the Stadium Manager it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies reasonably acceptable to the Stadium Manager.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following, subject to policy terms, conditions and exclusions:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) General Aggregate Limits that Apply per location
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability
- (8) Property Damage
- (9) Independent Contractors Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give Stadium Manager, Forty Niners SC Stadium Company LLC, Forty Niners Football Company LLC, the Santa Clara Stadium Authority, and the City of Santa Clara, their officials, officers, and employees, additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or their equivalent.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the Stadium

Manager, and provided that such deductibles shall not apply to the Stadium Manager as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for any auto, including those owned, non-owned, hired or otherwise operated or used by or on behalf of Contractor, in a form and with insurance companies reasonably acceptable to the Stadium Manager.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give Stadium Manager, Forty Niners SC Stadium Company LLC, Forty Niners Football Company LLC, the Santa Clara Stadium Authority, and the City of Santa Clara, their officials, officers, and employees additional insured status.

(iv) Subject to written approval by the Stadium Manager, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the Stadium Manager as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies reasonably acceptable to the Stadium Manager and in an

amount indicated herein. This insurance shall be written on a policy form specifically designed to protect against negligent acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend the Consultant.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for this Agreement (which can be met through a combination of primary and excess policies):

Combined Single Limit

Commercial General Liability	\$2,000,000 per occurrence/\$4,000,000 general aggregate for bodily injury, personal injury, and property damage/\$2,000,000 personal and advertising injury/\$2,000,000 products/completed operations
Automobile Liability	\$1,000,000 combined single limit per accident
Employer's Liability	\$1,000,000 bodily injury per accident/\$1,000,000 bodily injury by diseases – policy limit/\$1,000,000 bodily injury by disease – each employee
Professional Liability	\$5,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits, except as respects Professional Liability.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the Stadium Manager evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original Certificates

of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the Stadium Manager at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Stadium Manager at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the Stadium Manager or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the Stadium Manager, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Stadium Manager, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) With respect to the General Liability, Auto Liability and Umbrella/Excess Liability, the limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the Stadium Manager and shall not preclude the Stadium Manager from taking such other actions available to the Stadium Manager under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by reasonably acceptable insurance companies, as determined by the Stadium Manager, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the Stadium Manager, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Stadium Manager has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Stadium Manager will be promptly reimbursed by Consultant or Stadium Manager will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Stadium Manager may cancel this Agreement.

(iii) The Stadium Manager may require the Consultant to provide complete copies of its General Liability, Auto Liability, and Umbrella/Excess Liability insurance policies in effect for the duration of the Project. Should the Stadium Manager request a review of the Consultant's Professional Liability policy, such review shall be performed upon prior written notice to Consultant and at a mutually agreed upon location and time. Consultant shall not be required to provide electronic copies of its Professional Liability policy.

(iv) Neither the Stadium Manager nor any of its officials, officers, and employees shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Stadium Manager that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Stadium Manager as an additional and Consultant shall use good faith efforts to obtain ISO forms CG 20 10 10 01 and 20 37 10 01 or an endorsement providing substantially similar coverage in all material respects. If requested by Consultant, Stadium Manager may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (for claims other than professional liability claims -- with counsel of Stadium Manager's choosing), indemnify

and hold Stadium Manager, the Santa Clara Stadium Authority, the City of Santa Clara, their affiliates, and each of their respective officers, directors, managers, members, partners, owners, employees, agents and authorized volunteers, each tenant and event promoter of Levi's Stadium, and any mortgagee, bond trustee or other financial institution from time to time holding a line or indenture upon an interest in Levi's Stadium, and each of them (collectively, the "Indemnified Parties") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent caused by any negligent acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project, any Task Order or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the Indemnified Parties.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the Indemnified Parties free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which are applicable to the services being provided by Consultant, which may include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant

and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. It shall be Consultant's sole responsibility to comply with, and maintain adequate records of its adherence to, all applicable registration and labor compliance requirements. Proof of such compliance may include Contractor registration with the Department of Industrial Relations, California certified payroll form A-131, statements of non-performance for work not undertaken at any point during the project, DAS 140/142 forms for all apprenticeable crafts or trades, and proper fringe benefits statements. At any time during or subsequent to the full performance of the services under this Agreement, Stadium Manager and/or the Santa Clara Stadium Authority may require Contractor to produce complete and adequate compliance records, subject to Stadium Manager and/or the Santa Clara Stadium Authority's satisfaction, prior to release of payment.

d. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the Stadium Manager. Consultant shall defend, indemnify and hold the Indemnified Parties free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. **Reserved**

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

17. Termination or Abandonment

a. Stadium Manager has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In

such event, and upon payment to Consultant to all sums due and payable through the date of termination, Stadium Manager shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. Stadium Manager shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by Stadium Manager and Consultant of the portion of such task completed but not paid prior to said termination. Stadium Manager shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to Stadium Manager only in the event of substantial failure by Stadium Manager to perform in accordance with the terms of this Agreement through no fault of Consultant. Stadium Manager's failure to make payment to Consultant pursuant to the terms of this Agreement shall be considered substantial failure.

18 Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the Stadium Manager.

19. Organization

a. Consultant shall assign Jason Perryman as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the Stadium Manager.

b. Consultant represents that all persons or entities who provide or directly supervise any architectural or engineering services for the Project will be duly licensed to practice under the laws of the State of California. Each Task Order shall set forth a list of the key personnel and subconsultants who will be providing the services under the Task Order (the "Key Personnel and Subconsultants"). Prior to the parties' execution of a Task Order Consultant shall provide, for Stadium Manager's review and approval, its proposed list of the key personnel and subconsultants. No substitutions of any Key Personnel and Subconsultants may be made by Consultant without the prior written consent of Stadium Manager, which consent shall not be unreasonably withheld. If any Key Personnel are no longer employed by Consultant, then Consultant shall notify Stadium Manager within five (5) days after learning of such event. Consultant shall provide a replacement of any Key Personnel within fourteen (14) days after such event. Stadium Manager shall have the right to approve the proposed replacement in advance of an assignment to the Project.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above and in each Task Order.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

STADIUM MANAGER:

Forty Niners Stadium Management Company LLC
4900 Marie DeBartolo Way
Santa Clara, CA 95054
Attn: Ryan van Maarth, Vice President, Stadium
Operations and Strategic Planning

With copy to:

Legal Affairs
Forty Niners Stadium Management Company LLC
4949 Marie P. DeBartolo Way
Santa Clara, CA 95054

CONSULTANT:

Populous, Inc.
4800 Main Street, Suite 300
Kansas City, MO 64112

Attn: Jason Perryman

With a copy to:

Populous, Inc.
4800 Main Street, Suite 300
Kansas City, MO 64112
Attn: Zachary Rudman, Chief Legal Officer

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Stadium Manager and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of Stadium Manager and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of Stadium Manager. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. Stadium Manager's Right to Employ Other Consultants

Stadium Manager reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Disputes

All disputes between Consultant and the Stadium Manager relating in any way to this Agreement or any work performed under this Agreement (including, but not limited to, claims for breach of contract, tort, discrimination, harassment and any violation of federal or state law, regulation or constitution) ("Arbitrable Claims") shall be resolved by binding arbitration under the Federal Arbitration Act, in conformity with the procedures of the California Arbitration Act (Cal. Code Civ. Proc. § 1280 *et seq.*, including § 1283.05 and all of the Act's other mandatory and permissive rights to discovery). In addition to any other requirements imposed by law, the arbitrator selected shall be a retired California Superior Court Judge, or otherwise qualified

individual to whom the parties mutually agree, and shall be subject to disqualification on the same grounds as would apply to a judge of such court. All rules of pleading (including the right of demurrer), all rules of discovery, all rules of evidence, all rights to resolution of the dispute by means of motions for summary judgment, judgment on the pleadings and all other dispositive motions, and judgment under Code of Civil Procedure § 631.8 shall apply and be observed. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis other than such controlling law. The arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of an arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or in connection with the arbitration proceedings are privileged in accordance with Cal. Civil Code § 47(b). As reasonably required to allow full use and benefit of this agreement's modifications to the Act's procedures, the arbitrator shall extend the times set by the Act for the giving of notices and setting of hearings. Awards shall include the arbitrator's written reasoned opinion. **The Parties understand and agree to this binding arbitration provision, and both Consultant and the Stadium Manager give up their right to trial by jury of any claim they may have against each other.**

31. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Stadium Manager shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of Stadium Manager, during the term of his or her service with Stadium Manager, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR ON-CALL PROFESSIONAL SERVICES AGREEMENT
ARCHITECTURAL AND ENGINEERING SERVICES
BETWEEN THE FORTY NINERS STADIUM MANAGEMENT COMPANY LLC
AND POPULOUS, INC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

**FORTY NINERS STADIUM
MANAGEMENT COMPANY LLC**

POPULOUS, INC.

By: _____

By: _____

Its: _____

Its: _____

Printed Name: _____

Printed Name: _____

EXHIBIT A

Scope of Services

The architectural and engineering services that may be included in a Task Order for a Project include, but are not limited to, the following:

A. Architectural and Engineering:

1. Architectural design
2. Electrical engineering
3. Mechanical engineering
4. Plumbing engineering
5. Civil engineering
6. Landscape architectural
7. Structural engineering
8. Fire protection engineering
9. Fire alarm and EMS design
10. Hazardous abatement assessment
11. Waterproofing
12. Geotechnical engineering
13. Acoustic design
14. Audio, video, communications, low voltage and information Technology design
15. Security engineering
16. Wayfinding signage design
17. Signage, branding, theming graphics, and experiential design
18. ADA design and consulting
19. Concessions, merchandising and catering services / kitchen service equipment design services
20. Interior design
21. Sport and specialty lighting design
22. Vertical transportation design and engineering
23. Traffic and pedestrian engineering
24. Telecommunications, high density Wi-Fi and neutral host Distributed Antenna System (DAS)
25. Survey and Mapping

B. Other Services:

1. Project verification and analysis
2. Project schedule and phasing
3. Project development
4. Building code analysis
5. Field investigation
6. ADA evaluations

7. Site Line Evaluations
8. Design development of bid documents including
 - a. Schematic Design
 - b. Design Development
 - c. Construction Documents and Specifications Building Information Modeling (BIM) Services, if needed
 - d. Permit Approval from Authorities Having Jurisdiction
9. Bid and contract award assistance
10. Construction Administration services including
 - a. Submittal and shop drawing reviews
 - b. Contractor Requests For Information (RFI) response
 - c. Site visits
 - d. Field observation reports
 - e. Change order administration
 - f. Punch list administration
 - g. Mechanical commissioning as needed
 - h. Preparation of final record drawings from the Contractor's as-built drawings, as necessary
 - i. Close out support, including cost estimates for outstanding or unfinished elements.
11. LEED and sustainability studies, including energy modeling, building analysis and commissioning
12. Energy consumption analysis
13. Data collection
14. Cost estimating

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice Stadium Manager on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform Stadium Manager regarding any out-of-scope work being performed by Consultant. Any mutually agreed upon unexpected costs to be reimbursed by Stadium Manager shall be approved in writing by Stadium Manager prior to being incurred by Consultant, provided Consultant has furnished proper documentation of such authorized expenses as the Stadium Manager may reasonably request. This is a time-and-materials contract.

Consultant's Cost Proposal is attached hereto as **Attachment B-1** and includes the hourly billing rates that will apply throughout the term of this Agreement for services provided by Consultant and its Subconsultants.

Attachment B-1

CONSULTANT'S COST PROPOSAL

1. General

Consultant's pricing for architectural and engineering services is set forth in the tables provided below:

Respondent: Populous					
Position/Title	Year 1	Year 2	Year 3	Year 4	Year 5
Senior Principal	\$420	\$433	\$446	\$459	\$462
Senior Architect – PIC	\$325	\$335	\$345	\$355	\$365
Senior Project Manager	\$275	\$283	\$291	\$299	\$307
Senior Project Architect	\$275	\$283	\$291	\$299	\$307
Senior Project Designer	\$275	\$283	\$291	\$299	\$307
Project Architect	\$205	\$211	\$217	\$223	\$229
Project Designer	\$205	\$211	\$217	\$223	\$229
Architecture Designer II	\$140	\$145	\$150	\$155	\$160
Senior Interior Designer	\$220	\$227	\$234	\$231	\$238
Interior Designer	\$155	\$160	\$165	\$170	\$175
Specifications Writer	\$205	\$211	\$217	\$223	\$229
Reimbursables	at cost	at cost	at cost	at cost	at cost

Subconsultant 1	Name: ME Engineers				
Position/Title	Year 1	Year 2	Year 3	Year 4	Year 5
Senior Principal	\$300	\$310	\$320	\$330	\$340
Principal	\$280	\$290	\$300	\$310	\$315
Associate Principal	\$260	\$270	\$280	\$285	\$295
Sr. Associate	\$240	\$250	\$255	\$265	\$270
Associate	\$225	\$235	\$240	\$250	\$255
Senior Project Manager	\$215	\$225	\$230	\$235	\$245
Project Manager	\$190	\$200	\$205	\$210	\$215
Project Engineer	\$160	\$165	\$170	\$175	\$180
Designer	\$140	\$145	\$150	\$155	\$160
Sr. BIM Coordinator	\$130	\$135	\$140	\$145	\$150
BIM Coordinator	\$125	\$130	\$135	\$140	\$145
CAD Technician	\$115	\$120	\$125	\$130	\$135
Administrative Staff	\$110	\$115	\$120	\$125	\$130
Reimbursables	at cost	at cost	at cost	at cost	at cost

Subconsultant 2	Name: Magnusson Klemencic Associates				
Position/Title	Year 1	Year 2	Year 3	Year 4	Year 5
Ron Klemencic	\$400	\$412	\$424	\$436	\$448
Senior Principal (Senior VP)	\$350	\$361	\$372	\$383	\$394
Principal (VP)	\$300	\$309	\$318	\$327	\$336
Senior Associate	\$250	\$258	\$266	\$274	\$282
Associate	\$215	\$221	\$227	\$233	\$239
Senior Engineer	\$180	\$185	\$190	\$195	\$200
Engineer	\$150	\$155	\$160	\$165	\$175
Senior BIM Specialist	\$175	\$180	\$185	\$190	\$195
BIM Specialist	\$140	\$144	\$148	\$152	\$156
Administrative Support	\$105	\$108	\$111	\$114	\$117
Reimbursables	at cost	at cost	at cost	at cost	at cost

Subconsultant 3	Name: Howe Engineers				
Position/Title	Year 1	Year 2	Year 3	Year 4	Year 5
Principal/Partner	\$230	\$237	\$244	\$251	\$258
Associate Principal	\$215	\$221	\$227	\$233	\$239
Project Director	\$210	\$215	\$220	\$225	\$230
Project Manager	\$185	\$190	\$195	\$200	\$205
Senior Engineer	\$175	\$180	\$185	\$190	\$195
Associate Engineer/Consultant	\$160	\$165	\$170	\$175	\$180
Fire Protection Engineer/Consultant	\$145	\$149	\$153	\$157	\$161
Fire Protection Designer	\$110	\$113	\$116	\$119	\$122
Fire Protection Technician	\$95	\$98	\$101	\$104	\$107
Reimbursables	at cost	at cost	at cost	at cost	at cost

Subconsultant 4	Name: S2O Consultants				
Position/Title	Year 1	Year 2	Year 3	Year 4	Year 5
Principal	\$225	\$235	\$240	\$250	\$255
Project Manager	\$200	\$206	\$212	\$218	\$224
Associate	\$175	\$180	\$185	\$190	\$195
REVIT/CAD Technicians	\$150	\$155	\$160	\$165	\$175
Reimbursables	at cost	at cost	at cost	at cost	at cost

2. Prevailing Wage Requirements (If Applicable to a particular Project)

- a. In the cost proposal for each Task Order, identify the assigned employees/staff positions who shall be paid in accordance with State of California prevailing wage requirements.

- b. It's Consultant's responsibility to comply with prevailing wage requirements and assure assigned staff are properly classified and paid at the proper rate.

3. Reimbursable Expenses

Reimbursable Expenses are in addition to compensation for Consultant's services and include reasonable expenses incurred by and Consultant and its subconsultants directly related to the performance of services under a Task Order. Such Reimbursable Expenses are as follows:

- a. Transportation and out-of-town travel and subsistence, if authorized in advance by the Stadium Manager.
- b. Dedicated data and communication services and project websites, and extranets, if authorized in advance by the Stadium Manager.
- c. Permitting and other fees required by authorities having jurisdiction over any project Consultant is tasked with performing under the awarded contract.
- d. Printing, reproductions, plots and standard form documents.
- e. Postage, handling, and delivery of any instruments of service or deliverables.
- f. Renderings, physical models, mock-ups, professional photography and presentation materials requested by the Stadium Manager or required under a Task Order, excluding computer-generated renderings, models and mockups prepared by the Architect's in-house staff during the course of design.
- g. All taxes (except sales tax and B&O tax) levied on professional services and on reimbursement expenses.
- h. Site office expenses, if authorized in advance by the Stadium Manager.
- i. Other similar project-related expenditures, if authorized in advance by the Stadium Manager.
- j. Consultant will be required to prepare an estimate of reimbursable expenses in connection with each Task Order issued by the Stadium Manager. Consultant shall not exceed the estimated cost of such expenses without the Stadium Manager's prior written approval.

EXHIBIT C

Sample Task Order Form

TASK ORDER

Task Order No. [redacted]

Agreement: Professional Services Agreement, dated as of November 15, 2021

Consultant: Populous, Inc.

The Consultant is hereby authorized to perform the following services subject to the provisions of the Agreement identified above:

The following are the Key Personnel and Subconsultants who will be providing the services:

List any attachments: (Please provide if any.)

Dollar Amount of Task Order: Not to exceed \$ [redacted]

Completion Date: [redacted]

The undersigned Consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Agreement identified above and will accept as full payment therefore the amount shown above. The terms and conditions of the Agreement identified above are incorporated herein by reference.

**FORTY NINERS STADIUM
MANAGEMENT COMPANY LLC**

POPULOUS, INC.

Dated: _____

Dated: _____

By: _____

By: _____