

**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 International Facilities Group, LLC, an Illinois Limited Liability Company, for a project known as El Paso Ballpark - Owner's Representative" for an amount not to exceed Six Hundred Fifty Thousand and No/00 Dollars (\$650,000.00), plus reimbursables not to exceed One Hundred Fifty Three Thousand and No/00 Dollars (\$153,000.00); 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 Eight Hundred Fifty Three Thousand and No/00 Dollars (\$853,000.00); 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 an owner's representative to represent the interests of both parties in the execution of the design and construction of the ballpark. This item addresses this requirement. The Owner's representative was selected through the City's Architect/Engineer selection process. Six submissions were received. Two firms were short listed, and IFG 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:

\$803,000.00; DeptId 190, Division 99998, Fund 4735, Account 580270, PCP13STADIUM1, Baseball Stadium Construction.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(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 INTERNATIONAL FACILITIES GROUP, LLC, an Illinois Limited Liability Company, for a project known as "EL PASO BALLPARK – OWNER'S REPRESENTATIVE" for an amount not to exceed Six Hundred Fifty Thousand and No/00 Dollars (\$650,000.00), plus reimbursables not to exceed One Hundred Fifty Three Thousand and No/00 Dollars (\$153,000.00); 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 Eight Hundred Fifty Three Thousand and No/00 Dollars (\$853,000.00); 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

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR
PROFESSIONAL SERVICES

This Agreement is made this _____ day of _____, 2012 by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the “**Owner**”, and **INTERNATIONAL FACILITIES GROUP, LLC**, an Illinois Limited Liability Company, hereinafter referred to as the “**Consultant**”.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as “**EL PASO BALLPARK – OWNER’S REPRESENTATIVE**” hereinafter referred to as the “**Project**”, as further described in **Attachment “A”**; and

WHEREAS, the Consultant has been selected to perform such services as required by the Owner, and the Consultant was selected through the Owner’s selection procedure, in accordance with all applicable state and local laws and ordinances;

NOW, THEREFORE, for the consideration set forth in this Agreement and its attachments, the Owner and Consultant agree as follows:

**ARTICLE I.
ATTACHMENTS**

1.1 The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

| | |
|----------------|---|
| Attachment “A” | Scope of Services and Project Budget |
| Attachment “B” | Consultant’s Fee Proposal and Staffing Plan |
| Attachment “C” | Payment Schedule |
| Attachment “D” | Certificate of Insurance |

**ARTICLE II.
PROJECT**

2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform professional services for the Project as professional consultant for the Project. The Project shall consist of the Consultant’s completion of the Scope of Services as further described in **Attachment “A”**. Such Scope of Services shall be completed in accordance with the identified phases described in **Attachment “C”**.

2.2 In completion of such phases, the Consultant shall comply with the City of El Paso Engineering Department Construction Document Guidelines in effect on the execution date of

this Agreement in the performance of the services requested under the Design Phase of this Agreement. Such Guidelines are available in the Engineering Department.

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 **SIX HUNDRED FIFTY THOUSAND AND NO/00 DOLLARS (\$650,000.00)** for all basic services performed pursuant to this Agreement, plus reimbursables. Reimbursables shall not exceed **ONE HUNDRED FIFTY THREE THOUSAND AND NO/00 DOLLARS (\$153,000.00)**. 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 "C"**.

3.2 CONSULTANT'S SERVICES. The Basic Services to be provided by the Consultant for this Agreement are attached hereto as **Attachment "A"**. If authorized by the City Engineer, prior to the performance of such services, the Consultant may perform Additional Services 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"**.

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 "C"**. 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 NO/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 **Attachments "A" and "B"**.

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 "C"**.

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 shall also include the name of the project on the corresponding insurance certificate. Further, each certificate shall contain the following statement:

"The insurance covered by this certificate will not be canceled, and there will 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 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 0.00% 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 "C"**. 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 "C"** 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.

7.5 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

7.6 VENUE. For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

7.7 GOVERNING LAW. The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

7.8 CAPTIONS. The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

7.9 SEVERABILITY. Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

7.10 NOTICES. Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner:

The City of El Paso
Attn: City Manager
2 Civic Center Plaza
El Paso, Texas 79901

With a Copy to: The City of El Paso
Attn: City Engineer
2 Civic Center Plaza
El Paso, Texas 79901

To the Consultant: International Facilities Group, LLC
Attn: Mr. Philip Couture
105 West Adams Street, Suite 2700
Chicago, Illinois 60603

Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

7.11 CONFLICTING PROVISIONS. Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

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.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce A. Wilson,
City Manager

**CONSULTANT:
INTERNATIONAL FACILITIES
GROUP, LLC**

By: Philip Couture
Title: Managing Member

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E.
Project Engineer-El Paso Ballpark

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 EI PASO §**

This instrument was acknowledged before me on this ____ day of _____, 2012,
by **Philip Couture, as Managing Member of International Facilities Group, LLC.**

Notary Public, State of Texas

My commission expires:

ATTACHMENT "C"
PAYMENT AND DELIVERABLE SCHEDULES

For the Project known as "EL PASO BALLPARK – OWNER'S REPRESENTATIVE", hereinafter referred to as the Project, the Owner shall compensate the Consultant an amount not to exceed Six Hundred Fifty Thousand and 00/100 Dollars (\$650,000.00) for all Basic Services plus an amount not to exceed One Hundred Fifty Thousand and no/00 Dollars (\$153,000.00) for reimbursables, as noted within the Agreement and its attachments.

PAYMENT SCHEDULE

Basic services shall include the phases listed below at the fixed fee shown for each phase.

Fixed fee Payment to Consultant

| | |
|---|------------------|
| Phase I – Assemble Project Team/Design | \$90,000 |
| (Duration – Three months, Oct 15, - Dec 31, 2012) | |
| Phase II – Design/Preconstruction/GMP | \$135,000 |
| (Duration – Three months, Jan 1, - Mar 31, 2013) | |
| Phase III – Construction/Commissioning | \$363,000 |
| (Duration – Eleven months, Apr 1, 2013 – Feb 28, 2014) | |
| Phase IV – Closeout | \$62,000 |
| (Duration – Two months, Mar 1 – Apr 30, 2014) | |
| Total | \$650,000 |

Payment for each Phase shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and accompanying Summary and Progress Report and the Owner's written approval.

Attachment A

Exhibit B

Scope of Services

Phase I –Introduction and Project Review

IFG will become familiar with the Project team members and the activities completed to date by reviewing the critical documents and offering comments regarding their status and suggesting improvements to benefit the Project. During this phase, IFG (Consultant) would provide suggestions that would improve the venue, enhance revenue and operational aspects of the Project. Consultant would offer opinions as to the current status and what modifications could be considered while working within the project guidelines. Specific activities include:

- A. Introduction to the Project Team already assembled. Develop a general understanding of the Project and activity to date. The Consultant shall provide a preliminary evaluation of the Client's program, schedule and construction budget requirements, each in terms of the other.
- B. Become familiar with the current Project documents. Provide review and comment on the following completed or in-process documents:
 - 1. Development Agreements that may already exist.
 - 2. Facility Program and current business plan.
 - 3. Construction and development budget.
 - 4. Project Schedule.
- C. Assist with the selection of the design team:
 - 1. Assist the Client in selecting the design team members.
 - 2. Suggest specialty design consultants familiar with sport and entertainment facilities.
 - 3. Assist the Client in negotiating and executing an agreement for Architectural and Engineering services.
 - 4. Provide an outline of risk assessment of existing agreement(s).
- D. Assist with the selection of the Construction Contractor:
 - 1. Assist Client in determining the best delivery approach method. Evaluate and recommend best design/construction approach (i.e. design/build, design-assist, design-bid-build, CM, CM at Risk, etc)
 - 2. Evaluate qualifications and assumptions to mitigate risk to owner.
 - 3. Develop draft construction agreement for inclusion with the RFP for construction services.
 - 4. Assist the Client in issuing an RFP for construction services to the most capable pre-qualified firms.
 - 5. Receive, evaluate and assist Client in selecting the construction contractor.

6. Assist the Client in negotiating and executing an agreement for construction services.
- E. Oversee or assist with the selection and execution of agreements for the other critical services required for development (for example, environmental reviews, site surveys, geotechnical investigations, etc.).
- F. Participate in regular meetings to review project issues and determine on-going strategies to keep the project moving forward.
- G. Assist in negotiating the final agreement with the Construction Contractor.
- H. Become familiar with the current third party reports and surveys required to date.
- I. Comparative Facility Study:
 1. Compare the project with other state of the art AAA Baseball stadiums and report to the Project Team on industry-best practices and emerging trends in the development of minor league baseball stadiums above and beyond the AAA Baseball League's standard.

Phase II – Design and Pre-Construction Services

IFG will monitor the documents being produced by the design team for compliance with the program and that the documents are complete and understood by the Construction Contractor. Overall organization of the effort may be completed as follows:

- A. Assist in development of efficient means of communication among all parties.
- B. Design Review
 1. Oversee the ongoing review and refinement of the Project design.
 2. Work with all design team members to ensure all goals are met and the project is approached in a coordinated manner.
 3. Work with design team in the review of the design documents to ensure all operational needs are met.
 4. Coordinate work efforts of the Project Team to keep the design responsive to the budget and schedule.
 5. Assist in the presentation and review of various design alternatives, and provide recommendations to the Project Team.
 6. Review and comment on Architect's in-process and completed drawings and specifications. The Consultant shall consult with the Client and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost or schedules.
 7. Review street and utility requirements to ensure proper coordination with the new facility.

C. Construction Approach

Review the Construction Contractor's pre-construction services plan, including the following:

1. Review the Construction Contractor's organization and management plan suggesting options to maximize cost-effective completion.
2. Review the Construction Contractor's plans regarding site preparation and logistics.
3. Work with the Construction Contractor and the Project Team to coordinate the Construction Contractor's Project controls and reporting systems.
4. Review Construction Contractor's construction estimates and updates. The Consultant shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction costs including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.
5. Review Project schedule as to overall reasonableness.
6. Review Construction Contractor's cost-control plan.
7. Review Construction Contractor's purchase and procurement plan.
8. Review Construction Contractor's commissioning schedule and plans.
9. Participate in value engineering or other cost saving alternatives suggested by the Design Team or Construction Contractor.
10. Comment on constructability reviews completed by the Construction Contractor.

D. Financial Services

1. Review proposed form for Project budget.
2. Develop and maintain Project budget.
3. Review proposed initial costs for all categories.
4. Review and propose procedures for payment requests and monitor payment requests.

Phase III – Construction Oversight

The primary responsibility for the construction of the new improvements resides with the Construction Contractor and the Architect. IFG will oversee the day-to-day activities of each of these participants by monitoring their progress, reminding each of its responsibilities and obligations and ensuring that the Client is continually advised of the status. Specific activities are as follows:

1. Review initial construction procedures and processes. The Consultant shall assist the Client in preparing construction contracts and advise the Client on the acceptability of subcontractors and material suppliers proposed by contractors.
2. Assist in development of procedures to be used by Construction Contractor to bid various phases of the project. Once agreed upon, monitor these processes.

3. Review proposed schedule and updates for accuracy and reliability.
4. The Consultant shall determine in general that the work of each contractor is being performed in accordance with the requirements of the contract documents, endeavoring to guard the Client against defects and deficiencies in the work.
5. Attend construction progress meetings.
6. The Consultant shall submit written progress reports to the Client and Architect, including information on each contractor and contractor's work as well as the entire Project(s) showing percentages of completion.
7. Attend regular Project meetings and incidental meetings as required.
8. Continue to review drawings as they develop and monitor impact on schedule and budget.
9. Review proposal requests recommended by Architect and provide input and recommendations to Client.
10. Review proposals issued by the Construction Contractor for impact on budget and schedule. Assist in determination of cost responsibility.
11. Review and provide a recommendation for all proposed Change Orders.
12. Monitor the procurement of the necessary construction testing and inspection services and purchasing. Monitor results of all testing and inspection during the project.
13. Work with Construction Contractor to coordinate occupancy schedule.
14. Assist in development of start-up plans, checklists, etc. for ongoing operation of the facility.

Phase IV -- Start up and FF&E

- A. Assist the Client in developing organizational start-up timelines and checklists.
- B. Assist the Client in the procurement, installation and coordination of all necessary furniture, fixtures and equipment for arena where needed (the "FF&E"), including the following:
 1. Review all FF&E scope lists, specifications, bid documents, budgets and schedules for completeness and accuracy.
 2. Advise Client in establishment of a bid schedule and bidding procedure for the procurement of all FF&E;
 3. Assist Client in evaluating bid responses and recommend selections.
 4. Coordinate lead times with the Project schedule and prepare final delivery, storage and installation schedules;
 5. Monitor delivery and installation of FF&E.

Phase V – Project Commissioning & Close-out

- A. IFG will assist the Client in overseeing Project close-out activities to ensure that the required deliverables are received from the Construction Contractor and other Project team members (for example, Certificate of Occupancy, as-built drawings, operations and maintenance manuals, warranties, etc.) and that the Project commissioning is properly and fully completed, punch list activities completed, final payments made and contracts closed.
- B. One Year Warranty Period - One month prior to the expiration of the one year warranty period of the project, the Owner's Representative shall participate in a walkthrough of the project with the Project Team. The Owner's Representative shall be responsible to report any observed defects, deficiencies, or other warranty issues observed during the walkthrough in accordance with the project documents.

The following scope of work is excluded from this agreement:

1. Sales and Marketing staff.
2. Operational staffing. If requested, Consultant will continue to discuss various options to assist in operational staffing of the facility on behalf of the Client
3. Legal or engineering services.

EXHIBIT C

Base Fee and Project Personnel

Project Personnel

| | |
|----------------------------------|------------------------------|
| Project Executive - Phil Couture | 10-30% during entire project |
| Project Executive - Mark Appell | 30% during design |
| Project Director - Kevin Greene | 60-80% during entire project |

| | | |
|--|---------------|--------------------------|
| Base Fee Calculation | Total: | <u>\$ 650,000</u> |
| Phase I - Assemble Project Team/Design Duration - Three months (Oct. 15 - Dec. 31, 2012) | | \$90,000 |
| Phase II - Design/Preconstruction/GMP Duration - Three months (Jan. 1 - March 31, 2013) | | \$135,000 |
| Phase III - Construction/Commissioning Duration - Eleven months (April 1, 2013 - Feb. 28, 2014) | | \$363,000 |
| Phase IV - Closeout Duration - Two months (March 1 - April 30, 2014) | | <u>\$62,000</u> |
| | Total | \$650,000 |

Note: Average Time Commitment - Although the manpower requirements for IFG personnel may vary slightly during different phases of the Project, the percentages identified in this Exhibit C represent an average of the amount of time spent by IFG personnel over the duration of the Project.

EXHIBIT E

REIMBURSABLE ITEMS

Administrative

- Messenger, delivery, overnight courier, etc.
- Postage
- Long distance telephone calls appropriately chargeable to matters for the Project
- High speed internet at the project jobsite (if not provided by the construction contractor)
- Document reproduction, printing, copying

Out of Town Travel (with prior written approval of Client)

- Airfare (except for first or business class)
- Automobile mileage incurred during out-of-town travel
- Automobile rental incurred during out-of-town travel
- Taxis

In-Town Travel

- Automobile mileage to meetings locations or jobsite
- Taxis
- Parking

Meals & Lodging

- Hotel and motel incurred during out-of-town travel
- Meals incurred during out-of-town travel

Project Specific (with prior written approval of Client)

- Advertising and promotional expenses
- Extraordinary office equipment and supplies
- Printing of presentation and construction documents
- Insurance riders in excess of normal business and professional liability insurance as required by Section 6.1 of this Agreement
- License, application, and other reasonable and customary fees relating to regulatory compliance that relate to the Project, but excluding any such fees, relating to the operation of Consultant's business or professional licensing
- Subject to the terms of Section 1.6 of the Agreement, Subconsultants (e.g., architects, engineers, lawyers, accountants, etc., which are employed for the Project, but not for the operation of Consultant's business)

Attachment C

EXHIBIT D

Payment Schedule

Include Monthly Payment Schedule

| MONTH | PAYMENT |
|----------------|------------|
| Oct./Nov. 2012 | \$ 45,000 |
| December 2012 | \$ 45,000 |
| January 2013 | \$ 45,000 |
| February 2013 | \$ 45,000 |
| March 2013 | \$ 45,000 |
| April 2013 | \$ 33,000 |
| May 2013 | \$ 33,000 |
| June 2013 | \$ 33,000 |
| July 2013 | \$ 33,000 |
| August 2013 | \$ 33,000 |
| September 2013 | \$ 33,000 |
| October 2013 | \$ 33,000 |
| November 2013 | \$ 33,000 |
| December 2013 | \$ 33,000 |
| January 2014 | \$ 33,000 |
| February 2014 | \$ 33,000 |
| March 2014 | \$ 33,000 |
| April 2014 | \$ 29,000 |
| Total | \$ 650,000 |



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/19/2012

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 Willis of Illinois, Inc. c/o 26 Century Blvd. P. O. Box 300191 Nashville, TN 37230-5191 | CONTACT NAME | |
| | PHONE (A/C NO, EXT): 877-945-7378 | FAX (A/C NO): 888-467-2378 |
| | E-MAIL ADDRESS: certificates@willis.com | |
| | INSURER(S) AFFORDING COVERAGE | NAIC# |
| | INSURER A: Hartford Fire Insurance Company | 19682-002 |
| INSURED International Facilities Group, LLC Attn: Mary Beth Hardina 105 West Adams Suite 2700 Chicago, IL 60603 | INSURER B: FEDERAL INSURANCE COMPANY | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |
| | INSURER F: | |

COVERAGES CERTIFICATE NUMBER: 18758768 REVISION NUMBER:

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 | ADD'L SUBR INSRD 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 | 83UUNIUG6358 | 10/13/2012 | 10/13/2013 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PROP AGG \$ 2,000,000 |
| A | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | 83UUNIUG6358 | 10/13/2012 | 10/13/2013 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| B | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 | | 93641871 | 10/13/2012 | 10/13/2013 | EACH OCCURRENCE \$ 7,000,000 AGGREGATE \$ 7,000,000 |
| A | 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 N/A | 83WEAO0851 | 10/13/2012 | 10/13/2013 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER 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)

It is agreed that the City of El Paso is included as an Additional Insured as required by written contract.

Waiver of Subrogation: applies in favor of Additional Insured with respects to Workers Compensation as permitted by law.

| | |
|--|--|
| CITY OF EL PASO 2 CIVIC CENTER PLAZA 4TH FLOOR 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 <i>Andrea Paris</i> |

have all your rights and duties under this Coverage Part.

e. Unnamed Subsidiary

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in the Coverage Part as a named insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

3. Newly Acquired or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Sub-paragraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization;

(2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors of Land or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insureds the following additional exclusions apply:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land; or

2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In connection with your premises; or

(2) In performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specification; or

2. Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations;
- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
 - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds under this provision is described in Section III - Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV - Commercial General Liability Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Most We will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Personal and Advertising Injury Limit

Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Each Occurrence Limit

Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Damage To Premises Rented To You Limit

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

7. Medical Expense Limit

Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

8. How Limits Apply To Additional Insureds

If you have agreed in a written contract or written agreement that another person or organization be

A/E SELECTION SUMMARY

Project Name:

El Paso Ballpark Owner's Representation

Department Requesting Service:

Engineering and Construction
Management

District / Representative:

District 8 / Courtney Niland

SHORTLIST

RFQ Notification Date:

Thursday, August 30, 2012

RFQ Due Date:

Thursday, September 13, 2012

Shortlist Committee

A/E Firms that Submitted RFQ package

Joshua Hunt, Owner's Representation

3

Heery International

5

Unity Hunt, Inc.

Allan Ledford, Owner's Representation

6

Keller Munoz - Root Architects

1

International Facilities Group

Juan Gonzales-Garza, Owner's Representation

2

Weston Sports & Entertainment

4

Brailsford & Dunleavy

Alan Shubert, City Engineer

Scoring sheets issued / due date:

September 13, 2012 / September 24, 2012

Final Ranking Date:

Thursday, October 04, 2012

Firms Notified Date:

Thursday, October 04, 2012

FINAL SELECTION

Presentation Committee

Finalists

Joshua Hunt, Owner's Representation

1

International Facilities Group

2

Weston Sports and Entertainment

Allan Ledford, Owner's Representation

Juan Gonzales-Garza, Owner's Representation

Bill Studer, Deputy City Manager

Alan Shubert, City Engineer

Irene Ramirez, Assistant City Engineer

Selected Consultant:

International Facilities Group

Presentation Date:

Thursday, October 11, 2012

Firms Notified Date:

Thursday, October 11, 2012