

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 9/25/2007 [] Consent [X] Regular
[] Workshop [] Public Hearing

Department

Submitted By: TOURIST DEVELOPMENT COUNCIL

Submitted For: _____

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An agreement with Global Spectrum, L.P., which is an assumption of the Agreement between Global and Discover Palm Beach County, Inc., dba the Palm Beach County Convention and Visitors Bureau (CVB), for the operation of the Palm Beach County Convention Center for a period beginning October 1, 2007 to September 30, 2008, with one (1) additional two (2) year renewal option, in the amount of \$169,674.72, plus 5% of the net food and beverage sales.

Summary: This Agreement provides for the County's assumption of the rights and obligations of the CVB under the CVB's existing agreement with Global Spectrum for the operation and management of the Convention Center. In addition, Global will assume responsibility for the management of the parking and audio-visual contract previously held by the CVB. Global will be paid a management fee of \$169,674.72 for FY2008 plus 5% of the net food and beverage sales (which was \$34,611.00 in 2006). Countywide (MC)

Background and Policy Issues: In 2001 the County entered into an Agreement with the CVB for the management of the Convention Center. Pursuant to the terms of that agreement, the CVB selected Global Spectrum, through a Request for Proposal process which included representatives of the County and the Tourist Development Council, to provide the day-to-day operations at the Center. Thereafter the CVB entered into a contract with Global which provided that, in the event the CVB Convention Center Management Agreement was terminated, the County would have the right to assume the rights and obligations of the CVB in its operating agreement with Global.

Earlier this year, the BCC voted to terminate the CVB's Convention Center Management Agreement and directed staff to provide for the County to assume the CVB/Global agreement. Staff met with representatives of Global and reviewed the CVB/Global contract. This agreement represents the County's assumption of that contract with certain necessary changes made to reflect how Global will work directly with the County in managing the operations of the Convention Center, as well as manage the parking and audio-visual service at the center.

Global's compensation will be an annual management fee of \$169,674.72 for FY 2008 plus 5% of the net food and beverage sales. Global's annual management fee will increase in future years based upon any percentage increase in the CPI.

D. Attachments:
(1) Global Contract

Recommended by: _____
Department Director Date

Approved By: JCBaker _____
Deputy County Administrator Date 9/21/07

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____		
Operating Costs	\$5,127,238	_____	_____		
External Revenues	< \$2,344,745 >	_____	_____		
Program Income (County)	_____	_____	_____		
In-Kind Match (County)	_____	_____	_____		
	\$2,782,493				
NET FISCAL IMPACT	=====	=====	=====		
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____		

County Attorney's office is working on getting contracts signed.

RECEIVED

SEP 20 2007

P.B. COUNTY ATTORNEY

Is Item Included In Current Budget? Yes No

Budget Account No.: Fund 1450 Agency 710 Org. 7420 Object 3401
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Department Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

John Smith 9-21-07
OFMB
9/20/07
CN 9/20/07

Dr. J. Jacob 9/24/07
Contract Dev. and Control
9/24/07 This contract reflects the negotiations with the County Attorney of Administration. At the time of our review the insurance & Fidelity Bond were not available. The Agreement was not executed.

B. Legal Sufficiency:
Sharon Culla
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

CONVENTION CENTER OPERATING AGREEMENT

This Convention Center Operating Agreement (the "Agreement") is made as of October 1, 2007, (the "Effective Date") by and between the Board of County Commissioners of Palm Beach County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County," and Global Spectrum, LP, a Delaware limited partnership, hereinafter referred to as "Operator," whose Federal Employer Identification Number is 59-3599248.

RECITALS

WHEREAS, in July 2001, Palm Beach County entered into an agreement with Discover Palm Beach County, Inc., hereinafter "Discover," whereby Discover would oversee, promote, operate, manage and maintain the Palm Beach County Convention Center, hereinafter "Facility"; and

WHEREAS, said agreement provided that Discover could hire various firms to perform services for the operations of the Facility; and

WHEREAS, pursuant to that authority, Discover solicited proposals from qualified firms to provide day-to-day operations of the facility; and

WHEREAS, a committee, comprised of representatives of the County, Discover, and the Palm Beach County Tourist Development Council, selected Global Spectrum (hereafter referred to as "Operator") through that Request for Proposals process to provide the day-to-day operating services at the Facility; and

WHEREAS, on July 1, 2001, Discover entered into an Agreement with Operator ("Operator Agreement") for the provision of such services, which Agreement further provided that in the event the County-Discover Agreement was terminated, the County would have the right to assume the rights and obligations of Discover in the Operator Agreement; and

WHEREAS, the County has served notice that it will terminate the County-Discover Agreement and that it intends to exercise its right to assume the rights and obligations of Discover under the Operator Agreement; and

WHEREAS, the County and Global have jointly reviewed the terms and conditions of the Operator Agreement, which had just completed one year of its first two-year renewal period; and

WHEREAS, the County and Global have mutually agreed to enter into this Agreement whereby the County will assume the rights and obligations of Discover in the Operator Agreement with certain changes reflecting the County's direct role in the management and operation of the Facility; and

WHEREAS, this Agreement between the County and Operator, as a restated assumption of the Operator Agreement, is meant to replace that Agreement which is recorded in the Records of Palm Beach County as R-2001-1109, as amended.

NOW, THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby recognized, the parties agree as follows:

SECTION 1 **DEFINITIONS**

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are considered to be correct and true and are agreed upon by the parties.

1. Bureau: Discover Palm Beach County, Inc., doing business as the Palm Beach County Convention & Visitors Bureau.
2. Capital Expenditures: All expenditures for building additions, alterations, or improvements and for purchases of additional or replacement furniture, machinery, or equipment, the depreciable life of which, according to generally accepted accounting principles, is in excess of one (1) year and any other item of expense that, according to generally accepted accounting principles, is not properly deducted as a current expense on the books of the Operator, but rather should be capitalized.
3. County: Palm Beach County, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners or its designee.
4. County Administrator: County Administrator of Palm Beach County and his or her designee.
5. CPI Index: "CPI Index" or "Index" means the monthly Consumer Price Index – All Items – All Urban Consumers (base year 1982-1984 - 100) for the Miami- Fort Lauderdale, Florida area of the United States, published by the United States Department of Labor. If the CPI Index increases so that the base year differs from that in effect on the Opening Date, the CPI Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is discontinued or revised during the Operating Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI Index had not been discontinued or revised.

6. Event Operating Account: The account by that name established pursuant to Section 12 of this Agreement.
7. Facility or Center: The Palm Beach County Convention Center located in the City of West Palm Beach, Florida, including entrances, ground, sidewalks, and parking areas surrounding it and adjacent thereto. The Convention Center includes meeting rooms, common areas, lobby areas, offices, storage and utility facilities and other spaces. A diagram of the Facility is attached hereto as Exhibit A.
- 8.. Facility Operating Account(s): The account(s) by that name established pursuant to Section 12 of this Agreement.
9. Food & Beverage Contractor: the entity which the County contracts with to provide food and beverage services for the Facility.
10. General Escrow Account(s): The account(s) by that name established pursuant to Section 12 of this Agreement.
11. General Manager: An individual employed by Operator who is qualified and has experience in the management of a convention center.
12. Operating Term: The period commencing October 1, 2007, and expiring at 11:59 p.m. on the 30th day of September, 2008, unless the term is extended for two additional years upon County providing one-hundred and eight (180) days notice to Operator pursuant to the terms of this Agreement.
13. Operating Year: The period of time beginning on the first day of October and ending on the 30th day of the month of September.
14. Operator: Global Spectrum, L.P.
15. Revenues: "Revenues" has the meaning set forth in Section 13.10 of this Agreement.
16. TDC: Tourist Development Council of Palm Beach County, Florida.

SECTION 2

2.1 County hereby engages Operator as an independent contractor to perform the services hereinafter described.

2.2 County has engaged the services of Discover to manage the long term sales for the Center and the services of Aramark to provide food and beverage services at the Facility. Operator shall have no responsibility for performing such functions.

SECTION 3
SCOPE OF SERVICES

3.1 Operator agrees to perform and furnish services, systems and materials needed to operate and maintain the Facility in the most efficient manner consistent with standards of the industry for similar first-class convention center facilities. It is the intent of the parties that the Operator will be delegated authority by County over the day-to-day operation of the Facility, and all activities therein, but subject to existing contracts and subject to policies, procedures, budgets and guidelines established by County. The Operator's authority shall be subject to the terms of this Agreement and County policies and procedures, as they relate to the Facility and are consistent with the terms of the Agreement, which policies and procedures may, from time to time, hereafter may be established or modified by County.

3.2 The Operator's obligations shall include, but shall not be limited to, the performance of the following obligations, subject to controls and restrictions as stated elsewhere in the Agreement and in an Operations Manual as the same may thereafter be amended (the "Operations Manual"). The Operations Manual, and any amendment thereto, shall be deemed to be a part of this Agreement and is incorporated herein by reference. Operator shall maintain the Operations Manual and shall present an updated manual on an annual basis for review and approval by the TDC and County Administrator. In the event a substantive change is proposed for the manual during the year, the revised manual shall be presented to the TDC and County Administration within a reasonable time thereafter.

3.3 Prepare an Annual Operating Plan and Capital Budget for approval by the TDC and County.

3.4 Operate the Facility in accordance with the Annual Operating Plan, the Operations Manual and the terms of this Agreement, including, but not limited to, purchasing, payroll, fire prevention, routine repairs, preventive maintenance, janitorial services, promotions, advertising, energy conservation, security, admission procedures, accounting, grounds maintenance and general user services. Means and methods of operation will effectively accommodate the needs of the mobility impaired and handicapped patrons in accordance with applicable laws.

3.5 Advise County concerning operational issues for Facility.

3.6 In accordance with procurement policies and procedures established by County solicit, negotiate, execute, administer, and assure compliance with, service contracts, vendor agreements, user/rental agreements, booking commitments, licenses, and all other documents required in the ordinary course of business in operating the Facility.

3.7 Review annually and propose modifications, as necessary, to policies and procedures, rate schedules, services pricing and lease agreement terms and conditions, as necessary, and submit proposed modifications and/or recommendations to the County Administrator for consideration by TDC.

3.8 Assure that any contract between the Operator and its subsidiary and/or affiliate or related entity in connection with the Facility shall be entered into in accordance with County's procurement policies and procedures and shall be at terms and for prices customarily charged by such parent, affiliate or subsidiary company for comparable goods and services elsewhere and which are competitive within the industry. Documentation shall be submitted in a timely manner to the County Administrator evidencing the foregoing and the competitive nature of the goods or services obtained.

3.9 Require that all users of the Facility, unless otherwise approved by the County Administrator, execute rental/user agreements in accordance with the requirements of Section 18 herein.

3.10 Cause such acts and things to be done in and about the Facility as shall be necessary to its operation and maintenance, all in compliance with all statutes, ordinances, laws, rules, regulations and requirements under Federal, State, and other local governmental authority.

3.11 Operate and maintain the Facility, including the equipment and security and any improvements made during the term of this Agreement, in a manner consistent with standards of the industry for similar first-class convention center facilities. At the conclusion of the term of this Agreement, or any extensions thereto, the County shall retain ownership of the Facility, including all equipment and any improvements made during the term of the Agreement. All losses in inventory of County-owned equipment shall be documented by the Operator as soon as such losses are discovered by the Operator and County shall be promptly notified.

3.12 Maintain the Facility in the condition received, excepting normal wear and tear. At all times equipment maintenance shall meet or exceed manufacturer's recommendations. The Operator shall provide the County Administrator an annual preventive maintenance schedule for the Facility. In addition, the Operator shall provide the County Administrator a report of all Facility maintenance that was performed during the preceding month and all Facility maintenance scheduled for the following month by the fifteenth (15th) day of the following month. This report shall include a list of breakdowns of all major pieces of installed and portable equipment for that month. The Operator shall provide the County with access to the Facility for routine maintenance inspections.

3.13 Develop, subject to the approval of the County Administrator, prices, rates and rate schedules for user and occupancy agreements.

3.14 Provide advice and consultation to Bureau for use by Bureau in scheduling long-term events at the Facility in accordance with a priority booking policy to be established by Bureau and Operator and approved by the County.

3.15 Hire, supervise and direct all of the Operator's employees and personnel.

3.16 Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles and any additional County requirements as they relate to the Facility, provided they are consistent with the terms of the Agreement. The County shall have access to such records. In furtherance of its services to be provided, pursuant to this subparagraph and elsewhere in this Agreement, the Operator, with permission of County, may use its own proprietary computer software, which, in such event, shall remain the sole property of the Operator.

3.17 Include in gross revenues for the Facility all revenues that are generated from the operation of Facility within the term of this Agreement and in a mutually agreed-upon format.

3.18 Submit a written financial report to the County Administrator and the TDC at least monthly, or as otherwise agreed to between the parties, no later than the close of the following month concerning its activities in the operation of the Facility. Such report shall, among other things, set forth receipts from all sources, expenditures and such other and further information as the County Administrator may require or request; provided Operator shall not be legally responsible for financial information provided by the Food & Beverage Contractor or the Tourist Development Office.

3.19 Prepare a proposed annual operating budget and submit it to County, in accordance with an established County schedule for approval by TDC and the County.

3.20 Comply with spending limitations imposed in such budget, including any amendment(s) thereto as authorized. However, if extraordinary events occur which could not reasonably have been contemplated at the time the budget was prepared, the Operator may submit an amendment to the budget to the TDC for review and recommendation and then to County for review and approval or denial.

3.21 Pay all operating and related expenses for the Facility from Operator's accounts established under this Agreement-by Operator on behalf of County and maintained within Palm Beach County.

3.22 Initiate with approval of the County Administrator, and at the reasonable expense of County, legal actions or proceedings to collect charges, rentals or other income generated, or to cancel or terminate any license, use or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire of County. With prior

approval from the County Administrator, legal expenses for actions approved under the terms of this paragraph shall be included as an operating expense of the Facility.

3.23 Deposit and hold in trust in the Event Operating Account or such other interest-bearing account in a local qualified public depository as County shall direct, any ticket sale revenues which it receives in the contemplation of or arising from an event pending the completion of the event, as more fully provided herein 12 and in the Operations Manual.

3.24 Maintain an ongoing relationship with the TDC, Bureau, the Food and Beverage Contractor, and any other organization or County department as designated by County.

3.25 Seek and provide advice and consultation to the Bureau and Food & Beverage Contractor in the preparation of the annual marketing plan for promotion of the Facility ("Facility Plan") so as to integrate the Bureau's annual long term sales marketing plan and the Food & Beverage Contractor's food service plan into the Facility Plan.

3.26 Manage risk management and Facility insurance needs arising out of the operation of the Facility.

3.27 Administer related Convention Center operating contracts as authorized by the County.

3.28 Provide parking services and/or administer related contracts.

3.29 Provide advice and consultation, upon request of the County Administrator, concerning the operational implications of the Facility resulting from the proposed design of the Facility parking garage, hotel and any potential Facility expansion.

SECTION 4 **TERM OF THE AGREEMENT**

Unless sooner terminated as provided herein, the term of this Agreement shall commence on October 1, 2007 and end at 11:59 p.m. on September 30, 2008.

County shall have the right to extend the current term for one additional two-year periods. The County shall give notice of its intent to extend 180 days prior to extension.

SECTION 5 **EARLY TERMINATION**

5.1 This Agreement may be terminated by a party in accordance with the following provisions:

5.1.1 This Agreement may be terminated by either party, without cause, upon one hundred eighty (180) days prior written notice.

5.1.2 In addition to the rights of termination provided in this Section County shall have the right to terminate this Agreement immediately upon the occurrence of one of the following events of default:

5.1.2.1 Failure of the Operator to perform or comply with any of the material terms, covenants, agreements, or conditions hereof and continuance of such failure for more than thirty (30) days after written notice thereof from County.

5.1.2.2 Repeated failure of the Operator to perform or comply with any of the material terms, covenants, agreements, or conditions hereof to the extent that such failures, taken together, (i) constitute a general failure to operate the Center in conformance with standards of the industry for a first class convention center, or (ii) substantially interfere with County or the Bureau's ability to successfully market the Facility, including its long-term sales and food and beverage sales.

5.1.2.3 The occurrence of any act or omission on the part of the Operator that deprives it of the material rights, powers, licenses, permits, and authorizations necessary for the lawful and proper conduct and operation of the services and activities authorized;

5.1.2.4 The filing by or against the Operator of any petitions in bankruptcy, which petition is not dismissed within 60 days;

5.1.2.5 The abandonment or discontinuance by the Operator, without written consent of County, of any or all of the operations and services permitted or required; and

5.1.2.6 The indictment of Operator or any of its management employees for a criminal or fraudulent act committed at the Facility or while performing the services called for hereunder.

5.1.3 Operator shall have the right to terminate this Agreement if County fails to perform or comply with any material terms, covenants, agreements, or conditions hereof and such failure continues for more than thirty (30) days after written notice thereof from Operator.

5.1.4 In addition to the rights of termination provided for in this Section, Operator shall have the right to terminate this Agreement immediately upon the occurrence of one of the following events of default:

5.1.4.1 Failure of County to adopt an annual operating budget for the Facility;

5.1.4.2 Failure of County to appropriate and make available funds as provided in the adopted annual operating budget of the Center;

5.2 In the event of any termination pursuant to this Section, Operator will be paid for work performed to the date of termination, plus any expenses payable hereunder incurred to date of termination.

5.3 Upon the effective date of a termination notice pursuant to this Section, the Operator shall (unless the notice directs otherwise); (i) promptly discontinue all services and (ii) deliver or otherwise make available to County all data, documents, procedures, reports, estimates, summaries, and other such information and materials as may have been accumulated by the Operator in performing its obligations, whether completed or in process, unless said information is considered proprietary for the Operator. The Operator shall advise County of the general nature of all information it considers proprietary and shall provide County with an explanation of why it reasonably considers the information to be proprietary. County has the right to challenge the Operator's designation of information as proprietary.

5.4 In the event of any termination under this Section, County may, in its discretion, assume the work and see that the same is completed by agreement with another party, including subcontractors of Operator, or otherwise, all without liability to Operator.

5.5 In the event of any termination under this Section, County shall be substituted for Operator as a party to any and all executory contracts entered into with a third party by Operator in the performance of Operator's duties under this Agreement in accordance with the terms and conditions of this Agreement, and County shall be entitled to receive the benefits of the same.

5.6 In the event of any termination under this Section, County will not be liable for, and Operator hereby waives any claims for, lost prospective profits, economic losses, or other consequential damages.

5.7 The exercise by County or Operator of remedies and rights provided herein shall in no way affect any other right or remedy available to County or Operator.

SECTION 6 **COMPENSATION**

As total compensation for Operator's services, County shall pay to Operator a Fixed Fee and an Incentive Fee, as follows:

6.1 Fixed Fee: A monthly amount of Fourteen Thousand, One Hundred and Thirty-Nine Dollars and Fifty-Six Cents (\$14,139.56) as shall be adjusted effective October 1, 2007, by the percentage change in the CPI Index published for August 30, 2007, as compared to the same date in 2006. The Fixed Fee will be similarly adjusted by the percentage change in the CPI Index in each subsequent Operating Year. The Fixed Fee will be payable monthly as an operating expense, payable as provided, for herein.

6.2 Incentive Fee: County shall pay the Operator monthly as earned an incentive fee 5% of the Facility's share of operating revenues from food and beverage and parking services.

6.3 General: In no event shall the total Incentive Fee paid for services performed in any Operating Year exceed the amount of One Hundred Thousand Dollars (\$100,000.00).

6.4 Payment of the monthly Fixed Fee and Incentive Fee by County shall constitute full payment for any and all expenses incurred by Operator under this Agreement except for expenses for which provision is made in the Annual Operating Budget as adopted by the County from time to time.

SECTION 7 **OWNERSHIP**

7.1 The County will retain ownership of the Facility, including but not limited to real estate, technical and office equipment and facilities, furniture, displays, fixtures and similar property. Ownership of assets purchased with revenues or any other County funds is and shall remain the property of the County. The County shall own all data and other electronic files generated by Operator through the use of either County's or Operator's data processing programs and software in operating the Facility. Property rights will not accrue to Operator.

7.2 Operator may not take or use, for its own purposes, customer or exhibitor lists or similar materials for the use of the Facility unless written consent is granted by County.

SECTION 8 **USE BY COUNTY**

8.1 The parties acknowledge that County shall have the right to use the Facility or any part thereof, subject to availability, for such purposes as County deems appropriate, without rent, use fee or other payment of compensation; provided, however, that notwithstanding the foregoing, County shall reimburse Operator for the actual direct operational costs incurred by Operator as a result of such use.

SECTION 9
NON-COMPETE

While Operator is providing services under this Agreement, and for a period of one year thereafter, the Operator agrees not to enter into an agreement for the management of a similar facility within a (fifty) 50 mile radius of the Facility without the approval of County.

SECTION 10
EXPENDABLE SUPPLIES

The Operator will be responsible for purchasing all expendable supplies for the operation of the Facility. The Operator will exercise prudent judgment in the purchase of said supplies within budget provided to the Operator.

SECTION 11
OPERATING BUDGET

The Operator agrees that it will each year, in accordance with the County's schedule, prepare and present a line item budget for the Facility which budget will follow and comply with the existing County budget process or such other procedures which County may require. Said budget shall include, at a minimum, a projected income and expense statement. Additionally, the budget shall include but not be limited to the following detailed projections, presented on a monthly and annual basis:

- 1) Gross revenues;
- 2) Operating expenses;
- 3) Incomes;
- 4) Administrative and general expenses;
- 5) Marketing, advertising, and promotion expenses;
- 6) Energy costs;
- 7) Exhibitor Services;
- 8) Repairs and maintenance.
- 9) Payroll and Personnel costs included in the annual operating budget which may include training programs, bonuses and costs of moving expenses and other fringe benefits of the type customarily provided by Operator to employees in accordance with written policies of company-wide applications in effect at the time of expenditure.

The Operator shall ensure that its representatives are present at all necessary meetings of the budget approval process related to the Facility.

The annual operating budget for the Facility shall receive the prior approval of the County after recommendation of the TDC.

SECTION 12
PROCEDURE FOR HANDLING INCOME & EXPENSES

12.1 Ticket sale revenues and similar event-related (other than advance rental deposits) which the operator receives in contemplation of or arising from an event shall be deposited by the Operator as soon as practicable upon receipt (but not less often than once each business day, and in any event within one (1) business day of receipt) into the interest bearing Event Operating Account. All advance rental deposits which the Operator receives in contemplation of or arising from an event shall be deposited by the Operator as soon as practicable upon receipt into the interest-bearing General Escrow Account, or such other interest-bearing account in a local qualified public depository, to be held for the benefit of the County and the Operator. All such advance rental deposits will be transferred to the Event Operating Account upon the close of the month following the month in which such event occurs. The ticket sales revenues and similar event-related revenues (other than advance rental deposits), net of all such expenses, will remain in the Event Operating Account until the satisfactory completion of the event, as further set forth in the Operations Manual. Additionally, all other revenues associated with the Center including but not limited to the balance of the rental fees, parking revenue, advertising revenue, food and beverage revenues (when remitted by food service provider) exhibitor service fees, box office fees, etc., will be deposited into such Event Operating Account. As long as the Operator is not required to pay interest on advance deposits for space rentals to the promoter or licensee of an event pursuant to the applicable rental/license agreement, the Operator shall consider interest earned from the rental deposit as revenues. Together, these revenues, net of any expenses paid from such account in accordance with the terms of this Agreement, shall be transferred from the Event Operating Account or General Escrow Account, as applicable, into the County's bank account (as designated to Operator in writing) within thirty days after the close of the month, as further detailed in the Operations Manual. The parties agree that in the event it becomes economically infeasible (as determined by Operator but subject to the approval of County which approval shall not be unreasonably withheld) to keep the Event Operating Account in an-interest bearing account, Operator and County shall take the necessary steps to accomplish such conversion.

12.2 Prior to the opening of the Center, the County advanced two months of budgeted operating expenses for deposit into the Facility Operating Account in order to commence operations of the Center. The Operator shall use funds in the Facility Operating Account to pay expenses of operation of the Facility. The Operator periodically shall submit to County requests for reimbursement of expenses paid from the Facility Operating Account, in accordance with County requirements and as further detailed in the Operations Manual. All such accounts must be maintained in Palm Beach County and available for review and audit upon County's request.

12.3 The Event Operating Account, General Escrow Account, and Facility Operating Account and any other account established hereunder or pursuant to the Operations Manual, will be in Operator's name and have two authorized County signatories, however the Operator shall have access to such accounts and shall designate up to four (4) Operator employees to be authorized signatories on the accounts.

12.4 In addition to the reports specified in Section 13, within thirty (30) days after the end of each month, the Operator will provide to County a reconciliation for each bank account, which accounts shall be subject to audit.

12.5 It is the intent of this Agreement that cash control for Facility operations shall be accomplished through a combination of rigid accounting procedures and internal audit tests and an annual audit by an independent public accounting firm selected by County. As more fully provided in this Agreement and in the Operations Manual, separate Operator bank accounts shall be utilized for operating funds and box office receipts. Payrolls shall be processed through a separate impressed bank account in the name of the Operator, reconciled monthly and tested via internal audit procedures. Events with gross revenues in excess of Twenty Thousand Dollars (\$20,000.) shall be accounted for using an event accounting system, with final reports prepared for each such event as provided in the Operations Manual. Reimbursable expenses for each event shall be coded for accurate accumulation to ensure all applicable costs shall be paid by the users of the Facility. All other events will be documented in monthly financial reports and appropriate support documentation will be maintained. Advance deposits covering rentals and estimated costs may be required as provided in the Operations Manual to minimize collection problems. Credit references shall be checked on any new or questionable client, depending on pre-event deposits.

SECTION 13 **FISCAL RESPONSIBILITY**

13.1 The Operator agrees to keep and maintain, at its office in the Facility, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its Facility management operations at the facility in West Palm Beach, Florida. Said books, ledgers, journals, accounts, and records shall contain all entries reflecting the business operations of the Operator under this Agreement. All of the foregoing records shall be open for examination and audit by the County Administrator during the Operator's ordinary business hours.

13.2 The Operator agrees to render, within thirty (30) days after the end of each month, financial reports for the Facility including a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for the current month and year to date in accordance with generally accepted accounting principles. In addition, the Operator will immediately upon request by County, provide information on the Event Operating Account, General Escrow Account, and the Facility Operating Account.

13.3 The Operator agrees to meet with the County Administrator to answer questions relating to the operation of the Facility and the financial reports. In addition, Operator agrees that the County's private auditing firm will audit the accounts and records as kept by the Operator for the Facility. This certified audit report will be paid from appropriate funds set aside in the operating budget. A letter from said accounting firm expressing its opinion as to the effectiveness of internal controls and a management letter will accompany the audit report. At the option of County and at

its expense, additional audits may be performed.

13.4 The Operator agrees to use forms, accounting methods, internal controls and procedures for its reports that are acceptable to the County.

13.5 County Administrator may request additional financial or statistical reports with respect to areas under the control or managed by the Operator in the Facility, and the Operator shall promptly provide same. It is agreed that such requests by County will be reasonable with respect to timing and frequency. Any and all reasonable costs for such reports which have been approved by the County Administrator shall be included as an operating expense.

13.6 County will make immediately available to the Operator for the operation, maintenance, supervision, and management of the Facility, including performance of all User/Rental Agreements entered into under Section 18 hereof, all funds necessary to pay all budgeted items of expense. To the extent the Operator is unable to perform under this Agreement due to the fact that required budgeted funds are not made available by County, the Operator will not be considered in breach of this Agreement nor shall such failure to perform for lack of funds be considered an event of default.

13.7 The parties shall together conduct an annual inventory of all equipment and fixed assets of the Facility.

13.8 Any data, equipment or materials furnished by County to the Operator and any such data, equipment or materials that may be acquired for County by the Operator to be used at the Facility shall remain the property of County, and when no longer needed for the performance of this Agreement, shall be returned to County.

13.9 The parties agree that in the event the Operator requests a capital improvement, County will give reasonable consideration to such request(s) in formulating its budget in light of competing financial considerations.

13.10 Revenues for the Facility shall be defined to include, but are not limited to:

- 1) Rental income;
- 2) Merchandise income;
- 3) Advertising sales income;
- 4) Equipment and decorating rental fees;
- 5) Box Office income;
- 6) Miscellaneous operating income;
- 7) Parking income;
- 8) Leasing income; and
- 9) Food & beverage sales income.

Revenues do not include applicable excise, sales, occupancy and use taxes, or similar government taxes, duties, levies or charges collected directly from patrons or guests, or as a part of the sales price of any goods, services, or displays, such as gross receipts, admission, cabaret, or similar or equivalent taxes, nor any gratuities collected (or to be collected) for the benefit of and paid to any of the Operator's personnel. Further, Revenues do not include monies collected (or to be collected) for the benefit of and paid to third parties such as event promoters.

13.11 Operating expenses will be paid from Facility Operating Account based on County approved budgets and shall include, but are not limited to:

- 1) Payroll, benefits, relocation costs, bonus and related costs;
- 2) Operating supplies;
- 3) Advertising;
- 4) Cleaning;
- 5) Data processing;
- 6) Dues, subscriptions and membership;
- 7) The Fixed Fee and the Incentive Fee to be paid under this Agreement;
- 8) Printing and stationary costs;
- 9) Postage and freight costs;
- 10) Equipment and rental costs;
- 11) Minor repairs and maintenance, not inclusive of expenses relating to performing capital improvements, as further defined in Section 14;
- 12) Security expenses;
- 13) Cost of office supplies;
- 14) Telephone and telecommunication charges;
- 15) Travel and entertainment expenses;
- 16) Cost of employee uniforms;
- 17) Exterminator and trash removal costs;
- 18) Parking expenses;
- 19) Utility expenses;
- 20) Audit, legal;
- 21) Insurance costs; and
- 22) Applicable taxes.

13.12 All travel and professional expenses of the Operator's employees shall be paid when included in the approved annual budget of the Facility. Such expenses shall be prorated if the Operator's employees conduct business on behalf of the Operator or other facilities. All non-budgeted travel and professional expenses shall be paid only with the prior written approval of County.

SECTION 14
CAPITAL IMPROVEMENTS

14.1 The County will retain the responsibility for capital improvements to the Facility; however, the County is under no obligation to make such improvements. The County shall, at its sole discretion, determine Capital Expenditures for repairs, improvements and maintenance. The Operator agrees to annually provide to the County Administrator, in accordance with the Operator's requirements, a schedule of items that can be reasonably anticipated as necessary capital expenditures. The purpose of such a schedule is to allow the County Administrator to consider such projects for recommendation for inclusion in the County's budget for the ensuing year and to prepare and update a long-range (five year) capital expenditure budget. The Operator's failure to list particular items or projects shall not be deemed a waiver of the County's responsibility to make such capital improvements. All routine and minor repairs, maintenance, preventive maintenance, and equipment servicing shall be the responsibility of the Operator as an operating expense in accordance with the approved budget.

14.2 The Operator shall obtain prior approval of County for repairs or Capital Expenditures that are made to the Facility the cost of which exceeds Five Thousand Dollars (\$5000.00). The Operator shall further cause all necessary minor repairs and improvements to be made to the Facility from those moneys available in the annual operating budget.

14.3 The cost of all repairs shall be paid by the Operator from that line of the operating budget allocated for repairs. In the event repairs exceed the above stated amount, such repairs must be pre-approved by County. Additionally, the Operator shall be responsible for ensuring that all repairs, replacements, and maintenance shall be of a quality and class at least equal to the original work. Any replacement of an item contained on the inventory schedule to be prepared prior to Facility opening or any new item added to the inventory shall be deemed the property of the County.

14.4 If any repairs are of an emergency nature, the Operator shall make such repairs in accordance with the following provisions: County shall reimburse the Operator for the full amount of the emergency repair. An emergency repair is defined herein as the repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Facility threatening persons or property and which was not the result of lack of preventive maintenance or improper operation. The cost of any emergency repairs shall be reimbursed to the Operator from the capital or operating budgets, as the case may be.

SECTION 15
CASH BASIS LAW

15.1 County is obligated only to make such payments under this Agreement as may be lawfully made from funds budgeted and appropriated by the County for the purpose as set forth in this Agreement during the County's current fiscal year. In the event the County does not so budget and appropriate the funds, the parties shall be relieved from all obligations, without penalty, under this Agreement.

SECTION 16
PERSONNEL

16.1 All personnel employed in the operation of the Facility shall be employees of the Operator and not of County. The Operator shall select the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment relating to such employees, subject to the availability of funds for such purpose under the Annual Operating Budget. County may request that the Operator take appropriate action as required for correction of any performance shortcomings of any of the Operator's employees, and the Operator will respond to said request with due diligence as required for the Operator to perform its duties under this Agreement to industry standards for first-class convention center.

16.2 The Operator's General Manager shall be responsible for the day-to-day operation of the Facility by the Operator.

16.3 County shall not hire any of the senior management employees of the Operator without the Operator's approval for a period of six months after the termination of such employee's employment with Operator. In the event that County hires any of Operator's senior management employees within such period, County shall immediately compensate the Operator in an amount equal to one (1) year's salary for each employee hired. For the purposes of this provision, senior management employees shall mean: General Manager, Assistant General Manager, and Directors. This provision shall not apply in the case of termination of this Agreement by County with cause.

16.4 Unless otherwise agreed to by the parties, Operator will not transfer any senior management employee (as defined in Subsection 16.3) to any other position of employment with Operator or any of its affiliates without first hiring a replacement with suitable qualifications for the position to be vacated. If the General Manager terminates employment voluntarily or involuntarily, Operator will immediately supply an interim General Manager, and within ninety (90) days appoint a permanent replacement with suitable qualifications. If Operator should fail to supply such permanent replacement within such time, Operator shall pay to the County the sum of Twenty Thousand dollars (\$20,000), as liquidated damages, and not as a penalty, the parties recognizing that the damage to the County from such failure to act is not readily amenable to calculation.

SECTION 17
AGREEMENT MONITORING AND GENERAL MANAGER

17.1 County shall monitor the Operator's compliance with the terms of this Agreement through the County Administrator. The Operator also agrees to name a specific individual to monitor the Agreement.

17.2 The County Administrator shall work with the General Manager of the Facility and shall have such authority as set forth in this Agreement. Any and all references in this Agreement requiring County participation shall mean the County Administrator or his/her designee.

17.2.1 Shall be responsible for ensuring that any information supplied by the Operator is properly distributed to the appropriate County departments; and

17.2.2 Shall be responsible for the monitoring and assessment of the quality of services provided by the Operator and contract compliance by the Operator.

17.3 The Operator agrees to name a qualified individual with experience in the management of similar facilities as the General Manager of the Facility. In the event the Operator wishes to replace the current General Manager, Operator will submit to County qualified candidates for the position, for review and consultation. Operator will be responsible for hiring the General Manager, with the consent of County, which consent shall not be unreasonably withheld. The General Manager:

17.3.1 Shall be responsible for the day-to-day operation of the Center.

17.3.2 Shall be responsible for providing supervision and direction to Center operational employees.

17.4 Complaints received by the County Administrator regarding the conduct or manner of operation of the Facility by the General Manager shall be addressed by the Operator.

SECTION 18
USER/RENTAL AGREEMENTS

18.1 Operator will execute user/rental agreements for the use of the Facility. Long-term sales agreements shall be entered into in consultation with the Bureau and Operator as to its terms and conditions, shall be in the form approved by the County, and shall designate Operator as Contract Administrator to act on behalf of County with respect to its implementation.

SECTION 19
INDEMNIFICATION AND INSURANCE

19.1 Operator shall indemnify, hold harmless and defend the County, and their officials, agents, servants, and employees, from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission or negligent act of Operator, its agents, servants or employees in the performance of Operator's duties under this Agreement.

19.2 The indemnification provided under Section 19.1 shall survive the expiration or early termination of this Agreement.

19.3 The Operator agrees to obtain and maintain during the life of this Agreement insurance coverage in the manner and amounts as set forth in Exhibit B attached hereto. No modification or change from these specifications shall be made without County's approval.

19.4 All insurance policies shall be rated no less than A VIII, in the most recent "Best" insurance guide and shall be licensed in the state of Florida or as otherwise agreed by the parties, and shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved to the extent not otherwise required by this Agreement.

19.5 The commercial general liability policy, automobile liability insurance policy and umbrella or excess liability policy shall name County as an additional insured. The workers compensation policy shall contain a waiver of all rights of subrogation against County.

19.6 Each insurance policy shall include a requirement that the insurer provide at least thirty (30) days' written notice of cancellation or material change in the terms and provisions of the applicable policy.

19.7 If Operator subcontracts any of the Audio Visual, Parking and other services identified by County (not including food and beverage) provided for under this Agreement, Operator shall either (i) cover all subcontractors under its policies of insurance; or (ii) require each subcontractor not so covered to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein. Whichever option is chosen, Operator shall indemnify and hold harmless the County as to any and all damages, claims or losses, including attorney's fees, arising out of the negligence or other actionable fault of its subcontractors.

SECTION 20
COMPLIANCE WITH EQUAL OPPORTUNITY LAWS,
REGULATIONS AND RULES AND OTHER LAWS

20.1 Operator shall not discriminate against any employee or applicant for employment on the grounds of race, religion, color, national origin, sex, age, handicap, disability, sexual orientation,

or marital status. The foregoing shall be deemed to include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

20.2 Furthermore, Operator will not discriminate against any subcontractor, potential contractor, or participant hereunder, on any of the above prohibited grounds.

20.3 In all solicitations or advertisements for employees, Operator shall include the phrase, "equal opportunity employer".

20.4 Operator shall include the provisions of paragraphs (1) and (2) above in every subcontract so that such provisions will be binding upon such subcontractor.

20.5 Operator further agrees to abide by all federal, state, and local laws, ordinances and regulations applicable to the work to be performed under this Agreement and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

SECTION 21

PROHIBITION AGAINST CONTINGENT FEES

21.1 Operator warrants that it has not employed or retained any company or person, other than a bona fide employee working for Operator, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, County may terminate this Agreement without liability or may, in its discretion, deduct from the Agreement Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

SECTION 22

FORCE MAJEURE

22.1 Except as otherwise provided herein, neither party shall be obligated to perform, and neither party shall be deemed to be in default of its performance, if prevented by: (a) fire not caused by negligence of either party, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion occurring at the Facility, or; (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation; or labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement other than those occurring as a result of an act or omission of the Operator.

SECTION 23
ASSIGNMENT

23.1 County is entering into this Agreement in recognition of and in reliance on the expertise, reliability, and competence of Operator and its management in matters pertinent thereto. The performance of the obligations imposed upon Operator under the Agreement will not be assignable by it to any other party unless, County, within its sole discretion, consents to said assignment in writing. Any purported assignment in contravention of this Section shall be void. In the event of an assignment by Operator to an affiliate, parent or subsidiary which is an entity which is substantially owned by, or controlled by, or under common control with Operator, or which retains substantially similar management and directors and where such assignment is intended to accomplish an internal corporate purpose of Operator as opposed to materially and substantially altering the method of delivery of services to County, County will not unreasonably withhold its consent for such assignment.

SECTION 24
NOTICES

24.1 All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally to individuals or entities addressed below. The designation of the individuals to be so notified and the addresses of such persons or entities for the purpose of notice may be changed from time to time by written notice to the other party which shall be deemed effective ten (10) days after such notice of change is furnished to the other party.

For Operator:

Global Spectrum, LP
3601 South Broad St
Philadelphia, PA 19148-5290
Attn: John Page
Chief Operating Officer

With copy to:
County Administrator
301 North Olive Avenue
West Palm Beach, FL 33401

Philip I. Weinberg, Esquire
Comcast – Spectacor
3601 South Broad Street
Philadelphia, PA 19148-5290

and
Office of the County Attorney
301 North Olive Avenue
West Palm Beach, FL 33401

SECTION 25
SEVERABILITY

25.1 If a court of competent jurisdiction or an arbitrator determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

SECTION 26
ALL PRIOR AGREEMENTS SUPERSEDED

26.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understanding applicable to the matter contained herein; and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 27
APPLICABLE LAW

27.1 This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Florida. Venue shall be located in Palm Beach County, Florida.

SECTION 28
INDEPENDENT CONTRACTOR

28.1 Operator is an independent contractor and as such is not an employee of County. All operational employees shall be employees of Operator, and shall be paid directly by Operator.

SECTION 29
AMENDMENTS TO AGREEMENT

29.1 No alteration or variation of terms shall be valid unless made in writing and signed by both parties, and no oral understanding or agreement not incorporated therein shall be binding on any of the parties.

SECTION 30
CONVENTION CENTER NAMES AND LOGOS

30.1 While providing services under this Agreement, the Operator shall use the County's and the Facility's name and logo on stationery, clothing, and other articles, and in advertising and whenever conducting business for the Facility unless otherwise approved by the County Administrator. The design, format, font and overall appearance of said stationery and other articles and the purposes of their usages are subject to the prior approval of County.

SECTION 31
WAIVERS, MODIFICATIONS, REMEDIES

31.1 No failure or delay by a Party to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by the Party against whom the enforcement of the change,

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waiver, or termination is sought. No waiver of any breach shall affect or alter this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in quadruplicate as of the day and year first above written.

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

[Seal]
Approved as to terms
terms and conditions:

Approved as to form
and legal sufficiency:

County Administrator

Legal Counsel

GLOBAL SPECTRUM, LP
By Global Spectrum, Inc., the General Partner

By: _____

Title: _____

**CONVENTION CENTER OPERATING AGREEMENT
EXHIBIT A
DIAGRAM OF FACILITY**

**CONVENTION CENTER OPERATING AGREEMENT
EXHIBIT B
INSURANCE AND BONDS**

A. Third-Party Commercial Fidelity Bond. Operator shall during the life of this Agreement, procure and maintain a Third-Party Commercial Fidelity Bond in an amount not less than One Million Dollars (\$1,000,000.00) written on a blanket basis covering all officers, employees and agents who have custody of or access to any revenues, monies, or finances of the Center. The bond shall include or be endorsed to cover "Third-Party" liability and include a third-party beneficiary endorsement in favor of Palm Beach County, Board of County Commissioners, A Political Subdivision of the State of Florida, its officers, agents, and employees. The bond shall include a minimum twelve (12) month "Discovery Period" when written on a Loss Sustained basis.

Operator shall furnish the County Administrator a certificate of insurance naming County as an additional insured and evidencing such insurance shall be provided to County within thirty (30) days of the Effective Date, and such certificate shall require at least thirty (30) days prior notice to County of any cancellation, or non-renewal or material change in coverage.

B. Insurance Requirements. Unless otherwise specified in this Agreement, Operator shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverage as described herein at limits, including endorsements, set forth in the Insurance Coverage & Limit Table below. Operator shall deliver to County, Certificate(s) of insurance evidencing that such policies are in full force and effect, not later than thirty (30) calendar days prior to the Effective Date of this Agreement. The requirement contained herein as to types and limits, as well as County's review or acceptance of insurance coverage to be maintained by Operator, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by Operator under the Agreement.

1. Commercial General Liability. Operator shall maintain a standard ISO version Commercial General Liability, or its equivalent providing coverage for, but not be limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Contractors, Contractual Liability, Broad Form Property Damage, Severability of Interest including Cross Liability, and be in accordance with all of the limits, terms and conditions set forth herein. Operator agrees this coverage shall be provided on a primary basis.

2. Business Automobile Liability. Operator shall maintain a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles, and in accordance with all of the limits, terms and conditions set forth herein. Operator agrees this coverage shall be provided on a primary basis. Notwithstanding the foregoing, should Operator not own any automobiles, the business auto liability requirement shall be amended to allow Operator to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.

3. Worker's Compensation & Employer's Liability. Operator shall maintain Worker's Compensation Insurance & Employers Liability. This coverage shall be accordance with all of the limits, terms and conditions set forth herein. Operator agrees this coverage shall be provided on a primary basis.

4. Professional Liability. Operator shall maintain Professional Liability insurance, or similar Errors & Omissions coverage, for negligent acts, errors or omissions of Operator or any person employed or acting on Operator's behalf (including but not limited to sub-consultants), and in accordance with all of the limits, terms and conditions set forth herein. When a self-insured retention or deductible exceeds \$10,000, the County reserve the right, but not the obligation, to request and review a copy of Operator's most recent annual report or audited financial statements in determining whether to reject or accept a higher self-insured retention or deductible. When written on a "Claims-Made" form, Operator shall cause the retroactive Date applicable to coverage under the policy to equal or precede the Effective Date of this Agreement; and that continuous coverage shall be maintained; otherwise, the bidder shall purchase a Supplemental Extended Reporting Period (SERP) with a minimum reporting period not less than 3 years, in the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced or any other event triggering the right to purchase a SERP during the life of this Agreement. Operator shall be solely responsible for any SIR, deductible, or additional premium. Operator agrees this coverage shall be provided on a primary basis.

5. Liquor Liability. Operator shall maintain Liquor Liability in accordance with all of the limits, terms and conditions set forth herein in the event a liquor license or permit is required, whether maintained or not; liquor is served with or without a charge to the general public; liquor is served as a means of generating revenue for a fund raising event; liquor is served by a third-party contracted by the insured for any of the foregoing reasons mentioned above; and/or liquor is offered for the purpose of financial gain or livelihood. Liquor includes beer or wine. Operator agrees this coverage shall be provided on a primary basis.

6. Umbrella or Excess Liability. Operator shall maintain an Umbrella or Excess Liability in accordance with all of the limits, terms and conditions set forth herein. County shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Umbrella or Excess Liability provides continuous coverage to the underlying policies on a complete "Follow-Form" basis without exceptions and stated as such on the Certificate of Insurance. The Umbrella or Excess Liability must "Follow-Form" the underlying Commercial General Liability, Business Auto Liability, Liquor Liability and Employer's Liability.

C. Additional Insurance Requirements, Terms and Conditions.

1. Additional insured endorsements. Operator shall endorse the County as Additional Insured on each of the insurance policies required to be maintained by the Operator, except for Worker's Compensation, Business Auto and Professional Liability. The CG 2026 Additional Insured - Designated Person or Organization or CG 2010 Additional Insured-Owners, Lessees, or Contractors (Form B) endorsement, or their equivalent, shall be endorsed to the Commercial General Liability. Other policies shall provide a standard Additional Insured endorsement offered by the insurer. The endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents". The Additional Insured endorsements shall provide coverage on a primary basis. Endorsement shall be in accordance with all of the limits, terms and conditions set forth herein.
2. Waiver of Subrogation. Operator shall agree by entering into this Agreement to a Waiver of Subrogation for each required policy providing coverage during the life of this Agreement. When required by the insurer or should a policy condition not permit an Insured to enter into an pre-loss agreement to waive subrogation without an endorsement, then Operator shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the insured enter into such an agreement on a pre-loss basis. The Waiver of Subrogation shall be in accordance with all of the limits, terms and conditions set forth herein.
3. Right to Review & Adjust. Notwithstanding the foregoing, the County, by and through its Risk Management Department, in cooperation with the County Attorney's Office, reserves the right to periodically review, modify, reject or accept all required policies of insurance, including limits, coverages, or endorsements, hereunder from time to time throughout the life of this Contract. Furthermore, the County reserve the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or because it is not operating legally. In such event, County, as the case may be, shall provide Operator written notice of such adjusted limits and Operator shall comply within thirty (30) days of receipt thereof and be responsible for any premium revisions as a result of any such reasonable adjustment.
4. No Representation of Coverage Adequacy. The coverages and limits identified in the table have been determined to protect primarily interests of the County only, and Operator agrees in no way should the coverages and limits in the table be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect Operator against any loss exposures, whether as a result of this Agreement or otherwise.

5. Certificate of Insurance. Certificates of Insurance must provide clear evidence that Operator's insurance policies contain the minimum limits of coverage and terms and conditions set forth herein. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be identified on each certificate. In the event the County is notified that a required insurance coverage will cancel or non-renewed during the period of this Contract, Operator shall furnish prior to the expiration of such insurance, a new or revised certificate of insurance as proof that equal and like coverage for the balance of the term of this Agreement and any extension thereof. County reserves the right to withhold payment, but not the obligation, to Operator until coverage is reinstated. If Operator fails to maintain the insurance as set forth herein, the County shall have the right, but not the obligation, to purchase said insurance at Operator's expense. The Certificate holder address should read as follows:

County Administrator
Palm Beach County
301 North Olive Avenue, 11th floor
West Palm Beach, FL 33401, and

Director,
Risk Management Department, Palm Beach County
160 Australian Avenue
West Palm Beach, Florida 33406

6. Deductibles, Coinsurance Penalties, & Self-Insured Retention. Operator shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

7. Subcontractor's Insurance. Operator shall cause each subcontractor employed by Operator to purchase and maintain insurance of the type specified herein as appropriate for the activity in scope and amount as determined by the County Administrator in consultation with County's Risk Management Department, provided Operator's insurance does not afford coverage on behalf of the subcontractor. When requested by the County, Operator shall obtain and furnish copies of certificates of insurance evidencing coverage for each subcontractor.

8. Insurance Coverage & Table. Operator shall maintain the coverages, endorsements, and limits of liability in accordance with and set forth by the Insurance Coverage & Table below:

INSURANCE COVERAGE & LIMIT TABLE	
TYPE OF COVERAGE	LIMIT OF LIABILITY
<p><u>COMMERCIAL</u> <u>GENERAL</u></p> <p><u>LIABILITY:</u></p> <p>Limit of Liability not less than:</p> <p>Additional Insured endorsement required:</p>	<p>\$1,000,000 per occurrence /</p> <p>\$2,000,000 annual aggregate</p> <p>Yes</p>
<p><u>UMBRELLA OR EXCESS LIABILITY:</u></p> <p>Limit of Liability not less than:</p> <p>Additional Insured endorsement required:</p>	<p>\$5,000,000 per occurrence /</p> <p>\$5,000,000 annual aggregate</p> <p>Yes</p>
<p><u>COMPREHENSIVE</u> <u>AUTO</u></p> <p><u>LIABILITY:</u></p> <p>Limit of Liability not less than:</p>	<p>\$1,000,000 per occurrence</p>
<p><u>WORKERS COMPENSATION &</u></p> <p><u>EMPLOYER'S LIABILITY:</u></p> <p>Coverage not less than:</p> <p>Employers Liability Limits:</p>	<p>Statutory</p> <p>\$100/500/100</p>

INSURANCE COVERAGE & LIMIT TABLE	
<u>PROFESSIONAL LIABILITY:</u> Limit of Liability not less than:	\$1,000,000 per occurrence / \$1,000,000 annual aggregate
<u>LIQUOR LIABILITY:</u> Limit not less than: Additional Insured endorsement required:	\$1,000,000 per occurrence / \$2,000,000 annual aggregate Yes

9. Any and all costs incurred by Operator in obtaining and maintaining insurance coverage that is in accord with the requirements of this Agreement, including costs of premiums and deductibles, shall be included in the Operating Budget as an operating expense.

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