

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 7/11/2017    ☒ Consent    ☐ Regular  
   ☐ Ordinance    ☐ Public Hearing  
Department

Submitted By: TOURIST DEVELOPMENT COUNCIL

Submitted For: TOURIST DEVELOPMENT COUNCIL

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: A. The Amendment to extend the term of the Convention Center Operating Agreement R2012-1047 (“Agreement”) with Global Spectrum, L.P. (Operator), a Delaware Limited Partnership, doing business as Spectra Venue Management (Spectra Venue), for the operation and management of the Palm Beach County Convention Center (“Convention Center”); and  
B. The Amendment to the Agreement which adds language to the Agreement on incentive funds along with County Policy for Nondiscrimination and required provisions for Public Records and Survival state laws.

**Summary:** The Amendment to the Agreement extends the term of the Convention Center Operating Agreement with Global Spectrum for an additional five (5) years for the operation and management of the Palm Beach County Convention Center through September 30, 2022. This Agreement provides for Spectra Venue to have the authority over the day to day operation of the Convention Center. The Agreement provides for the County to pay Spectra Venue an annual fixed fee (Annual Fixed Fee) of \$203,182.92 to be paid in monthly installments of \$16,931.91 which will be adjusted annually as of October 2017, based on the percentage change in the Consumer Price Index (CPI); provided however, the annual adjustment will not increase or decrease by more than 3%. In addition to the Annual Fixed Fee, Spectra Venue has the potential to earn an incentive fee (“Incentive Fee”), which will not exceed \$100,000 or 25% of the Annual Fixed Fee, whichever is less, if key performance measures are met in areas of financial, SBE achievement, marketing, sales and customer service. The Amendment addresses guidelines on the administration, sources and uses of incentive funds to further assist with marketing and group sales effort for the Convention Center. The Amendment to the Agreement adds language to comply with the county’s Nondiscrimination policy. In addition, the Amendment inserts Public Records and Survival provisions into the Agreement to comply with state laws. The BCC approved the incentive funding and transfer from the first cent to the Convention Center on January 26, 2016. (TDC) Countywide (DW)

**Background and Justification:** The Tourist Development Council (TDC) at their May 11, 2017 meeting recommended to exercise the option for renewal for an additional five years to Spectra Venue through September 30, 2022. The Amendment includes the addition of an Incentive Fund allocated in county direct expense, to attract meetings/tradeshows and events to the Convention Center. In 2014, stimulus funding, including an incentive pool of \$200,000 was established to assist with attracting meeting/tradeshows/events to the Convention Center. This program proved very successful and the TDC approved on December 10, 2015 an additional incentive of \$300,000, which was approved by the Board of County Commissioners on January 26, 2016 providing monies to incentivize additional meetings/tradeshows/convention events generating increased hotel room nights and associated economic benefits in the surrounding Convention Center District. -continue page3.

**Attachments:** The Amendment to the Agreement

Recommended by: [Signature] Date 6/30/17  
Department Director

Approved By: Nancy L. Bolton Date 7/7/17  
County Administrator

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

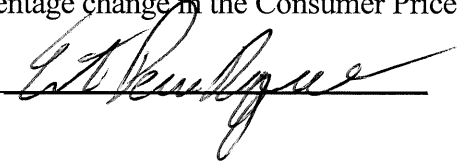
Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	203,183	203,183	203,183	203,183	203,183
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	-----	-----	-----	-----	-----
In-Kind Match (County)	-----	-----	-----	-----	-----
	203,183	203,183	203,183	203,183	203,183
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	- 0-	0----	0----	0----	0-----

Is Item Included In Proposed Budget?      Yes X                      No.

Budget Account No.: Fund 1450    Dept 710    Unit 7420    Object 3401  
Reporting Category \_\_\_\_\_

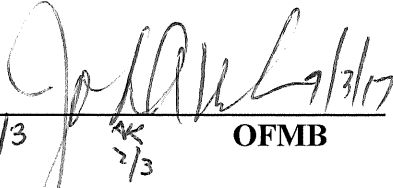
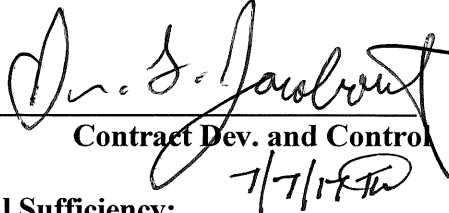
### B. Recommended Sources of Funds/Summary of Fiscal Impact:

First Cent of the bed tax operating reserve. The fiscal impact is \$203,183 per year plus or minus 3% based upon the percentage change in the Consumer Price Index (CPI).

C. Department Fiscal Review: 

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Administration Comments:

 7/3/17       7/7/17  
OFMB      Contract Dev. and Control

### B. Approved as to form and Legal Sufficiency:

 7/7/17  
Assistant County Attorney

### C. Approved as to Terms and Conditions:

\_\_\_\_\_  
Department Director

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

**Background and Justification:** Continue Page 3

This Amendment includes the process of Spectra Venue and the TDC to recommend to the County the approval of designated funding, in an amount to be determined during the Convention Center budgeting process, these Incentive Funds (incentives) administered on behalf of the County. All incentives are payable post event, after the reconciliation of the performance of hotel room night generation agreed to by the client and after the meeting/tradeshow/event has occurred.

**AMENDMENT TO EXTEND THE TERM  
OF THE CONVENTION CENTER OPERATING AGREEMENT**

**This Amendment to Extend the Term** (“Amendment”) of the Convention Center Operating Agreement is made and entered into on \_\_\_\_\_ 2017, by and between Palm Beach County (“County”), a political subdivision of the State of Florida and Global Spectrum, L.P. (“Operator”), a Delaware Limited Partnership doing business as Spectra Venue Management, authorized to conduct business in the State of Florida.

**WITNESSETH**

**WHEREAS**, on July 24, 2012, the parties hereto entered into the Convention Center Operating Agreement (R2012-1047) (hereinafter the “Agreement”) under which the Operator provides management and operation services to the County for its Palm Beach County Convention Center located at 650 Okeechobee Boulevard in West Palm Beach, Florida (“PBC Convention Center”); and

**WHEREAS**, the term of the Agreement commenced on October 1, 2012 for an initial term of five (5) years through September 30, 2017, with one (1) renewal option for an additional term of five (5) years; and

**WHEREAS**, the Operator has indicated a willingness and demonstrated the ability to continue to provide operation and management services to the County for its PBC Convention Center according to the terms and provisions set forth in the Agreement and this Amendment; and

**WHEREAS**, the parties desire to extend the term of the Agreement and amend and modify certain provisions of the Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants, promises and representations contained herein, the Parties agree as follows:

1. **Term Extended.** The term of the Agreement shall be extended through September 30, 2022.
2. **Agreement Modifications and Additions.** The following provisions of the Agreement are modified as follows:

**Article 9 of the Agreement is amended to include the following new provision:**

**9.9 Incentive Funds**

*9.9.1 Budget for Incentive Funds. The Tourist Development Council (TDC) will recommend to the County approval of designated funding, in an amount to be determined each year during the Palm Beach County Convention Center Annual Budget process, for Incentive Funds (incentives) to be administered on behalf of the County. This budget will be proposed by the Operator in conjunction with the TDC Executive Director and will be used for the purposes described in this Section 9.9.*

*9.9.2 Funds Availability. If the recommended Incentive Fund Budget is approved by the County, such funding shall be made available to the Operator by the County at the beginning of each County fiscal year from the first penny fund, outside of the contract operating amount. The incentives budget will consist of encumbered funds for incentives payable for future room night generating contracted group meetings and events, along with new incentives for sales activities occurring during the current budget year.*

*9.9.3 Use of Incentive Funds. The incentive funds shall be used solely to assist with group sales efforts to attract room night generating events to the Facility in cooperation with the Discover the Palm Beaches (Discover) Group Sales Team, any hotels in the convention center district providing the convention center use lead, or by Operator on a standalone basis.*

*9.9.4 Administration of the Incentive Funds. The Operator will be responsible for managing the incentive funds and for documenting the use of such funds. Such funds shall be maintained in the Facility Operating Account, and may be commingled with other program funds in such account, but shall be tracked and accounted for separately by the TDC finance function in conjunction with the Operator. The Operator will coordinate with the TDC and Discover in determining when to provide such incentives, the dollar amount of the incentive and the proposed use of the incentive, in accordance*

*with policies developed by the Operator, TDC and Discover for acceptable reimbursements for use.*

*9.9.5 Process for Authorizing Incentive. The Operator, along with the assistance of Discover or any party requesting incentives, will prepare a request for incentive funding with pro-forma return on investment analysis for the incentive being proposed to the client. Such request and analysis shall be submitted to the TDC Executive Director for approval prior to the proposed offer being made to the client. The incentive will not be offered without the written approval of the TDC Executive Director. Once approved, the terms for use of such funds will be described in the relevant contract/license agreement with the client and will be encumbered for future disbursement upon definite contract for the convention center and 50% of the hotel room block contracts in definite status; and such encumbered funds will be moved to the General Escrow Account.*

*9.9.6 Process for Authorizing Payment. At the completion of the group meeting or event, the actualized room nights and convention center revenues for rental, F&B and other revenues will be submitted by the applicable lead sales person to the Operator and the TDC Executive Director with a request to disburse incentives. Reimbursement will be based on actualized room nights at the per room night incentive dollar contracted and will never exceed the total incentive dollars proposed to the client. Once approved, the Operator will make payment on behalf of the County from the incentive fund to the contracted party submitting the reimbursement request for the monies. Such monies shall be accounted for and paid outside of the Operating Budget (not as an Operating Expense but as a County direct expense).*

*9.9.7 Additional Funding. The TDC may request additional incentive funding by the County based upon demand and budget availability. If such request is granted, the use of such funds shall be in accordance with the terms of this paragraph.*

*9.9.8 No Liability to Operator. The parties acknowledge that Operator's duties under this Section 9.9 are to make requests for incentive funds on behalf of third parties and to administer and manage the incentive fund on behalf of the County in accordance with the policies and procedures established under this Section 9.9. In the event the County does not allow the payment of an incentive to a client which has been appropriately authorized, committed and substantiated under the policies and procedures*

*established under this Section 9.9, then the County will be responsible for defending any claims for payment that may arise from a client requesting payment of an incentive under an executed license agreement and for satisfying any resulting judgements.*

**Article 14 of the Agreement is amended to include the following new provision:**

*14.4 Survival. The indemnification provisions of Article 14 shall survive the termination of this Agreement.*

**Article 24 of the Agreement is amended to include the following new provisions:**

*Section 24.20 Nondiscrimination*

*The Operator warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.*

*Operator has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the Operator does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to County that Operator will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.*

*Section 24.21 Scrutinized Companies (when contract value is \$1million or more)*

*As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Operator certifies that it and its affiliates who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or the Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725, or is engaged in business operations in Cuba or Syria.*

*If the County determines, using credible information available to the public, that a false certification has been submitted by the Operator, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135.*

*Section 24.22 Public Records*

*Notwithstanding anything to the contrary contained in the Agreement, as provided for under Section 119.0701, F.S., if a consultant: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., then a consultant must comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. Accordingly, the Operator is specifically required to:*

- A. *Keep and maintain public records required by the County to perform services as provided under the Agreement.*
- B. *Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Operator further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.*
- C. *Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the Operator does not transfer the records to the County.*
- D. *Upon completion of the Agreement, the Operator shall transfer, at no cost to the County, all public records in possession of the Operator unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Operator transfers all public records to the County upon completion of the Agreement, the Operator shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Operator keeps and maintains public records upon completion of the Agreement, the Operator shall meet all applicable requirements for retaining public records. All records stored electronically by the Operator must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.*

*Failure of the Operator to comply with the requirements of this section shall be a material breach of the Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Operator acknowledges that it has familiarized itself with the requirements of Chapter*



*119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.*

***IF THE OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.***

3. **All Other Terms Affirmed.** In all other respects, the terms and conditions of the Agreement shall remain in full force and effect and are hereby ratified and affirmed by the parties hereto.

**THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY**

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

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

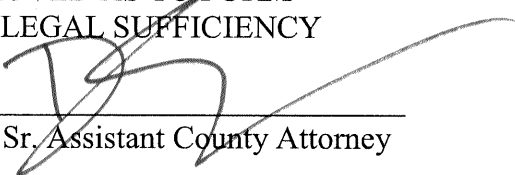
PALM BEACH COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor Paulette Burdick

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

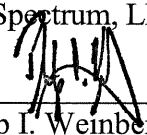
APPROVED AS TO TERMS  
AND CONDITIONS

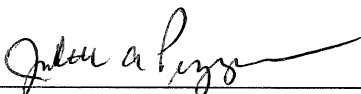
By: \_\_\_\_\_  
Sr. Assistant County Attorney

By: \_\_\_\_\_  
County Administrator

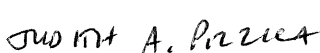
GLOBAL SPECTRUM, L.P.

By: Global Spectrum, LLC, general partner

By: \_\_\_\_\_  
Philip I. Weinberg, President

\_\_\_\_\_  
Witness Signature

(SEAL)

\_\_\_\_\_  
Print Witness Name