

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028
Capital Expenditures	<u>0</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>\$277,500*</u>	<u>\$324,450*</u>	<u>\$334,183*</u>	<u>\$344,209*</u>	<u>\$354,535*</u>
External Revenues	<u>0</u>	<u>0</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>\$277,500</u>	<u>\$324,450*</u>	<u>\$334,183*</u>	<u>\$344,209*</u>	<u>\$354,535*</u>

ADDITIONAL FTE
POSITIONS (Cumulative)

Is Item Included in Proposed Budget? Yes No

Does this item include the Use of Federal Funds? Yes No

Does this item include the Use of State Funds? Yes No

Budget Account Nos:

Fund 1450 Agency 710 Org 7420 Object 3401

Reporting Category

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

First Cent of the bed tax operating reserve.

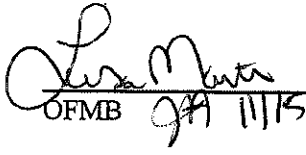
*The fiscal impact for FY 2024 is based on 10 monthly installments of \$18,750 plus a maximum incentive fee of \$90,000 as incentives will be calculated based on the full fiscal year (i.e., October 2023-September 2024). Fiscal impact for FY25-FY28 assumes that the Base Management Fee has been adjusted annually to the maximum increase possible (i.e., CPI not to exceed 3%) and that the full potential of the annual Incentive Fee (i.e., 40% of the Base Management Fee) is earned by Global.

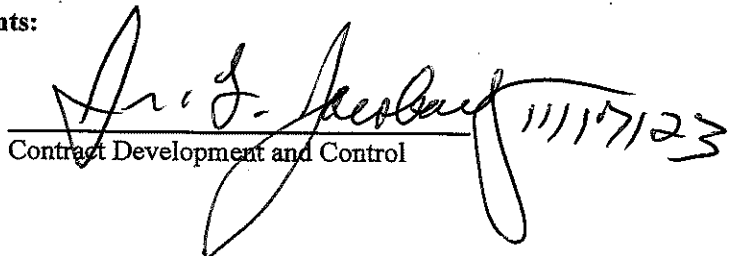
C. Departmental Fiscal Review:



III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Development Comments:

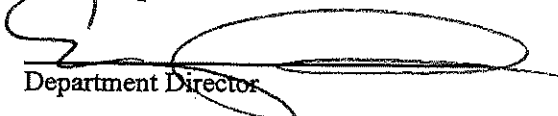

OFMB JA 11/15
11/16/2023
11-16-23


Contract Development and Control 11/17/23

B. Legal Sufficiency:


Assistant County Attorney 11/17/23

C. Other Department Review:


Department Director

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

Background & Policy Issues (cont.): Fee of \$225,000 which will be subject to annual adjustment (beginning on October 1, 2024) based on the percentage change in the Consumer Price Index (CPI) not to exceed 3%. Global will have the potential to earn an annual Incentive Fee of up to 40% of the annual Base Management Fee (i.e., equivalent to \$90,000 during the first year). Global will also make a capital contribution of \$500,000 to be amortized over the term of the Agreement (i.e., 9 years 10 months). An analysis and overview of the key changes reflected in the Agreement, as compared to the existing contract with Global (R2012-1047 as amended by R2017-0932, R2022-0407 and R2023-1400) follows.

Financial Terms

The current contract provides for the County to pay Global an annual fixed fee of \$220,515.00 to be paid in monthly installments of \$18,376.25 which may be adjusted annually each October, 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, Global has the potential to earn an 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. Global has no capital contribution under the current contract.

The recommended Agreement provides for the County to pay Global an annual Base Management Fee of \$225,000 (payable in monthly installments of \$18,750); this represents a 2% increase over the current annual fixed fee. The Base Management Fee will be subject to annual adjustments based on the percentage change in the CPI, not to exceed 3%. Global will have the potential to earn an annual Incentive Fee of up to 40% of the annual Base Management Fee (i.e., equivalent to \$90,000 during the first year). The Incentive Fee is based on attainment of key quantitative (i.e., gross revenue and room nights generation) and qualitative (i.e., SBE achievement, customer satisfaction, community engagement and capital project implementation) performance measures. Global will make a capital contribution of \$500,000 to be amortized over the term of the Agreement (i.e., 9 years 10 months). If the Agreement is terminated earlier, the County will be required to pay Global all unamortized amounts. The capital improvements proposed by Global include improvements to the: 1) concierge alcove, 2) outdoor meeting space, 3) boardroom flex space, and 4) pre-function event space. All proposed capital improvement work will require prior authorization by County staff as projects will need to be reconciled with pending work including, but not limited to, the development of the second Convention Center hotel and ongoing renewal/replacement.

The financial component of the recommended Agreement reflects the negotiated financial proposal attained during contract negotiations. The key modifications from Global's original proposal are summarized as follows:

- Established a cap of 3% for the annual adjustments to the Base Management Fee;
- Established a cap to the Incentive Fee equivalent to 40% of the Base Management Fee;
- Reduced Global's capital improvements contribution from \$1,000,000 to \$500,000;
- Redefined the Incentive Fee to include both, quantitative and qualitative components; Global's original proposal had them as separate items with no cap on the quantitative component and a \$50,000 cap on the qualitative component;
- Redefined the quantitative component as a combination of revenues and room night attainment, with the latter being the driving factor; Global's original proposal was solely based on gross revenues; and
- Redefined the qualitative component to provide measurable goals.

Coordination with Food & Beverage Contractor

Although the current contract imposes upon Global the obligation to coordinate with, and provide general oversight of, the Food & Beverage Contractor, the recommended Agreement adds language to clarify that, when developing its annual preventative maintenance plan, monthly schedule of maintenance and renewal/replacement schedule, Global will be required to work closely with the Food & Beverage Contractor to ensure that the facilities, fixtures, and equipment used by the Food & Beverage Contractor are included.

Travel Expenses

Under the existing contract Global is limited as to the travel expenses it can incur, which is not in alignment with the other agencies operating under the TDC umbrella. The recommended Agreement includes a new exhibit for travel expenses comparable to the ones allowed for Discover The Palm Beaches (Discover). In working towards securing events and room nights, Global and Discover work in tandem. As such, their ability to travel and conduct outreach should mirror each other with one notable exception: entertainment. Under the new Travel Exhibit, Global will not be able to claim entertainment expenses as TDC intends to manage the same through Discover.

Incentive Funding

Under the existing contract, Global can request from TDC incentive funds (for clients) to assist with group sales efforts to attract room night generating events. Said incentive funds currently operate on a per-request basis. Under the recommended Agreement, TDC will advance Global \$100,000 of incentive funds to be managed in a dedicated account and subject to detailed administrative approval requirements. The advancement of funds will allow Global to expeditiously respond to opportunities identified by its sales team in order to secure room night generating events.

Non-Compete/Conflict

The recommended Agreement expands on the non-compete/conflict clause to state that while Global is providing services under the Agreement and for a period of one year thereafter, it shall not acquire an interest in or enter into an agreement to manage or operate a hotel in downtown West Palm Beach, Florida without the prior written approval of the County. It also provides that while Global is providing services under the Agreement, and for a period of one year thereafter, it shall not

enter into a room block agreement with the Convention Center without the prior written approval of County. Staff's intent in adding this provision was to protect the County's best interests by ensuring that the Convention Center operator would not be representing opposing interests.

Non-Standard Terms

Most County contracts allow the County to terminate for convenience with 10 business days' notice. The Agreement with Global provides that the County will provide Global with 180 calendar days' notice prior to termination for convenience (i.e. termination without cause).

**CONTRACT
BETWEEN
PALM BEACH COUNTY
AND
GLOBAL SPECTRUM, L.P.
FOR
OPERATION AND MANAGEMENT
OF THE PALM BEACH COUNTY CONVENTION CENTER**

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CONVENTION CENTER OPERATING AGREEMENT

This Convention Center Operating Agreement (the "Agreement") is made as of _____, 2023, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners ("County") and Global Spectrum, L.P. d/b/a OVG360, a Delaware limited partnership, qualified to do business in the State of Florida ("Operator") whose Federal Employer Identification Number is 59-3599248.

RECITALS

WHEREAS, the County is the owner of the Palm Beach County Convention Center located at 650 Okeechobee Boulevard in West Palm Beach, Florida; and

WHEREAS, the County has determined that it requires the services of a private management company to operate and manage the Palm Beach County Convention Center; and

WHEREAS, Operator was selected through a competitive proposal process to operate and manage the Palm Beach County Convention Center by reason of its expertise in facility management and operation; and

WHEREAS, the County and the Operator desire to enter into this Agreement pursuant to the terms and conditions as set forth herein.

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:

ARTICLE 1 **DEFINITIONS**

The following terms have the meanings specified in this Article 1 when capitalized and used in this Agreement. Capitalized terms not defined in this Article 1 have the meanings ascribed to them elsewhere in this Agreement.

Base Management Fee: has the meaning set forth in Section 5.1.1 of this Agreement.

Board: means Palm Beach County's Board of County Commissioners.

Bureau: Discover Palm Beach County, Inc., a Florida not-for-profit corporation, doing business as Discover the Palm Beaches.

Bureau Representative: The Executive Director of the Palm Beach County Convention & Visitors Bureau or his/her designee, whose telephone number is (561) 233-3000, or such other person as may be designated in writing by the County from time to time.

Capital Expenditures: All expenditures for Capital Renewal and Replacement and Capital Improvements.

Capital Improvements: All labor and materials related to any improvements or betterments to any part of the Facility that have a useful life of more than one (1) year.

Capital Renewal and Replacement: means the provision of all labor and materials related to capital renewal and replacement that have a useful life of more than one (1) year which are reasonably required to repair, restore and/or replace, when reasonably necessary, all Facility access ways, seating, equipment, painting, structural components or systems components, or integral parts of the Facility. By way of example only, structural components include all foundations, footings, structural members, piers, columns, walls, roofs, ramps and steps; system components include heating, ventilating, air conditioning, plumbing, electrical, gas and water systems, escalators and elevators; and integral parts include materials (e.g., stucco), parking lot and access road surface and curb repairs, drainage systems, parking lot and access road lighting installations (including, without limitation, towers, poles, wires and conduits) and light towers, within the Facility. Replacement of any equipment having an expected useful life of greater than one (1) year also constitutes, for purposes hereof, a Capital Renewal and Replacement.

County: means Palm Beach County, Florida

County Administrator: County Administrator of Palm Beach County or his/her designee.

County Code: The Palm Beach County Code.

CPI: means the monthly Consumer Price Index for all Urban Consumers, All Items, for the Greater West Palm Beach/ Boca Raton, Florida area of the United States, issued by the Bureau of Statistics of the U.S. Department of Labor.

Day(s): All references to "day(s)" will be interpreted to mean calendar days unless otherwise specified herein.

Disposal: The release, storage, use, handling, discharge or disposal of any Hazardous Materials.

Emergency Repair: 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.

Emergency R/R Project: has the meaning set forth in Section 7.2 of this Agreement.

Environmental Laws: Any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Equal Business Opportunity (EBO) Ordinance: means the County's EBO program which is codified in Sections 2-80.20 through 2-80.30 (as may be amended) of the Palm Beach County Code.

Event Operating Account: The account by that name established pursuant to Section 9.7 of this Agreement.

Facility: The Palm Beach County Convention Center, including entrances, grounds, sidewalks, and parking areas surrounding it and adjacent thereto as depicted on **Exhibit A** attached hereto and made a part hereof. The Facility includes meeting rooms, common areas, lobby areas, offices, storage and utility facilities and other spaces.

Facility Operating Account(s): The account(s) by that name established pursuant to Section 9.7 of this Agreement.

FDO Representative: The Director of the Facilities Development & Operations Department or his/her designee, whose telephone number is (561) 233-0200, or such other person as may be designated in writing by the County from time to time, who is tasked with the responsibility for administration of Articles 6, 7, and 8 of this Agreement.

Food & Beverage Contractor: The entity which the County contracts with to provide food and beverage services for the Facility.

GAAP: Generally Accepted Accounting Principles.

General Escrow Account(s): The account(s) by that name established pursuant to Section 9.7 of this Agreement.

General Manager: An individual employed by Operator who is qualified and has experience in the management of a first class convention center.

Governmental Regulations: has the meaning set forth in Section 15.1 of this Agreement.

Hazardous Materials: Any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws.

Incentive Fee: has the meaning set forth in Section 5.1.2 of this Agreement.

Incentive Funds: has the meaning set forth in Section 9.9 of this Agreement.

Joint Venture: An association of two (2) or more persons or business entities whose purpose is to conduct a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

Long Term Sales: The scheduling and booking of the Facility for all long term dates, 18 months or more in advance.

Operating Expenses: Any and all expenses and expenditures of every kind and nature incurred, directly or indirectly by the Operator in managing, operating, maintaining, promoting and marketing

the Facility, including, without limitation: (i) payroll, benefits, relocation costs, bonus and related costs; (ii) operating supplies; (iii) advertising; (iv) cleaning; (v) data processing; (vi) dues, subscriptions and membership; (vii) the Base Management Fee and the Incentive Fee to be paid pursuant to Article 5 below; (viii) printing and stationary costs; (ix) postage and freight costs; (x) equipment and rental costs; (xi) Routine Maintenance, not inclusive of expenses relating to performing Capital Renewal and Replacement and Capital Improvements; (xii) security expenses; (xiii) cost of office supplies; (xiv) telephone and telecommunication charges; (xv) travel expenses in accordance with **Exhibit F** hereto; (xvi) cost of employee uniforms; (xvii) exterminator and trash removal costs; (xviii) parking expenses; (xix) utility expenses; (xx) audit and legal expenses; (xxi) any and all costs incurred in obtaining and maintaining the Third-Party Commercial Fidelity Bond or its equivalent, insurance coverage, and Surety Bond, in accordance with the requirements set forth in Article 13, except for those costs as set forth in Section 13.1.3.6; (xxii) applicable taxes, subject to the terms and conditions set forth in this Agreement; and (xxiii) amortization of the Operator's Capital Investment as referenced in Section 5.3 of this Agreement.

Operations Manual: The manual prepared by the Operator and approved by the County Administrator relating to the overall operation of the Facility.

Operating Year: The period of time beginning on the first day of October and ending on the 30th day of the month of September.

Operator: means Global Spectrum, L.P. d/b/a OVG360.

Operator's Capital Investment: has the meaning set forth in Section 5.3 of this Agreement.

Operator's Representative: The General Manager, whose telephone number is 561-366-3006, or such other person as may be designated in writing by the Operator from time to time.

Renewal/Replacement Program: has the meaning set forth in Section 7.1 of this Agreement.

Revenues: Any and all revenues of every kind and nature derived from owning, managing, operating, maintaining, promoting and marketing the Facility, including, without limitation: (i) rental income; (ii) merchandise income; (iii) advertising sales income; (iv) equipment and decorating rental fees; (v) box office income; (vi) miscellaneous operating income; (vii) parking income; (viii) leasing income; and (ix) food and beverage sales income. Revenues will not include: (i) applicable excise, sales, occupancy and use taxes, or similar government taxes; (ii) 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 (iii) any gratuities collected (or to be collected) for the benefit of and paid to any of the Operator's personnel. For the sake of clarity, Revenues do not include monies collected (or to be collected) for the benefit of and paid to third parties such as event promoters.

Routine Maintenance: All labor and materials which are required to keep the Facility (including equipment located thereon) in good order and repair (normal wear and tear excepted) and which are routine, regular and predictable in nature, given the age of the Facility and the use of the Facility, expressly not including any Capital Renewal and Replacement.

R/R Payment Request: has the meaning set forth in Section 7.1.6 of this Agreement.

R/R Project: means the labor and materials necessary to renew, rehabilitate or replace a physical improvement, fixture, piece of equipment or any other physical asset of the Facility which is intended to extend the overall life of the improvement or equipment by over one year.

R/R Project Bid Tabulation Sheet: has the meaning set forth in Section 7.1.5 of this Agreement.

R/R Project Schedule, Updated R/R Project Schedule and Approved R/R Project Schedule: have the meanings set forth in Section 7.1.3 of this Agreement.

R/R Purchase Order: has the meaning set forth in Section 7.1.5 of this Agreement.

Sales and Marketing Plan: An annual sales and marketing plan for the promotion of the Facility.

SBE: A small business enterprise which has been certified by the County's Office of Equal Business Opportunity.

Senior Management Employees: Operator's employees who hold senior management positions, such as, general managers, assistant general managers and directors, and who Operator has identified in its Operations Manual, and who Operator defines as such in accordance with the Operator's current policies and procedures.

Short Term Sales: The scheduling and booking of the Facility for all short term dates, 18 months or less in advance.

TDC: Tourist Development Council of Palm Beach County, Florida.

TDC Representative: The Executive Director of the TDC or his/her designee or such other person as may be designated in writing by the County from time to time.

Term: Term has the meaning as set forth in Section 2.1 of this Agreement; provided however, if this Agreement is extended pursuant to Section 2.2 of this Agreement then all references to Term contained herein will also include such extension.

ARTICLE 2

TERM

2.1 Initial Term. Unless sooner terminated as provided herein, the term of this Agreement will commence on December 1, 2023 (the "Commencement Date") and end at 11:59 p.m. on September 30, 2028 (the "Initial Term").

2.2 Extensions. County has the right and option to extend the Term of this Agreement for one (1) additional term of five (5) years ("Renewal Term") under the same terms and conditions of this Agreement and commencing upon the expiration of the Initial Term of this Agreement. County may

exercise its option to extend, if at all, by written notice to the Operator received by the Operator on or before one hundred and eighty (180) days prior to the expiration of the Initial Term of this Agreement.

ARTICLE 3
OWNERSHIP AND COUNTY'S RIGHTS OF USE

3.1 Ownership. The Facility is owned in fee simple by the County and at the conclusion of the Term of this Agreement, as well as throughout the Term of this Agreement, the County will retain ownership of the Facility, including but not limited to real estate, all equipment and any improvements made during the Term of this Agreement, all technical and office equipment and facilities, furniture, displays, fixtures and similar property. The Operator will not own or have any possessory interest in the Facility. This Agreement does not create or grant any ownership or possessory interest or similar right, title or interest, legal or equitable, in the Facility to the Operator. Ownership of assets purchased with Revenues or any other County funds is and will remain the property of the County.

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 will remain the property of County, and when no longer needed for the performance of this Agreement, will be returned to County. Furthermore, the County will 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.

Ownership of and title to all intellectual property rights of whatsoever value, including but not limited to logos and trademarks, held in the County's name, will remain in the name of the County.

Operator must 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.

Any assets of the County, including, without limitation, those described herein, must not be mortgaged, pledged, lien, encumbered, sublet or otherwise alienated or assigned without the prior written consent of the County, which consent may be withheld in the County's sole and absolute discretion. The foregoing will be construed to include a prohibition against any assignment, mortgage, sublease, pledge or encumbrance by operation of law, legal process, receivership, bankruptcy or otherwise, whether voluntary or involuntary.

3.2 Fixed Assets Management. The Operator will comply with all County policies and procedures pertaining to the tracking and disposition of fixed assets. All County owned property will be assigned a Fixed Asset Identification Number by the Fixed Assets Section of the County's Office of Financial Management & Budget.

Together, the parties will conduct an annual inventory of all equipment and fixed assets of the Facility.

All losses in inventory of County-owned equipment must be documented by the Operator as soon as such losses are discovered by the Operator, and County must be promptly notified. Operator will be responsible for the recovery of any such lost assets or in the alternative for reimbursement to the County for such lost assets in an amount equal to the last documented value of the same.

3.3 County's Use. County will 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 will reimburse Operator for the actual direct operational costs incurred by Operator as a result of such use.

3.4 County's Booking Rights. The County via the Bureau will have primary responsibility for marketing the Facility for all Long Term Sales events, and to carry out this responsibility, will have control over all Long Term Sales, which Bureau will coordinate with the Operator prior to commitment. Operator will work pro-actively with the Bureau in connection with the aforementioned Long Term Sales. The Bureau may also book Short Term Sales events if the dates have not been confirmed to other users and in coordination with the Operator. Notwithstanding anything herein to the contrary, the Operator in coordination with the Bureau may book Long Term Sales; provided that, (i) the dates have not otherwise been confirmed to other users and (ii) the County has granted its consent, which may be granted or denied in the County's sole discretion, to such Long Term Sales for such dates.

3.5 County's Use during State of Emergency. In addition to the County's rights of use as set forth in Section 3.3 and 3.4 above, Operator acknowledges that the Facility is a highly visible County-owned building and therefore agrees as follows: In the event of any type of emergency situation or natural disaster, including, without limitation, a hurricane or other extreme weather event, the County Administrator may determine that the County's use of the Facility is necessary to protect the health, safety and welfare of the residents and visitors of the County. Upon that determination (which determination will be within the sole and absolute discretion of the County Administrator and will be based on the best information and knowledge regarding the particular emergency that the County Administrator has available to him/her at the time of making such determination), and upon verbal or written notice to the General Manager, Operator must promptly cede use of the Facility, or any portion thereof, for County use, without rent, use fee or other payment of compensation; provided, however, that notwithstanding the foregoing, County will reimburse Operator for the actual direct operational costs incurred by Operator as a result of such use, during the pendency of the emergency event and/or natural disaster (including, without limitation, the time period(s) immediately preceding and following the actual occurrence of the event).

ARTICLE 4 **SCOPE OF SERVICES**

County hereby engages Operator as an independent contractor to perform the services hereinafter described. Notwithstanding anything herein to the contrary, Operator will have no responsibility to provide: (i) food and beverage services at the Facility as the County has engaged the services of a Food & Beverage Contractor; nor (ii) for the management of Long Term Sales as the County has engaged the services of the Bureau to provide for the same. However, the Operator has a duty to work cooperatively with, provide advice to, and maintain open communication with the Food & Beverage Contractor and with the Bureau as more specifically set forth in this Agreement.

4.1 Operations Manual. Operator acknowledges that it has delivered to the County the current Operations Manual which has been approved by the County Administrator and the TDC

Representative. Operator will maintain the Operations Manual and will provide to the County Administrator on an annual basis a letter that identifies changes to the Operations Manual. In the event any changes are proposed to the Operations Manual, then such proposed changes will not become effective until such time as the County Administrator has provided Operator with its written approval of the same which may be granted or withheld in the County's sole and absolute discretion. Operator acknowledges that the County Administrator may choose to present such changes to the TDC for further review prior to the County Administrator granting or withholding its consent to the incorporation of such proposed changes into the Operations Manual.

4.2 Operation Standards. Operator will 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.

4.3 County Policies and Procedures. Operator will have the authority 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 will be subject to the terms of this Agreement and County policies and procedures, which are posted at <http://discover.pbcgov.org/publicaffairs/Pages/PPM-Index.aspx>, as they relate to the Facility and are consistent with the terms of this Agreement, which policies and procedures may, from time to time, hereafter be established or modified by County.

4.4 Incorporation. Operator's obligations include, but are not be limited to, the performance of the obligations set forth in Section 4.5 below, subject to controls and restrictions as stated elsewhere in the Agreement and in the Operations Manual as the same may hereafter be amended. The Operations Manual, and any amendment thereto, are deemed to be a part of this Agreement and is incorporated herein by reference.

4.5 Services. Operator will perform the following services as required and within the time frames specified by the County:

4.5.1 Prepare an annual operating plan, which Operator must submit to County, in accordance with an established County schedule for approval by the TDC and County.

4.5.2 Prepare a Capital Expenditure budget in accordance with the requirements of the Agreement, which Operator must submit to County for approval by the TDC and County.

4.5.3 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, state of emergency disaster plan, 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.

4.5.4 Advise the County Administrator of any condition of which Operator is or becomes aware of which Operator believes impairs the structural soundness or sound operating

condition of the Facility. Notwithstanding the foregoing, Operator must make its own determination as to the structural soundness of the Facility and the necessity for repair.

4.5.5 In accordance with the procurement policies and procedures set forth in Section 11.7, 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.

4.5.6 Assure that any contract between the Operator and its subsidiary and/or affiliate or related entity in connection with the Facility will be entered into in accordance with the procurement policies and procedures set forth in Section 11.7.

4.5.7 Develop policies and procedures, rate schedules, services pricing and rental/user agreement terms and conditions, subject to the approval of the County Administrator. Operator must review annually and propose modifications and/or recommendations, as necessary, to all of the foregoing and submit such proposed modifications and/or recommendations to the County Administrator for consideration by TDC as a part of the budget process.

4.5.8 Require that all users of the Facility, unless otherwise approved by the County Administrator, execute rental/user agreements in accordance with the requirements of Article 12 of this Agreement.

4.5.9 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.

4.5.10 Market and schedule the Facility for all Short Term Sales, and to carry out this responsibility, Operator will have experienced personnel who will diligently promote such use of the Facility. Furthermore, Operator will provide advice and consultation to Bureau for use by Bureau in scheduling Long-Term Sales events at the Facility in accordance with a priority booking policy to be established by Bureau and Operator and approved by the County.

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

4.5.12 Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with GAAP and any additional County requirements as they relate to the Facility, provided they are consistent with the terms of the Agreement. The County will 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, will remain the sole property of the Operator.

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

4.5.14 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 must, 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 will not be legally responsible for financial information provided by the Food & Beverage Contractor or the TDC.

4.5.15 Comply with spending limitations imposed in the annual operating 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.

4.5.16 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.

4.5.17 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 will be included as an operating expense of the Facility.

4.5.18 Deposit and hold in trust in the Event Operating Account or such other interest-bearing account in a local qualified public depository as County will 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 in Section 9.4 and in the Operations Manual.

4.5.19 Work cooperatively and in close daily coordination with the Food & Beverage Contractor and maintain ongoing open communications with the TDC, the Bureau, the Food & Beverage Contractor, and any other organization or County department as designated by County.

4.5.20 Seek and provide advice and consultation to the Bureau and Food & Beverage Contractor in the preparation of the Sales and Marketing 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 Sales and Marketing Plan. Operator must provide both the Bureau and the Food & Beverage Contractor a standardized format in which to submit information to be incorporated by Operator into the Sales and Marketing Plan. Manage the Facility's website as part of the Sales and Marketing Plan.

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

4.5.22 Administer related Facility operating contracts as authorized by the County, including without limitation, Long Term Sales agreements.

4.5.23 Provide parking services and/or administer related contracts.

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

ARTICLE 5
OPERATOR COMPENSATION AND OPERATOR CAPITAL INVESTMENT

5.1 Payments to Operator. As total compensation for Operator's services, County shall pay Operator: (i) a Base Management Fee and (ii) an Incentive Fee, as set forth below, which together shall constitute full payment for any and all expenses incurred by Operator under this Agreement, except for those expenses which are otherwise provided for in the annual operating budget as adopted by the County from time to time.

5.1.1 Base Management Fee. County shall pay Operator an annual amount of two hundred twenty five thousand dollars (\$225,000) ("Base Management Fee"). The Base Management Fee shall be adjusted either upward or downward annually, beginning October 1, 2024, by the percentage change in the CPI published for August 2024, as compared to the same date in 2023. Notwithstanding the foregoing, the adjustment to the Base Management Fee shall never increase or decrease by more than three percent (3%) in any annual period. The Base Management Fee will be similarly adjusted by the percentage change in the CPI in each subsequent Operating Year; provided that Operator has obtained County's written approval of the methodology by which such adjustment will be made. The Base Management Fee will be payable monthly as an Operating Expense, payable as provided for herein.

5.1.2 Incentive Fee. In addition to the Base Management Fee, and provided that Operator has met the criteria, as set forth in subsection 5.2 below, Operator shall be entitled to receive an annual incentive fee ("Incentive Fee"), during the Term of this Agreement, to be calculated as set forth below. Notwithstanding the foregoing, the Incentive Fee for each Operating Year shall not exceed: forty percent (40%) of the annual Base Management Fee as adjusted by CPI ("Maximum Incentive Fee Potential"). Promptly following the end of the Operating Year and a completed financial audit, the County Administrator, shall assess and total the Incentive Fee due to Operator for the preceding Operating Year. The County Administrator will provide Operator with a written report with respect thereto within ninety (90) days of County's approval and acceptance of the completed financial audit and the County will pay Operator the Incentive Fee within said timeframe.

5.1.3 First Operating Year. Since the first Operating Year under the Contract will be only ten (10) months (December 1, 2023 – September 30, 2024), the Base Management Fee will be prorated for the short Operating Year. Since the Incentive Fee Criteria are based on a full Operating Year, Operator shall include the months of October and November 2023 in its reporting for the calculation of the Incentive Fee under Section 5.1.2, which

Incentive Fee will not be prorated for the short Operating Year. Operator shall not request that the performance metrics for the months of October and November 2023 be considered in the calculation of incentive fees under any other contract with the County, including contract R2012-2017.

5.2 Incentive Fee Criteria. Operator shall have an opportunity to earn an Incentive Fee based on both quantitative and qualitative criteria, as follows:

5.2.1 Quantitative Fee (up to fifty percent (50%) of Maximum Incentive Fee Potential).

1. Gross Revenue Performance. Up to forty percent (40%) of the Quantitative Fee to be earned will be based on Gross Revenue Performance. Operator shall receive up to twenty percent (20%) of the Revenues that exceed the Gross Revenue Benchmark which for the first Operating Year will be nine million eight hundred thousand dollars (\$9,800,000) and for each subsequent Operating Year will be the Board/TDC approved Facility Gross Revenue budget (Annual Gross Revenue Benchmark).

2. Room Night Generation. Up to sixty percent (60%) of the Quantitative Fee to be earned will be based on room night generation in accordance with the Bureau approved goal (Annual Goal). If Operator reaches 100% of the Annual Goal, Operator is eligible for 50% of the Room Night Generation Incentive. If Operator exceeds the Annual Goal by 10%, Operator is eligible for an additional 25% of the Room Night Generation Incentive. If Operator exceeds the annual goal by 15%, Operator is eligible for an additional 25% of the Room Night Generation Incentive.

The total amount of the quantitative components of the Incentive Fee that Operator is eligible to earn in any Operating Year shall not exceed fifty percent (50%) of the Maximum Incentive Fee Potential.

5.2.2 Qualitative Fee (up to fifty percent 50%) of Maximum Incentive Fee Potential). Operator may be awarded up to fifty percent (50%) of its Maximum Incentive Fee Potential based on qualitative criteria, as set forth below. The County, in its fair and reasonable discretion, shall measure Operator's performance following each Operating Year in the following qualitative categories:

1. SBE Participation (30% of the Qualitative Fee)
 - a. Measured by total dollars spent annually with SBEs on the purchase of professional services, grounds maintenance, building repairs and other maintenance and service contracts in excess of 30%.
 - b. Operator spends 30% of costs allocable to professional services, grounds maintenance, building repairs and other maintenance and service contracts with County certified SBEs (i.e. this exceeds the contractual SBE goal of 20%), and Operator earns this part of the Qualitative Fee.

2. Client Survey Scores (20% of the Qualitative Fee)
 - a. Response Rate Operator will send a survey to each contracted event that occurs at the Facility and achieve an annual response rate of at least 60% in order for 50% of this part of the Qualitative Fee to be earned.
 - b. Average Survey Score - Achieve an annual customer satisfaction score of at least 90% in order for 50% of this part of the Qualitative Fee to be earned
3. R/R Project Completion (30% of the Qualitative Fee)
 - a. Based on operators' ability to successfully and timely complete annual R/R Projects which are assigned to Operator by the FDO Representative.
4. Community/Stakeholder/Agency Involvement (20% of the Qualitative Fee) - Discretionary
 - a. Operator's annual participation in community related events that promote tourism for 50% of this part of the Qualitative Fee to be earned.
 - b. Operator's successful working relationship with partner TDC agencies to maximize tourism in Palm Beach County. Operator's annual senior management staff collaboration with the TDC staff and the partner TDC agencies will be reviewed by the TDC Director to determine the synergy and productivity between all parties. Operator can earn up to 50% of this part of the Qualitative Fee.

5.3 Operator's Capital Investment. Operator shall make a capital investment of five hundred thousand dollars (\$500,000) immediately upon the Commencement Date of the Initial Term of this Agreement (Operator's Capital Investment). A list of the Operator's proposed projects is attached hereto as **Exhibit E**. Operator anticipates completion of the proposed projects within twelve months of the Commencement Date of the Initial Term. Before beginning any capital project, Operator will follow the approval process set out in **Exhibit E** to obtain County's review and approval of each project and the implementation of each project. Amortization of the Operator's Capital Investment will be on a straight line basis over the Term (the Initial Term and the Renewal Term) of this Agreement. In the event that the Agreement is terminated or not renewed for any reason, County agrees to reimburse Operator within thirty Business Days of termination or non-renewal for any unamortized Operator's Capital Investment.

ARTICLE 6

ROUTINE MAINTENANCE

6.1 Routine Maintenance Obligation. Except as otherwise provided herein, the Operator will be responsible for all costs of operating the Facility, including without limitation Routine

Maintenance. With respect to the Operator's performance of Routine Maintenance, the Operator agrees as follows:

6.1.1 Standards. All Routine Maintenance must be performed on a regular and ongoing basis consistent with standards of maintenance of similar first-class convention centers in other jurisdictions, public assembly facilities in Palm Beach County, or to the level initially installed by the County; whichever is higher. Furthermore, at all times equipment maintenance must meet or exceed manufacturer's recommendations;

6.1.2 Performance. All Routine Maintenance must be performed in a good and workmanlike manner, with all reasonable efforts made to preserve the aesthetics of the Facility to the standards of maintenance for similar first-class convention centers in other jurisdictions, public assembly facilities in Palm Beach County, or to the level initially installed by the County; whichever is higher;

6.1.3 Annual Preventative Maintenance Plan and Monthly Reports. The Operator must provide the County Administrator an annual preventive maintenance plan for the Facility in support of the annual operating budget. In addition, the Operator must 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 must include a list of breakdowns of all major pieces of installed and portable equipment for that month. When developing its annual preventive maintenance plan and monthly schedule of maintenance, Operator must work closely with the Food & Beverage Contractor and obtain from the Food & Beverage Contractor assessments of facilities, fixtures and equipment used by the Food & Beverage Contractor that require maintenance or repair. Operator must provide the FDO Representative with a copy of the annual preventive maintenance plan, and each schedule and report required herein. The Operator must provide the County with access to the Facility for routine maintenance inspections;

6.1.4 FDO Review. All Routine Maintenance must be reviewed with the FDO Representative;

6.1.5 Prior FDO Approval for Certain Repairs. The Operator must obtain prior approval of the FDO Representative for repairs that are made to the Facility the cost of which exceeds Twenty-Five Thousand Dollars (\$25,000.00); provided however, the County, in its sole discretion, may decrease such threshold during the Term of the Agreement. The Operator must further cause all necessary Routine Maintenance and repairs to be made to the Facility from those moneys available in the annual operating budget;

6.1.6 Funding for Repairs. The cost of all repairs which are less than Twenty-Five Thousand Dollars (\$25,000.00) individually, will be paid by the Operator from that line of the annual operating budget allocated for Routine Maintenance. In the event repairs exceed Twenty-Five Thousand Dollars (\$25,000.00), such repairs must be pre-approved by the FDO Representative. The FDO Representative will evaluate the condition of the equipment to determine if the work required to return the equipment to working order, is in fact a repair or

requires a replacement. If the work is determined to be a repair, the cost of such repair will be made from the annual operating budget despite its value exceeding Twenty-Five Thousand Dollars (\$25,000.00). If the work is determined to be a replacement, the FDO Representative will identify as part of his/her approval, a funding source for such replacement. The FDO Representative's decision is final in terms of whether the work: (i) should proceed as suggested by the Operator, or whether an alternate scope of work should be pursued, and (ii) is in fact a repair or a replacement;

6.1.7 Permits. The Operator must obtain all development approvals and permits from the appropriate regulatory agencies prior to commencing any repair which requires a permit and must perform all such repairs in compliance with the effective Florida Building Code, supplements thereto, and any City of West Palm Beach amendments thereto. All applications for permits and approvals of any kind require the approval of the FDO Director; Operator must provide to FDO copies of development approvals and permits obtained;

6.1.8 No Liens. Operator covenants and agrees that nothing contained in this Agreement will be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate will not be subject to such liability. Operator must notify any and all parties or entities performing work or providing materials relating to any repairs made by Operator of this provision of this Agreement. If so requested by County, Operator must file a notice satisfactory to County in the Public Records of Palm Beach County, Florida stating that County's interest will not be subject to liens for repairs made by Operator. In the event that a construction lien is filed against the Facility or other County property in connection with any work performed by or on behalf of Operator, Operator must satisfy such claim, or transfer same to security, within ten (10) days from the date of filing. In the event that Operator fails to satisfy or transfer such claim within said ten (10) day period, County may do so and thereafter charge Operator, and Operator must promptly pay to County upon demand, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Operator will indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien; and

6.1.9 Construction Bond. Operator will require contractors to furnish a payment and performance bond to County equal to the cost of the individual repairs in the form required under Section 255.05, Florida Statutes, naming Palm Beach County Board of County Commissioners as a third-party beneficiary for individual repairs in excess of Two Hundred Thousand Dollars (\$200,000).

6.2 Emergency Repairs. Operator will make all Emergency Repairs to the Facility, pursuant to Section 6.1.2 and 6.1.4 through 6.1.9 of this Agreement. Notwithstanding anything herein to the contrary, Operator will not be required to follow a competitive process as set forth in Section 11.7.1 so long as Operator submits an emergency procurement letter to the FDO Representative explaining that an emergency procurement is required in response to a need when the delay incident to complying

with the requirements of Section 11.7 would be detrimental to the interests, health, safety or welfare of the Facility.

6.3 Failure to Perform. The County may establish at least two (2) days a month to inspect the Facility at reasonable times, upon reasonable request, to observe whether the Operator is performing its Routine Maintenance obligations pursuant to the terms of this Agreement. If, in the County's reasonable opinion, the Operator has not performed its Routine Maintenance obligations pursuant to the terms hereinabove, the County will provide written notice to the Operator stating the basis for such opinion, and the Operator will have thirty (30) days from the date of receipt of such notice during which to perform such Routine Maintenance as required hereunder or to notify the County that it disagrees with the County's opinion. If the Operator disagrees with the County's opinion, then the County may pay for and perform the Routine Maintenance that it believes is required hereunder. Notwithstanding the above, the County may inspect the Facility at any time without prior notice to the Operator if the County has reason to believe that an emergency situation exists at the Facility.

ARTICLE 7

CAPITAL RENEWAL / REPLACEMENT PROGRAM

7.1 Capital Renewal/Replacement (R/R) Program.

7.1.1 Concept. The County has determined the need for establishing and funding a program to address R/R Projects in order to ensure that age, use and deterioration of the Facility does not adversely impact its use or the cost to maintain the Facility (the "Renewal/Replacement Program"). Funding for this program was set aside from the original construction bond and subsequently approved Bed Tax funding. Since the actual funding requirements of the Renewal/Replacement Program will be continually re-evaluated in the future pursuant to the requirements of this Agreement, the County acknowledges that additional funding may be required; provided however, County has no obligation to add additional funding. The County will retain the responsibility for funding R/R projects to the Facility; however, the County is under no obligation to undertake such R/R projects. The Operator agrees to annually provide to the FDO Representative, a schedule of items that can be reasonably anticipated as necessary R/R projects. The purpose of such a schedule is to allow the County 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) budget. When preparing the annual R/R schedule, the Operator must work closely with the Food & Beverage Contractor and obtain from the Food & Beverage Contractor assessments of facilities, fixtures and equipment used by the Food & Beverage Contractor that require replacement.

7.1.2 Generally. The County's obligation to fund R/R projects in any calendar year, is limited to those R/R projects that are reflected on the Approved R/R Project Schedule (as defined in Section 7.1.3 below) (the "R/R Project"). The County will have the option in its sole discretion to determine whether an R/R Project will be procured and managed by the County or the Operator. In the event that the County chooses to undertake the R/R Project with its own forces, the Operator will fully cooperate with the County. In the event

that that County determines that the Operator will procure and manage the R/R Project, the Operator will be solely responsible for, and will undertake and perform the R/R Project subject to the terms and conditions set forth in this Section 7.1. All such R/R Projects must be performed in a good and workmanlike manner using good quality materials and supplies, and components and replacement parts that are of better quality as the quality of those being repaired or replaced and must be performed through completion. The Operator must obtain all development approvals and permits from the appropriate regulatory agencies prior to commencing any R/R Projects and must perform all such R/R Projects in compliance with the effective Florida Building Code, supplements thereto, and any City of West Palm Beach amendments thereto. All applications for permits and approvals of any kind require the approval of the FDO Director; Operator must provide to FDO copies of development approvals and permits obtained. Furthermore, Operator must comply with the same requirements as set forth in Section 6.1.8 and Section 6.1.9 regarding any R/R Projects.

7.1.3 Modifications to R/R Project Schedule. The parties acknowledge that an R/R Project Schedule is in place for fiscal years 2023-2028. The Operator will annually recommend modifications to the R/R Project Schedule, including the extension of the same no less than six (6) years from the current year, by submitting an updated R/R Project Schedule (incorporating such proposed modifications, including any and all modifications made necessary due to Emergency R/R Projects) (the "Updated R/R Project Schedule") to the County on or before February 1st of any year during the Term of this Agreement. The Operator must submit, with the Updated R/R Project Schedule, a detailed written narrative for each and every R/R Project not included in the then-current R/R Project Schedule, providing an explanation as to why such R/R Project had previously not been included in the R/R Project Schedule. Within fourteen (14) days after the County's receipt of the Updated R/R Project Schedule, the FDO Representative and the Operator will meet at the Facility in order to review and discuss the Updated R/R Project Schedule. The County will have fourteen (14) additional days to approve the R/R Project Schedule (the "Approved R/R Project Schedule").

7.1.4 Costs of R/R Project. The County will be responsible for the costs of completing all R/R Projects on the Approved R/R Project Schedule, regardless of whether the County determines the project is going to be implemented by the Operator.

7.1.5 Implementation of the Approved R/R Project Schedule. In the event that the County is responsible for implementing the R/R Project, the County will follow its standard applicable procurement and management policies. In the event that the Operator is responsible for implementing the R/R Project, the Operator will use its standard purchasing practices for all contracts entered into in connection with R/R Projects subject to the conditions listed below.

If the Operator is selecting an architect, engineer, landscape architect or surveyor/mapper for a R/R Project where the estimated costs of the project exceeds \$325,000 (or such monetary limit as in effect at the time of the R/R Project), then the Operator must use the

qualifications based selection process for professionals set out in F.S. Section 287.055 Consultant's Competitive Negotiation Act (CCNA).

Any firm selected by the Developer to perform architecture, engineering, landscape architecture or surveying or/mapping must be certified by the County's Engineering and Public Works Department. Information regarding the design consultant certification process may be obtained at: <http://discover.pbcgov.org/engineering/roadwayproduction/Pages/CCNA.aspx>

All other purchases must be undertaken and awarded by a competitive process. Prior to the Operator entering into a contract or purchase order for any individual R/R Project, the Operator must submit: (i) a bid tabulation sheet that sets forth the vendor/contractor name and bid amount for each bid response ("R/R Project Bid Tabulation Sheet"), and (ii) a copy of the Operator's proposed contract or purchase order which contains the scope of work to be purchased and a copy of the vendor's/contractor's insurance certificate naming the County as an additional insured. In the event that the Operator does not choose to contract with the vendor/contractor who submitted the lowest bid reflected on the R/R Project Bid Tabulation Sheet, the Operator must provide the County with a written explanation as to why the lowest bidder was not chosen. Unless the Operator has included qualification based criteria in the bid and the Operator can reasonably demonstrate that the low bidder did not meet those qualification criteria, the only justifications for not choosing the low bidder are either: (i) an award to the next lowest bidder in order to contract with a Palm Beach County certified SBE vendor and the SBE vendor's bid does not exceed the low bidder's price by ten percent (10%), or (ii) an award to the next lowest bidder in order to contract with a bidder meeting the Palm Beach County definition of local business and the local business's bid does not exceed the low bidder's price by five percent (5%). Preferences are not cumulative and in the event of a conflict, the SBE preference is of higher priority. Within seven (7) days of County's receipt of the foregoing, the County will issue a purchase order to the Operator in the amount of the intended awardee's bid plus an additional five percent (5%) contingency ("R/R Purchase Order").

7.1.6 Process Regarding Payment Against R/R Purchase Orders. Requests for payment against R/R Purchase Orders may be made at intervals determined by the Operator, but no more frequently than monthly. Requests for payment against R/R Purchase Orders must be made by the Operator to the County and must include: (i) the R/R Purchase Order number, (ii) a copy of the vendor's/contractor's request for payment or invoice; (iii) evidence of payment by the Operator; and (iv) both a release of lien from subcontractors and a final release of lien from the general contractor, if applicable. For purposes of this Section 7.1.6 a copy of a check written by the Operator that is made payable to the vendor/contractor in the amount set forth on the vendor's/contractor's request for payment or invoice, will constitute evidence of payment. Any request for payment which includes a request for use of contingency funds, must include a copy of the change order issued by the Operator to the vendor/contractor and must specifically identify: (i) the scope of work included in the change order; (ii) the amount of the change order; (iii) the new total contract amount; and (iv) an explanation of the reason for the change order. Any final payment request against each R/R Purchase Order must be marked accordingly. Once the County

has received a request for payment on an R/R Purchase Order, together with the foregoing documentation ("R/R Payment Request"), the County will within five (5) business days from receipt of the R/R Payment Request review the request and notify the Operator if such request is complete or deficient. If the R/R Payment Request is deficient the Operator must resubmit its request to the County and the County will within five (5) business days from receipt of the Operator's subsequent R/R Payment Request review such submittal and notify the Operator if such submittal is complete or deficient. This process will continue until such time as the County receives a complete R/R Payment Request. Once the County receives a complete R/R Payment Request, the County will make payment against the R/R Purchase Order in accordance with the Local Government Prompt Payment Act, Section 218.70 *et seq.*, Florida Statutes.

7.1.7 Miscellaneous. The same requirements and process set forth above in Section 7.1.5 and Section 7.1.6, except as modified by Section 7.2 in the case of an Emergency R/R Project, shall apply and shall be used in connection with the reimbursement to the Operator of the costs and expenses incurred by the Operator for all design, testing, lab, and construction services agreements entered into in connection with R/R Projects as well as any permit fees paid to a governmental entity.

7.2 Emergency R/R Projects. If, at any time during the Term, the Operator believes that an emergency R/R Project (a project not on the Approved R/R Project Schedule for the current year ("Emergency R/R Project")) needs to be made to the Facility, the Operator will request that the County consider a modification to the Approved R/R Project Schedule. The decision to approve a modification to the Approved R/R Project Schedule is solely the County's decision. In the event that the County decides that the requested project is a repair, the Operator will proceed to prosecute the repair work pursuant to Section 6.2. In the event that the County determines that the requested project is an Emergency R/R Project, then implementation of the project will proceed pursuant to Sections 7.1.3 through 7.1.7 of this Agreement. Notwithstanding anything herein to the contrary, County (or Operator if assigned) will be able to immediately proceed with such Emergency R/R Project(s) without having to follow a competitive process so long as the FDO Representative has received an emergency procurement letter explaining that an emergency procurement is required in response to a need when the delay incident to complying with the requirements of Section 7.1.5 would be detrimental to the interests, health, safety, or welfare of the Facility. The letter should also be accompanied by a written narrative on the proposed approach to the project. If the FDO Representative approves the Emergency R/R Project he/she will do so in writing with conditions and/or direction on how the procurement is to be conducted. The Operator must include approved Emergency R/R Projects in its proposed modifications to the R/R Project Schedule submitted for the County's approval in accordance with Section 7.1.3 hereof.

7.3 Indemnity. The Operator must include in its contracts with contractors, subcontractors, consultants and subconsultants the following indemnity clause indemnifying the County:

Contractor shall indemnify and hold harmless the County and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or

intentional wrongful misconduct of Contractor and persons employed or utilized by the Contractor in the performance of this Contract.

7.4 As Built. Within 60 Days following Operator's receipt of a certificate of occupancy or certificate of completion, as appropriate, for the project, the Operator must prepare and deliver to the FDO Representative: one (1) complete set of as-built drawings in a hardcopy format, one (1) complete set of as-built drawings in a PDF format, one (1) complete set of as-built drawings in Auto CADD files in the latest version acceptable to FDO and all warranty certificates resulting from the project.

ARTICLE 8

CAPITAL IMPROVEMENTS

8.1 Capital Improvements. Except as provided in Section 5.3 of this Agreement, the County will retain the responsibility for Capital Improvements to the Facility; however, the County is under no obligation to make such improvements. The Operator must 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 Improvements. 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) budget.

ARTICLE 9

OPERATING BUDGET / EXPENDABLE SUPPLIES / FUNDS AVAILABILITY / PROCEDURE FOR HANDLING INCOME AND EXPENSES

9.1 Operating Budget. Each year, in accordance with the County's schedule, the Operator must 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 must include, at a minimum, a projected income and expense statement. Additionally, the budget must include but not be limited to the following detailed projections, presented on a monthly and annual basis:

- i) Revenues;
- ii) Operating expenses;
- iii) Incomes;
- iv) Administrative and general expenses;
- v) Marketing, advertising, and promotion expenses;
- vi) Energy costs;
- vii) Exhibitor services;
- viii) Routine Maintenance;
- ix) 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 will 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 is subject to the prior approval of the County after recommendation by the TDC.

9.2 Expendable Supplies. The Operator will purchase all expendable supplies for the operation of the Facility. The Operator will exercise prudent judgment in the purchase of said supplies within the budget provided to the Operator.

9.3 Funds Availability. County will make immediately available to the Operator all funds necessary to pay all budgeted items of expense for the operation, maintenance, supervision, and management of the Facility, including performance of all User/Rental Agreements entered into under Article 12 hereof. 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 will such failure to perform for lack of funds be considered an event of default.

9.3.1 Facility Operating Account. On or prior to the Commencement Date, the County will advance two (2) months of budgeted Operating Expenses for deposit into the Facility Operating Account in order to commence operations of the Facility. The Operator will use funds in the Facility Operating Account to pay expenses of operation of the Facility. The Operator periodically will 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.

9.4 Procedure For Handling Income and Expenses. Ticket sale revenues and similar event-related revenues (other than advance rental deposits) which the operator receives in contemplation of or arising from an event must be deposited by the Operator into the interest-bearing Event Operating Account. The Operator and County will agree upon the procedures, including without limitation the frequency, by which the foregoing deposits must be made into the Event Operating Account and must include such procedures in the Operations Manual. All advance rental deposits which the Operator receives in contemplation of or arising from an event must 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 Facility including but not limited to the balance of the rental fees, parking revenue, advertising revenue, food and beverage revenues (when remitted by the Food & Beverage Contractor), 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 interest earned from the rental deposit will be treated as revenues. Together, these revenues, net of any expenses paid from such account in

accordance with the terms of this Agreement, must 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 (30) days after the close of the month, as further detailed in the Operations Manual. In the event it becomes economically infeasible (as determined by Operator, but subject to the approval of County, which approval will not be unreasonably withheld) to keep the Event Operating Account in an interest-bearing account, Operator and County will take the necessary steps to accomplish such conversion.

9.5 Facility Operating Account. Operating Expenses will be paid from the Facility Operating Account based on County approved budgets.

9.6 Employee Travel and Professional Expenses. All travel and professional expenses of the Operator's employees will be paid when included in the approved annual operating budget of the Facility. Such expenses must be prorated if the Operator's employees conduct business on behalf of the Operator for other facilities. All non-budgeted travel and professional expenses will be paid only with the prior written approval of County. All travel expenses must be in accord with the policies set forth on **Exhibit F**.

9.7 Signatories for Accounts. 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 must have at a minimum two (2) authorized County signatories; provided however, the Operator will have access to such accounts and will designate up to four (4) employees of the Operator to be authorized signatories on the accounts.

9.8 Controls. The cash control for Facility operations will 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 or in the alternative an auditor who is acceptable to the County, such determination of acceptability to be made in the County's sole and absolute discretion. As more fully provided in this Agreement and in the Operations Manual, separate Operator bank accounts must be utilized for operating funds and box office receipts. Payrolls will be processed through a third-party payroll service provider in accordance with the policies and procedures set forth in the Operations Manual. Events with Revenues in excess of Twenty Thousand Dollars (\$20,000) must be accounted for using an event accounting system, with final reports prepared for each event as provided in the Operations Manual. Reimbursable expenses for each event will be coded for accurate accumulation to ensure all applicable costs will 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 must be checked on any new or questionable client, depending on pre-event deposits.

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 to be administered on behalf of the County (Incentive Funds or incentives).

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 Incentive Funds Operating Account. The County will advance the Operator one hundred thousand dollars (\$100,000) of incentive funding to be managed in an account separate from the Facility Operating Account known as the “Incentive Fund Operating Account.” The Operator will use Incentive Funds 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 a lead, or by Operator on a standalone basis. The Operator periodically will submit to County a request for reimbursement of incentives paid from the Incentive Funds Operating Account, in accordance with the County requirements listed in this Section 9.9. The Incentive Funds Operating Account must be maintained in Palm Beach County and is subject to review and audit by the County upon request.

9.9.3 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 will be maintained in the Incentive Funds Operating Account. 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.

9.9.4 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 must 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.

9.9.5 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 must be accounted for and paid outside of the Operating Budget (not as an Operating Expense but as a County direct expense).

9.9.6 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 will be in accordance with the terms of this paragraph.

9.9.7 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 Funds 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 10

FISCAL RESPONSIBILITY

10.1 Records. Operator will keep and maintain, throughout the Term of this Agreement at its office in the Facility, separate and independent books of accounts and records customarily used in this type of operation, and as from time to time may be required by the County, in accordance with GAAP, devoted exclusively to its Facility management operations at the Facility. Said books, ledgers, journals, accounts, and records will contain all entries reflecting the business operations of the Operator under this Agreement. All of the foregoing records will be retained and available for such period of time as provided herein unless otherwise approved by the County.

10.2 Right to Audit. The County, at all times, throughout the Term of the Agreement and for up to five (5) years following expiration, will have the right to audit and examine during Operator's ordinary business hours, all such records and books of accounts relating to Operator's operation, provided that Operator will not be required to retain such books of accounts and records for more than five (5) years after the end of the final year of this Agreement. Operator will arrange for the books of account and records to be brought to a location convenient to the auditors for the County in order for the County to conduct the audits and inspections. Failure of the Operator to keep record of and provide the information to County as set forth herein will be considered a default under the terms of this Agreement.

10.3 Reconciliation of Accounts. The Operator must provide to County, within thirty (30) days after the end of each month, a reconciliation for each bank account specified in Article 9 above, which accounts will be subject to audit by the TDC Representative or County during Operator's ordinary business hours.

10.4 Monthly Financial Reports. The Operator will 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 GAAP. In addition, the Operator will immediately, upon request by County, provide information on the Event Operating Account, General Escrow Account, the Facility Operating Account and the Incentive Funds Operating Account.

10.5 Certified Audit Report. The Operator will meet with the County Administrator to answer

questions relating to the operation of the Facility and the financial reports. Furthermore, the County's private auditing firm or in the alternative an auditor who is acceptable to the County, such determination of acceptability to be made in the County's sole and absolute discretion, will audit the accounts and records as kept by the Operator for the Facility and provide the County with a certified audit report, together with a management letter. Appropriate funds will be set aside in the annual operating budget to pay for such certified audit report. At the option of County and at its expense, additional audits may be performed.

10.6 Approval of County. Operator must use forms, accounting methods, internal controls and procedures for its reports that are acceptable to the County.

10.7 Additional Reports. County Administrator may request additional financial or statistical reports with respect to areas in the Facility that are under the control or managed by the Operator, and the Operator must promptly provide the same. County's requests for such additional reports 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, will be included as an operating expense.

ARTICLE 11 **OPERATION OF BUSINESS**

11.1 Joint Ventures. In the event the Operator is a joint venture, each joint venturer will be held jointly and severally liable throughout the Term of this Agreement.

11.2 Operator's Employees. Operator will hire, supervise and direct all of the Operator's employees and personnel. All personnel employed in the operation of the Facility will be employees of the Operator and will be paid directly by Operator. The Operator will select the number, function, qualifications, and compensation, including salary and benefits, of its employees and will 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 centers.

Operator warrants and represents that it treats all of its personnel and applicants for employment equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, and gender identity or expression.

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

11.3 Operator's General Manager. Operator acknowledges that Operator has named a qualified individual with experience in the management of similar facilities as the General Manager of the Facility. The General Manager will be responsible for: (i) the day-to-day operation of the Facility and (ii) providing supervision and direction to Facility operational employees. Operator's General Manager will work cooperatively and in close daily coordination with the Food & Beverage

Contractor's General Manager. In addition, the Operator's General Manager must devote his/her full efforts to the work pertaining to the Facility unless otherwise consented to by the County, which consent may be granted or withheld in the County's sole and absolute discretion.

In the event the Operator wishes to replace the current General Manager, Operator must submit to County qualified candidates for the position, for County's review and consultation. Operator will be responsible for hiring the General Manager, subject to the prior consent of County as to the acceptability of the General Manager, which consent may be withheld in the County's sole and absolute discretion.

If the General Manager terminates employment voluntarily or involuntarily, Operator must immediately supply an interim general manager, and within ninety (90) days appoint a permanent replacement with suitable qualifications. Operator will follow the same review process and obtain the County's prior consent as to the acceptability of the permanent replacement, which consent may be withheld in the County's sole and absolute discretion. If Operator should fail to supply such permanent replacement within such time, Operator must pay to the County the sum of Fifty Thousand Dollars (\$50,000.00), 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.

11.4 Operator's Senior Management. Unless otherwise agreed to by the parties, Operator will not transfer any Senior Management Employee 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. Notwithstanding the foregoing, Operator will not transfer the General Manager of the Facility to any other position of employment with Operator or any of its affiliates from the Effective Date and throughout the Term of this Agreement, without the prior consent of the County, which may be withheld in the County's sole and absolute discretion.

11.5 Resolution of Complaints. Complaints received by the County Administrator regarding the conduct or manner of operation of the Facility by the General Manager will be addressed by the Operator.

11.6 Subcontracts. Operator will have the authority to negotiate and contract for services and products pertaining to the Facility, in accordance with the Operations Manual, approved annual operating budget and in accordance with the procurement policies and procedures set forth in Section 11.7.

In the event that work is subcontracted the Operator will: (i) retain full responsibility for the acts and omissions of its subcontractors and of persons employed by such subcontractors and (ii) be responsible for binding each subcontractor to the terms of this Agreement and ensuring each subcontractor's compliance with the terms of this Agreement, regardless of whether or not a particular term in this Agreement specifically references compliance by subcontractors.

Operator's delegation to subcontractors of any of Operator's obligations or responsibilities under this Agreement will not relieve Operator of its obligations or responsibilities under this Agreement. Operator will be responsible for ensuring that all subcontractors are adequately trained and credentialed for the services they are to provide. Operator will make County a third party

beneficiary to all agreements with subcontractors and will include in its agreements with subcontractors a requirement that each subcontractor indemnify and release County as set forth in this Agreement.

11.7 Procurement Policies and Procedures. Unless otherwise set forth in this Agreement, this Section will apply to all contracts entered into in connection with Operator's operations of the Facility, except for those contracts entered into in connection with Capital Renewal and Replacement, which will be made in accordance with the procurement policies and procedures set forth in Section 7.1.5 of this Agreement.

11.7.1 Competitive Process. Operator may use its standard purchasing practices for all contracts entered into in connection with its obligations set forth in this Agreement; provided that all purchases are undertaken and awarded by a competitive process.

11.7.2 Transactions with Affiliates. Notwithstanding anything to the contrary set forth in this Section 11.7, Operator will have the right, but not the obligation, to purchase goods and services for the Facility from a parent, affiliate or subsidiary company of Operator at terms and for prices customarily charged by such affiliate for comparable goods and services elsewhere and which are competitive in the industry. Operator will provide County with documentation evidencing the foregoing and the competitive nature of the goods or services to be obtained. Operator must obtain County's consent prior to Operator entering into a transaction with an Affiliate as set forth herein, which consent may be withheld in the County's sole and absolute discretion.

11.7.3 Equal Business Opportunity Program.

11.7.3.1 Policy. It is the policy of the Board of County Commissioners of Palm Beach County, Florida, (the Board) that all segments of its business population, including, but not limited to, small, local, minority and women owned businesses, have an equitable opportunity to participate in the County's procurement process, prime contract and subcontract opportunities. To that end, the Board adopted an Equal Business Opportunity Ordinance which is codified in Sections 2-80.20 through 2-80.30 (as may be amended) of the Palm Beach County Code, (EBO Ordinance) which sets forth the County's requirements for the EBO program and is incorporated herein and made a part of this Agreement. Non-compliance with the EBO Ordinance must be corrected within fifteen (15) days of notice of non-compliance. Failure to comply with the EBO Ordinance may result in any of the following penalties:

- Suspension of contract;
- Withholding of funds;
- Termination of the contract based upon a material breach of contract pertaining to the EBO Program compliance;
- Suspension or debarment of the Operator from eligibility for providing goods or services to the County for a period not to exceed three (3) years; and

- Liquidated damages equal to the difference in dollar value of SBE participation as committed to in the contract, and the dollar value of SBE participation as actually achieved.

11.7.3.2 SBE Mandatory Goal. During the Term of this Agreement, the Operator will comply with a minimum mandatory SBE participation goal of 20% as calculated on the total annual cost of goods and services purchased from third party vendors for operations such as professional services, temporary personnel services, grounds maintenance/ landscaping, building repair services, general maintenance services for equipment and facilities, and inventories of goods such as lighting, spare parts, etc. and in accordance with the EBO Schedules 1 & 2 signed by the Operator attached hereto and incorporated herein as **Exhibit D** under which Operator committed to SBE participation of 25.29%. Failure to comply with this Section 11.7.3 is a material breach of this Agreement.

11.7.3.3 EBO Schedules 3 & 4. Operator will report all subcontractor activity and payment information on EBO Schedules 3 and 4, and, when the EBO portal is available, input subcontractor payment information directly into the County's contract management system.

11.7.3.4 Substitutions. Operator must notify the Office of EBO of changes in SBE utilization and get prior approval for any substitutions.

11.7.3.5 Prompt Payment of Subcontractors. Operator will pay subcontractors promptly. In the event of a disputed invoice, the Operator will send the subcontractor a written notice of the dispute within five (5) days after receipt of the subject invoice. The Operator agrees to pay its subconsultants in compliance with the Florida Prompt Payment Act. In the event Operator fails to comply with payments(s) to its subconsultants in accordance with the Florida Prompt Payment Act, Operator will be subject to any and all penalties and sanctions available under the terms of the EBO Program, its contract with the County, or any other applicable law.

11.7.3.6 Registration in VSS. Operator and any subcontractors used by Operator must be registered in the County's Vendor Self Service ("VSS") system at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService> before beginning work under this agreement.

11.7.3.7 Records and Access. The Office of EBO has the right to review Operator's records and interview subcontractors in order to determine compliance with the County's EBO Program and contract requirements.

11.7.4 Local Preference. The County's Board of County Commissioners has established a policy whereby a five percent (5%) preference is given, when ranking bids, to those vendors/contractors who have been determined by the County to be eligible for such local preference.

11.8 Contracts. Operator will include in each and every contract entered into in connection with the operation of the Facility that County will have the right to assume such contract at County's election (without the assumption of Operator's liability that accrued prior to the date of County's assumption) upon the termination or expiration of this Agreement. Furthermore, Operator must submit to County for County's prior approval, all contracts whose term extends beyond the Term. The County will review the terms of such contracts to confirm the acceptability of such terms to the County in the event the County exercises its right to assume such contracts. Notwithstanding the foregoing, the County is under no obligation to assume any of the contracts that Operator enters into.

11.9 County Administrator. The County via the County Administrator will be responsible for: (i) ensuring that any information supplied by the Operator is properly distributed to the appropriate County departments; (ii) monitoring and assessment of the quality of services provided by the Operator; and (iii) monitoring and assessment of the Operator's compliance with the terms of this Agreement.

The County Administrator will work with the General Manager of the Facility and will have such authority as set forth in this Agreement.

Any and all references in this Agreement requiring County participation will mean the County Administrator unless otherwise specified herein.

11.10 Names And Logos. While providing services under this Agreement, the Operator will 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.

11.11 Waste or Nuisance. Operator will not commit or suffer to be committed any waste at the Facility, commit or permit the maintenance or commission of any nuisance or other act or thing which may result in damage or depreciation of value of the Facility or which may affect County's fee interest in the Facility or which results in an unsightly condition.

11.12 Hazardous Materials. Operator will not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Operator's operations, at the Facility or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Operator will not cause or permit the Disposal of Hazardous Materials at the Facility or upon adjacent lands and will operate and occupy the Facility in compliance with all Environmental Laws.

Any Disposal of a Hazardous Material, whether by Operator or any third party, will be reported to County immediately upon the knowledge thereof by Operator. Operator will be solely responsible for the entire cost of remediation and clean-up of any Hazardous Materials disposed of or discovered at the Facility or emanating from the Facility onto adjacent lands, as a result of the use and occupancy of the Facility by Operator, or Operator's agents, licensees, invitees, subcontractors or employees.

Operator shall indemnify, defend and hold harmless County from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs, which may arise directly, indirectly or proximately as a result of any violation of the Disposal of any Hazardous Materials at the Facility or violation of this provision. Operator's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the Term of this Agreement or otherwise. While this provision establishes contractual liability of Operator, it shall not be deemed to alter or diminish any statutory or common law liability of Operator.

Operator acknowledges that County would not have entered into this Agreement without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. The indemnification provisions of this section shall survive the termination or expiration of this Agreement

11.13 Taxes and Fees; Licenses. Operator will pay, or in good faith contest, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes and fees, which are now or may hereafter be levied upon Operator, or upon its business conducted at the Facility, or upon Operator's interest hereunder, or upon Operator's property used in connection therewith.

11.14 Criminal History Records Check Ordinance. Operator will comply with Palm Beach County Code, Sections 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance") if Operator's employees, agents, or contractors are required under this Agreement to enter or work at the site of a "critical facility" or "criminal justice information facilities ("CJI facilities") as identified in Resolutions R2013-1470 and R2015-0572, as may be amended. Operator acknowledges and agrees that all employees, agents, and contractors who are to perform work in a critical facility or CJI facility will be subject to a fingerprint based criminal history records check. Furthermore, Operator must attest in writing that a criminal history records check as provided herein, to the extent allowed by law, has been conducted on each of its permanent employees and is available for inspection by the County Administrator, to the extent permitted by law, prior to that employee's starting work. Such criminal history records checks will be updated annually for each employee and results made available for inspection by the County Administrator.

ARTICLE 12

USER / RENTAL AGREEMENTS

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

12.2 PPM CW-O-089. User agreements for BCC Events, County Events, and Departmental Events, as those terms are defined in County's PPM CW-O-089, will be governed by PPM CW-O-089, as may be amended.

ARTICLE 13

BOND AND INSURANCE REQUIREMENTS

13.1 General. Unless otherwise specified in this Agreement, Operator shall, at its sole expense, obtain and maintain throughout the life of this Agreement insurance coverages, endorsements, limits of liability and surety bonds in the manner and amounts as set forth herein. No modification or change from these specifications shall be made without County's approval.

13.1.1 Third-Party Commercial Fidelity Bond. Upon the Effective Date and throughout the duration of the Term of this Agreement, Operator shall maintain a Third-Party Commercial Fidelity Bond or the equivalent thereto via insurance coverage, 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 Facility. 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 acknowledges that it has delivered to the County the original Third-Party Commercial Fidelity Bond or a certificate of insurance evidencing that such policy is in full force and effect. Such certificate of insurance shall name County as an additional insured and require at least thirty (30) days prior notice to County of any cancellation, non-renewal or material change in coverage.

13.1.2 Insurance Requirements. Unless otherwise specified in this Agreement, Operator shall, at its sole expense, maintain in full force and effect at all times throughout the life of this Agreement, insurance coverage as described herein at limits, including endorsements, set forth in this Section 13.1.2 below. Operator acknowledges that it has delivered to the County, Certificate(s) of insurance evidencing that such policies are in full force and effect. 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.

13.1.2.1 Commercial General Liability. Operator shall maintain a standard ISO version Commercial General Liability, or its equivalent, at a limit of liability not less than \$1,000,000 Per Occurrence/\$2,000,000 Annual Aggregate, 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.

13.1.2.2 Business Automobile Liability. Operator shall maintain a standard ISO version Business Automobile Liability, or its equivalent, at a limit of not less than \$1,000,000 Per Occurrence, 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.

13.1.2.3 Worker's Compensation & Employer's Liability. Operator shall maintain Worker's Compensation Insurance covering all employees in accordance with Chapter 440 Florida Statutes & Employers Liability Insurance at a limit not less than \$100,000/\$500,000/\$100,000. 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.

13.1.2.4 Professional Liability. Operator shall maintain Professional Liability insurance, or similar Errors & Omissions coverage, at a limit of liability of not less than 1,000,000 Per Occurrence/\$1,000,000 Annual Aggregate, 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 reserves 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 Operator 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 Term 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.

13.1.2.5 Liquor Liability. Operator shall maintain Liquor Liability at a limit of liability of not less than 1,000,000 Per Occurrence/\$2,000,000 Annual Aggregate, 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.

13.1.2.6 Umbrella or Excess Liability. Operator shall maintain an Umbrella or Excess Liability at a limit of liability of not less than \$5,000,000 Per Occurrence/\$5,000,000 Annual Aggregate, 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.

13.1.3 Additional Insurance Requirements, Terms and Conditions.

13.1.3.1 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.

13.1.3.2 Waiver of Subrogation. Operator shall agree by entering into this Agreement to a Waiver of Subrogation for each required policy providing coverage during the term 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.

13.1.3.3 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 Agreement. Furthermore, the County reserves 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.

13.1.3.4 No Representation of Coverage Adequacy. The coverages and limits identified herein have been determined to protect primarily interests of the County

only, and Operator agrees in no way should the coverages and limits herein 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.

13.1.3.5 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. In addition, the Operator shall notify the County of any cancellation, non-renewal or material change taking place during the life of this Agreement. In the event the County is notified that a required insurance coverage will cancel or will not be renewed during the period of this Agreement, Operator shall furnish prior to the expiration of such insurance, a new or revised certificate of insurance as proof that equal and like coverage exist for the balance of the Term of this Agreement. County reserves the right to withhold payment 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's address should read as follows:

Palm Beach County
County Administrator
301 North Olive Avenue, 11th Floor
West Palm Beach, Florida 33401

and

Palm Beach County
Insurance Compliance
P.O. Box 100085
Duluth, GA 30096

13.1.3.6 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.

13.1.3.7 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.

13.1.3.8 Ratings. 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.

13.1.4 Surety Bond Requirements. Unless otherwise specified in this Agreement, Operator shall, at its sole expense, maintain in full force and effect from the Effective Date and throughout the duration of the Term of this Agreement, a surety bond in a minimum amount of One Million Dollars (\$1,000,000.00) as a financial guaranty of Operator's performance under the terms of this Agreement. The surety bond shall be issued by an insurance company or surety company qualified to do business in the State of Florida, which company shall be acceptable to the County which shall be determined in the County's sole and absolute discretion. The surety bond shall be substantially in the form attached hereto as **Exhibit B**. Upon the failure of Operator to pay any amounts to County when due or upon any failure to perform any of the Operator's obligations hereunder, County shall be entitled to draw upon the financial guarantee in addition to any other rights or remedies available to County. Operator acknowledges that it has delivered to the County such original surety bond. Operator shall provide County with commitment documents providing for continuation or replacement of the surety bond at least thirty (30) days prior to the expiration of the same. Operator's failure to renew such surety bond upon expiration of its coverage term shall be deemed an event of default.

ARTICLE 14 **INDEMNIFICATION AND DISCLAIMER OF LIABILITY**

14.1 Indemnification. Operator shall protect, reimburse, indemnify, hold harmless and defend the County, its officials, agents, servants and employees, from and against any and all claims, liability, expense, loss, cost, damages, demands and/or causes of action of whatsoever kind or nature, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of Operator's, its subcontractors, its agents, servants or employees performance of the terms of this Agreement or due to the acts or omissions of Operator, its subcontractors, agents, servants or employees. In the event County shall be made a party to any litigation commenced against Operator or any subcontractor or by Operator or subcontractor against any third party, then Operator shall protect and hold harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Operator recognizes the broad nature of this indemnification provision and specifically acknowledges that County would not have entered into this Agreement without Operator's agreement to indemnify County and further acknowledges the receipt of good and valuable separate consideration provided by County in support hereof in accordance with the laws of the State of Florida.

14.2 DISCLAIMER OF LIABILITY. COUNTY HEREBY DISCLAIMS, AND OPERATOR HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER

SUSTAINED BY OPERATOR, ITS SUBCONTRACTORS, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF THE OPERATOR OR OPERATOR'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED AT THE FACILITY, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO OPERATOR'S USE OF THE FACILITY PURSUANT TO THIS AGREEMENT.

14.3 Additional Facilities. The parties acknowledge that the Facility is associated with an adjacent hotel and is planned to be associated with another adjacent hotel and to include certain expanded facilities to be constructed in the future. The parties further acknowledge that during construction of the referenced projects, the County will use its best efforts to minimize interference with the operations of Operator during such construction. However, it is expressly acknowledged and agreed by the parties that the County does not assume any liability for disruption, loss, or damage that may be incurred by Operator or Operator's employees, subcontractors, contractors, or patrons as a result of any construction or expansion of the Facility or affiliated facilities. The parties agree to renegotiate reasonably and in good faith the terms of this Agreement as may be reasonably necessary and appropriate due to the effects of any such construction or expansion so as to maintain the basis of the bargain of this Agreement and assure continued services to the Facility in accordance with the standards of this Agreement.

14.4 Survival. The indemnification provisions of this article shall survive the termination or expiration of this Agreement.

ARTICLE 15
COMPLIANCE WITH LAWS,
REGULATIONS, ORDINANCES, CODES AND RULES

15.1 Generally. Operator shall, at Operator's sole cost and expense, comply with all ordinances, laws, statutes, codes, rules and regulations promulgated thereunder of all city, county, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force (individually and collectively, the "Governmental Regulations"), in connection with the development, construction, use, operation and occupancy of the Facility under the terms of this Agreement. Furthermore, upon County's request, Operator shall provide evidence to County of any certification required by such Government Regulations. Operator shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Operator's failure to perform its obligations in this Article. The indemnification provisions of this section shall survive the termination or expiration of this Agreement.

15.2 Non-Discrimination. The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Operator warrants and represents that throughout

the Term of the Agreement, including any renewals thereof, if applicable, 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 or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

As a condition of entering into this Agreement, the Operator represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the Operator shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Operator retaliate against any person for reporting instances of such discrimination. The Operator shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. The Operator understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the company from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Operator shall include this language in its subcontracts.

15.3 Equal Employment Opportunity. Operator shall abide by all local, state and federal equal opportunity employment and contracting laws, including without limitation Executive Order No. 11246 entitled "Equal Employment Opportunity" and as amended by Executive Order No. 11375, as supplemented by the Department of Labor Regulations (41 CFR, Part 60).

15.4 Americans with Disabilities Act ("ADA"). Operator shall affirmatively comply with all applicable provisions of the ADA in the course of providing any services funded by County, including Titles I and II of the ADA (regarding discrimination on the basis of disability), and all applicable regulations, guidelines and standards.

15.5 Subcontracts. Operator shall include the provisions of paragraphs 15.2, 15.3 and 15.4 above in every subcontract so that such provisions will be binding upon such subcontractor.

ARTICLE 16 **PROHIBITION AGAINST CONTINGENT FEES**

16.1 Operator represents and warrants that it has not employed or retained any company or person to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement and further Operator agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such company or person claiming to have dealt with Operator. The foregoing indemnification shall include all costs

and expenses and fees, including reasonable attorney's fees at trial and appellate levels, expended or incurred in the defense of any such claim or demand. For breach or violation of this warranty, County may terminate this Agreement without liability or may, in its discretion, deduct from the fees payable under Article 5 or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee. The indemnification provisions of this section shall survive the termination or expiration of this Agreement.

ARTICLE 17
FORCE MAJEURE

17.1 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: (i) fire not caused by negligence of either party, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion occurring at the Facility, or other matter or conditions of like nature; or (ii) 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 (iii) labor disputes 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.

ARTICLE 18
DESTRUCTION OF FACILITY

18.1 In the event the Facility shall be destroyed or so damaged or injured by fire or other casualty during the Term of this Agreement, whereby the same shall be rendered materially untenable, in whole or in part, County shall have no responsibility for the restoration of the Facility, unless otherwise agreed to by the County. If County so deems, within one hundred and eighty days (180) from the happening of the fire or other casualty the County shall present to the Operator a plan for the restoration of the Facility, which shall include time frames regarding the implementation of the same. Operator and County shall negotiate in good faith to develop a plan to restore the Facility; provided however, that if the parties are unable to reach agreement then both parties shall each have the unilateral right to terminate this Agreement, which shall be effective upon the date specified in such notice. Upon any such termination the parties shall be relieved of all further obligations occurring subsequent to the date of termination, except as otherwise provided for in this Agreement.

ARTICLE 19
ASSIGNMENT

19.1 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 this Agreement will not be assignable by it to any other party unless, County, within its sole and absolute discretion, consents to said assignment in writing. Any purported assignment in contravention of this Article 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 shall not unreasonably withhold its consent for such assignment; provided however, if the Operator's General Manager will not remain as the General Manager of the Facility then County may withhold its consent in its sole and absolute discretion.

ARTICLE 20
EARLY TERMINATION

20.1 General. This Agreement may not be terminated by the parties to this Agreement prior to the expiration of the Term, except as otherwise provided for in Articles 10, 11, 13, 15, 16, 18, 20 and 24.

20.2 County Termination for Convenience. This Agreement may be terminated by the County, without cause, upon one hundred eighty (180) days prior written notice to the Operator.

20.3 County Termination for Operator Default. This Agreement may be terminated by the County immediately upon the occurrence of any one (1) of the following events of default:

20.3.1 Failure of the Operator to perform or comply with any of the terms, covenants, agreements, or conditions hereof and continuance of such failure for more than ten (10) days after written notice thereof from County;

20.3.2 Repeated failure of the Operator to perform or comply with any of the terms, covenants, agreements, or conditions hereof to the extent that such failures, taken together, (i) constitute a general failure to operate the Facility in conformance with standards of the industry for a first class convention center, or (ii) substantially interfere with County's, the Bureau's or the Food & Beverage Contractor's ability to successfully market the Facility, including its Long-Term Sales and food and beverage sales, as applicable;

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

20.3.4 The filing by or against the Operator of any petitions in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings), and such petition is not dismissed within thirty (30) days from the filing thereof, or in the event Operator is adjudged bankrupt;

20.3.5 The assignment for the benefit of creditors is made by Operator;

20.3.6 An appointment, by any court, of a receiver or other court officer of Operator's property and such receivership is not dismissed within thirty (30) days from such appointment;

20.3.7 Operator's estate is taken by execution, attachment or process of law or subjected to any bankruptcy proceeding;

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

20.3.9 The use by the Operator of the Facility, without written consent of County, for purposes other than the purposes permitted or required herein;

20.3.10 An execution or other legal process is levied upon the interest of Operator in this Agreement, and the same is not satisfied or dismissed within ten (10) days from such levy;
or

20.3.11 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.

20.4 Operator Termination for County Default. This Agreement may be terminated by the Operator if County fails to perform or comply with any material terms, covenants, agreements, or conditions hereof and such failure continues for more than forty-five (45) days after written notice from Operator to County, specifying how County has failed to perform or comply with its obligations hereunder; provided, however, that if the nature of County's obligations is such that more than forty-five (45) days are required for performance, then County shall not be in default if County commences performance within such forty-five (45) day period and thereafter diligently pursues the same to completion. Notwithstanding the foregoing, Operator shall not be permitted to exercise its rights of termination as provided for herein, if County's failure to perform or comply with any terms, covenants, agreements or conditions is due to the fault of the Operator, its agents, servants or employees.

20.5 Payment upon Termination. In the event of any termination pursuant to the terms of this Agreement, Operator shall be paid for work performed to the date of such termination, plus any expenses payable hereunder incurred to date of termination, unless such termination is due to Operator's default.

20.6 Duties upon Receipt of Termination Notice. Upon the effective date of a termination notice pursuant to the terms of this Agreement, 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.

20.7 Takeover in the Event of Termination. In the event of any termination pursuant to the terms of this Agreement, 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.

20.8 Assumption of Third Party Contracts. In the event of any termination pursuant to the terms of this Agreement, County shall have the right to assume any and all executory contracts entered into with a third party by Operator in the performance of Operator's duties under this Agreement at County's election (without the assumption of Operator's liability that accrued prior to the date of County's assumption) in accordance with the terms and conditions of this Agreement, and County shall be entitled to receive the benefits of the same.

20.9 Waiver of Operator. In the event of any termination pursuant to the terms of this Agreement, County shall not be liable for, and Operator hereby waives any claims for, lost prospective profits, economic losses, or other consequential damages.

20.10 Remedies. No remedy set forth in this Agreement conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 21

SURRENDER OF FACILITY

21.1 Upon expiration or termination of this Agreement, Operator shall surrender and vacate the Facility upon the effective date of such termination. The Facility, and all furnishings, fixtures, and equipment located thereon, shall be returned to the County in good repair and condition, reasonable wear and tear excepted. Notwithstanding the foregoing, Operator, at its sole cost and expense, may remove from the Facility Operator's personal property, furnishings, removable fixtures and equipment that were purchased by Operator with funds other than funds provided to Operator by the County or those generated as Revenues of the Facility or those funds provided as Operator's Capital Investment under Section 5.3 hereof. Upon surrender of the Facility, title to any and all remaining improvements, alterations or property within the Facility shall vest in County.

ARTICLE 22

ANNUAL BUDGETARY FUNDING

22.1 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.

ARTICLE 23

NON-COMPETE / CONFLICT OF INTEREST

23.1 Non-Compete/Conflict.

23.1.1 While Operator is providing services under this Agreement, and for a period of one (1) year thereafter, the Operator shall not enter into an agreement for the management of a

similar facility within a sixty-five (65) mile radius of the Facility without the prior written approval of County. Such approval may be withheld in the County's sole and absolute discretion.

23.1.2 While Operator is providing services under this Agreement, the Operator shall not acquire an interest in or enter into to an agreement to manage or operate a hotel in downtown West Palm Beach, Florida without the prior written approval of County (with downtown being defined in Section 94-101 of the West Palm Beach Municipal Code as the 13 districts subject to the downtown master plan (DMP) urban regulations). Such approval may be withheld in the County's sole and absolute discretion.

23.1.3 While Operator is providing services under this Agreement, the Operator shall not enter into a room block agreement with the Facility without the prior written approval of County. Such approval may be withheld in the County's sole and absolute discretion.

23.2 Conflict of Interest. The Operator represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes and the Palm Beach County Code of Ethics. The Operator further represents that no person having any conflict of interest shall be employed for said performance or services.

The Operator shall promptly notify the County, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence, or appear to influence, the Operator's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Operator may undertake and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest if entered into by the Operator. The County agrees to notify the Operator of its opinion within thirty (30) days of receipt of notification by the Operator. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Operator, the County shall so state in the notification and the Operator shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by the Operator under the terms of this Agreement.

23.3 Operator shall not materially alter the nature of the services that its company offers in a manner that might impact on the operation at the Facility without the prior written approval of the County. Such approval may be withheld in the County's sole and absolute discretion.

23.4 Operator agrees, in all instances when County is in convention solicitation competition with other areas where Operator has convention center operations, not to become corporately involved on behalf of another destination in attempts to influence the decision making process regarding selection of a convention site. Conversely, Operator shall use best efforts in supporting the County and/or Bureau in all attempts to obtain exhibition and convention bookings for the Facility.

23.5 In the event Operator enters into a management agreement for the operation of a facility other than a similar type facility within a sixty-five (65) mile radius of Palm Beach County, Operator agrees and represents to County that it shall perform such services in a manner so as to show no preference for any facility(ies) with regard to the management, booking and operation of said facility(ies). Further, Operator agrees that it shall incorporate this provision in its entirety, without modification, in any management agreement with said facility.

ARTICLE 24
MISCELLANEOUS

24.1 Notices. All notices, consents, approvals, and elections (collectively, “notices”) to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the County at:

Palm Beach County
County Administrator
301 North Olive Avenue, 11th Floor
West Palm Beach, Florida 33401
Fax: (561) 233-0210

with a copy to:

Palm Beach County Attorney’s Office
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Fax: (561) 355-6461

(b) If to the Operator at:

Global Spectrum, L.P.
150 Rouse Blvd.
3rd Floor
Philadelphia, PA 19112

Any party may from time to time change the address at which notice under this Agreement shall

be given such party, upon three (3) days prior written notice to the other parties.

24.2 Independent Contractor. The Operator is, and shall be, in the performance of all work, services, and activities under this Agreement, an independent contractor and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Operator's sole direction, supervision, and control, and shall be paid directly by Operator. The Operator shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Operator's relationship, and the relationship of its employees, to the County shall be that of an independent contractor and not as employees or agents of the County.

The Operator does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

24.3 Public Entity Crimes. As provided in Section 287.131-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Operator certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes. Operator also certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder have not been suspended from doing business with Palm Beach County.

24.4 Palm Beach County Office of the Inspector General Audit Requirements. Pursuant to Palm Beach County Code, Sections 2-421 through 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to have the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 through 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

24.5 Complimentary Access to Events for County Representatives. To the extent that Operator provides access to key stakeholder events without cost, including tickets to events, materials, parking, meals, or other promotional items, to members of the Board of County Commissioners, County staff, their guests, and/or other County representatives (collectively County Representatives), such access serves the public purpose of ensuring adequate performance of the terms and conditions of this Agreement and is being provided to the County for further distribution to County Representatives as part of the consideration for this Agreement. The County hereby authorizes the Operator to provide such access directly to the County Representatives on the County's behalf. In so doing, the Operator shall take all reasonable efforts to communicate to the County Representatives that the access to the key stakeholder event is being provided pursuant to this Agreement with the County, and that the County is the donor of said access for any state or local reporting purposes. The foregoing authorization may be revoked by the County at any time

for any reason upon notice to Operator.

24.6 Waivers and Modifications. 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, 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.

24.7 Successors and Assigns. This Agreement and the rights and obligations set forth herein shall be binding, and inure to the benefit of, the parties hereto and each of their respective successors and permitted assigns. Except as provided in Section 19.1 above, neither the County nor the Operator shall assign, sublet, convey or transfer its interest in this Agreement without prior written consent of the other.

24.8 No Third Party Beneficiary. This Agreement shall not be construed as giving any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect to this Agreement or any of the provisions herein contained. This Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other person or entity.

24.9 Amendments to Agreement. 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.

24.10 WAIVER OF JURY TRIAL. THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COUNTY AND THE OPERATOR TO ENTER INTO THIS AGREEMENT.

24.11 Applicable Law. 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 in a state court of competent jurisdiction located in Palm Beach County, Florida.

24.12 Survival. Notwithstanding anything herein that is or may be construed to the contrary, any provision of this Agreement that is of a continuing nature, or which by its language or nature imposes an obligation or right that extends beyond the Term of this Agreement shall survive the expiration or early termination of this Agreement.

24.13 Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

24.14 Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any article, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

24.15 Severability. If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

24.16 Entire Agreement. This Agreement and any Exhibits attached hereto constitute all agreements, conditions, and understandings between County and Operator concerning the Facility. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change, or addition to this Agreement shall be binding upon County or Operator unless reduced to writing and signed by them.

24.17 Recording. Operator shall not record this Agreement, or any memorandum or short form thereof, in the public records of Palm Beach County.

24.18 Incorporation by Reference. The Recitals and all Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

24.19 Effective Date of Agreement. This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").

24.20 Scrutinized Companies

A. As provided in section 287.135, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Operator certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to section 215.4725, Florida Statutes. Pursuant to section 287.135(3)(b), Florida Statutes, if Operator is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the County.

B. When Agreement value is greater than \$1 million: As provided by section 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Operator certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in the Iran Petroleum Energy Sector List created pursuant to section 215.472, Florida Statutes, 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 section 287.135, Florida Statutes. Said certification must also be submitted at the time of Contract renewal, if applicable.

24.21 Public Records

Notwithstanding anything to the contrary contained in the Agreement, as provided for under Section 119.0701, F.S., if the Operator: (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/liason, 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.

24.22 E-Verify Employment Eligibility. Operator warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the Operator's contractors and subcontractors performing any duties and obligations under this Agreement are registered with the E-Verify System, and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

Operator shall obtain from each of its contractors and subcontractors an affidavit stating that the contractor or subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. Operator shall maintain a copy of any such affidavit from a contractor or subcontractor for, at a minimum, the duration of the contract or subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

County shall terminate this Agreement if it has a good faith belief that Operator has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If County has a good faith belief that Operator's contractor or subcontractor has knowingly violated section 448.09(1), Florida Statutes, as may be amended, County shall notify Operator to terminate its contract with the contractor or subcontractor and Operator shall immediately terminate its contract with the

contractor or subcontractor. If County terminates this Agreement pursuant to the above, Operator shall be barred from being awarded a future contract by County for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, Operator shall also be liable for any additional costs incurred by County as a result of the termination.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

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

ATTEST:

JOSEPH ABRUZZO
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida, by its
Board of County Commissioners

By: _____
Deputy Clerk

By: _____
, Mayor

APPROVED AS TO
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Assistant County Attorney

By: _____
Director, FDC
By: _____
Director, TDC

ATTEST:

OPERATOR: GLOBAL SPECTRUM,
L.P.
By Its General Partner: Global Spectrum,
LLC

Aaliyah Castro
Witness Signature

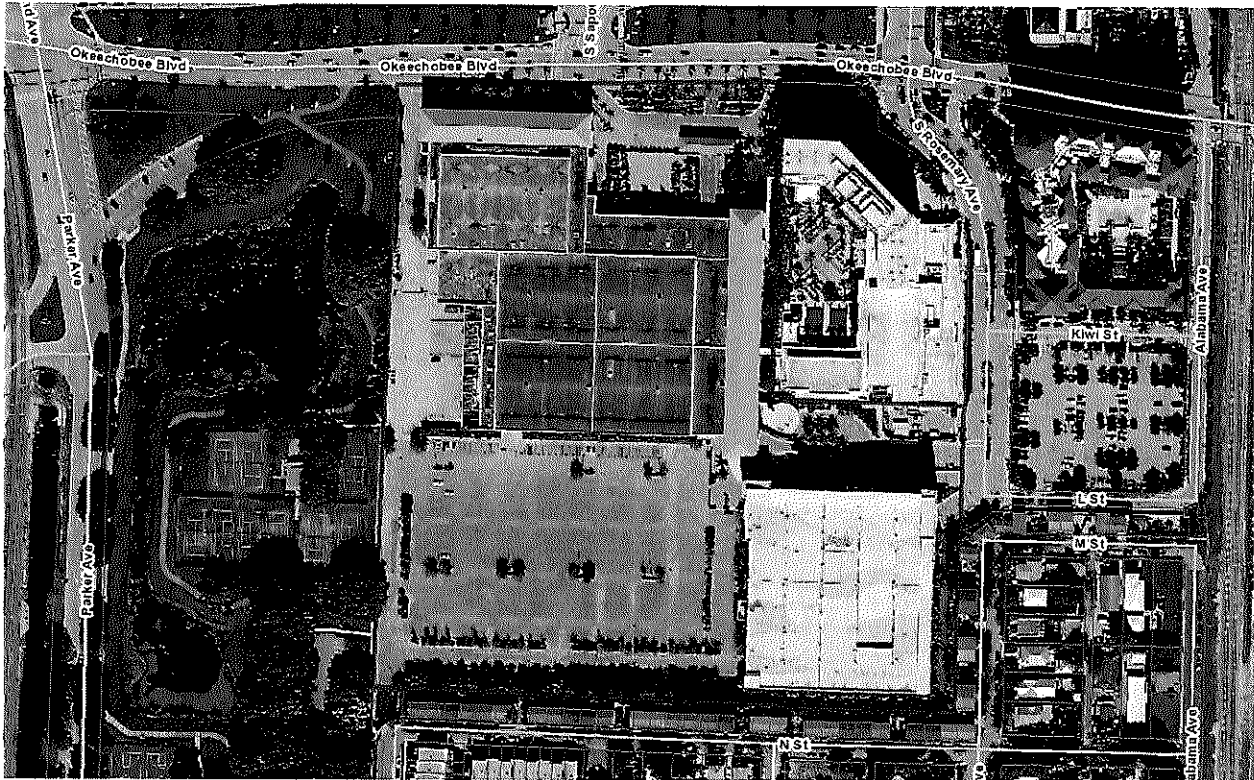
Aaliyah Castro
Print Witness Name

By: [Signature]
Name Printed: Brian Kolbary
Title: President

(SEAL)

**OPERATION AND MANAGEMENT AGREEMENT
EXHIBIT A**

DEPICTION OF THE FACILITY



OPERATION AND MANAGEMENT AGREEMENT
EXHIBIT B
FORM OF PERFORMANCE BOND

TERM OF THIS BOND: DECEMBER 1, 2023
THROUGH NOVEMBER 30, 2024

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That Global Spectrum, L.P., (hereinafter called Principal), as Principal, and Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut and duly authorized and licensed to do business in the State of Florida (hereinafter called Surety), as Surety, are held and firmly bound unto Palm Beach County, a political subdivision of the State of Florida (hereinafter called the Obligee), as Obligee, in the full and just sum of ONE MILLION Dollars (\$ 1,000,000.00) lawful money of the United States of America to be paid to the Board of County Commissioners of Palm Beach County to which payment will and truly to be made, the said Principal and Surety bind themselves and each of their administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bound Principal has entered into a certain written agreement with the above mentioned Obligee, with the effective date of December 1, 2023, to operate and manage the Palm Beach County Convention Center, which agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein; and

WHEREAS, the Obligee has agreed to accept a bond guaranteeing the performance of said agreement.

NOW THEREFORE, the conditions of this obligation are such that if Principal shall faithfully perform such agreement within the time therein specified, and shall in every respect fulfill its obligations thereunder, and shall indemnify and save harmless the Obligee against or from all claims, costs, expenses, damages, injury or loss, including contingent costs to carry out and execute all the provisions of said agreement, within the time therein specified, then this obligation shall be void; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, the Principal and Surety have executed these presents this 8th day of November, 2023.

ATTEST:

By: [Signature]
(Signature of Other Corporate Officer)

Principal Address:
150 Rouse Blvd
Philadelphia, PA 19112

PRINCIPAL

Global Spectrum, L.P., a corporation
of the State of Pennsylvania

By: [Signature]
David Anderson
Senior Vice President-OVG360

[Signature]
Witness Signature
Carlyn J. Miluski
Print Name

[Signature]
Witness Signature
Francis P. McGeer
Print Name

Surety Address:
1 Hartford Plaza
Hartford, CT 06155

SURETY Hartford Fire Insurance Company

By: [Signature]
Micael J. Knapp
It's Attorney-in-Fact

(Attach Power of Attorney)

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-11

One Hartford Plaza

Hartford, Connecticut 06155

Bond.Claims@thehartford.com

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: VENCER INSURANCE AND RISK LLC

Agency Code: 39-428361

- Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of Unlimited :**

Andrew J. Clow, Micah Knapp of MEDIA, Pennsylvania

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on May 23, 2016 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Shelby Wiggins

Shelby Wiggins, Assistant Secretary

Joelle LaPierre

Joelle L. LaPierre, Assistant Vice President

STATE OF FLORIDA

COUNTY OF SEMINOLE

ss. Lake Mary

On this 20th day of May, 2021, before me personally came Joelle LaPierre, to me known, who being by me duly sworn, did depose and say: that (s)he resides in Seminole County, State of Florida; that (s)he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that (s)he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that (s)he signed his/her name thereto by like authority.



Jessica Ciccone

Jessica Ciccone
My Commission HH 122280
Expires June 20, 2025

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of November 8, 2023.

Signed and sealed in Lake Mary, Florida.



Keith Dozols

Keith D. Dozols, Assistant Vice President

**OPERATION AND MANAGEMENT AGREEMENT
EXHIBIT C
DISCLOSURE OF OWNERSHIP INTERESTS**

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Brian Rothenberg, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the President (position - i.e. president, partner, trustee) of Global Spectrum, LLC, gen partner of Global Spectrum (name and type of entity - i.e. ABC Corporation, XYZ Limited Partnership), (the "Contractor") which entity seeks to do business with Palm Beach County. .

2. Affiant's address is: 150 Route 5/rd.
Philadelphia, PA 19112

3. Attached hereto, and made a part hereof, as **Exhibit A** is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater beneficial interest in the Contractor and the percentage interest of each such person or entity.

4. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

5. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

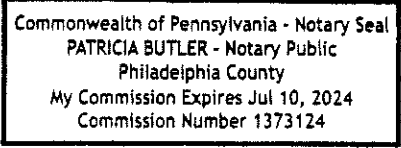
FURTHER AFFIANT SAYETH NAUGHT.

[Signature], Affiant
Print Affiant Name: Brian Rothenberg
State of Pennsylvania
County of Philadelphia

Subscribed and Sworn to before me by means of physical presence or online notarization on this day of NOV 9th, 2023 by Brian Rothenberg who is personally known to me or has presented (type of identification) as identification.

[Signature]
Notary Public

My Commission Expires: Jul 10, 2024



**OPERATION AND MANAGEMENT AGREEMENT
EXHIBIT C Continued**

**EXHIBIT A
TO DISCLOSURE OF BENEFICIAL INTERESTS FORM**

**SCHEDULE TO BENEFICIAL
INTERESTS**

Contractor is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Contractor must identify individual interest holders. If, by way of example, Contractor is wholly or partially owned by another entity, such as a corporation, Contractor must identify such other entity, its address and percentage interest, as well as such information for the individual interest holders of such other entity.

NAME	ADDRESS	PERCENTAGE OF INTEREST
------	---------	------------------------

<i>Global Spectrum, LLC</i>	<i>150 Rapa Blvd.</i>	<i>1%</i>
	<i>Philadelphia, PA 19112</i>	<i>99%</i>
<i>Spectra US, LLC</i>	<i>"</i>	
<i>No individual owners held > 5%</i>		

**OPERATION AND MANAGEMENT AGREEMENT
EXHIBIT D
EBO SCHEDULES 1 and 2
(from Proposal of Global Spectrum, L.P.)**

OEBO SCHEDULE 1 - PBCCC Operator Contract ONLY

SOLICITATION/PROJECT/BID NAME: Provide Operation and Management Services at The Palm Beach County Convention Center RFP NO.: 2023-001/BZ

SOLICITATION OPENING/SUBMITTAL DATE: May 12, 2023

COUNTY DEPARTMENT: Facilities Development & Operations

Section A PLEASE LIST THE TOTAL DOLLAR AMOUNT FOR COVERED EXPENSES* ON THE PROJECT:

NAME OF PRIME RESPONDENT/BIDDER: Global Spectrum, L.P., d/b/a OVG360

ADDRESS: 150 Rouse Blvd., Philadelphia, PA 19112

CONTACT PERSON: Dave Anderson

PHONE NO.: 561.366.3006

E-MAIL: dave.anderson@oakviewgg

TOTAL DOLLAR AMOUNT OF COVERED EXPENSES: \$480,000

Section B PLEASE LIST THE DOLLAR AMOUNT OR PERCENTAGE OF WORK TO BE COMPLETED BY S/M/WBE SUBCONTRACTORS/SUBCONSULTANTS ON THE PROJECT FOR THE COVERED EXPENSES ONLY:

Subcontractor/Subconsultant Name	(Check all Applicable Categories)			DOLLAR AMOUNT OR PERCENTAGE OF WORK					
	MBE Minority Business	WBE Women Business	SBE Small Business	Black	Hispanic	Women	Caucasian	Asian	Other
1 Holyfield & Thomas, LLC (VC0000130593)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>				\$20,160		
2 Palm Beach Landscape & Maintenance, Inc (VC0000126593)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		\$52,500				
3 Lite USA Holdings, Inc (VS0000012891)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>					\$5,250	
4 AGPB, LLC (VC0000113114)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					\$2,100	
5 Midds Inc. (VC0000106447)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>				\$2,100		
(Please use additional sheets if necessary)				Total	\$52,500		\$22,260	\$7,350	

Total Annual Estimated Covered Expenses* \$ 480,000

Total Certified S/M/WBE Participation \$ Next page.

* Covered expenses are the contractor's annual estimated expenses for professional services, temporary personnel services, grounds maintenance, building repairs & maintenance, etc.

I hereby certify that the above information is accurate to the best of my knowledge: Signature provided on next page.

Name, Authorized Signature & Title

- Note:
- The amount listed on this form for a Subcontractor/subconsultant must be supported by price or percentage listed on the properly executed Schedule 2 or attached signed proposal.
 - Only those firms certified by Palm Beach County at the time of solicitation opening or due date are eligible to meet the established OEBO Affirmative Procurement Initiative (API). Please check the applicable box and list the dollar amount or percentage under the appropriate demographic category.
 - Modification of this form is not permitted and will be rejected upon submittal.

REVISED 03/03/2013

OEBO SCHEDULE 1 - PBCC Operator Contract ONLY

SOLICITATION/PROJECT/BID NAME: Provide Operation and Management Services at The Palm Beach County Convention Center RFP NO.: 2023-001/BZ

SOLICITATION OPENING/SUBMITTAL DATE: May 12, 2023 COUNTY DEPARTMENT: Facilities Development & Operations

Section A PLEASE LIST THE TOTAL DOLLAR AMOUNT FOR COVERED EXPENSES* ON THE PROJECT:

NAME OF PRIME RESPONDENT/BIDDER: Global Spectrum, L.P., d/b/a OVG360 ADDRESS: 150 Rouse Blvd., Philadelphia, PA 19112

CONTACT PERSON: Dave Anderson PHONE NO.: 561.366.3006 E-MAIL: dave.anderson@oakviewgg

TOTAL DOLLAR AMOUNT OF COVERED EXPENSES: \$480,000

Section B PLEASE LIST THE DOLLAR AMOUNT OR PERCENTAGE OF WORK TO BE COMPLETED BY S/M/WBE SUBCONTRACTORS/SUBCONSULTANTS ON THE PROJECT FOR THE COVERED EXPENSES ONLY:

Subcontractor/Subconsultant Name	(Check all Applicable Categories)			DOLLAR AMOUNT OR PERCENTAGE OF WORK					
	MBE Minority Business	WBE Women Business	SBE Small Business	Black	Hispanic	Women	Caucasian	Asian	Other
1 Dias Protection Services (VS0000015076)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$19,215					
2 RPM Commerical Cleaning (VS0000021490)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>						\$20,055
3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
(Please use additional sheets if necessary)				Total	\$19,215				\$20,055

Total Annual Estimated Covered Expenses* \$ \$480,000 Total Certified S/M/WBE Participation \$ \$121,380

* Covered expenses are the contractor's annual estimated expenses for professional services, temporary personnel services, grounds maintenance, building repairs & maintenance, etc.

I hereby certify that the above information is accurate to the best of my knowledge: Brian Rothenberg, EVP and General Counsel, 

Name, Authorized Signature & Title

- Note:**
- The amount listed on this form for a Subcontractor/subconsultant must be supported by price or percentage listed on the properly executed Schedule 2 or attached signed proposal.
 - Only those firms certified by Palm Beach County at the time of solicitation opening or due date are eligible to meet the established OEBO Affirmative Procurement Initiative (API). Please check the applicable box and list the dollar amount or percentage under the appropriate demographic category.
 - Modification of this form is not permitted and will be rejected upon submittal.

REVISED 03/03/2023

OEBO LETTER OF INTENT – SCHEDULE 2

A completed Schedule 2 is a binding document between the Prime Contractor/consultant and a Subcontractor/subconsultant (for any tier) and should be treated as such. The Schedule 2 shall contain bolded language indicating that by signing the Schedule 2, both parties recognize this Schedule as a binding document. All Subcontractors/subconsultants, including any tiered Subcontractors/subconsultants, must properly execute this document. Each properly executed Schedule 2 must be submitted with the bid/proposal.

SOLICITATION/PROJECT NUMBER: RFP NO. 2023-001/BZ
 SOLICITATION/PROJECT NAME: TO PROVIDE OPERATION AND MANAGEMENT SERVICES AT THE PALM BEACH COUNTY CONVENTION CENTER

Prime Contractor: Global Spectrum, L.P., d.b.a. OVG 360 Subcontractor: AGPB, LLC

(Check box(es) that apply)

SBE WBE MBE M/WBE Non-S/M/WBE Date of Palm Beach County Certification (if applicable): 5/15/2022

The undersigned affirms they are the following (select one from each column if applicable):

Column 1	Column 2	Column 3
<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	<input type="checkbox"/> African-American/Black <input checked="" type="checkbox"/> Asian American <input type="checkbox"/> Caucasian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American	<input checked="" type="checkbox"/> Supplier

S/M/WBE PARTICIPATION - S/M/WBE Primes must document all work to be performed by their own work force on this form. Failure to submit a properly executed Schedule 2 for any S/M/WBE participation may result in that participation not being counted. Specify in detail, the scope of work to be performed or items supplied with the dollar amount and/or percentage for each work item. S/M/WBE credit will only be given for the areas in which the S/M/WBE is certified. A detailed proposal may be attached to a properly executed Schedule 2.

Line Item	Item Description	Unit Price	Quantity/ Units	Contingencies/ Allowances	Total Price/Percentage
96676	Print-On-Demand Printing Services	\$2,000	1	\$100	\$2,100


The undersigned Subcontractor/subconsultant is prepared to self-perform the above-described work in conjunction with the aforementioned project at the following total price or percentage: \$2,100

If the undersigned intends to subcontract any portion of this work to another Subcontractor/subconsultant, please list the business name and the amount below accompanied by a separate properly executed Schedule 2.

Name of 2nd/3rd tier Subcontractor/subconsultant _____ Price or Percentage: _____

Global Spectrum, L.P., d.b.a. OVG 360

Print Name of Prime

By:  _____
 Authorized Signature

Brian Rothenberg

Print Name

EVP and General Counsel

Title

Date: 05/08/2023

AGPB, LLC

Print Name of Subcontractor/subconsultant

By:  _____
 Authorized Signature

Jennifer Kerbs

Print Name

Owner

Title

Date: 05/05/2023

Revised 09/17/2019

OEBO LETTER OF INTENT -- SCHEDULE 2

A completed Schedule 2 is a binding document between the Prime Contractor/consultant and a Subcontractor/subconsultant (for any tier) and should be treated as such. The Schedule 2 shall contain bolded language indicating that by signing the Schedule 2, both parties recognize this Schedule as a binding document. All Subcontractors/subconsultants, including any tiered Subcontractors/subconsultants, must properly execute this document. Each properly executed Schedule 2 must be submitted with the bid/proposal.

SOLICITATION/PROJECT NUMBER: RFP NO. 2023-001/BZ

SOLICITATION/PROJECT NAME: TO PROVIDE OPERATION AND MANAGEMENT SERVICES AT THE PALM BEACH COUNTY CONVENTION CENTER

Prime Contractor: Global Spectrum, L.P., d.b.a. OVG 360 Subcontractor: Midds Inc

(Check box(s) that apply)

SBE WBE MBE M/WBE Non-S/M/WBE Date of Palm Beach County Certification (if applicable): 11/16/2021

The undersigned affirms they are the following (select one from each column if applicable):

Column 1	Column 2	Column 3
<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> African-American/Black <input type="checkbox"/> Asian American <input checked="" type="checkbox"/> Caucasian American	<input checked="" type="checkbox"/> Supplier
	<input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American	


S/M/WBE PARTICIPATION - S/M/WBE Prims must document all work to be performed by their own work force on this form. Failure to submit a properly executed Schedule 2 for any S/M/WBE participation may result in that participation not being counted. Specify in detail, the scope of work to be performed or items supplied with the dollar amount and/or percentage for each work item. S/M/WBE credit will only be given for the areas in which the S/M/WBE is certified. A detailed proposal may be attached to a properly executed Schedule 2.

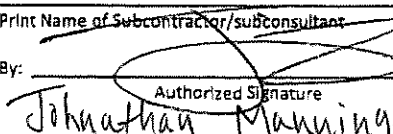
Line Item	Item Description	Unit Price	Quantity/ Units	Contingencies/ Allowances	Total Price/Percentage
96676	Print-On-Demand Printing Services	\$2,000	1	\$100	\$2,100

The undersigned Subcontractor/subconsultant is prepared to self-perform the above-described work in conjunction with the aforementioned project at the following total price or percentage: \$2,100

If the undersigned intends to subcontract any portion of this work to another Subcontractor/subconsultant, please list the business name and the amount below accompanied by a separate properly executed Schedule 2.

Name of 2nd/3rd tier Subcontractor/subconsultant _____ Price or Percentage: _____

Global Spectrum, L.P., d.b.a. OVG 360
 Print Name of Prime
 By: 
 Authorized Signature
Brian Rothenberg
 Print Name
EVP and General Counsel
 Title
 Date: 05/08/2023

Midds Inc
 Print Name of Subcontractor/subconsultant
 By: 
 Authorized Signature
Johnathan Manning
 Print Name
VP
 Title
 Date: 5-8-23

Revised 09/17/2019

OEBO LETTER OF INTENT – SCHEDULE 2

A completed Schedule 2 is a binding document between the Prime Contractor/consultant and a Subcontractor/subconsultant (for any tier) and should be treated as such. The Schedule 2 shall contain bolded language indicating that by signing the Schedule 2, both parties recognize this Schedule as a binding document. All Subcontractors/subconsultants, including any tiered Subcontractors/subconsultants, must properly execute this document. Each properly executed Schedule 2 must be submitted with the bid/proposal.

SOLICITATION/PROJECT NUMBER: RFP NO. 2023-001/BZ

SOLICITATION/PROJECT NAME: TO PROVIDE OPERATION AND MANAGEMENT SERVICES AT THE PALM BEACH COUNTY CONVENTION CENTER

Prime Contractor: Global Spectrum, L.P., d.b.a. OVG 360 Subcontractor: Holyfield & Thomas, LLC

(Check box(s) that apply)

SBE WBE MBE M/WBE Non-S/M/WBE Date of Palm Beach County Certification (if applicable): 2/15/2023

The undersigned affirms they are the following (select one from each column if applicable):

Column 1	Column 2	Column 3
<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> African-American/Black <input type="checkbox"/> Asian American <input checked="" type="checkbox"/> Caucasian American	<input type="checkbox"/> Supplier
	<input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American	

S/M/WBE PARTICIPATION – S/M/WBE Primes must document all work to be performed by their own work force on this form. Failure to submit a properly executed Schedule 2 for any **S/M/WBE** participation may result in that participation not being counted. Specify in detail, the scope of work to be performed or items supplied with the dollar amount and/or percentage for each work item. S/M/WBE credit will only be given for the areas in which the S/M/WBE is certified. A detailed proposal may be attached to a properly executed Schedule 2.

Line Item	Item Description	Unit Price	Quantity/ Units	Contingencies/ Allowances	Total Price/Percentage
94620	Auditing	\$19,200	1	\$960	\$20,160

The undersigned Subcontractor/subconsultant is prepared to self-perform the above-described work in conjunction with the aforementioned project at the following total price or percentage: \$20,160

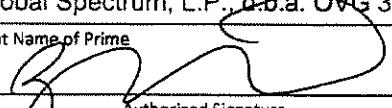
If the undersigned intends to subcontract any portion of this work to another Subcontractor/subconsultant, please list the business name and the amount below accompanied by a separate properly executed Schedule 2.

_____ Price or Percentage: _____

Name of 2nd/3rd tier Subcontractor/subconsultant

Global Spectrum, L.P., d.b.a. OVG 360

Print Name of Prime

By:  _____
Authorized Signature

Brian Rothenberg
Print Name

EVP and General Counsel
Title

Date: 05/08/2023

Holyfield & Thomas, LLC

Print Name of Subcontractor/subconsultant

By:  _____
Authorized Signature

David J. Thomas, CPA
Print Name

Manager/Member
Title

Date: May 5, 2023

Revised 09/17/2019

OEBO LETTER OF INTENT – SCHEDULE 2

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SOLICITATION/PROJECT NUMBER: RFP NO. 2023-001/BZ
 SOLICITATION/PROJECT NAME: TO PROVIDE OPERATION AND MANAGEMENT SERVICES AT THE PALM BEACH COUNTY CONVENTION CENTER

Prime Contractor: Global Spectrum, L.P., d.b.a. OVG 360 Subcontractor: Dias Protection Services, LLC

(Check box(s) that apply)
 SBE WBE MBE M/WBE Non-S/M/WBE Date of Palm Beach County Certification (if applicable): 10/6/2021

The undersigned affirms they are the following (select one from each column if applicable):

Column 1	Column 2	Column 3
<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	<input checked="" type="checkbox"/> African-American/Black <input type="checkbox"/> Asian American <input type="checkbox"/> Caucasian American	<input type="checkbox"/> Supplier
	<input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American	

S/M/WBE PARTICIPATION – S/M/WBE Primes must document all work to be performed by their own work force on this form. Failure to submit a properly executed Schedule 2 for any S/M/WBE participation may result in that participation not being counted. Specify in detail, the scope of work to be performed or items supplied with the dollar amount and/or percentage for each work item. S/M/WBE credit will only be given for the areas in which the S/M/WBE is certified. A detailed proposal may be attached to a properly executed Schedule 2.

Line Item	Item Description	Unit Price	Quantity/ Units	Contingencies/ Allowances	Total Price/Percentage
99046	Guard and Security Services	\$18,300	1	\$915	\$19,215

The undersigned Subcontractor/subconsultant is prepared to self-perform the above-described work in conjunction with the aforementioned project at the following total price or percentage: \$19,215

If the undersigned intends to subcontract any portion of this work to another Subcontractor/subconsultant, please list the business name and the amount below accompanied by a separate properly executed Schedule 2.

Name of 2nd/3rd tier Subcontractor/subconsultant _____

Price or Percentage: _____

Global Spectrum, L.P., d.b.a. OVG 360

Print Name of Prime

By: 

Authorized Signature

Brian Bothenberg

Print Name

EVP and General Counsel

Title

Date: 05/08/2023

Dias Protection Services, LLC

Print Name of Subcontractor/subconsultant

By: 

Authorized Signature

Print Name

Title

Date: 5/8/2023

Revised 09/17/2019

OEBO LETTER OF INTENT – SCHEDULE 2

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SOLICITATION/PROJECT NUMBER: RFP NO. 2023-001/BZ

SOLICITATION/PROJECT NAME: TO PROVIDE OPERATION AND MANAGEMENT SERVICES AT THE PALM BEACH COUNTY CONVENTION CENTER

Prime Contractor: Global Spectrum, L.P., d.b.a. OVG 360 Subcontractor: RPM Commercial Cleaning

(Check box(s) that apply)

SBE WBE MBE M/WBE Non-S/M/WBE Date of Palm Beach County Certification (if applicable): 3/29/2023

The undersigned affirms they are the following (select one from each column if applicable):

Column 1	Column 2	Column 3
<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> African-American/Black <input type="checkbox"/> Asian American <input type="checkbox"/> Caucasian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> OTHER	<input type="checkbox"/> Supplier

S/M/WBE PARTICIPATION – S/M/WBE Primes must document all work to be performed by their own work force on this form. Failure to submit a properly executed Schedule 2 for any S/M/WBE participation may result in that participation not being counted. Specify in detail, the scope of work to be performed or items supplied with the dollar amount and/or percentage for each work item. S/M/WBE credit will only be given for the areas in which the S/M/WBE is certified. A detailed proposal may be attached to a properly executed Schedule 2.

Line Item	Item Description	Unit Price	Quantity/ Units	Contingencies/ Allowances	Total Price/Percentage
95863	Janitorial Management Services	\$19,100	1	\$955	\$20,055

The undersigned Subcontractor/subconsultant is prepared to self-perform the above-described work in conjunction with the aforementioned project at the following total price or percentage: \$20,055

If the undersigned intends to subcontract any portion of this work to another Subcontractor/subconsultant, please list the business name and the amount below accompanied by a separate properly executed Schedule 2.

Name of 2nd/3rd tier Subcontractor/subconsultant _____

Price or Percentage: _____

Global Spectrum, L.P., d.b.a. OVG 360

Print Name of Prime

By: [Signature]
Authorized Signature

Brian Rothenberg

Print Name

EVP and General Counsel

Title

Date: 05/08/2023

RPM Commercial Cleaning

Print Name of Subcontractor/subconsultant

By: [Signature]
Authorized Signature

Robert McKeown

Print Name

President

Title

Date: May 8, 2023

Revised 09/17/2019

OEBO LETTER OF INTENT – SCHEDULE 2

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SOLICITATION/PROJECT NUMBER: RFP NO. 2023-001/BZ
 SOLICITATION/PROJECT NAME: TO PROVIDE OPERATION AND MANAGEMENT SERVICES AT THE PALM BEACH COUNTY CONVENTION CENTER

Prime Contractor: Global Spectrum, L.P., d.b.a. OVG 360 Subcontractor: Lite USA Holdings, Inc

(Check box(s) that apply)
 SBE WBE MBE M/WBE Non-S/M/WBE Date of Palm Beach County Certification (if applicable): 7/31/2022

The undersigned affirms they are the following (select one from each column if applicable):

Column 1	Column 2	Column 3
<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> African-American/Black <input checked="" type="checkbox"/> Asian American <input type="checkbox"/> Caucasian American	<input checked="" type="checkbox"/> Supplier
	<input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American	

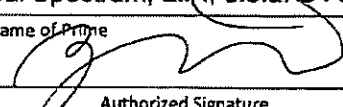
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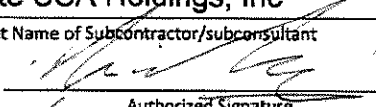
Line Item	Item Description	Unit Price	Quantity/Units	Contingencies/Allowances	Total Price/Percentage
55955	Lamps/Lighting, Interior & Exterior	\$5,000	1	\$250	\$5,250

The undersigned Subcontractor/subconsultant is prepared to self-perform the above-described work in conjunction with the aforementioned project at the following total price or percentage: \$5,250

If the undersigned intends to subcontract any portion of this work to another Subcontractor/subconsultant, please list the business name and the amount below accompanied by a separate properly executed Schedule 2.

_____ Price or Percentage: _____
 Name of 2nd/3rd tier Subcontractor/subconsultant

Global Spectrum, L.P., d.b.a. OVG 360
 Print Name of Prime
 By: 
 Authorized Signature
Brian Rabinberg
 Print Name
EVP and General Counsel
 Title
 Date: 05/08/2023

Lite USA Holdings, Inc
 Print Name of Subcontractor/subconsultant
 By: 
 Authorized Signature
Nirvan Mahabir
 Print Name
President
 Title
 Date: 05/08/23

Revised 09/17/2019

**OPERATION AND MANAGEMENT AGREEMENT
EXHIBIT E
OPERATOR'S CAPITAL INVESTMENT**

1. Operator's Capital Investment. Operator will make Operator's Capital Investment as set forth in Section 5.3 of this Agreement.

2. Proposed Projects. Operator proposed the following list of projects in its response to the RFP:

- Concierge Alcove
- Outdoor Event Space
- Boardroom Flex Space
- Pre-Function Event Space

General details related to each project are attached hereto as **Attachment 1**. The project list attached hereto has been approved by the County at a conceptual level; however each individual project must be reviewed and approved by the County Administrator and FDO, as applicable and as set forth below. (Collectively, the projects or individually, a project)

3. County Review and Approval of Projects.

a. Investments Not Involving Design, Permitting and/or Construction. For Operator investments that do not involve design, permitting and/or construction, Operator must submit project details and proposed budget to the County Administrator for approval prior to purchase. The County Administrator will review the project and determine whether the project aligns with the Center's programmatic goals. If the County Administrator determines that the project does not align with the Center's programmatic goals, then the County Administrator will notify the Operator and the Operator may submit an alternate project for review. If the County Administrator determines that the project meets the Center's programmatic goals, the County Administrator will notify the Operator in writing and the Operator may proceed with the purchase. The County Administrator will complete the programmatic review within 15 Business Days.

b. Investments Involving Design, Permitting and/or Construction.

i. Programmatic Review. Prior to commencing any project involving design, permitting and/or construction, the Operator must submit to the County Administrator the following information: nature and scope, estimated cost (including all project phases: design, permitting, construction and any required furnishings/fixtures/equipment), purpose and objectives/goals, and implementation timeline. If the County Administrator determines that the project does not align with the Center's programmatic goals, then the County Administrator will notify the Operator and the Operator may submit an alternate project for review. If the County Administrator determines that the project meets the Center's programmatic goals, then the County Administrator will refer the project to the County's Facilities Development & Operations (FDO) Department Director for technical review.

The County Administrator will complete the programmatic review within 15 Business Days.

ii. Technical Review. The FDO Director's technical review will focus on ensuring that the proposed project meets the County's standard applicable management policies (e.g., FDO's Policies and Procedures Manual for Design Professionals) as they relate to capital improvements projects at County facilities. The FDO Director will complete his/her technical review within 30 Days after receipt of the project details. The FDO Director will notify the Operator in writing of his/her decision. If the FDO Director denies approval, the reason(s) will be stated. Operator may then revise its request and re-submit through the approval process or submit an alternate project through the approval process. If the FDO Director approves the request, the FDO Director will notify the Operator in writing that its project has been approved and include all the conditions of approval resulting from the programmatic review and technical review. The approval notification will contain a requirement for the Operator to accept and concur in writing to all conditions of approval. The approval notification will only become effective when the Operator delivers to the FDO Director a written acceptance confirmation. The FDO Director may include as many conditions as he/she deems appropriate to ensure that the project meets life safety, building code, and the County's applicable management policies as it relates to County facilities. The FDO Director may include additional approval conditions under the advice of the County Attorney's Office or the County's Risk Management Department. The FDO Director is responsible for the oversight of all capital improvements projects at the Center. The FDO Director may include as a condition of approval an estimate of staff costs to be funded by the Operator. Approval conditions by the FDO Director will at a minimum include the conditions listed on **Attachment 2**.

4. Amortization of Operator's Capital Investment. Amortization of Operator's Capital Investment will be as set forth in Section 5.3 of this Agreement.

EXHIBIT E – ATTACHMENT 1 – PROPOSED PROJECTS

CONCIERGE ALCOVE

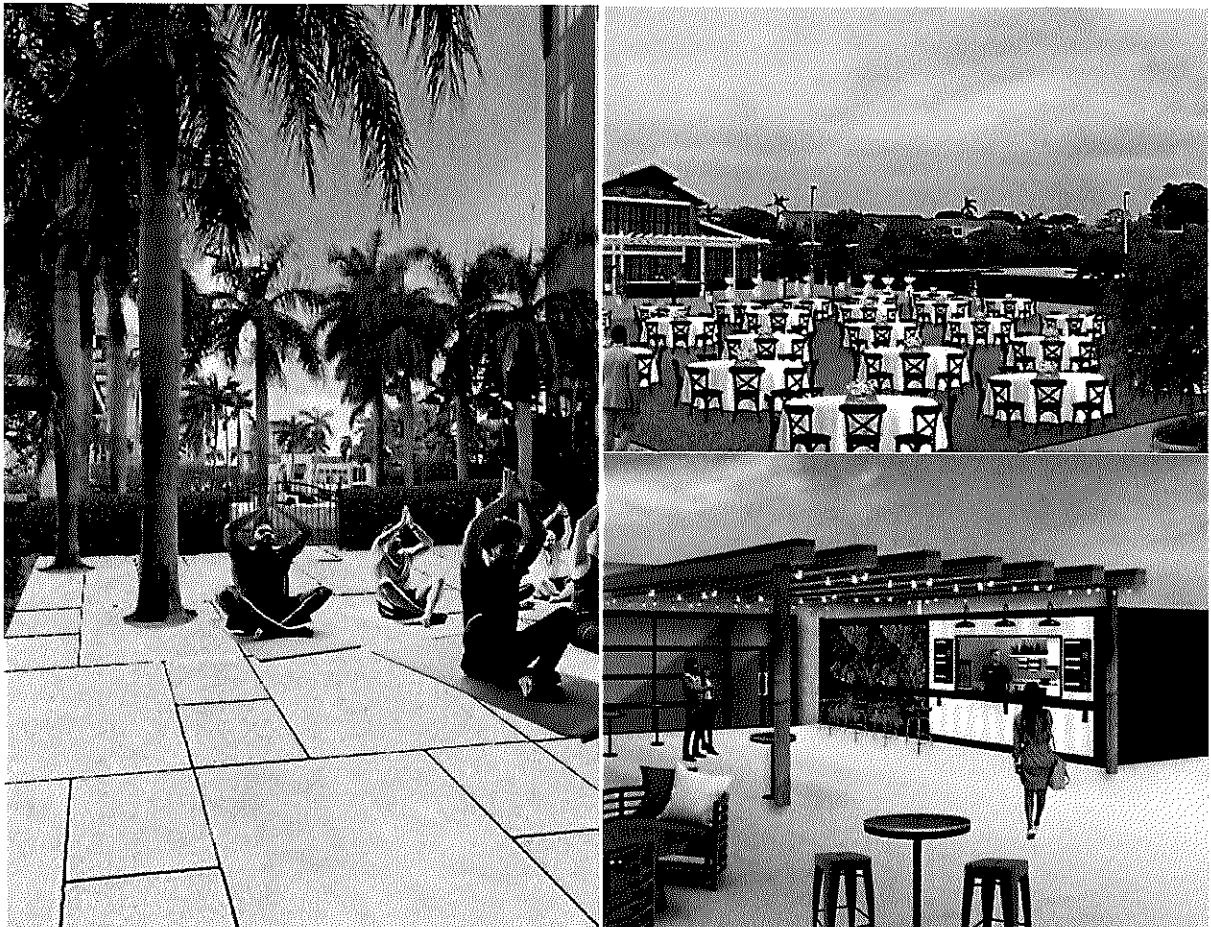
The Concierge Alcove located at the center the PBCCC has always been a place for clients and attendees to get information about our facility, area attractions, restaurants, shopping and transportation options. It also serves as a security location for monitoring the north entry of the facility. This personal service is very popular with our guests and keeps them informed on how to make the most out of their time in Palm Beach County. Our plan is to do a complete makeover of the Alcove to make it not only the window to Palm Beach County, but the window to the world! From larger screen information boards that display weather and flight information to a news ticker which will show breaking news around the world, this updated Alcove will provide the ultimate in-service and information to all of our guests.



OUTDOOR EVENT SPACE

During the pandemic, one of the most replicated ideas around the world was creation of outdoor event spaces. In every city and country around the world businesses were creating outdoor event spaces in order to make people feel safe and continue to do business. While most of these installations were intended to be temporary, many of them are still operating or have become permanent because of the public interest in being outdoors.

In response to this need we opened the "Skyroom," which has become a popular space used for gathering in between meetings, client receptions, and outdoor dinners under the stars. We plan to create three additional activity spaces out of the PBCCC. The three selected spots are the front grass area on the east side (Wellness Activities) of the facility, the flat parking area (Large Reception) just west of the garage and a portion of the roof (Small Gatherings) on top of the garage. Each of these areas will offer additional opportunities to allow attendees to enjoy the beautiful weather in south Florida while maximizing opportunities for building revenue.



BOARDROOM FLEX SPACE

The term "Flex Space" has been a hot topic in the industry for many years when looking at new construction and/or renovations, and will be a part of an eventual expansion of the PBCCC. Since expansion is a few years down the road, we have decided to take our second floor boardroom and transform it into a mini flex space to test the concept.

The Executive Boardroom has always been an ideal place to conduct meetings and small catering events thanks to its beautiful windows that allow natural light and views of the east-wing exterior and exhibit hall. Our plan is to remove the permanently installed boardroom table and replace it with high end furniture to meet several different types of configurations. We will also upgrade our audio and visual technology so those using the room can communicate with or live stream anything they wish.



PRE-FUNCTION EVENT SPACE

Even though our pre-function space is limited, our attendees still love to gather in small groups or find a cozy spot by themselves to hold small break out meetings, sit and enjoy a cup of coffee or just return some emails. While our current furniture has worn amazingly well, we plan to do a complete front of house refresh to upgrade the current seating areas, add additional locations and create additional meeting locations for people to gather in between larger sessions. The upgraded pre-function space will also allow the OVG Hospitality team to take advantage of attendees gathering outside of their meeting spaces to provide additional grab-n-go and portable options during larger events.



EXHIBIT E – ATTACHMENT 2
FDO DIRECTOR MINIMUM APPROVAL CONDITIONS

- a. The FDO Department will hold oversight responsibility for any capital improvement project at the Center.
- b. The title to and ownership of all improvements, including Facilities, Fixtures and Equipment or Furnishings and Equipment, will be vested in the County upon completion; except that the title to and ownership of improvements, including Facilities, Fixtures and Equipment or Furnishings and Equipment, purchased by Operator with Operator's Capital Investment will remain vested in the Operator until the cost of such improvement has been fully amortized at which time title to and ownership will vest in the County. If the Agreement is terminated before the cost of such improvement has been fully amortized title will vest in the County once the County pays the Operator any unamortized amount in accordance with Section 5.3 of this Agreement.
- c. All capital improvement projects must be performed in a good and workmanlike manner using good quality materials and supplies, and components and replacement parts that are of equal or better quality than the quality of those being repaired or replaced and must be performed through completion.
- d. The Operator must obtain all development approvals and permits from the appropriate regulatory agencies prior to commencing any capital improvement projects. All applications for permits and approvals of any kind require the approval of FDO Director. The Operator must perform all capital improvement projects in compliance with all government laws, regulations, rules, ordinances, and orders.
- e. The Operator must provide to FDO copies of all development approvals and permits obtained for the capital improvement project.
- f. The Operator must ensure that all improvements are constructed to completion in material accordance with the approved plans and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all consultants, contractors, subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services performed and materials used.
- g. If the Operator is: 1) selecting an architect, engineer, landscape architect or surveyor/mapper for a construction project where the estimated construction costs of the project exceeds \$325,000 (or such monetary limit as in effect at the time of the Capital Improvement project) and 2) the County is funding or reimbursing, in whole or in part, the cost of design, then the

Operator must use the qualifications based selection process for professionals set out in F.S. Section 287.055 Consultant's Competitive Negotiation Act (CCNA). If the Operator is funding the entirety of the design costs, then the Operator may use its standard purchasing practices.

- h. The design firm selected by the Developer must be certified by the County's Engineering and Public Works Department. Information regarding the design consultant certification process may be obtained at: <http://discover.pbcgov.org/engineering/roadwayproduction/Pages/CCNA.aspx>
- i. The Operator must submit detailed plans and specifications prepared by a design professional licensed in the State of Florida for all capital improvement projects to the FDO Director for the County's written approval prior to commencing work on same, including the estimated project cost.
- j. If the Operator is funding the entirety of the construction costs of the capital improvement project, then it may use its standard purchasing practices for the construction project.
- k. If the County is funding, in whole or in part, the construction costs of a capital improvement project, then the Operator may use its standard purchasing practices provided that all purchases are undertaken and awarded by a competitive process. Unless the Operator has included qualification based criteria in the bid and the Operator can reasonably demonstrate that the low bidder did not meet those qualification criteria, the only justifications for not choosing the low bidder are either: 1) an award to the next lowest bidder in order to contract with a Palm Beach County certified SBE vendor and the SBE vendor's bid does not exceed the low bidder's price by 10%, or 2) an award to the next lowest bidder in order to contract with a bidder meeting the Palm Beach County's definition of local business and the local business's bid does not exceed the low bidder's price by 5%. Preferences are not cumulative and in the event of a conflict, the SBE preference is of higher priority. When necessary, the Operator may use qualification-based selection criteria as a pre-bid step or as part of a competitive selection provided that the qualification based selection criteria is objective, directly responsive to the work, and does not limit competition among qualified bidders.
- l. The Operator must obtain a payment and performance bond in conformity with the requirements of Florida Statute § 255.05 on a County approved form and from a surety meeting the County's requirements for all construction projects in excess of \$200,000, or such monetary limit as in effect at the time of the capital improvement project. County must be named as an obligee on the bond.

- m. The Operator must require its consultants, subconsultants, contractors and subcontractors to furnish satisfactory evidence, as applicable, of statutory Worker's Compensation insurance, professional liability insurance, comprehensive general liability insurance, comprehensive auto insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon in amounts as determined by the County's Risk Management Department.
- n. The Operator must include in its contracts with contractors, subcontractors, consultants and subconsultants the following indemnity clause indemnifying the County:

Contractor shall indemnify and hold harmless the County and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor and persons employed or utilized by the Contractor in the performance of this Contract.
- o. For capital improvement projects that are wholly or partially funded by the County and prior to the Operator entering into a contract or purchase order, the Operator must submit to the FDO Director: 1) the scope of work that was used as the basis for the bid, 2) a bid tabulation sheet that sets forth the vendor/contractor name and bid amount for each bid response, and 3) a copy of the Operator's proposed contract or purchase order which identifies the final scope of work to be purchased, a copy of the vendor's/contractor's insurance certificate naming the County as an additional insured; and for projects in excess of \$200,000, a copy of the contractor's payment and performance bond . All documents must be subject to approval of the FDO Director at his/her sole discretion.
- p. For capital improvement projects that are wholly funded by the Operator and before the Operator executes a contract or purchase order, the Operator must submit to the FDO Director, a copy of the Operator's proposed contract or purchase order which identifies the final scope of work to be purchased, a copy of the vendor's/contractor's insurance certificate naming the County as an additional insured; and for projects in excess of \$200,000, a copy of the contractor's payment and performance bond . All documents are subject to approval of the FDO Director at his/her sole discretion.
- q. The Operator will notify the County Administrator and the FDO Director at least five (5) Days prior to the commencement of the capital improvement work.

- r. After project commencement, the Operator will notify FDO's Facilities Management Regional Manager at least 72 hours in advance of any project-related activity that will impact building operations or equipment.
- s. The Operator will notify the FDO Director of the date, time and location of all project meetings. The Operator will coordinate training sessions covering the maintenance and operation of any specialized equipment installed as part of the capital improvement project, and will notify the FDO Director of the date, time and location of all said training sessions. The FDO Director reserves the right to assign a project representative to attend project meetings and training sessions in order to ensure compliance with the conditions of approval. The Operator will facilitate participation of the FDO's project representative at the meetings and training sessions.
- t. The Operator must notify all parties performing work or providing materials relating to the capital improvement project that the County's property is not subject to liability under the Construction Lien Law of the State of Florida. If so requested by County, the Operator must file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's property is not subject to liens for improvements made by the Operator. In the event that a construction lien is filed against the County's property in connection with any work performed by or on behalf of the Operator, the Operator must satisfy such claim, or transfer same to security, within 30 Days from the date of filing. In the event that the Operator fails to transfer or satisfy such claim within the 30 Day period, County may do so and thereafter charge the Operator all reasonable and documented costs incurred by County in connection with the satisfaction or transfer of such claim, including reasonable attorneys' fees, and the Non-County must promptly pay to County all such costs upon demand.
- u. Within 60 Days following Operator's receipt of a certificate of occupancy or certificate of completion, as appropriate, for the capital improvement, the Operator must prepare and deliver to the FDO Director: one (1) complete set of as-built drawings in a hardcopy format, one (1) complete set of as-built drawings in a PDF format, one (1) complete set of as-built drawings in Auto CADD files in the latest version acceptable to FDO and all warranty certificates resulting from the capital improvement project.

**EXHIBIT F
TRAVEL POLICY**

Pursuant to Section 125.0104, Florida Statutes, the following policy shall govern the reimbursement of travel expenses incurred by employees of Global Spectrum, L.P., d/b/a OVG360, (OVG360) in connection with the performance of the promotional services under this Agreement.

As set forth below, expenditures for transportation, lodging, meals, and other reasonable and necessary items and services in connection with OVG360's performance of the promotional services under this Agreement are authorized. OVG360 shall be reimbursed for the actual, reasonable, and necessary costs, as ultimately determined by the Executive Director of the Tourist Development Council (TDC), for travel, meals, lodging, and incidental expenses of OVG360's employees while attending or traveling in connection with travel or trade shows, conventions, and professional education events related to OVG360's performance under this Agreement. Only domestic travel expenses will be reimbursed. No foreign travel or entertainment expenses will be reimbursed.

I. APPROVAL OF EXPENDITURES

A. Receipts. All travel related expenditures in excess of \$10 shall be substantiated by receipts (Receipts).

B. Justification. A complete and detailed justification for all travel related expenditures shall be shown on the travel expense voucher or attached thereto (Justification). The Justification shall provide sufficient information to establish that the expenditures were reasonable and necessary in connection with the performance of promotional and other duties of the OVG360 pursuant to this Agreement.

C. OVG Approval. All travel, including review of Receipts and Justification shall, in the first instance, be approved by the traveler's supervisor at OVG360, or his/her designee (OVG Approval). For reimbursements for expenses incurred by OVG360's General Manager, OVG Approval shall be obtained from OVG360's Senior Vice President.

D. TDC Approval. After obtaining OVG Approval, OVG360 shall submit the reimbursement packet, including the Receipts, Justification, and documentation reflecting OVG Approval, to the Executive Director of the TDC for a final determination of whether the expenses are reimbursable (TDC Approval). This determination by the Executive Director of TDC as to the reasonable and necessary costs of expenditures shall be final.

E. Reimbursement. The packet containing the Receipts, Justification, OVG Approval, and TDC Approval (collectively, the Reimbursement Package) shall be submitted to the Clerk & Comptroller (Clerk) for reimbursement payment. The fact that the Reimbursement Packet contains TDC Approval indicates that all Receipts and the Justification provided are sufficient to establish that the expenditures are reimbursable, reasonable, and necessary, as determined by the Executive

Director of TDC. Only upon confirmation that the Reimbursement Package is complete (i.e., that it contains the required Receipts, Justification, OVG Approval, and TDC Approval) shall the Reimbursement Package be submitted to the Clerk for reimbursement. Nothing in this Agreement shall in any way limit the Clerk's legal authority to perform any pre-disbursement audits in connection with remitting any payments under this Agreement.

II. DOMESTIC TRAVEL

A. Per Diem Limit for Domestic Travel. Expenses related to domestic travel are presumed to be reasonable if they comply with the per diem limit by city as shown in the most recently published Business Travel News Per Diem (Per Diem Limit) schedule. If a city is not listed in the per diem schedule, the Per Diem Limit of the closest city in the same state, by proximity, shall apply. Any departure from the Per Diem Limits shall be presumed to be excessive unless the reasonableness of the expenditure is satisfactorily proven to the Executive Director of the TDC in the Justification.

Meal expenditures may be combined such that the daily total does not exceed the Per Diem Limit. Snacks/beverages between meals are allowed as long as the overall Per Diem Limit is not exceeded. Miscellaneous incidental expenses may be reimbursed upon review of the Reimbursement Package. When meals are included at any convention, trade show or conference, any additional meal reimbursements are not authorized

B. Domestic Air Travel. The most economical class that is reasonable under the circumstances shall be utilized. In addition, following provisions will be presumed reasonable and necessary: 1) luggage fees; 2) flight change fees; 3) cancellation insurance; 4) seat reservation; 5) Wi-Fi charges.

C. Lodging. Room rates, taxes, fees, parking, and internet are the only allowable room charges. Room folios must be provided as back up for reimbursement. No other expenses should be charged to the room folio including room service, absent an acceptable justification. A late arrival to a city after a lengthy trip would qualify for reasonable room service expenses.

D. Mileage, Parking, Taxi and Tolls. The allowable mileage reimbursement will be computed on the basis of either the shorter distance from the point of origin to the point of destination or the traveler's official headquarters to the point of destination. Printouts from a web-mapping server (such as MapQuest or Google Maps) are required to substantiate mileage requested for reimbursement. Actual costs of parking and tolls shall be reimbursed if substantiated by the Receipt provided in accordance with Section I above. Transportation Receipts, regardless of form, shall be accepted, including, but not limited to, Receipts relating to transportation provided by taxi, Uber, Lyft and/or any other shared economy transportation company. Transponder toll rental fees in rental cars shall be accepted for reimbursement as shown on applicable Receipts, which may include charges evidenced on car rental agreements. For parking expenses while staying at hotel, the hotel folio is sufficient support as long as the parking charge is clearly marked for each day of parking incurred. Electronic parking meter receipts via text, email, Sun Pass printout, or any other similar Receipts shall be acceptable. Normal commute mileage (Normal Commute Mileage) for the normal workday is not reimbursable when departing from home to an event or meeting, or from an event or meeting returning home. The Normal Commute Mileage shall be

deducted from the overall mileage reimbursement request. Mileage incurred on weekends or United States holidays shall not constitute Normal Commute Mileage and shall be reimbursable. Mileage shall be reimbursed at IRS published rates multiplied by the mileage incurred, as evidenced from Google Maps, MapQuest, or a similar platform, rounded to the nearest cent. This paragraph shall apply for domestic travel.

III. EXPENSE REPORTS

Requests for reimbursement for travel expenses are to be made utilizing the standard OVG expense report form or the electronic expense system, as updated from time to time. (Expense Report). These Expense Reports may be generated by OVG360 electronic travel expense recording systems. The TDC retains the right to reject any Expense Report for failure to sufficiently identify and document expenses or otherwise meet documentation requirements as determined by the Executive Director for the TDC. Each Expense Report shall receive the required OVG Approval as defined herein.

Expenses incurred by third parties in the connection with OVG360's performance under this Agreement (e.g., representation, sales, and public relations consultants, customers, and the like) shall be governed by the specific provisions within their contract/agreement and a reasonable understanding that the expense will influence future visitation and bookings and not this travel policy.

Where exceptions/interpretations to this travel policy are identified, OVG360 will provide justification for the use of public dollars to fund these expenses and the TDC Executive Director or his/her designee will have the authority to review and approve or reject these exceptions.

TERMINATION AGREEMENT

This Termination Agreement is made and entered into on _____ 2023, 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, 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), which was amended on July 11, 2017 (R2017-0932), on May 3, 2022 (R2022-0407), and on September 26, 2023 (R2023-1400) (collectively the “2012 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”);

WHEREAS, the term of the 2012 Agreement commenced on October 1, 2012 for an initial term of five (5) years through September 30, 2017, was renewed for an additional term of five (5) years through September 30, 2022, was extended for an additional term through September 30, 2023, and was extended for an additional term through January 31, 2024;

WHEREAS, the County advertised a solicitation for a new Convention Center Operator in 2023 and the Operator was the only respondent; and the County’s selection committee recommended Operator’s proposal for contract award; and

WHEREAS, the parties now desire to terminate the 2012 Agreement for convenience upon approval by the Board of County Commissioners of a new contract between County and Operator (“2023 Agreement”).

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

1. **Recitals**. The recitals above are incorporated herein by reference.
2. **Termination**. Subject to the County and the Operator entering into the 2023 Agreement, the 2012 Agreement is terminated effective at 11:59 pm on November 30, 2023.
3. **Payment**. Operator will be paid its fixed fee in accordance with the terms of the 2012 Agreement for services rendered through November 30, 2023.
4. **Waiver**. Operator waives its rights under Section 20.2 of the 2012 Agreement to one hundred eighty (180) days prior written notice for a termination without cause.

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

ATTEST:

JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT &
COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Mayor

APPROVED AS TO LEGAL
SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Assistant County Attorney

By: _____
FDO Director

By: _____
TDC Director

GLOBAL SPECTRUM, L.P.

By: Global Spectrum, LLC, its general partner

By: 

Name Printed: Brian Kottenberg

Title: President


Witness Signature

Kathleen Pokorski
Print Witness Name



MEMORANDUM

TO: Gregg K. Weiss, Mayor and Members of the Board of County Commissioners

FROM: Verdenia C. Baker
County Administrator *V. Baker*

DATE: October 23, 2023

RE: Staff's Report
Palm Beach County Convention Center Operations

On September 26, 2023, while considering a four-month extension to the Palm Beach County Convention Center (Convention Center) Operating Agreement with Global Spectrum, L.P. (Global), the Board of County Commissioners (Board) directed staff to provide a report on the matter of Convention Center operations. This memorandum serves to fulfill Board's direction.

Facility Overview

The Convention Center is a County-owned facility that opened for operations in 2004. The state-of-the-art facility has approximately 340,000 square feet and features: a 100,000 square foot exhibit hall; a 22,000 square foot ballroom (divisible into 4 rooms); 48,000 square feet of flexible breakout space divisible into 19 rooms and pre-function/lobby space of 180,000 square feet. The 13,789 square foot north courtyard has been recently renovated, transforming the space into an intimate outdoor event area capable of hosting receptions and seated food and beverage events. There is an eight (8) story on-site parking garage with over 2,500 parking spaces.

Operations and Management Services Contracts Overview

The County retains contractual services to operate the Convention Center. The current operator is Global Spectrum, LP (Global). A brief overview of the historical evolution of the operator contract follows. In 2001, the County entered into an agreement with the Palm Beach County Convention and Visitors Bureau (CVB) for the management of the Convention Center. Pursuant to the terms of the agreement and through a Request for Proposals (RFP), CVB selected Global as the operator. The operating contract between CVB and Global provided that in the event the agreement between the County and CVB was terminated, the County would have the rights to assume the rights and obligations of the CVB in its operating contract with Global. In 2007, the Board voted to terminate its Convention Center management agreement with CVB. As a result, in September 2007, the



Board assumed the contract and approved an agreement (R2007-1626) with Global for the operation of the Convention Center for a period beginning in October 1, 2007 to September 30, 2008, with one additional 2-year renewal option, which had a non-compete within a 50-mile radius clause. Said contract included daily management plus general oversight of the food & beverage operations. The renewal option was exercised on October 1, 2008, and as a result, the contract was extended to September 30, 2010. On September 28, 2010, the Board approved a 2-year extension to the contract leading to a revised expiration date of September 30, 2012.

In March 2012, the County's Facilities Development and Operations department (FDO) advertised RFP No. 2012-101-SJC for the provision of operation and management services at the Convention Center, which RFP included a non-compete within 65-mile radius clause. Global was the only respondent. On July 24, 2012, the Board approved a 5-year contract (R2012-1047) with Global, with a one 5-year renewal option. On July 11, 2017, the Board approved the 5-year extension to the contract (R2017-0932). On May 3, 2022, the Board approved a 1-year extension to the contract (R2022-0407).

In April 2023, FDO advertised RFP No. 2023-011-BZ for the provision of operation and management services at the Convention Center. The RFP retained the non-compete within 65-mile radius clause and, to avoid potential conflict of interests, expanded it to include entities owning, managing or operating hotels in downtown West Palm Beach. Although the RFP was broadly advertised and Staff conducted direct outreach with six national firms offering these types of services (ASM Global, Oak View Group, Aramark, Delaware North, Guion and Sodexo), Global was the only respondent. In June 2023, the selection committee met and recommended award to Global subject to negotiation of the financial component of Global's proposal. Negotiations extended further than anticipated therefore, on September 26, 2023 staff recommended, and the Board approved, a 4-month extension to the contract with Global (R2023-1400). Included as Attachment 1 is a summary of all the operation contracts executed for the Convention Center since its inception. Included as Attachment 2 is a summary of all fees paid to Global over the past ten (10) years.

Under the provisions of the operation and management contract, Global is required to prepare an annual operating budget which shall at a minimum include: revenues, operating expenses, incomes, administrative and general expenses, marketing/advertising/promotional expenses, energy costs, exhibitor services, routine maintenance, and payroll/personnel costs. The revenues section of the annual operating budget includes, without limitation: rental income, advertising sales income, equipment/decorating rental fees, box office income, parking income, and food and beverage sales income. Parking revenues are of special interest as construction of the parking garage was funded through tax-exempt bonds which debt service is paid with monies from the local tourism development tax (i.e., commonly referred to as the "bed tax"). As a result of the tax-exempt bond, Internal Revenue Service (IRS) code and regulations dictate that certain limitations on private use and private payments made in connection with a facility financed with tax-exempt bonds. The private activity limitation is a two-fold test that entails private payments (as a function



of the debt service over the life of the bond) and private use (as a function of total financed facility). In essence, private use cannot exceed 10% of the facilities financed with tax-exempt bonds and private payments cannot exceed 10% of principal and interest paid over the life of the tax-exempt bonds. In the case of the Convention Center Garage, the County has preliminarily estimated that cumulative private payments over the life of the bond cannot exceed \$6.6 million (approximately) and private use cannot exceed approximately 250 spaces of the parking facility¹. As a result of bed tax funds being used to pay the debt service, Florida Statutes Section 125.0104 dictates that uses are limited to tourism-related activities. The annual operating budget is approved by the County after recommendation by the Tourist Development Council (TDC). All operational costs, including the operator's fixed fee and incentives, are funded by the bed tax. Therefore, all annual profits/deficits from Convention Center operations accrue to the County.

Food and Beverage Services Contracts Overview

The County retains contractual services to provide for food and beverage services (F&B) at the Convention Center. The current operator is Ovarions Food Services, L.P. d/b/a OVG Hospitality (Ovarions). A brief overview of the historical evolution of the F&B contract follows.

As previously stated, in 2001, the County entered into an agreement with CVB for the management of the Convention Center. Pursuant to the terms of the agreement and through an RFP, CVB selected Aramark Sports and Entertainment Services, Inc. (Aramark) to provide F&B at the Convention Center. The operating contract between CVB and Aramark provided that in the event the agreement between the County and CVB was terminated, the County would have the rights to assume the rights and obligations of the CVB in its F&B contract with Aramark. In 2007, the Board voted to terminate its Convention Center management agreement with CVB. As a result, in September 2007, the Board assumed the contract and approved an agreement (R2007-1627) with Aramark for the provision of food and beverage services at the Convention Center. On September 23, 2008, the Board approved a one-year extension of the contract (R2008-1689). On September 22, 2009, the Board approved a month-to-month extension to the contract with Aramark up to December 31, 2009 (R2009-1595) while an RFP was underway to select a new service provider. On December 15, 2009, the Board approved a six-month extension to the contract with Aramark (R2009-2169) as the RFP had to be reissued. On June 24, 2010, the Board approved a contract with Ovarions for the provision of F&B at the Convention Center for the period beginning on July 1, 2010 through September 30, 2015, with the option to renew for an additional 5-year term (R2010-096). On October 6, 2015, the Board approved the five-year extension to the contract, revising the expiration date to September 30, 2020 (R2015-1409). On June 16, 2020, the Board approved a one-year extension to the contract, revising the expiration date to September 30, 2021 (R2020-0640). On June 15, 2021, the Board approved a one-year extension to the contract, revising the expiration date to September 30, 2022 (R2021-0795).

¹ These numbers need to be further analyzed by bond counsel as other factors may affect the same and further review may be required.



In March 2022, FDO advertised RFP No. 2022-001-BZ for the provision of food and beverage operation services at the Convention Center. Three firms attended the pre-proposal meeting, only Ovation submitted a proposal. On September 13, 2022, the Board approved a contract with Ovation for an initial term of 5 years (ending on September 30, 2027), with one 5-year renewal option (R2022-0948). Included as Attachment 3 is a summary of all the F&B contracts executed for the Convention Center since its inception. Included as Attachment 4 is a summary of all fees paid to the F&B Contractor over the past ten (10) years.

Convention Center Revenues

In general and throughout the nation, convention centers operate at a deficit. This was also true for the County until 2017, the year after the Convention Center Hilton Hotel commenced operations. Since then, with the exception of the years affected by the COVID19 pandemic, the Convention Center has reported operational profits. As previously stated, since all operational costs are funded by the bed tax, all annual profits/deficits from Convention Center operations accrue to the County. Included as Attachment 5 is a summary of the Convention Center's operational revenues over the past ten (10) years.

Convention Center Second Hotel

As directed by the Board, staff proceeded with issuance of an RFP for the *Design, Development, Permitting, Construction, Operation and Maintenance of a Branded Hotel at the Palm Beach County Convention Center*. The first public notice of the RFP was published on October 1, 2023 and the second public notice was published on October 8, 2023. The RFP is available on the County's Vendors Self-Service (VSS) website. At this time, proposals will be due in January 2024. It must be noted that, under the conditions of the RFP, the County will be leveraging two key components to facilitate development of the second Convention Center hotel. First, its real estate; three County-owned sites have been identified for potential development. Second, its existing infrastructure, most notably the parking garage which was designed and built with capacity to accommodate and serve the second hotel and a future expansion of the Convention Center. Preservation of both components to ensure their availability will be paramount to ensure the success of the RFP process.

With this memo staff hopes to have conveyed a better understanding of the Convention Center operations. TDC and FDO staff remains available to provide any additional information should the Board take interest and/or deem it appropriate.

Cc: Isami C. Ayala-Collazo, Director, FDO
Emanuel Perry, Executive Director, TDC

Attachments

Attachment 1 – Summary of Operator (Global) Contracts for the Convention Center

Contract Number	Term	Fixed Fee (annual)	Incentives (annual)
R2007-1626	October 1, 2007- September 30, 2008 (original term) October 1, 2008 – September 30, 2010 (2-year renewal option exercised)	\$169,674.72 subject to annual CPI increase	5% of the Convention Center's share of operating revenues from food & beverage and parking services Incentives capped at \$100,000
R2010-1466	October 1, 2010 – September 30, 2012	\$186,060	
R2012-1047	October 1, 2012 – September 30, 2017	\$191,640 subject to annual CPI increase not to exceed 3%	Based on performance measures: financial, SBE achievement, marketing, sales and customer service Incentives capped at \$100,000 or 25% of the Annual Fixed Fee (i.e., \$47,910 during the first year)
R2017-0932	October 1, 2017-September 30, 2022 (5-year renewal option exercised)	\$203,182.92 subject to annual CPI increase not to exceed 3%	Based on performance measures: financial, SBE achievement, marketing, sales and customer service

			Incentives capped at \$100,000 or 25% of the Annual Fixed Fee (i.e., \$50,795.73 during the first year)
R2022-0407	October 1, 2022 – September 30, 2023	\$214,092 subject to annual CPI increase not to exceed 3%	Based on performance measures: financial, SBE achievement, marketing, sales and customer service Incentives capped at \$100,000 or 25% of the Annual Fixed Fee (i.e., \$53,523)
R2022-0407	October 1, 2023 – January 31, 2024	\$214,092 subject to annual CPI increase not to exceed 3%	Based on performance measures: financial, SBE achievement, marketing, sales and customer service Incentives capped at \$100,000 or 25% of the Annual Fixed Fee (i.e., \$53,523)

Attachment 2 – Summary of all Fees Paid to Operator (Global) for the Convention Center

	FY14	FY15	FY16	FY17	FY18	FY19	F20	FY21	FY22	FY23
Fixed Fee	\$191,640	\$192,789.84	\$197,416.80	\$199,983.21	\$203,182.95	\$207,856.15	\$214,091.84	\$214,091.84	\$214,091.88	\$220,514.64
Incentive Fee	\$34,943.16	\$41,951.07	\$49,995.81	\$50,795.73	\$49,365.85	\$52,951.37	\$13,380.74	\$12,000.00	\$40,000.00	**
Total	\$226,583.16	\$234,740.91	\$247,412.61	\$250,778.94	\$252,548.80	\$260,807.52	\$227,472.58	\$226,091.84	\$254,091.88	**
Incentive Fee Cap	\$40,967.84	\$49,534.20	\$49,995.81	\$50,795.73	\$51,964.05	\$52,951.37	\$53,522.97	\$53,522.97	\$53,522.97	\$55,128.66
Max. Incentive Fee Earned?	No	No	Yes	Yes	No	Yes	No	No	No	**

** Pending end of fiscal year financial reconciliation

Attachment 3 – Summary of Food and Beverage Contracts for the Convention Center

Contract Number	Term/Contractor	Fixed Fee (annual)	Incentives (annual)
R2007-1627	Aramark October 1, 2007- September 30, 2008 (original term) October 1, 2008 – September 30, 2009 (one year extension) October 1, 2010- December 31, 2009 (month-to-month extension) January 1, 2010 – June 30, 2010 (6-month extension)	\$100,000 plus 8% net profits	
R2010-096	Ovations July 1, 2010 – September 30, 2015 (original term) October 1, 2015 – September 30, 2020 (5-year renewal option) October 1, 2020 – September 30, 2021	\$62,500 (first 15-month contract period) \$50,000 (following annual periods) subject to annual CPI increase plus 7% net profits	Up to 1% on gross sales up to \$2.5M and additional up to 2% of the incremental difference in gross sales over \$2.5M no greater than \$4M County to receive \$130,000 in sponsorship funding

	(1-year extension) October 1, 2021 – September 30, 2022 (1-year extension)		
R2022-0948	Ovations October 1, 2022 – September 30, 2027	7% net profit Includes capital contribution by Ovations to be amortized over the term, same totals \$1.25M over the original term and \$500K during the renewal term	No incentive fees

Attachment 4 – Summary of all Fees Paid to F&B Contractor for the Convention Center

	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23
7% Net Profits	\$104,202.55	\$95,888.35	\$124,509.56	\$194,879.09	\$278,734.81	\$264,901.28	\$27,293	\$4,819.57	\$96,575.41	\$168,065.39
Incentive Fee	-	-	-	-	\$7,870.01	-	-	-	-	**
Total	\$104,202.55	\$95,888.35	\$124,509.56	\$194,879.09	\$286,604.82	\$264,901.28	\$27,293	\$4,819.57	\$96,575.41	**
Incentive Fee Cap	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	N/A
Max. Incentive Fee Earned?	No	No	No	No	No	No	No	No	No	N/A

** Pending end of fiscal year financial reconciliation

Attachment 5 – Summary of Convention Center’s Operational Revenues

	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23**
Net Revenue	\$471,958.41	\$407,867.34	\$1,018,866.92	\$1,603,601.85	\$2,578,890.03	\$2,112,876.11	\$1,672,992.21	(\$292,492.64)	\$1,275,181.03	\$2,079,597.67

** Projected amount, pending end of fiscal year financial reconciliation