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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jimmy L. Morales, City Manager

DATE: May 13, 2013

SUBJECT: **A DISCUSSION REGARDING THE MANAGEMENT AGREEMENT FOR THE MANAGEMENT OF THE MIAMI BEACH CONVENTION CENTER AND COLONY THEATER.**

BACKGROUND

On September 10, 2008, the City Commission approved Resolution No. 2008-26888 which approved an agreement between the City and Global Spectrum, L.P. for the Management of the Miami Beach Convention Center, Colony Theater, and Byron Carlyle Theater. The Agreement was for an initial three (3) year term commencing on October 1, 2008, and ending on September 30, 2011, with two (2) one-year renewal options, exercisable with ninety (90) days prior written notice, at the sole and absolute discretion of the City. Please note that on April 15, 2011, the City terminated Global Spectrum's rights and responsibilities with respect to the operation and management of the Byron Carlyle Theater following the City Commission's approval of a management agreement with Broward Stage Door Theater.

The Base Management Fee in the first year was \$275,000 (plus incentive that cannot exceed an amount equal to 100% of the base fee; capped at greater of CPI or 3%). Global Spectrum also provided the City with the following contributions:

- Capital contribution (one-time) = \$375,000
- Scholarship contribution (annual) = \$ 12,500

Net Performance Improvement

Pursuant to the Agreement, Global Spectrum guaranteed a Net Performance Improvement, which is defined as the "Required Improvement" on the Fiscal Year (FY) 08/09 budgeted net deficit of \$1,492,134 (which includes both the FY08/09 budgeted net operating deficit and includes Executive Salaries and Benefits). As per the Agreement, the Required Improvement over the net deficit of \$1,492,134 for each Contract Year is as follows:

- FY 08/09 = \$ 500,000 (or a resulting net operating loss of \$992,134)
- FY 09/10 = \$1,000,000 (or a resulting net operating loss of \$492,134)
- FY 10/11 = \$1,500,000 (or a resulting net profit of \$7,866)

On March 1, 2010, the City Commission adopted Resolution No. 2010-27372, which approved an amendment to the Agreement adjusting the Net Performance Improvement by \$50,301.20 in each year due to a an interest shortfall credit which resulted from the City's requirement for Global Spectrum to change banking institutions. The requirement for Global Spectrum to make a \$500,000, \$1,000,000 and \$1,500,000 improvement over the net deficit did not change. The adjustment is only to the starting net deficit amount. For example, this Amendment changed the Required Improvement over the net deficit of \$1,542,435 (instead of \$1,492,134).

In the first year of the initial Term, to the extent the actual improvement achieved in the Fiscal Year was less than the Required Improvement, as set forth above, the City could draw against a required \$500,000 Letter of Credit (LOC) provided by Global for any difference between the Required Improvement and the actual improvement. The contract also allows Global to bank or apply any excess improvement from year one to any shortfall of their required improvement in year two (up to the value of their Incentive Pay). The Line of Credit provides a venue for the City to collect if there are subsequent shortfalls on their Required Improvements.

Following the end of FY 2009, Global Spectrum paid the City \$76,897, which represents the shortfall from the "Required Improvement." This also included uncollected bad debt. In FY 2010 Global Spectrum surpassed the "Required Improvement" by \$214,445. Over the first two years of the Agreement, Global Spectrum reduced the operating loss of the MBCC by \$1,214,445. In FY 2012 the Convention Center generated an operating profit of \$21,821, which is only the second time in the history of the facility that an operating profit was produced. The Operating Loss for the current Fiscal Year is projected to be \$872,955 as of second quarter projections.

FY 2010/11 Global Spectrum was not able to meet the net performance guarantee and was required to pay the City \$500,000, plus the earned annual incentive fee. As previously stated, Global was required to achieve an annual Net Performance Improvement as specified in the Agreement. As a penalty for not achieving the annual improvement, the City could draw against the \$500,000 Letter of Credit (LOC) provided by Global for any difference between the Required Improvement and the actual improvement. In the final year of the Agreement, if the LOC does not cover the shortfall, the City can draw against the earned Incentive Fee from that Fiscal Year. Global is not responsible for any additional shortfall beyond the LOC and Incentive Fee.

The City has agreed to use these funds on mutually agreed upon improvements to the Facility.

New Messe Schweiz Show

As you may recall, the Management Agreement also has a requirement for Messe Schweiz (M.S.), in partnership with Global Spectrum, within the initial term and subject to the existing booking policies and commercial viability to do the following:

1. Use best efforts to book and actualize, one (1) M.S. owned show or event during the initial term of the Agreement.
2. Use best efforts to book and actualize during the initial term of the Agreement, which can occur after the initial Term, one (1) (non-M.S. owned) international show or event.

Global Spectrum provided a Corporate Guarantee, on behalf of M.S., for \$275,000 for the City to draw upon if, notwithstanding M.S. "best efforts," as provided for in the Management Agreement, M.S. failed to book and actualize shows or events as required. The March 2010 Amendment gave Global Spectrum until the end of the third contract year (September, 30, 2011) to book and actualize one M.S. produced/owned show or event before the \$250,000 Guarantee is due to the City.

Global and M.S. were to also book, during the initial Term, one non-M.S. produced/owned international show or event, or an additional \$25,000 is due to the City. This show or event may be actualized at any time up to 24 months following the end of the Term if, during such period, the Corporate Guarantee provided by Global to secure this obligation remains in effect, unaffected by the termination or expiration of this Agreement.

As required, in 2011 Global Spectrum booked and actualized a Messe Schweiz owned show (Animalia) during the initial term of the Agreement. Animalia was successful in its first year and will recur annually. Global also booked a non-M.S. international show for 2012. Additionally, Global Spectrum, in partnership with Messe Schweiz (MCH), developed new collateral material, which outlines the business industry and related selling points strictly devoted to the European market. MCH also launched additional web pages within their website that includes sales brochures and additional information regarding the MBCC and the destination.

Other Operational Highlights

Global Spectrum officially assumed management responsibility for the Miami Beach Convention Center (MBCC), Colony Theatre and Byron Carlyle Theater on October 1, 2008. Global originally successfully transitioned 63 of the 77 full-time employees (81%). The transition of management was seamless and without any interruption to services.

The following is a summary of events and attendance during Global Spectrum's management:

<u>Events</u>	<u>Attendance</u>
FY 08/09: 108	FY 08/09: 632,700
FY 09/10: 103	FY 09/10: 708,750
FY 10/11: 119	FY 10/11: 661,625
FY 11/12: 128	FY 11/12: 661,327

The "Green" Initiatives implemented by Global Spectrum included the "Step Up" program (logos placed on light switches and computers reminding employees to reduce energy when not in use); programming of major mechanical control functions for energy reduction; single stream recycling program; and the purchasing of green janitorial cleaning supplies, toilet tissue, paper towels and hand soap. They worked closely with Centerplate to ensure that they are utilizing recyclable products in regards to utensils, disposable plates and paper products. This effort has already yielded significant results.

On September 14, 2011, the City Commission adopted Resolution No. 2011-27728 extending the Management Agreement for an additional two (2) years.

The following is a summary of the contract amendment included in the renewal:

1. Eliminate the Net Performance Improvement and guarantee. The requirement for Global Spectrum to make a \$500,000 (year 1), \$1,000,000 (year 2) and \$1,500,000 (year 3) improvement over the net deficit was based on the 2008-09 SMG Budget as the measure of Global Spectrum's performance. After operating the facility for three (3) years, both parties agreed that Global should only guarantee its own annually City-approved budget. To that end, however:
 - a. If Global misses the City-approved budget Net Operating Profit/Loss by 5%, Global will rebate to the City \$.50 of each \$1.00 in Incentive Fee they earned, capped at an amount not to exceed 50% of the Incentive Fee earned in any given fiscal year; and
 - b. Global Spectrum will be required to rebate Incentive Fee only in the case where failure to achieve the City-approved budget Net Operating Profit/Loss by 5%, is due to reasons that are under Global Spectrum's control. Such as: bookings for conventions, tradeshow and corporate events within 24 months and day-to-day

maintenance of the facility and its infrastructure. Items beyond Global Spectrum's control include capital improvements due to storms or various acts of God and new operating or maintenance requirements imposed by the City after the current year's budget is approved.

2. Global Spectrum has met their obligation to book and actualize a Messe Schweiz owned show (Animalia) during the initial term of the Agreement. The partnership between Global and Messe Schweiz will continue for international sales efforts, as well on-going participation on the Executive Management Committee. The \$25,000 Guarantee for the non-M.S. owned show remained in effect.
3. The Incentive Fee allows Global to earn up to 100% of the base Management Fee if certain criteria are achieved. Both parties agreed the Incentive Fee is complicated and should be simplified. Negotiated changes to the Incentive Fee included customer satisfaction (30 points), financial performance (50 points), maintenance and capital improvements (15 points) and discretionary (5 points).

Global Spectrum was awarded the contract in 2008 following a competitive bid process and has managed the convention center since October 2008. The current agreement between the City and Global Spectrum does not have any additional renewal provisions. On December 12, 2012, the City Commission passed a motion made by Commissioner Weithorn authorizing the City Administration to negotiate with Global Spectrum for a new Management Agreement instead of proceeding with a Request for Proposals.

The following summaries the Net Operating Income, actual vs. budget, for the Convention Center during Global Spectrum's management tenure:

	Net Operating Income/(Loss) ACTUAL	Net Operating Income/(Loss) BUDGET	Variance Over/(Under)
FY 2008/09	(\$1,335,173)	(\$1,624,384)	(\$289,211)
FY 2009/10	(\$185,195)	(\$164,135)	\$21,060
FY 2010/11	(\$937,811)	(\$868,313)	\$269,498
FY 2011/12	\$21,821	(\$493,284)	(\$471,463)
FY 2012/13 (Projected) as of 2 nd qtr	(\$872,955)	(\$1,143,404)	(\$270,449)

* Please note: Net Operating Income does not include transition costs or non-operating (City) revenues or expenses that are part of the MBCC Enterprise Fund.

The following chart details the payments made to and from Global Spectrum during the first four (4) years of the agreement, as well as projections for the current, and final, year.

Payments to Global Spectrum	Actual 2008/09	Actual 2009/10	Actual 2010/11	Actual 2011/12	Projected 2012/13
MBCC	\$ 241,600.00	\$ 241,600.00	\$ 244,257.60	\$ 251,585.33	\$ 259,132.89
Colony	\$ 16,700.00	\$ 16,700.00	\$ 16,883.70	\$ 17,390.21	\$ 17,911.92
Byron	\$ 16,700.00	\$ 16,700.00	\$ 9,848.86	-	-
Incentive****	\$ 148,500.00	\$ 140,250.00	-	\$ 248,802.37	\$ 254,881.22
Total	\$ 423,500.00	\$ 415,250.00	\$ 270,990.16	\$ 517,777.91	\$ 531,926.03

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Payments to CMB	Actual 2008/09	Actual 2009/10	Actual 2010/11	Actual 2011/12	Projected 2012/13
Performance Guarantee	\$ 76,897.00	\$ -	\$ 646,334.69		
Capital	\$ 375,000.00				
Scholarship	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00
Total	\$ 387,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00

- FY 08/09 the Incentive Fee was equal to 54% of Base Fee; FY 09/10 there was no CPI Adjustment in, and the Incentive Fee was equal to 51% of Base Fee; FY 10/11 there was a 1.1% CPI Adjustment; Incentive Fee was equal to at 54%; Performance Guarantee was not achieved the Incentive was forfeited; FY 11/12 - CPI Adjustment was 3%; Incentive Fee is projected at 92%; FY 12/13 - CPI Adjustment is estimated at 3%; Incentive Fee is projected at 92%.

Following negotiations between the Administration and Global Spectrum, the attached Term Sheet is presented for your review and consideration.

JLM/KGB/MAS

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PRELIMINARY TERM SHEET (DRAFT #4)
Management Agreement for the
Miami Beach Convention Center and Colony Theater
Between the City of Miami Beach and Global Spectrum (Global)
Date: May 9, 2013

TERM	
1. Form of Agreement	Management Agreement.
2. Facilities covered under Agreement	Miami Beach Convention Center (MBCC), and Colony Theater (Colony). Collectively, aforesated may also be referred to as the Facilities.
3. Term	Three (3) year initial term commencing on October 1, 2013, and ending on September 30, 2016. A "contract year" shall be defined as the period from October 1 through September 30 of the following year (coinciding with the City's Fiscal Year).
4. Renewal Options	One (1) two (2) year renewal option, exercisable with ninety (90) days prior written notice, at the sole and absolute discretion of the City Manager. City Manager, at its sole discretion, may elect to exercise both options at the same time.
5. Management Fee	\$258,300 per year, escalating by Consumer Price Index – All Urban Consumers (CPI-U) – U.S. City Average, but not to exceed (capped at) 3%. Management fee will be allocated to each facility as follows: <ul style="list-style-type: none"> • Miami Beach Convention Center: \$241,600 • Colony Theater: \$16,700 <p>This reflects the original fees for the Convention Center and Colony Theatre.</p> <p>This will save the City over \$80,000 over the 5 year term of the agreement.</p>
6. Capital Contribution and improvements	\$200,000, payable within thirty (30) days of contract execution. Capital contribution will be used as determined by City, in its sole discretion. Capital contribution will be amortized on a straight-line, non-cash basis over five years. No repayment of unamortized portion if termination for cause. Global Spectrum (Global) to participate at corporate level, including the facility's General Manager (as MBCC stakeholder) on discussions relating to proposed MBCC expansion/improvements.
7. Scholarship Contribution	\$12,500 per year, payable within thirty (30) days of contract execution and, thereafter, within thirty (30) days of commencement of each contract year.
8. Incentive Fee	1. A total of up to twenty-five (25) percentage points will be awarded based on the average survey score for each of the following ten (10) departments (Global shall be awarded up to 2.5 points per department, for a total possible score of 25): <ul style="list-style-type: none"> - Sales - Event Management - Operations

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	<ul style="list-style-type: none"> - Food & Beverage - IT/Telecommunications - Audio Visual - Valet Parking Services - Business Center - Visit Miami Beach - Fire Inspector <p>If a department's average survey score is 93% or higher, Global shall be awarded 2.5 points for such department (out of 25)</p> <p>If a departments' average survey score is from 90% to 92.99%, Global shall be awarded 1 point for such department (out of 25)</p> <p>If a departments' average survey score is less than 90%, Global shall be awarded 0 points for such department (out of 25)</p> <p>Survey instrument administered by independent third party jointly selected by City, GMCVB and Global Spectrum.</p> <p>2. A total of up to five (5) percentage points will be awarded based upon the percentage of completed customer satisfaction surveys (which survey form shall be subject to the prior written approval of the City Manager) out of total potential surveys (of which there shall be one per Event) received from all Events that use the Facilities as detailed below:</p> <table data-bbox="649 1050 1218 1207"> <tr> <td>70% completed</td> <td>5 points</td> </tr> <tr> <td>65% completed</td> <td>3 points</td> </tr> <tr> <td>55% completed</td> <td>1 points</td> </tr> <tr> <td>Less than 55%</td> <td>0 points.</td> </tr> </table> <p>3. Financial Performance: A total of up to fifty (50) percentage points will be awarded based upon the percentage of annual Gross Operating Revenue generated as detailed below</p> <ul style="list-style-type: none"> • \$17.50M > revenue = 50 points • \$17.25 - \$17.499M = 35 points • \$17.00 - \$17.249M = 25 points • < \$16.99M = 0 points <p>4. Maintenance and Improvement of Facility and its Capital Equipment. A total of up to fifteen (15) percentage points will be awarded if Global has met or exceeded the maintenance standards set forth in the Agreement (including, without limitation, the Comprehensive Preventive Maintenance Program and maintenance of Capital Equipment, as may be amended from time to time during the Term by the City). The City Manager's evaluation pursuant to this subsection shall also, without limitation, take into account the annual review by the City's Property Management Division and/or a yearly review by an outside independent consultant retained by the City Manager.</p> <p>5. Discretionary. A total of up to 5 percentage points may be awarded, as determined by the City, in its sole and absolute discretion. The City</p>	70% completed	5 points	65% completed	3 points	55% completed	1 points	Less than 55%	0 points.
70% completed	5 points								
65% completed	3 points								
55% completed	1 points								
Less than 55%	0 points.								

TERM	
	<p>may take into account, but not be mandated by, the following: community involvement; extraordinary quantifiable and measurable creative initiatives that directly result in Global securing new City-wide business for the City of Miami Beach during the off season period; and/or demonstration and integration of new strategic Global corporate resources to the benefit of the tourism and/or cultural community of Miami Beach; and/or development of new or enhanced revenue streams for Facility use and services.</p> <p>**If the City elects to proceed with the Convention Center Expansion and Enhancement Project, the Incentive Fee criteria must be revisited and prior to the re-opening of the expanded and enhanced Convention Center.</p>
<p>9. Messe Schweiz (M.S.) Participation/Obligations</p>	<p>Global and M.S. are engaged in ongoing discussions regarding this and this section is pending future discussions.</p>
<p>10. Public Benefits</p>	<p>Global Spectrum will continue to produce a minimum of three (3) dances each year targeted to City of Miami Beach senior citizens.</p>
<p>11. Food and Beverage Oversight</p>	<p>The City Manager shall require that, during the Term of this Agreement, a member of Global's Executive Level Employees, have food & beverage experience and be charged (among his/her duties) with supervising, monitoring and ensuring consistent performance, quality standards, and compliance with the City's agreement with the City's Food and Beverage provider;</p>
<p>12. Marketing and Promotion</p>	<p>Global to continue following marketing and promotional obligations (as part of Global's comprehensive approach to marketing the Facilities):</p> <ol style="list-style-type: none"> 1) Global to continue to provide continuously during the Term hereof, an in-house ad-agency capability to place Event-related advertising. 2) Global to provide a report on sales and marketing efforts, as provided for in Section 6.3. 3) Global to develop an advertising buy program that will offer preferred (discount) pricing for each Facility's users on select Comcast services including, without limitation: <ol style="list-style-type: none"> A. In-market ROS advertising on Comcast channels; B. On Demand; C. Comcast.net; and D. Cross-channel marketing opportunities. 4) Global to provide assistance in obtaining discount pricing for advertising buys for the City and Facility users in out-of-market Comcast service areas. 5) Global to secure CNN Headline News Comcast - "Newsmakers" for Facilities including, without limitation: <ol style="list-style-type: none"> A. A minimum of four (4) "Newsmaker" shows per Contract Year during the Term hereof. Each "Newsmaker" show shall consist of a five (5) minute interview format of approximately 21 airings during a one-week period (42 total times per month) on CNN Headline News; and B. Segments provided to the Convention Center, to be used by the City and Convention Center users.

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	<p>C. Best efforts to secure additional Newsmaker show opportunities.</p> <p>6) Global to secure Comcast Bill Envelope Messaging including, without limitation:</p> <p>A. A minimum of two (2) times per Contract Year, the City or Convention Center users shall be provided with the ability to send messaging to Comcast subscribers in Miami-Dade, Broward and Monroe Counties on the monthly Comcast Bill Envelope (900,000 bills per month); and</p> <p>B. Best efforts to secure additional Comcast Bill Envelope Messaging opportunities.</p> <p>7) Global to secure Comcast Bill Messaging including, without limitation:</p> <p>A. A minimum of four (4) times per Contract Year, the City or Convention Center users will be provided the ability to send messaging to Comcast subscribers in Miami-Dade, Broward and Monroe Counties on the monthly Comcast Bill (900,000 bills per month); and</p> <p>B. Best efforts to secure additional Comcast Bill Messaging opportunities.</p>
<p>13. Net Operating Profit Guarantee</p>	<p>For any Contract Year, if the actual Net Operating Profit or Net Operating Loss achieved is unfavorable as compared to the Approved Budget by a margin of greater than Fifty Thousand Dollars (\$50,000), then the Incentive Fee earned by Global for such Contract Year shall be reduced by fifty cents (\$.50) for every dollar of Shortfall, up to the Cap.</p> <p>For purposes of this subsection, "Shortfall", with respect to any Contract Year, shall mean either (i) if the Approved Budget reflects a projected Net Operating Profit, the amount by which the Net Operating Profit projected in the Approved Budget exceeds the actual Net Operating Profit in such year by more than Fifty Thousand Dollars (\$50,000); or (ii) if the Approved Budget reflects a projected Net Operating Loss, the amount by which the actual Net Operating Loss in such year exceeds the Net Operating Loss projected in the Approved Budget for such year by more than Fifty Thousand Dollars (\$50,000). The "Cap" shall mean fifty percent (50%) of the Incentive Fee actually earned by Global in the applicable Contract Year. Notwithstanding the foregoing, the Incentive Fee shall not be reduced to the extent Global's failure to achieve the applicable benchmark is due to reasons outside Global's reasonable control, such as a Force Majeure affecting the Facility, or new operating or maintenance requirements imposed by the City after finalization of the Approved Budget (The parties acknowledge that items within Manager's control may include, but are not limited to, bookings for conventions, tradeshow and corporate events 24 months and in, and day to day routine maintenance of the Facility)."</p>
<p>14. Other</p>	<p>ALL OTHER TERMS AND CONDITIONS OF THE CURRENT MANAGEMENT AGREEMENT SHALL REMAIN IN EFFECT.</p>

