City of Las Cruces®

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Council Action and Executive Summary

Item # 10 Ordinance/Resolution# 14-058

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of September 16, 2013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A SETTLEMENT OF DISPUTED CLAIMS PURSUANT TO THE PRE-OPENING AND MANAGEMENT AGREEMENT AND TERMINATING SAME BY ENTERING INTO A MANAGEMENT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND GLOBAL SPECTRUM, LP FOR THE OPERATIONS OF THE LAS CRUCES CONVENTION CENTER.

PURPOSE(S) OF ACTION:

To approve a settlement of disputed claims and approve a new agreement.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: David Dollahon	**Department/Section:** Community & Cultural Services/Administration	**Phone:** 575-528-3060
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On October 6, 2008, the City Council approved Resolution 08-09-429, whereby authorizing the City to enter into a Pre-Opening Services and Management Agreement with Global Spectrum, LP, a Delaware Limited Partnership (Global) for the Las Cruces Convention Center.

As part of the City's on-going tourism and convention efforts through the Convention and Visitors Bureau, staff have been monitoring the performance of Global and has expressed concern and offered direction related to generating out-of-town business through the convention center. Much of this concern and direction did not appear to be addressed. The original agreement with Global was for five years; however, given the lack of responsiveness, the City provided Global with an intent to utilize the agreement's "early out" provision (i.e. 60 day notice to terminate the agreement prior to the third anniversary of the convention centers' opening). The City staff spent the latter part of FY2013 evaluating Global's responsiveness and the processes for the City to officially sever the agreement between the two parties. However, City Manager Robert Garza took opportunity in early July 2013 to disclose to Global the City's concerns and to again identify areas of dispute. As such, Global has offered and the City staff has negotiated a

(Continue on additional sheets as required)

settlement to the disputed items and agreed to enter into a new management agreement between the two parties, thus requiring City Council approval.

Within the new management agreement, the City and Global have agreed to the following:

1) Implementation of a new marketing plan that focuses on out-of-town business;
2) Creating a booking guidelines that rank and hierarchy preferences in scheduling events, with priority to conventions and trade shows;
3) Updates to the management and incentive fees;
4) Adopting new financial reporting mechanisms from Global to the City, including specific dates for new budgets and audit reports;
5) Clarification on reporting requirements and operational issues;
6) Accepting an initial term for the management agreement through FY2014 (June 30, 2014), with an additional five, one-year options for continued management by Global with a 120-day termination clause by the City at any time throughout the additional one-year option periods.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Amended agreement.
3. Attachment "A", Amended agreement shown in legislative format from previous agreement.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: ____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
N/A	Yes	☐	Funds will be deposited into this fund: ____in the amount of ___ for FY____.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

(Continue on additional sheets as required)

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; and approve the Resolution, thus settling the disputes between the City and Global related to the operations of the Las Cruces Convention Center and adopting a new management agreement as part of the settlement to the disputes.
2. Vote "No"; this will not approve the Resolution, thus allowing the disputes between the City and Global to remain as it relates to the operations of the Las Cruces Convention Center and limiting the City's ability to resolve issues with Global without the potential for litigation and requiring the City to allow Global to operate the convention center through the original term of the agreement (June 30, 2015).
3. Vote to "Amend"; this will require direction from Council to staff on how to proceed and could result in litigation between the parties and not address the issues of the operations of the convention center.
4. Vote to "Table"; this will require direction from Council to staff on how to proceed and could result in litigation or delays that prevent any other options for terminating the original agreement with Global.

REFERENCE INFORMATION:

1. Resolution No. 08-09-429.

(Continue on additional sheets as required)

RESOLUTION NO. 14-058

A RESOLUTION APPROVING A SETTLEMENT OF DISPUTED CLAIMS PURSUANT TO THE PRE-OPENING AND MANAGEMENT AGREEMENT AND TERMINATING SAME BY ENTERING INTO A MANAGEMENT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND GLOBAL SPECTRUM, LP FOR THE OPERATIONS OF THE LAS CRUCES CONVENTION CENTER.

The City Council is informed that:

WHEREAS, the Las Cruces Convention Center has been operated by Global Spectrum, LP, a Delaware Limited Partnership (Global Spectrum) since its opening in December 2010, under a Pre-Opening Services and Management Agreement approved by City Council on October 6, 2008 under Resolution 08-09-429; and

WHEREAS, under the original agreement between the City and Global Spectrum, the City has the right to terminate the agreement on the third anniversary of the opening in accordance with the original agreement's conditions or for other qualifying reasons; and

WHEREAS, the City has evaluated the operations of the Las Cruces Convention Center by Global Spectrum and had proposed to take the necessary steps to sever the original agreement between the two parties; and

WHEREAS, the City and Global Spectrum, in order to resolve disputed claims between the parties related to the Las Cruces Convention Center's management and for continued, efficient long-term operations of the Las Cruces Convention Center, have agreed, through mutual consent, to enter into an amended agreement, effective as of October 1, 2013.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the Settlement of Disputed Claims Pursuant to a Pre-Opening Services and

Management Agreement and Terminating Same by Entering Into a Management Agreement, between the City of Las Cruces and Global Spectrum, as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT the City Manager is hereby authorized to sign the agreement between the City and Global Spectrum on the City's behalf.

(III)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this_____ day of _____, 2013.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by _____

Seconded by _____

APPROVED AS TO FORM:

_____
City Attorney

SETTLEMENT OF DISPUTED CLAIMS PURSUANT TO A PRE-OPENING SERVICES AND MANAGEMENT AGREEMENT AND TERMINATING SAME BY ENTERING INTO A MANAGEMENT AGREEMENT.

This Management Agreement (this "**Agreement**") is made as of the 1st day of October, 2013 ("**Effective Date**"), by and between the City of Las Cruces, New Mexico, a home rule municipality ("**Owner**"), and Global Spectrum, LP, a Delaware limited partnership ("**Manager**").

RECITALS

1. The Owner owns a convention center in the City of Las Cruces known as the Las Cruces Convention Center (the "**Facility**");

2.

a. Owner and Manager are parties to that certain Pre-Opening Services and Management Agreement dated October 1, 2008, pursuant to which Owner engaged Manager to provide certain pre-opening services and to manage and operate the Facility ("Original Agreement").

b. Various disputes and controversies have arisen between the parties under the Original Agreement and the parties desire to resolve all disputes thereunder and by so doing terminate it effective as of September 30, 2013 and in its place and stead enter into this Agreement.

3. Owner and Manager intend that Manager continue to manage and operate the Facility pursuant to this Agreement, and that this Agreement shall supersede and replace the Original Agreement as of the Effective Date herein; and to avoid further disputes and to resolve various issues between the Owner and the Manager; and

4. All references to "the Facility" in this Agreement shall be deemed to include, and Manager's duties hereunder shall cover, the entire facility complex, including but not limited to the building, meeting rooms, common areas, lobby areas, executive and other offices, storage and utility facilities, and the entrances, grounds, sidewalks and parking areas surrounding the Facility and adjacent thereto.

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 acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1
SCOPE OF SERVICES

Section 1.1. Engagement.

(a) Owner hereby engages Manager to act as the sole and exclusive manager and operator of the Facility, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described in Exhibit A attached hereto.

(b) Manager hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement and in the Global Spectrum's Las Cruces Convention Center Operations Manual, as defined herein.

Section 1.2 Lease of Liquor License. The parties recognize that under the Original Agreement, Owner applied for a governmental liquor license pursuant to § 60-6A-101, NMSA, 1978, as amended, and that Owner leased to Manager, as a part of the Original Agreement, the liquor license, to be used exclusively for the operation of the Facility. The parties agree that Owner shall maintain such liquor license, and the parties shall maintain such lease agreement, for the duration of this Agreement. Manager agrees to maintain a qualified employee to serve as the designated representative to meet the requirements for issuance and maintenance of the license. Manager agrees that all activities by Manager associated with the operation of the license shall strictly conform to New Mexico law and the regulations of the New Mexico Alcohol and Gaming Division of the New Mexico Regulation and Licensing Department. All income and proceeds derived from alcohol sales shall be considered "Revenue" and shall be deposited as provided in Section 9.2.

Section 1.3 Contingency. Manager's obligations under this Agreement are contingent upon and subject to the Owner making available, in a timely fashion, the funds budgeted for and/or reasonably required by Manager to carry out such obligations during the Term. Manager shall not be considered to be in breach or default of this Agreement, and shall have no liability to the Owner or any other party, in the event Manager does not perform any of its obligations hereunder due to failure by the Owner to timely provide such funds.

Section 1.4 Owner's Authorization of Expenditures. Notwithstanding any provisions of this Agreement to the contrary, the terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the City of Las Cruces for the performance of this Agreement for subsequent fiscal years. If sufficient appropriations and authorizations are not made by the City Council for a subsequent fiscal year, this Agreement shall be terminated at the end of the then current budget year. The Owner is expressly not committed to the expenditure of funds until such time they are programmed, budgeted, and encumbered, for expenditures by the Owner; provided that any sums properly committed by Manager hereunder prior to being advised that such funds may not be budgeted, encumbered or approved shall nevertheless be payable by the Owner. The Owner's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

ARTICLE 2
COMPENSATION

Section 2.1 Management Fee. As consideration for the performance of Manager's obligations hereunder as set forth throughout this Agreement, including those duties described on Exhibit A hereto, and for the corporate support and oversight provided by Manager in performing these functions, the Owner shall pay Manager a fixed management fee ("**Fixed Management Fee**"), which from the Effective Date to June 30, 2014 shall be Eight Thousand Three Hundred Thirty-Three Dollars and 33 cents ($8,333.33) per month. As part of the settlement of disputed claims between the Owner and the Manager, the Manager agrees that the Fixed Management Fee under the Original Agreement for the months of August and September, 2013 shall, retroactively, be $8,333.33 per month for a total of $16,666.66, and any additional amounts paid to Manager in those months for the Fixed Management Fee shall be refunded by Manager to Owner and shall be paid by October 1, 2013. If this Agreement is extended beyond June 30, 2014, the Fixed Management Fee for each subsequent Operating Year (beginning with July 1, 2014) shall be increased over the fee from the previous year by the percentage increase in the Consumer Price Index for the local City of Las Cruces area, as published by the United State Department of Labor, Bureau of Labor Statistics or such other successor or similar index. The Fixed Management Fee shall be payable monthly to Manager in arrears, on the 30th day of each month of the Term (prorated as necessary for any partial months). Manager shall be entitled to pay itself such amount from the Operating Account, in accordance with Section 8.1 of this Agreement.

Section 2.2 Incentive Fee. In addition to the Fixed Management Fee, Manager shall be entitled to receive an Incentive Fee on account of each Operating Year of the Term, except that the Owner shall not pay to Manager an Incentive Fee for the 2013-14 Operating Year. The parties, in good faith, shall discuss the structure and criteria of the Incentive Fee, with the goal of agreeing on such structure and criteria for determining the Incentive Fee no later than January 31, 2014 which, once agreed, shall apply to the year commencing July 1, 2014. The parties shall thereafter seek to agree on the structure and criteria for the Incentive Fee by January 31st prior to each succeeding Operating Year, which, once agreed upon, shall be applied to such subsequent years. Notwithstanding anything to the contrary contained herein, in no event shall the Incentive Fee for any Operating Year exceed the Fixed Management Fee for such Operating Year. The Incentive Fee due to Manager for each Operating Year shall be paid to Manager within 30 days following completion of the year-end audit for such Operating Year; but in no event later than 120 days following the year-end.

Section 2.3 Commericial Rights Commission. The Manager shall have no rights to receive any Commercial Rights Commissions for or in the Facility. The Owner retains the exclusive right to sell Commercial Rights for the facility and to obtain Commercial Rights Commisions for or in the Facility.

ARTICLE 3
TERM; TERMINATION

Section 3.1 Term.

(a) The initial term ("**Initial Term**") of this Agreement shall begin on October 1, 2013, though signed on different dates, and, unless sooner terminated pursuant to the provisions of Section 3.2 below, shall expire on June 30, 2014.

(b) Owner may thereafter extend the Initial Term for five (5) successive one (1)-year periods, each beginning on July 1 and ending on the following June 30, provided Owner has given Manager written notice of each such extension no later than ninety (90) days in advance of the date on which such extension would take effect.

(c) The Initial Term plus any such extension periods is referred to herein as the "**Term**". The period of time beginning on October 1, 2013 and ending on June 30, 2014, and each successive twelve (12) month period beginning on July 1 during the Term shall be referred to herein as an additional "**Operating Year**".

(d) Prior to the end of the term, at the request of either the Owner or the Manager, the parties shall engage in good faith discussions regarding a new agreement for the management and operation of the facility following the end of the Term. This requirement to discuss and negotiate terms for a new management agreement shall not obligate either party to commit to any such new agreement or to the terms of any such new agreement.

Section 3.2 Termination.

(a) This Agreement may be terminated, (i) if the Term was initially extended by Owner beyond June 30, 2014, by Owner without cause at any time after July 1, 2014, provided that Owner has given Manager at least one hundred twenty (120) days prior written notice of such termination, or (ii) by either party upon thirty (30) days written notice, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions hereof, and such failure is not cured during such thirty (30) day notification period.

(b) In the event this Agreement expires or is terminated prior to the end of the Term, the Owner shall, in addition to all other amounts due to Manager hereunder, reimburse Manager for any actual ordinary and necessary expenses incurred by Manager in withdrawing from the provision of services hereunder in connection with such termination. The exact amount of such ordinary and necessary expenses shall be negotiated at the time of termination but the parties specifically agree that they shall include the reasonable costs actually incurred by Manager due to termination or assignment of contracts, leases, licenses and other agreements entered into by Manager pursuant to this Agreement. The Owner's payment of such expenses will occur only after Manager has provided reasonable evidence of the incurrence of such expenses. Except for reimbursement of the above stated expenses and payment of all accrued fees, Manager shall have no right or remedy, at law or in equity, against Owner for a termination permitted by this Agreement.

(c) Upon termination or expiration of this Agreement for any reason, Manager shall (i) promptly discontinue the performance of all services hereunder, (ii) deliver or otherwise make available to the Owner all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facility as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process, and (iii) assign to the Owner all contracts or leases entered into by Manager in furtherance of its duties hereunder, who shall accept such contracts and perform all obligations thereunder following the expiration or termination date.

ARTICLE 4
OWNERSHIP; USE OF THE FACILITY

Section 4.1 Ownership of Facility, Data, Equipment and Materials. The Owner will at all times retain ownership of the Facility, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Facility. Any data, equipment or materials furnished by the Owner to Manager or acquired by Manager as an Operating Expense and paid for by Owner, to be used at the Facility, shall remain the property of the Owner, and shall be returned to the Owner when no longer needed by Manager to perform under this Agreement. Notwithstanding the above, Owner shall not have the right to use any third party software licensed by Manager for general use by Manager at the Facility and other facilities managed by Manager, the licensing fee for which is proportionately allocated and charged to the Facility as an Operating Expense; such software may be retained by Manager upon expiration or termination hereof provided that the Facility data contained in such software shall be provided to Owner in an electronic format that can be accessed without the proprietary licensed software.

Section 4.2 Right of Use. The Owner hereby gives Manager the right and license to use the Facility, and Manager accepts such right of use, for the purpose of performing the services herein specified, including the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance and management of the Facility. The Owner shall provide Manager with a sufficient amount of suitable office space in the Facility and with such office equipment as is reasonably necessary to enable Manager to perform its obligations under this Agreement. In addition, the Owner shall make available to Manager, at no cost, parking spaces adjacent to the Facility for all of Manager's full-time employees and for the Facility's event staff.

Section 4.3 Observance of Agreements. The Owner agree to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any leases, bonds, debentures, loans and other financing and security agreements to which the Owner is bound in connection with its ownership or useof the Facility.

Section 4.4 Use by the Owner. Subject to availability, the Owner shall have the right to use the Facility or any part thereof rent-free for meetings, seminars, training classes or other non-commercial uses, provided that Owner shall promptly reimburse Manager, for deposit into the Operating Account, for any out-of-pocket expenses incurred by Manager (such as set-up and take-down personnel, security expenses and other expenses) in connection with such use. Such non-commercial use of the Facility by the Owner shall not compete with, nor conflict with; paying events booked by Manager, and shall be booked in advance upon reasonable notice to Manager. Upon request of the Owner, Manager shall provide to the Owner a list of available dates for Owner use of the Facility.

Section 4.5 Use by NMSU. Owner is a party to a Ground Lease Agreement dated March 12, 2007 (the "**Ground Lease**") with the Regents of New Mexico State University ("**NMSU**"), which Ground Lease allows for seven (7) rent-free uses of the Facility per year as well as a discounted rate for additional meetings. Manager agrees to honor the terms of the Ground Lease regarding such uses.

ARTICLE 5
PERSONNEL

Section 5.1 Generally. All Facility staff and other personnel shall be engaged or hired by Manager, and shall be employees, agents or independent contractors of Manager (or a subsidiary or affiliate thereof), and not of the Owner. Manager shall select, in its sole discretion, the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel, so long as said personnel expenses are within the approved Operating Budget.

Section 5.2 General Manager. Personnel engaged by Manager will include an individual with managerial experience in similar facilities to serve as a full-time on-site general manager of the Facility (the "**General Manager**"). The General Manager will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Facility, supervision of employees, and management and coordination of all activities associated with events taking place at the Facility.

Section 5.3 Non-Solicitation. During the Term and for a period of one (1) year after the end of the Term, Owner shall not solicit for employment, or encourage to cease rendering services to Manager, any management-level employee of Manager with whom the Owner has had dealings by virtue of the engagement of Manager hereunder, including the General Manager, Assistant General Manager, Business Manager or any department head. In the event Owner breaches or threatens to breach this Section 5.3 with respect to any such employee of Manager, Owner shall be entitled to equitable relief, including an injunction to enjoin Owner from breaching or continuing to breach such provision, without the necessity of posting a bond. Nothing in this paragraph shall prevent Owner from engaging any Manager employee who approaches the Owner regarding employment on an unsolicited basis.

Section 5.4 Use of Interns. The Owner has agreed to the use of interns from NMSU as a part of the Ground Lease. As a condition of entering into this Agreement, Manager agrees to facilitate the use and training of five paid interns per year through the Hotel, Restaurant and Tourism Management program at NMSU. The cost in connection therewith shall be an Operating Expenses.

ARTICLE 6
INTENTIONALLY OMITTED

ARTICLE 7
OPERATING BUDGET

Section 7.1 Establishment of Operating Budget.

(a) The parties agree that the Operating Budget for the 2013-14 Operating Year is the budget approved by Owner for such time period under the Original Agreement, provided that appropriate amendments to such budget shall be made to reflect (i) the change in management fees as specified in Article 2 above, and (ii) any changes in the long-term sales approach as set forth in the Marketing Plan attached as Exhibit "C" and as described in subsection (t) of Exhibit "A". Manager agrees that no later than February 28th prior to the commencement of each subsequent Operating Year in respect of such year, it will prepare and submit to the Owner a line item budget for the Facility (as approved by the Owner pursuant to Section 7.2, the "**Operating Budget**"). Each annual Operating Budget shall include a

projection of gross revenues and Operating Expenses, presented on a monthly and annual basis. The Operating Budget shall serve as an estimate of expected revenue and expenses for the Facility. The Owner agrees to provide Manager with all information in its possession necessary to enable Manager to prepare the Operating Budget. Owner acknowledges that each Operating Budget is an estimate only, and Manager does not guarantee that the Facility will achieve the revenue or expense targets contained therein. The parties acknowledge that Owner intends to fund the Facility's annual operating deficit (to the extent one exists) from designated revenues generated by the City of Las Cruces convention center fee and lodger's tax.

(b) The Manager's expenses in each annual Operating Budget approved by Owner shall include all expenses expected to be incurred by Manager in connection with its operation of the Facility, including but not limited to, the following expenses on a line item basis, all of which shall be deemed to be "**Operating Expenses**" and shall be payable by Manager pursuant to the terms set forth in Article 8 below: (i) employee payroll, benefits, bonus and other costs related to staffing the Facility, but not including relocation expenses for personnel, (ii) cost of operating supplies (including general office supplies), (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) the Fixed Management Fee, (viii) printing and stationary costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of Manager employees, (xv) cost of employee uniforms and identification, (xvi) exterminator, snow and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xviii) parking expenses, (xix) utility expenses, (xx) office expenses, (xxi) audit, accounting and legal fees, (xxii) all bond and insurance costs, including but not limited to personal property, liability, and worker's compensation insurance, (xxiii) commissions and all other fees payable to third parties (e.g. commissions relating to food and beverage and merchandise concessions services), if applicable, (xxiv) expenses relating to the operation by Manager of food and beverage concessions, if applicable, (xxv) Taxes (including without limitation the New Mexico gross receipts tax on Manager's receipt of its compensation hereunder), and (xxvi) costs to settle or defend claims asserted against Manager arising out of its activities hereunder where Manager is not found to be negligent or otherwise to have engaged in intentional misconduct. The term "Operating Expenses" does not include debt service on the Facility or the Incentive Fee.

Section 7.2 Approval of Operating Budget. Each annual Operating Budget shall be subject to the review and approval of the Owner, which approval shall not be unreasonably withheld or delayed. In order for the Owner to fully evaluate and analyze such budgets or any other request by Manager relating to income and expenses, Manager agrees to provide to the Owner such reasonable financial information relating to the Facility as may be requested by the Owner from time to time. If extraordinary events occur during any Operating Year which could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, Manager may submit an amendment to such budget for review and approval by the Owner, which approval shall not be unreasonably withheld or delayed. If the Owner fails to approve any annual Operating Budget, or any proposed amendment thereto, the Owner shall promptly provide Manager the specific reasons therefor and its suggested modifications to Manager's proposed Operating Budget or amendment in order to make it acceptable. The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties, including, if applicable, negotiation of a mutually acceptable modification to the economic terms of this Agreement.

Section 7.3 Adherence to Operating Budget. Manager shall use all reasonable efforts to manage and operate the Facility in accordance with the Operating Budget. Without the prior consent of the Owner, Manager shall not exceed, commit or contract to expend any sums in excess of the aggregate amounts allowed in the Operating Budget as approved by Owner, except if (i) such additional expenditure is necessary to perform an Emergency Repair, in which event Manager shall notify Owner prior to making such repair, (ii) expenses for services provided to the Facility by unaffiliated third parties, the cost of which is not within the reasonable control of Manager, such as the costs of utilities and insurance; and (iii) for increased costs resulting from events scheduled pursuant to Section 4.4. Manager agrees to report in writing to Owner, as promptly as practicable after becoming aware of such, any significant change or variance in the bottom line number in the Operating Budget, and any material increase in the total costs,as opposed to any particular line item cost, from that provided for in the Operating Budget,unless such change, variance or increase is a result of, or offset by, a corresponding increase in Revenue. In the event Manager desires to hold one or more events at the Facility which would require expenditures in excess of those available in the approved Operating Budget, Manager shall notify Owner so Owner can obtain and provide approval for such expenditure.

ARTICLE 8
FUNDING

Section 8.1 Source of Funding. Manager, as agent for the Owner, shall pay all items of expense related to the operation, maintenance, supervision and management of the Facility from funds in the Operating Account, which Manager may access periodically for this purpose. The Operating Account shall be funded with amounts generated by the operation of the Facility (as described below), or otherwise made available by the Owner. The Owner shall provide a one-time facility operating fee to establish a minimum balance of $50,000 for the Operating Account. This one-time facility operating fee shall be provided at the beginning of the Agreement, but in any event, no later than October 15, 2013 to be deposited in the Operating Account. At the end of each month, the Manager shall provide a reconciliation of the Operating Account to the Owner reflective of inflows and outflows for the previous month. In the event that the Operating Account is less than the minimum balance established herein for the facility operating fee ($50,000), the Owner shall provide an additional payment to the Manager for deposit into the Operating Account to restore the $50,000 minimum balance. Should the Operating Account exceed the $50,000 minimum balance at the end of any month, the Owner shall not be required to provide such additional payment. Any such payment provided by the Owner to the Manager, shall be requested in writing by the Manager to the Owner by the fifth (5th) business day of the following month, with reimbursement provided by the Owner to the Manager by the 15th of the month in which reimbursement was requested. At the end of the operating year or as requested by the Owner with reasonable notice to the Manager, the Manager shall reimburse any amount above the $50,000 minimum balance in the Operating Account. If at any time additional funds are required by Manager to pay Operating Expenses, Manager may request such funds.

Section 8.2 Advancement of Funds. Under no circumstances shall Manager be required to pay for or advance any of its own funds to pay for any Operating Expenses. In the event that, notwithstanding the foregoing, Manager advances its own funds to pay Operating Expenses, Owner shall promptly reimburse Manager for the full amount of such advanced funds, plus interest at a rate to be mutually agreed by the parties, if Owner fails to reimburse Manager within thirty (30) days of Manager's request for reimbursement (if the parties do not agree on the interest rate, the rate that shall apply shall be the Prime rate, as published daily in the Wall Street Journal, plus one percent (1%)).

ARTICLE 9
PROCEDURE FOR HANDLING INCOME

Section 9.1 Event Account. Manager shall deposit as soon as practicable following receipt, in an account in a local qualified public depository to be designated by the Owner in writing ("**Event Account**"), all revenue received from ticket sales and similar event-related revenues which Manager receives in contemplation of, or arising from, an event, pending completion of the event. Such monies will be held in escrow for the protection of ticket purchasers, the Owner and Manager, to provide a source of funds as required for payments to performers and for payments of direct incidental expenses in connection with the presentation of events that must be paid prior to or contemporaneously with such events. Promptly following completion and final settlement of such events, Manager shall transfer any remaining balance in such account to the Facility Operating Account. The Event Account shall be the account established under the Original Agreement by Manager in the name of Manager, as agent for the City, and under the Manager's federal identification number. As between Manager and Owner, and to the extent the applicable funds are in Manager's possession, Manager shall be responsible for paying any ticket refunds required due to a postponement or cancellation of a ticketed event. To the extent a promoter/licensee of the Facility has in its possession proceeds from ticket sales that are required to be refunded to ticket purchasers, Manager shall use reasonable commercial efforts to ensure that such promoter/licensee makes such refunds. The specific practice for paying such refunds shall be set forth in the Operations Manual.

Section 9.2 Facility Operating Account. Except as provided in Section 9.1, all Revenue derived from operation of the Facility shall be deposited by Manager into an account in a local qualified public depository to be designated by the Owner in writing ("**Facility Operating Account**") as soon as practicable upon receipt, but no less often than once each business day. The Facility Operating Account shall be the account established under the Original Agreement by Manager in the name of Manager, as agent for the City, and under Manager's federal identification number. "**Revenue**" shall mean all revenues generated by Manager's operation of the Facility, including but not limited to event ticket proceeds income, rental income, merchandise income, food and beverage income, income from any sale of Commercial Rights, advertising sales income, sponsorship income, equipment rental fees, box office income, miscellaneous operating income, and parking income, but shall not include monies collected (or to be collected) for the benefit of and paid to third parties (for example, event promoters).

Section 9.3 Transfer of Event or Facility Operating Accounts. In the event of receipt of notice of termination of this agreement as provided for in Article 3, Manager would provide to Owner an accounting of all funds in both accounts within ten (10) days of the Manager's receipt of notice of termination. Funds deposited in either account would be transferred to Owner or to accounts directed by the Owner within fifteen (15) days of the effective date of termination. Following termination, Owner shall assume responsibility for all contractual obligations related to deposits placed in both the events and facility operating accounts.

ARTICLE 10
FISCAL RESPONSIBILITY; REPORTING

Section 10.1 Records. Manager agrees to keep and maintain, at its office in the Facility, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its operations in connection with its management of the Facility. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations of

Manager under this Agreement and shall be kept for a period of three years after the close of each Operating Year, up to the date of termination of this Agreement. In the event of termination, as outlined elsewhere herein this Agreement, the Manager shall provide the Owner with the current and three prior Operating Year's records, within fifteen (15) days of the effective date of termination. The Owner or its authorized agent shall have the right to audit and inspect such records from time to time during the Term, upon reasonable notice to Manager and during Manager's ordinary business hours.

Section 10.2 Monthly Financial Reports. Manager agrees to provide to the Owner, within thirty (30) days after the end of each month during the Term, financial reports for the Facility including a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for such month and year to date in accordance with generally accepted accounting principles. In addition, Manager agrees to provide to the Owner a summary of bookings for each such month, and separate cash receipts and disbursements reports for each event held at the Facility during such month. Additionally, Manager shall submit to Owner, or shall cause the applicable public depository utilized by Manager to submit to the Owner, on a monthly basis, copies of all bank statements concerning the Event Account and the Facility Operating Account. The Owner shall provide a form for reporting such information that the Manager shall submit in accordance with this Section.

Section 10.3 Audit. Manager agrees to provide to the Owner following the end of each Operating Year, a certified audit report on the accounts and records as kept by Manager for the Facility. Costs associated with obtaining such certified audit report shall be an Operating Expense of the Facility. Such audit shall be performed by an external auditor approved by the Owner, and shall be conducted in accordance with generally accepted auditing standards. Manager shall use reasonable commercial efforts to cause the auditors to provide (a) an audited trial balance to the City by September 10 (or if such date is not a business day, then on the next business day following September 10) following the end of each Operating Year, and (b) the certified audit report by September 30 (or if such date is not a business day, then on the next business day following September 30) following the end of each Operating Year.

ARTICLE 11
CAPITAL IMPROVEMENTS

Section 11.1 Schedule of Capital Expenditures. Manager shall annually, at the time of submission of the annual Operating Budget to the Owner, provide to the Owner a schedule of capital improvements necessary at the Facility and requiring a Capital Expenditure (as defined below), for the purpose of allowing the Owner to consider for inclusion such projects in its budget for the ensuing year and to prepare and update a long-range capital expenditure budget. For purposes of this paragraph, "**Capital Expenditures**" shall mean all expenditures for building additions, alterations, or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than $5,000 and the depreciable life of the applicable item is, according to generally accepted accounting principles, is in excess of five (5) years.

Section 11.2 Responsibility for Capital Expenditures. The Owner shall be solely responsible for all Capital Expenditures at the Facility; provided, however, the Owner shall be under no obligation to make such Capital Expenditures. Notwithstanding the foregoing, Manager shall have the right to make Capital Expenditures at the Facility for "**Emergency Repairs**" (defined as the repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Facility threatening persons or property), and shall be promptly reimbursed by Owner for any such expenditures.

ARTICLE 12
AGREEMENT MONITORING AND GENERAL MANAGER

Section 12.1 Contract Administrator. Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Each party shall notify the other of the name of its contract administrator within thirty (30) days of execution hereof. Any and all references in this Agreement requiring Manager or Owner participation or approval shall mean the participation or approval of such party's contract administrator.

ARTICLE 13
INDEMNIFICATION

Section 13.1 Indemnification by Manager. Manager agrees to defend, indemnify and hold harmless Owner and its parent, subsidiary and affiliate companies, and each of their respective directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "**Losses**") suffered by such parties, arising out of or in connection with any (a) grossly negligent act or omission, or intentional misconduct, on the part of Manager or any of its employees or agents in the performance of its obligations under this Agreement, or (b) breach by Manager of any of its representations, covenants or agreements made herein; except to the extent such Losses arise out of or relate to Owner's negligence, intentional misconduct, or failure to comply with the terms of this Agreement.

Section 13.2 Indemnification by Owner. Owner represents that the New Mexico Constitution, as interpreted by the New Mexico Attorney General, prohibits Owner from indemnifying Manager. In the event there is a substantive change in New Mexico law permitting Owner to contract for indemnification for any acts of Owner under this Agreement, the parties shall meet and negotiate an indemnification amendment to this Agreement within the limitations defined by such court. Notwithstanding the foregoing, Owner recognizes that it shall be solely responsible for any third party claims arising out of Owner's failure to timely pay any amount it is required to pay under the terms of Article 8 above.

Section 13.3 Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this Article 13, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than twenty (20) days after any third party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 13.4 Survival. The obligations of the parties contained in this Article 13 shall survive the termination or expiration of this Agreement.

ARTICLE 14
INSURANCE; BONDS

Section 14.1 Types and Amount of Coverage. Manager agrees to obtain insurance coverage in the manner and amounts as set forth in Exhibit B, attached hereto, and shall provide to the Owner promptly following the Effective Date a certificate of certificates of insurance evidencing such coverage. Manager shall maintain such referenced insurance coverage at all times during the Term, and will not make any material modification or change from these specifications without the prior approval of the Owner. Each insurance policy shall include a requirement that the insurer provide Manager and the Owner at least thirty (30) days written notice of cancellation or material change in the terms and provisions of the applicable policy. The cost of all such insurance shall be an Operating Expense.

Section 14.2 Rating; Additional Insureds. All insurance policies shall be issued by insurance companies rated no less than A VIII in the most recent "Bests" insurance guide, and licensed in the State of New Mexico or as otherwise agreed by the parties. All such policies shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved. The commercial general liability policy, automobile liability insurance policy and umbrella or excess liability policy to be obtained by Manager hereunder shall name Owner as an additional insured. The workers compensation policy to be obtained by Manager hereunder shall contain a waiver of all rights of subrogation against the Owner. Manager shall require that all users of the Facility, including without limitation licensees, ushers, security personnel and concessionaires, provide to the Owner and to Manager certificates of insurance evidencing insurance appropriate for the types of activities such user is engaged in. If Manager subcontracts any of its obligations under this Agreement, Manager shall either: (a) cover all subcontractors under its policies of insurance, or (b) require each subcontractor not so covered to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, and name Manager and the Owner as additional insureds.

ARTICLE 15
MISCELLANEOUS

Section 15.1 No Discrimination. Manager agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental disability or serious medical condition, or spousal affiliation and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental disability or serious medical condition, or spousal affiliation.

Section 15.2 Use of Facility Names and Logos. Manager shall have the right to use throughout the Term (and permit others to use in furtherance of Manager's obligations hereunder), without restriction and for no charge, the name and all logos of the Facility, on Manager's stationary, in its advertising of the Facility, and whenever conducting business of the Facility; provided, that Manager shall take all prudent and appropriate measures to protect the intellectual property rights of the Owner relating to such logos. All intellectual property rights in any Facility logos developed by the Manager or the Owner shall be and

at all times remain the sole and exclusive property of the Owner. Manager agrees to execute any documentation requested by the Owner from time to time to establish, protect or convey any such intellectual property rights.

Section 15.3 Facility Advertisements. The Owner agrees that in all advertisements placed by the Owner for the Facility or events at the Facility, whether such advertisements are in print, on radio, television, the internet or otherwise, it shall include a designation that the Facility is a "Global Spectrum managed facility".

Section 15.4 Force Majeure. 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 occurrences outside its reasonable control, including without limitation: (a) fire, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion occurring at the Facility, or (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation, or (c) labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement. Notwithstanding the foregoing, a party's failure to make payments due hereunder shall not be considered to be a force majeure.

Section 15.5 Assignment. Neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld; however, Manager may, without the prior written consent of Owner, assign this Agreement to an affiliate, parent or subsidiary of Manager where such assignment is intended to accomplish an internal corporate purpose of Manager as opposed to materially and substantially altering the method of delivery of services to Owner. Any purported assignment in contravention of this Section shall be void.

Section 15.6 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

If to the Owner:

City of Las Cruces
City Manager Robert L. Garza, P.E.
PO Box 20000
Las Cruces, New Mexico 88004

With a copy to:

City Attorney Harry S. (Pete) Connelly
City of Las Cruces
PO Box 20000
Las Cruces, New Mexico 88004

If to Manager:

Global Spectrum, L.P.
Attn: Chief Operating Officer
3601 S Broad Street
Philadelphia, PA 19148-5290

With a copy to:

General Counsel
Comcast Spectacor, L.P.
3601 South Broad Street
Philadelphia, Pennsylvania 19148-5290

Convention & Visitors Bureau
Executive Director Phil San Filippo, Agreement Manager
City of Las Cruces
PO Box 20000
Las Cruces, NM 88004

The designation of the individuals to be so notified and the addresses of such parties set forth above may be changed from time to time by written notice to the other party in the manner set forth above.

Section 15.7 Severability. If a court of competent jurisdiction or an arbitrator determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 15.8 Prior Agreements. This Agreement (including the Owner's request for proposals, Manager's proposal, the Operations Manual and the exhibits and schedules referenced herein) supersedes and replaces all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof, including without limitation the Original Agreement, which Original Agreement is deemed terminated as of the Effective Date (provided that any liabilities accruing under the Original Agreement through the Effective Date and not fully satisfied thereunder shall remain in effect and survive termination thereof). Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written.

Section 15.9 Governing Law. The Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of New Mexico, without regard to its conflict of laws principles. Disputes not otherwise resolved by the parties shall be brought in the Third Judicial District Court of Dona Ana County, New Mexico.

Section 15.10 Amendments. 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 an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 15.11 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 15.12 Relationship of Parties. Manager and Owner acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Facility, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between Owner and Manager. In operating the Facility, entering into contracts, accepting reservations, and conducting financial transactions for the Facility, Manager acts on behalf of and as agent for Owner (but subject to the limitations on Manager's authority as set out in this Agreement) and assumes no independent contractual liability with respect to any obligation incurred in operating the Facility or

performing its obligations under this Agreement so long as Manager does not exceed the authority granted by this Agreement.

Section 15.13 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

Section 15.14 Settlement of all Disputed Claims. All disputes between the parties under the Original Agreement are hereby amicably resolved and this Agreement is substituted therefore and the Parties hereby release one another from any and all claims they may have against one another concerning the Original Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each party hereto has caused this Pre-Opening Services and Management Agreement to be executed on behalf of such party by an authorized representative as of the date first set forth above.

CITY OF LAS CRUCES,
NEW MEXICO

By: _____
Name: _____
Its: _____

GLOBAL SPECTRUM, L.P.

By: Global Spectrum, Inc.,
its general partner

By: _____
Name: _____
Title: _____

EXHIBIT A
DUTIES

Manager's obligations shall consist of the following obligations, all of which are subject to the terms hereof and the controls and restrictions in the Operations Manual:

(a) Manage all aspects of the Facility in accordance with the Operations Manual and the terms of this Agreement, including but not limited to managing purchasing, payroll, fire prevention, security, crowd control, routine repairs, preventative maintenance, janitorial services, promotions, advertising, energy conservation, security, box office, admission procedures, parking, and general user services.

(b) Establish and work with CVB staff to develop prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments, at the Facility and to recommend such for CVB Advisory Board and City Council. Manager may deviate from established rate schedule when entering into any such agreements if determined by Manager, using reasonable business judgment, to be necessary or appropriate with respect to specific situation. Manager shall also work with the City to develop food and beverage rates. Manager shall on an annual basis analyze the local market for the cost of food and beverage at comparable catering facilities and shall ensure that its rates are at or above the local average rates for comparable fare.

(c) As agent for the Owner, procure, negotiate, execute (as agent on behalf of the Owner), administer and assure compliance with service contracts with respect to the Facility, including without limitation contracts for ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, electricity, steam, gas, fuel, maintenance, telephone, staffing personnel including guards and ushers, extermination and other services which are deemed by Manager to be either necessary or useful in operating the Facility. Manager shall obtain the prior approval of the Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term longer than the Term. Notwithstanding the foregoing, contracts or purchases for non-event related goods or services under $20,000 may be entered into using Manager's normal procurement methods, and contracts or purchases for non-event related goods or services must be made on a demonstrated competitive basis with input from Owner.

(d) As agent for the Owner, procure, negotiate, execute, administer and assure compliance with vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements required in the ordinary course of business in operating the Facility. The Owner acknowledges and agrees that Manager may enter into any such contract (including a contract for food and beverage concessions or to sell advertising on behalf of the Facility) with an affiliate of Manager, provided that such contract is on demonstrated commercially competitive terms. Manager shall obtain the prior approval of the Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term longer than the Term. The parties may also agree that Manager provide the food and beverage service on an "in-house" basis, in which case Manager and Owner shall mutually agree on the compensation to be paid in consideration of such additional service.

(e) Require that all material vendors and licensees of the Facility execute vendor/license agreements containing standard indemnification and insurance obligations on the part of each such vendor/licensee, and provide the Owner named as additional insured with a copy of all such agreements within thirty (30) business days of their date of execution.

(f) Continue to utilize the standard form advertising and sponsorship contracts, user/rental agreements and license agreements developed and approved by Owner under the Original Agreement for use at or with respect to the Facility. Manager shall not materially deviate from the terms contained in such forms without obtaining the prior approval of the Owner (which shall not be unreasonably withheld). Manager's sole responsibility with regard to providing legal advice or assistance hereunder shall be to provide such standard form contracts.

(g) Operate and maintain the Facility, including the equipment utilized in connection with its operation and any improvements made during the term of this Agreement, in the condition received, normal wear and tear excepted.

(h) Arrange for and otherwise book events at the Facility in accordance with-booking guidelines developed by Manager with input from CVB. The current booking guidelines are attached hereto as Exhibit "D". The booking guidelines shall be reviewed annually by Manager and the City, and may be changed upon the mutual agreement of Manager and the CVB Executive Director. Unless otherwise provided in the booking guidelines, Manager agrees that, (a) without the prior approval of the CVB Executive Director, it will not hold event space for longer than 90 days without a deposit if there is another event requesting such space for that time, and (b) it shall not, without the prior approval of the CVB Executive Director, contract for any "local" event (i.e., an event which does not generate hotel room nights) more than twelve (12) months before the event date. In the event Manager has the ability to book either a "local" event or a convention that generates hotel room nights, Manager shall give the convention priority in booking.

(i) Hire or otherwise engage, pay, supervise, and direct all personnel Manager deems necessary for the operation of the Facility in accordance with Article 5 of the Agreement, and conduct staff planning, retention and training programs as determined to be necessary by Manager in its sole discretion.

(j) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to the Owner upon request, in accordance with Section 10.1 of the Agreement.

(k) Submit to the Owner in a timely manner financial and other reports detailing Manager's activities in connection with the Facility, as set forth in Section 10.2 of the Agreement.

(l) Prepare a proposed annual operating budget and submit such proposed budget to the Owner, both in accordance with Article 7 of the Agreement.

(m) Pay all Operating Expenses and other expenses incurred in connection with the operation, maintenance, supervision and management of the Facility with funds in the Operating Account or otherwise provided by the Owner, as described in Article 8 of the Agreement.

(n) Secure, or assist the Owner (or any other third party, as applicable) to secure, or maintain, as applicable, all licenses and permits necessary for the operation and use of the Facility for the specific events to be held therein, and for the general occupancy of the Facility, including without limitation all necessary food and liquor licenses, and renewals thereof. The Owner shall cooperate in this process to

the extent reasonably required, and any costs associated with this process shall be an operating expense of the Facility, payable by funds from the Facility Operating Account.

(o) Collect in a timely manner and deposit in the Event Account 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 described in Section 9.1 of the Agreement.

(p) Collect in a timely manner and, except as described in (o) above, deposit in the Facility Operating Account all Revenue (as defined in Section 9.2 of the Agreement).

(q) Subject to the Owner making available sufficient funds in a timely manner, pay, with Owner funds, any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the Owner at the Facility, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests, or from any others using or occupying all or any part of the Facility (collectively, "**Taxes**").

(r) Maintain an ongoing relationship with various local boards and committees and departments of the City of Las Cruces, The Greater Las Cruces Chamber of Commerce and the Hispano Chamber de Las Cruces as reasonably requested by the Owner from time to time.

(s) Plan, prepare, implement, coordinate and supervise all public relations and other promotional programs for the Facility.

(t) Prepare, maintain and implement on a regular basis, subject to the Owner's approval, a marketing plan for the advertising and promotion of the Facility and Facility events, which may contain but not be limited to the following elements: (i) market research, (ii) market position, (iii) marketing objectives, (iv) marketing strategies, (v) booking priorities, (vi) targeted events - local, regional, national and international, (vii) targeted meetings, conventions and trade shows, (viii) industry advertising campaign, (ix) internal and external support staff, (x) advertising opportunities at the local, regional and national level, (xi) attendance at various trade shows, conventions and seminars, (x) incentive formulas for multiple event presenters, (xi) merchandising and retail, (xii) food and beverage, (xiii) a plan for the sale of commercial rights, including without limitation naming rights, pouring rights, advertising signage, sponsorships (including event sponsorships), branding of food and beverage products for resale, and memorial gifts, (xiv) a plan regarding national, regional and local public relations and media relations, (xv) development of an in-house advertising agency, and (xvi) policies regarding the use of trade/barter. The current marketing plan, as approved by the City, is attached to this Agreement as Exhibit C.

(u) Document all major damage to, or loss in, Facility inventory during the Term as soon as such damage or loss is discovered by Manager, and promptly notify Owner of such damage or loss.

(v) Purchase, on behalf of Owner and with Owner funds, and maintain during the Term all materials, tools, machinery, equipment and supplies necessary for the operation of the Facility.

(w) As agent for the Owner, manage risk management and Facility insurance needs, as more fully described in Article 14 of the Agreement.

(x) Make and be responsible for all routine and minor repairs, maintenance, preventative maintenance, and equipment servicing. Manager shall be responsible for ensuring that all repairs, replacements, and maintenance shall be of a quality and class at least equal to that of the item being repaired, replaced or maintained. Any replacement of an item in inventory, or any new item added to the inventory, which is paid for by the Owner, shall be deemed the property of the Owner.

EXHIBIT B
INSURANCE

• At all times during this Agreement, Manager shall:

(a) maintain commercial general liability insurance, including products and completed operations, bodily injury and property damage liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Facility, or otherwise arising under this Agreement;

(b) maintain umbrella or excess liability insurance;

(c) maintain commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles;

(d) maintain appropriate workers compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the State of New Mexico; and

(e) maintain professional liability insurance and self-insured employment practices liability coverage;

In the case of the general liability, automobile and excess/umbrella policies, the City of Las Cruces will be named as additional insured.

• Such liability insurance shall be maintained in the following minimum amounts throughout the Term:

Commercial General Liability
$1,000,000 per occurrence

$1,000,000 personal and advertising injury

$1,000,000 products-completed operations aggregate

Automobile Liability
$1,000,000 per accident (PI and PD combined single limit)

$1,000,000 uninsured/underinsured motorist

Umbrella or Excess Liability
$5,000,000 per occurrence and aggregate

Workers Compensation
Workers Compensation: Statutory
Employer's Liability: $100,000 each accident-bodily injury by accident

$500,000 policy limit-bodily injury by disease

$100,000 each employee-bodily injury by disease

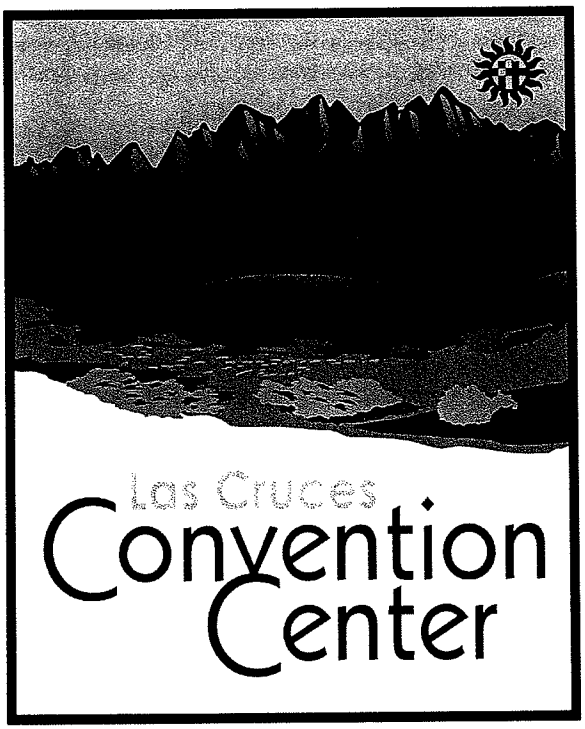
Professional Liability/Errors & Omissions (Claims Made)
$1,000,000 each occurrence/aggregate

Policy is to include:
- Entity Coverage

Crime Coverage

Type: Blanket Crime Bond
Limit: $500,000

EXHIBIT C
MARKETING PLAN



Sales & Marketing Plan

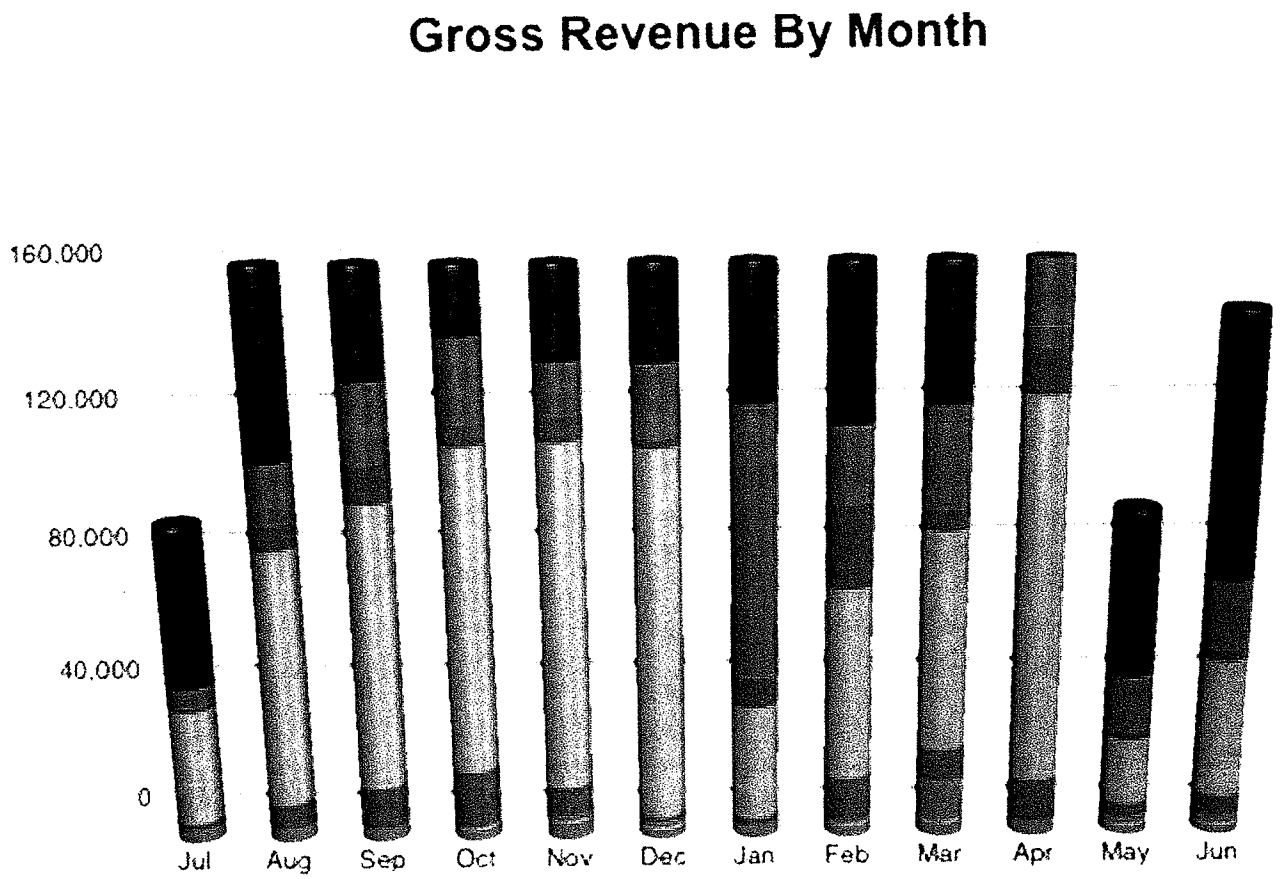
Prepared by:
Shura Garnett, Regional Vice President

Situational Analysis

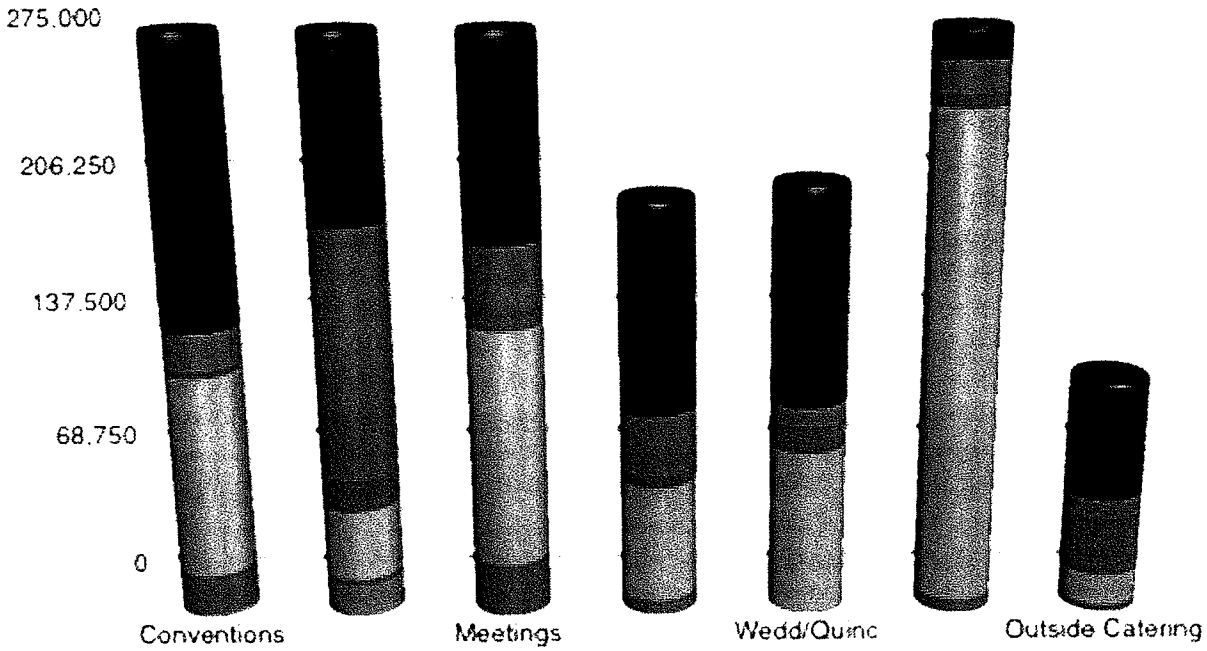
Current State

FY 2012-2013

This fiscal year proved to be one full of challenges which we were able to overcome. At the beginning of the fiscal year a convention that was scheduled canceled leaving us with a $75,000 gross revenue gap. We were able to prevail with aggressive sales and creative use of resources including the launching of the Mesilla Valley Outdoor Expo. The months which were the lowest in revenue; May, June and July are typical for the industry. This is due to many factors including family vacations and in Las Cruces NMSU being on break. These are opportunity areas for the future with the focus and growth of conventions in particular the SMERF markets that are focused around families and hobbies.

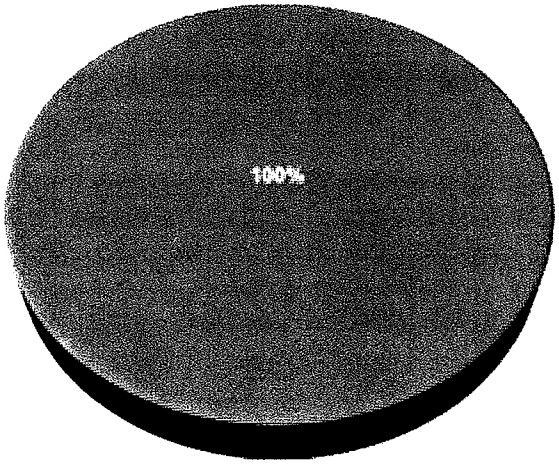


Gross Revenue by Event Type



Gross revenue by event showcases that the largest revenue produces are still locally based events with banquets, meetings, and consumer shows. The Las Cruces Convention Center's staff resources were adjusted to ensure we have solid deployment in proactively soliciting convention groups and additional staff focus will ensure growth of room night generating business for 2014 and beyond..

Event Mix by Number of Events



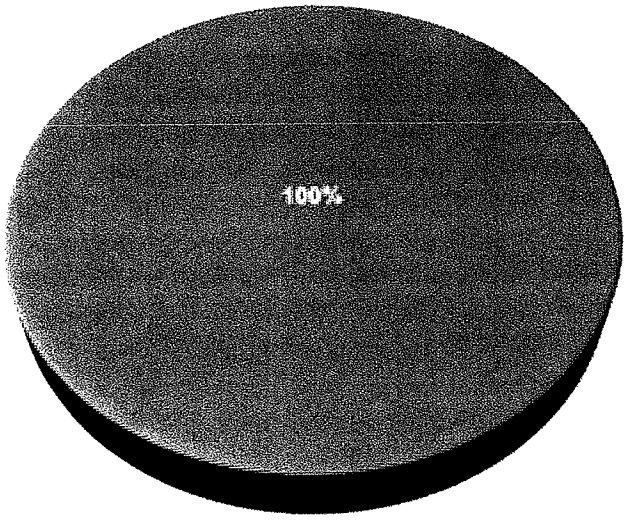
Desired State

FY 2013-2014

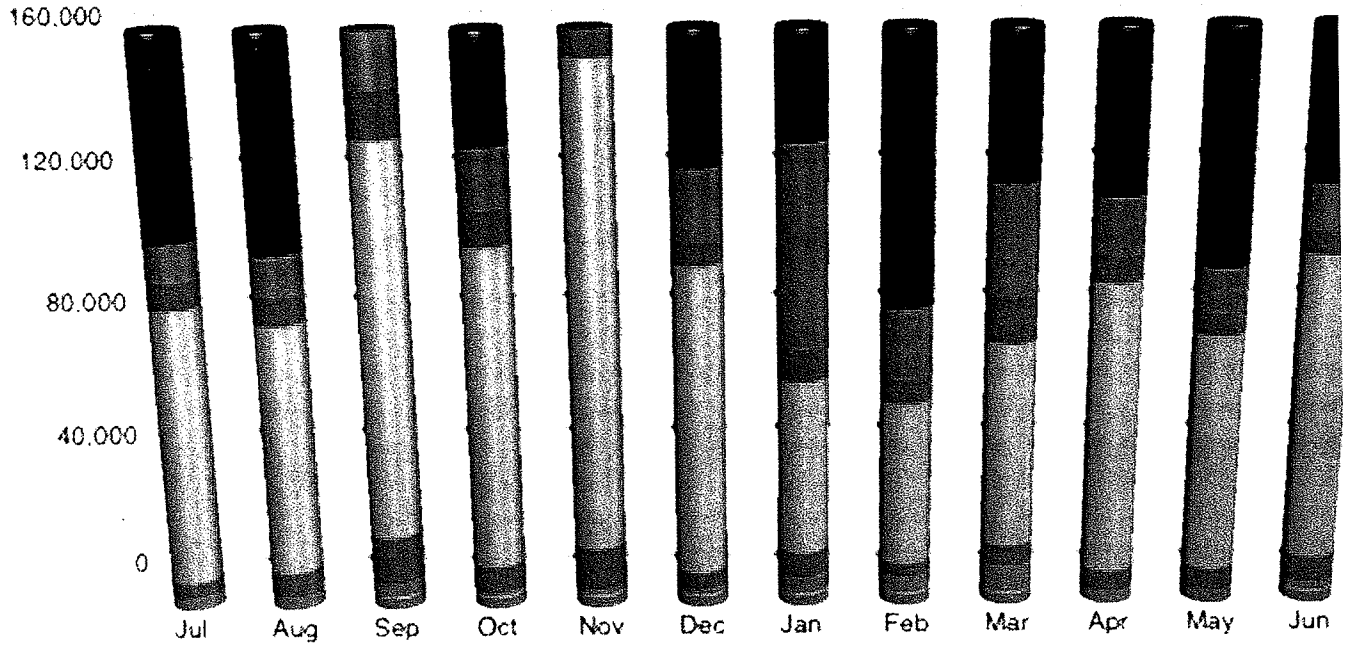
The Las Cruces Convention Center is poised for success in the coming year within the regional convention market and the local market. Our sales and marketing efforts have been divided into focusing on proactive long term sales of conventions and reactive bookings of short term local business.

Diversification of our event mix is necessary in order to continue reducing the deficit. Our sales effort for 2013-2014 will be placed predominantly towards the convention, tradeshows and other room night generating markets. These events are typically lower in number of events but generate a higher revenue impact per event due to the length of the event and the food and beverage spend. The meetings and banquets markets typically have lower revenue per event but a much larger potential for number of event bookings. By focusing on the long term business that fills hotel rooms and increases economic impact as our first and second priority businesses along with reactively booking 3rd and 4th priority short term business we should be able to level out the ups and downs with the monthly revenues..

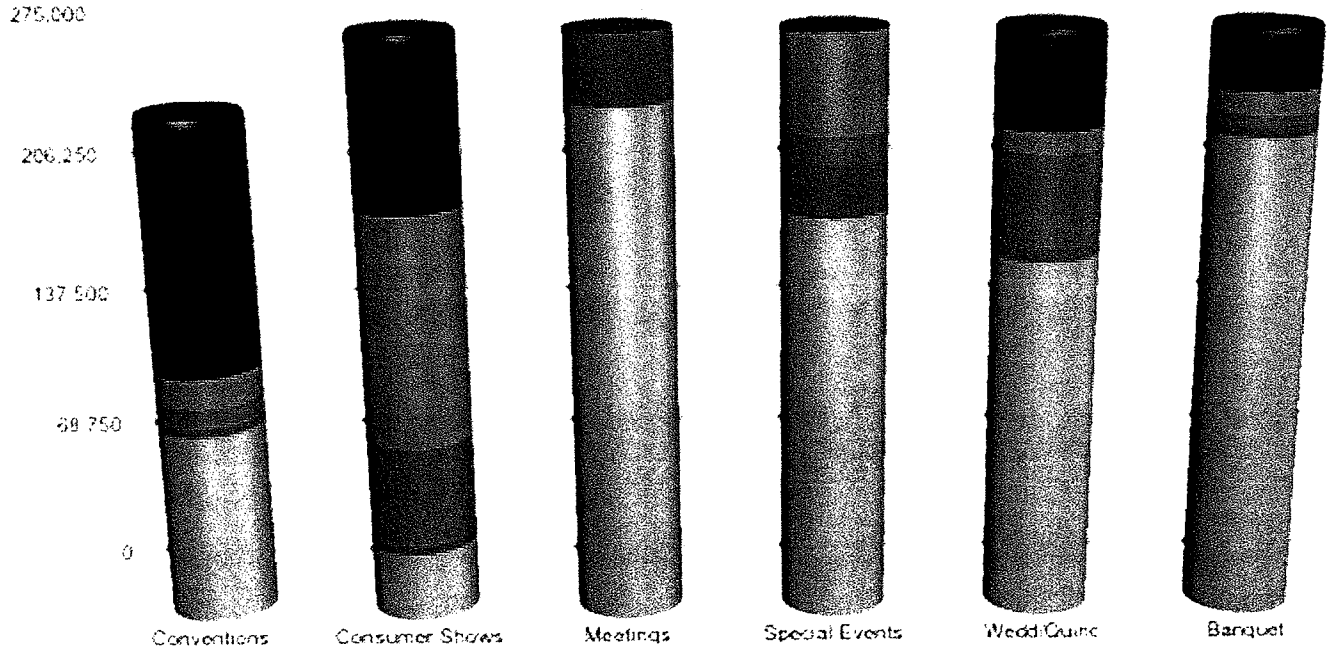
Event Mix by Number of Events



Gross Revenue By Month



Gross Revenue by Event Type



Plan Development

Staff Deployment

To ensure coverage of all key market segments, and to take advantage of each team member's strengths, we will move Kenny Valenzuela to a full-time position and deploy the staff in the following manner:

LCCC General Manager
Long Term Sales: Consumer Shows, Concerts, Comedy Shows & Special Events

Steven Livingston, Senior Sales Manager
Long Term Sales: State, Regional and International Conventions, Trade Shows, Corporate Meetings
Markets: Professional Associations and Spanish Speaking Groups

Patrick Drake, Sales Manager
Long Term Sales: State and Regional Conventions, Trade Shows, Corporate Meetings
Markets: Social, Military, Education, Religious, Fraternal, Hobby, Agricultural and Aerospace with local influence
Self Produced Show Sales: Mesilla Valley Outdoor Expo and Mesilla Valley Women's Expo

Kenny Valenzuela, Banquet Manager
Reactive Short Term Sales: Meetings, Banquets & Special Events

Our efforts are concentrated in proactively and aggressively booking long term business that has a major impact on the hotel, entertainment and economic impact for the Las Cruces area.

The short term business is imperative to the financial success of the Las Cruces Convention Center and is reactive in nature. Our focus will be working with repeat customers and handling reactive requests. The short term market consists of meetings, weddings, quinceañeras, proms and other special events.

Our practice of the yield management principles will be an intricate part of our sales strategy when it comes to obtaining the greatest possible return from available resources.

Yield Management
A way of doing business that maximizes occupancy and generates the highest level of revenue

Yield Has Two Components
Occupancy: In non-peak timeframes, build occupancy
Revenue Management: In peak timeframes, focus on maximizing rates and revenue

It is important to consider that there are non-peak timeframes in peak periods and peak timeframes in non-peak periods

Tools and Tactics

The sales and marketing process is multifaceted due to the numerous types of events, organizations, and lead times for those events. The priority for proactive sales are as follows:

1. Conventions and other Hotel Room Night Generating Business
    a. Conventions
    b. Tradeshows
    c. Meetings
2. Consumer Shows
3. Local Multi-Day Events
    a. Meetings
    b. Special Events
4. Short Term Local Events
    a. Meetings
    b. Banquets
    c. Wedding/Quincenearas
    d. Special Events

Conventions and other Hotel Room Night Generating Business

Within the conventions market a substantial amount of time is required as these clients must be solicited directly through a variety of ways that entails communicating one-on-one with the planners. These tactics will include direct phone calls, e-mails, and face to face sales calls, sales missions outside of Las Cruces as well as awareness campaigns at the local level.

We will immediately implement the following:

1. Focus on the state association groups and ensure that we have communicated with all potential clients within the drive-in market.
2. Increase our sales appointments in ABQ/Santé Fe to ensure that the state meeting planners are aware of the LCCC and will consider us for future conventions.
3. Research other regional areas and regional events for potential calls that have a high number of planners who that would consider Las Cruces as their destination.
4. Place a greater focus on targeting larger city-wide events to create more opportunities for the local hotels to partner with the LCCC and LCVB. The sales teams will work jointly on building bid packages inclusive of all partners, offering seamless proposals to prospective clients.
5. Research vertical markets in an effort to cast a wider net beyond New Mexico focusing on groups relative to the following industries:
    a. Agricultural
    b. Space/Aeronautics
    c. Military/NASA
        i. Missile testing
        ii. Contractors i.e. Lockheed Martin
        iii. Retired Members
    d. Professional groups tied to New Mexico State University
    e. Fraternal/Sorority groups
        i. Current students
        ii. Alumni
        iii. Professional groups
        iv. Community service groups
    f. United States/Mexico Border Initiatives

6. Focus on International groups coming from Mexico. Due to the newly implemented increase of travel distance this can open up opportunities for conventions from Mexico to meet in Las Cruces.

7. Global Spectrum will also examine participation in the following industry tradeshows through individual exhibits, coop exhibits with the LCCVB and through participation with Global Spectrum's Sales and Marketing Program. Each will be reviewed to ascertain the benefits to this markets and the return that would be needed to ensure the shows are producing business.
    a. Rejuvenate Marketplace – Oct 2013
    b. Small Market Meetings – Oct 2013
    c. Religious Conference Management Association's Aspire Conference - Nov 2013
    d. Religious Conference Management Association's Emerge – Feb 2014
    e. Collaborate Marketplace – June 2014
    f. Direct Selling Association's Annual Meeting – June 2014
    g. Connect Marketplace – Aug 2014

In the next 6 months implement a plan for the following marketing/promotional campaigns:

1. Create a "Bring it Home Campaign" to focus on local contacts and their respective professional and hobby groups. This campaign will encourage the local community to support bringing their respective groups to Las Cruces.
2. Create an email newsletter geared towards convention planners encouraging them to consider Las Cruces as a destination for their events.
3. Formulate a testimonial advertising campaign with our current and former clients that will be used to target other clients with the potential of increasing room night generating business. The campaign can be used in print, as deemed necessary, and as an email campaign utilizing the email newsletter list.
4. Our public relations efforts will focus on promoting the facility to the general public in the county and on developing awareness of the facility to the meeting planners (associations and corporations in the state and region). Global Spectrum maintains a list of relevant media that will be used to ensure widespread distribution. Prior to any press releases being sent out they will be sent to the Las Cruces Convention and Visitors Bureau for review and input. Releases will be issued for the following:
    a. When the group is booked to make everyone aware of the impact
    b. Before the groups arrival to remind them they are coming and of the local economic impact they will generate
    c. After the groups leaves Las Cruces a recap showing the impact of the event will be generated
5. Set SMART Goals for the sales team to achieve the following benchmarks within these markets.

	FY14	FY15	FY16	FY17	FY18	FY19
Number of Conventions	10	12	14	16	18	20
Total Hotel Room Nights	4,000	4,800	5,600	6,400	7,200	8,000
Gross Revenue	225,000	264,000	308,000	352,000	396,000	440,000

Consumer Shows

We will be researching a variety of consumer show markets that would do well there. This market will offer us filler business in some instances, but will also offer us some larger pieces of business that both generate room nights but do not compete with local market business.

Meetings

A large focus will be placed on the meetings market as it pertains to those that bring in out of town visitors. The effort will be started through working with organizations already doing business in town. We will target companies based on company size, largest employers, and the likelihood of holding larger and regional events.

Since the meetings we will be targeting will typically be planned locally it is imperative that the Center has a presence at networking events. These events are typically sponsored by the area chambers including business after hours, lunches, seminars, and the networks of professionals to name a few.

Special Events

These events include sporting events, dances, regional competitions and concerts. The sales department will seek out these promoters by networking within the community and researching what promoters are doing events within the region. We will also utilize the Global Spectrum GPS Database and network of venues to identify various cheer and dance events that have the ability to move geographically. These events have the potential to generate significant room nights.

Short Term Business/Local Business

1. In order to maintain rate integrity with local groups we will immediately and annually complete a price comparison study to ensure that we are at or above the market rates for our food and beverage services.

2. We will ensure that our pricing structure is built around maintaining a food cost of no more that 22% annually which is within the industry standard.

3. We will concentrate on local business that is reactive in nature, too large for local hotels or repeat clients. Local business being defined as any meetings or banquets where the majority of the attendees come from the Dona Ana County area. Through these contacts we will work to find convention groups relative to their organizations.

Banquets, Weddings & Quincenearas

Since most banquets are planned three to twelve months in advance we will book this business in the year for the year but not more than 12 months in advance, nor will we hold dates for these events when they are being requested for room night generating business. .

Tools and Tactics that apply to market segments we will be targeting:

E- Mail:

Global Spectrum will create two email databases to enable us to communicate with the convention and event planners and secondly a mailing list that will assist our shows to communicate with local attendees. The focus will be placed on creating a relevant newsletter to place the Las Cruces Convention Center top of mind with the convention and event planners.

Social Media:

An increasingly important component to any marketing plan is involvement in social media. Currently we have a Facebook and Twitter account and are utilizing these. We will work to maximize the impact of these mediums through consistent updates.

Community Memberships and Networking:

In addition to being members of local business groups, Chamber of Commerce and Hispanic Chamber of Commerce, we will encourage the facility staff to sit on the board of some key community organizations and charity groups. We find this tool being very effective to give visibility to the facility and the activities in the building. Currently staff members are involved in leadership boards at NMSU, Rotary Club and March of Dimes.

Industry Memberships and Networking:

The Las Cruces Convention Center is a member of New Mexico Meeting Professionals International and New Mexico Society of Association Executives. A focus will be placed to attend meetings with the CVB while doing joint sales calls in Albuquerque and Santa Fe.

EXHIBIT D
BOOKING GUIDELINES

Las Cruces Convention Center

CONVENTION CENTER BOOKING GUIDELINES

For Conventions, Trade Shows, Consumer Shows, Meetings, Banquets, and Special Events

Managed by GLOBAL SPECTRUM a subsidiary of Comcast SPECTACOR

Statement of Purpose:

The purpose of this booking guideline is to establish the goals of the *Facility* and the types of bookings that will result in the success of the buildings.

The following are general goals for the Facility:

1. Maximize hotel occupancy, food, beverage and sales revenues from convention, exhibition, tradeshow and other room night generating business from outside the Dona Ana County Area.
2. Maximize out-of-town attendance and expenditures by convention and trade show delegates, attendees and exhibitors from outside the Dona Ana County Area.
3. Minimize the facility operating deficits to the extent possible within the framework of the objectives.
4. 4. Generate repeat bookings.

These policies are intended to be guidelines within which the *Facility* and staff will seek to achieve the booking goals listed above.

CVB RELATIONS

The Las Cruces Convention and Visitors Bureau and the Las Cruces Convention Center staff are married to the booking guidelines. LCCC refers customers to the CVB when they have a need for hotel rooms and there is not existing hotel partner, or convention services. LCCC and LCCVB sales staffs meet as needed to review new leads and to discuss progress reports on room night business. Occasional meetings take place involving hotels, the CVB and the LCCC to discuss citywide leads (requiring a minimum of two hotels).

Event Evaluation:

To maximize the economic impact of the *Facilities*, the sales staff will consider the relative merits of each potential booking on a case-by-case basis. The *Facility* shall make the final determination of each event's evaluation, classification and booking priority.

Evaluation factors include the following:

- Amount of exhibition and meeting space required
- Room-night generation
- Food and beverage revenue
- Time of year
- Degree of cost sensitivity
- Revenue generation
- Potential for repeat/referral business
- Prestige factor
- Attendance
- Lead time of booking
- Historical data

Event Classification:

Events will be classified by type of usage and placed in the following categories:

- Conventions
- Tradeshows
- Consumer Shows
- Meetings
- Banquets
    - Weddings
    - Quinceaneras
    - Outside Catered Events
- Special Events

Booking Priority
Events will be granted a certain booking priority based upon its evaluation and event classification.

First Priority Bookings
As a guideline, first priority shall be given to international, national, regional, or state conventions, corporate meetings or tradeshows which generate a significant amount of hotel rooms (150 or more on peak). First priority events will receive exclusive booking rights for all space 18 months and longer prior to event date. A signed, fully executed contract for first priority events may be issued at any time. These bookings may be initiated by the CVB.

FACILITY **Booking Guideline for Convention Groups**

Time Frame	*Peak Room Night*	*Total Room Nights*
24 mos. +	150	400
18-24 mos.	75	200
12-18 mos.	50	125

First Priority Bookings will also include conventions, tradeshows, or meetings that have a significant impact on the hospitality community but do not entirely meet First Priority Booking requirements. These events may have a lower number of peak night guest rooms (50+). This business is considered desirable for the time period it occurs in. Any requests for exceptions to first priority booking parameters will be submitted to the CVB Executive Director in writing and will not be approved until such approval is received in writing.

Second Priority Bookings
Second priority for dates shall be given to multiple-day, annual public shows, such as sport shows, boat shows, and similar events. Second priority events shall not be contracted more than eighteen (18) months in advance of the event.

Third Priority Bookings
Local multiple-day events shall be given third priority. When space is available, reservations will be taken for local multiple-day events. Contracts for third priority events may not be issued until twelve (12) months prior to the event date with third priority events. Seasonal single day events may be considered as third priority bookings with the prior approval of the Facility General Manager.

Fourth Priority Bookings
Single day local events shall be given fourth priority. Requests for fourth priority events may be honored no sooner than twelve (12) months prior to the event on a space available basis. A contract may be issued six (6) months prior to event. There may be exceptions to this process for holiday season or special events.

Definition of Terminology:

In the process of scheduling facilities and dates, the following terms and definitions shall always apply to scheduling commitments; i.e. reservations, issued by the authority:

Tentative: Facilities and dates will be reserved during the negotiation and contracting process. In the event a tentative commitment is released by the *Facility*, the requesting party will be notified that the facilities and/or dates have been released.

Second Option: Facilities and dates will be reserved tentatively but the tentative reservation will be contingent upon release of a prior reservation, which is considered first option.

First Option: Facilities and dates reserved on first option are reserved tentatively but a conflicting commitment for the facilities and dates generally will not be made in favor of a second requesting party within the same scheduling priority without first offering the party holding a first option an opportunity to either execute a license agreement or release its reservation.

Firm: Both parties verbally agree to terms of the negotiation and a License Agreement has been issued, but is not yet signed by both parties.

Definite: A License Agreement has been issued and signed by both parties, and the deposit requirement, if any, has been met.

No variance from the Center's agreement represented in the above terms may be made in any case except upon the prior, express written approval of the *Facility* General Manager and no event will be held in Tentative or Firm status for more than 90 days.

EVENT CLASSIFICATION DEFINITION:

Conventions

Conventions provide educational programming and information to an organization, association or business. Attendees are usually members of a professional association, company, organization, or interest group. Most of the attendees and exhibitors will stay at local hotels. Conventions may have a local, regional, national, or international focus. Conventions may feature a single meeting or, most often, a number of concurrent meetings. Facility needs usually include assembly space for general sessions, banquet facilities, numerous breakouts, and often need space for exhibits. The number of guest rooms used on peak night and the total room nights generated by the event are the determining factors when classifying an event as a convention. These room night thresholds should be in concert with your booking guideline developed in conjunction with the CVB. If an event does not meet both of these criteria, the event should be considered a meeting. Examples of conventions include national associations, state associations, religious conferences, and large corporate meetings.

Trade Shows

Tradeshows display products, technology or services to a select group of invited people and not the general public. . Like conventions, tradeshows offer a forum for the exchange of industry ideas, but differ from conventions because they are more product and sales oriented. In most cases, the exhibitors in a trade show are manufacturers or suppliers, and the attendees are retailers. Most of the attendees and exhibitors will stay at local hotels; a number of attendees may "drive-in" for the day. Trade Shows may have a regional, national, or international focus and are often supported by enough room nights to contract outside the booking window. Other types of trade shows are local in nature and contract inside the booking window. Examples of industry trade shows include food, hair, machine & tool, hardware, automotive, and technology. In general, most shows with wholesale/retail relationships that are closed to the general public are trade shows.

Consumer Shows

A consumer show is a type of exhibition that is open to the public and many times ticketed. In most cases the majority of exhibitors are local retailers and the attendees are local consumers, although some larger shows may have a regional appeal. Some consumer events offer a recreational or entertainment function within the event. Relatively few hotels rooms are used for exhibitors or attendees. Examples of consumer shows include car shows, home and garden shows, boat shows, gun shows, and antique shows.

Meetings

This is a very broad category, and for most convention centers, it represents a significant percentage of our overall event mix. Size wise, a meeting can range from one person to many thousands. Meetings usually require a large number of meeting rooms but not typically space for exhibits. They can also be very food & beverage intensive. Meetings may use a significant number of hotel rooms and have a regional, national or international focus, but many will not require guest rooms at all. The determining factor when classifying an event as a meeting, rather than a convention, is the number of guest rooms used on peak night and the total room nights generated by the event. These room night thresholds should be in concert with your booking guideline developed in conjunction with the CVB. If an event exceeds both of these criteria, the event should be considered a convention. Examples of meetings include seminars, trainings, orientations, board meetings and local civic clubs.

Banquets

Banquets are food and beverage functions only. They are generally local events that are not associated with a convention, trade show, meeting or conference. They may be public or private in nature. Those events requiring the Ballroom will typically have priority over smaller events needing only meeting space. Examples of banquets include galas, fundraisers, holiday parties, and weddings.

Special Events

Miscellaneous events are those that do not have enough room night activity to contract outside the booking window and do not fit into the classifications described above. Examples of special events include dance competitions, graduations, proms, festivals, sporting events, and job fairs.

BOOKING PROCEDURE:

This booking procedure is intended to give an overall idea of the sales process from qualifying a lead to the execution of a contract by both parties. Working on a sale lead involves collecting accurate information about the organization and their event, tracking all activities and communication with the client, organizing this information in Ungerboeck and on paper in a way that it is easily accessible by sales managers and any other staff member needing to access account or booking data at any given time. In addition, Ungerboeck reporting system allows us to analyze any of the definer fields from all or specific types of accounts at one time.

General Information:

Paper trail: Make a copy of all written communication (emails, letters, proposals) to client for the file and put down in writing any verbal communication that implies a commitment from FACILITY (special arrangements, discounts, etc.). Copies of all proposal and license agreement and their revisions need to be on file with latest and/or executed copy on top (it is best to date the documents to avoid confusion).

Ungerboeck: All account or booking activity will be recorded in the diary section of both the Account, for non-event specific details, and the Event, for event specific details. This allows the information to be accessed through standard activity reports. Use this section for general information about the organization such as the nature of their business, their preference in terms of facility, cities, and details on how we found out about the organization. Use this section for information about hotels; if the client selected or if we refer them to the CVB. This is also where it should be explained on why we decided to book or not book a particular piece of business and justify the booking of an event that falls outside of the booking guideline.

Communication: All proposals and contracts need to be approved by the General Manager. The General Manager will sign all contracts.

Lead Status and Booking Procedures:

Qualified Lead

1. The Receptionist/Administrative Assistant will answer all phone inquiries and will transfer calls to the designated sales manager. If sales manager is not available, call will be directed to the next available sales manager. Finally, if no sales manager is available, the Receptionist/Administrative Assistant will collect information from client on the lead sheet (Attachment A). Receptionist/Administrative Assistant can provide client with information such as menus, general information on the facility, and packet of information; however is not allowed to give availability and pricing for an event. The lead is directed to the appropriate sales manager by market.

2. The information collected should consist of events history (size, history, and frequency, nature of event, number of exhibitors, attendance, set-up, experience, dates and flexibility on dates). In the case of a consumer show and for the purpose of advertising the event on our website, primarily, we ask the client to fill out and event information sheet. It can also help us in determining if an event can eventually compete with another event already booked.

3. Send preliminary facility information.

4. Ungerboeck entry: Event will be placed in the Prospect status (P), all definer fields are completed to include market segment, booking type, lead source, etc. Comments under the booking, should always include some details on how we came across the piece of business, how many hotel rooms (per night) the group is going to require, did we refer the client to the CVB for assistance on finding hotel rooms.

Tentative Lead

1. The client asked for a proposal/anticipated expense worksheet.

2. Collect business references (applies mostly to consumer shows and large meetings – minimum of 3), see "client reference" form under the reference checks section. The master copy will go in the facilities reference binder and a copy goes in each of the client's event files. References can be collected up until the client signs the contract but no later than when the contract is presented to the General Manager for signature.

3. Have GM review proposal and references.

4. Ungerboeck entry: update account and booking information – Event is in a Tentative (T) status.

Firm Lead

1. Client is ready to go to contract and *FACILITY* thinks it is a good piece of business and it fits in the booking guideline.

2. Collect further details on the event, review event dates, precise event time line, exact name of the event, create deposit schedule.

3. Have GM review license agreement and anticipated expense worksheet for approval of terms.

4. Ungerboeck entry: update booking information, release 2nd and 3rd dates options if any, update revenue definer fields if changes have been made during the negotiating process. Status is changed from Tentative to Firm.

Definite Lead

1. Client has returned the signed license agreement with deposit by requested date. Should client request changes to this document, changes need to be approved by GM and license agreement needs to be revised and sent back to client for signature, only then the event is considered definite. At that point, the contract and event revenue sheet are presented to the General Manager for signature. A copy is then sent to the client for their file. See attached "Event Revenue" sheet.

2. Ungerboeck entry: record the deposit amount. Status is (D) for Definite. It is the Sales Manager's responsibility to ensure that additional future deposits are traced in the system and collected on a timely basis.

Lost Lead

1. Means that the client chose not to come to *Facility* for one reason or another.

2. If dates were held, sales manager must send a letter to the client releasing the space that was held. If a contract was issued and signed by both parties, the sales manager must send a letter explaining that the facility has released their hold.
3. Ungerboeck entry: Classify event as lost in the system. Enter reason and lost to and further explain in the diary under the booking manager the reason we lost the business.

Canceled Event

1. Means that the client chose to cancel their contract.

2. The sales manager must send a letter explaining that the client canceled the event and the penalties involved or arrangements negotiated. Cancellation fees are discussed and approved by the General Manager.

3. Ungerboeck entry: Turn event to Canceled. Enter reason and lost to and further explain in the diary under the booking manager the reason we lost the business.

Turn down

1. Means that the Facility was not able to accommodate the client needs for reasons to include: space availability, conflicting event (i.e. other boat show within 3 weeks of each other).

2. Ungerboeck entry: Accounts needs to be created regardless of the fact that we don't get to bid on the event for any of the above reasons. The booking should consist in the window of dates the client asked for and the space can show TBA, the purpose is to show a record of the lead and dates discussed. The reason we turn down the lead is explained under "comments" in the booking manager. Turn even to Turn down (TD).

LAS CRUCES CONVENTION CENTER DEPOSIT SCHEDULE 44

When LCCC enters into contract with a client, a license agreement (contract) is issued and signed by both parties. In most cases, in addition to the signed contract, LCCC requires the licensee to pay a deposit amount due at the same time as the signed contract. An event is NOT considered definite until the first deposit has been returned and a contract is not countersigned by the GM until 1st deposit has been received. LCCC also requires full payments of all events two (2) weeks prior to event start date unless the client is direct bill approved or other payment arrangements have been made and approved by the GM.

The deposit schedule will vary on a case-by-case basis depending on the individual characteristics of the event being booked and the circumstances surrounding that booking. The goal in setting the deposit schedule is to:

1. Ensure the fulfillment of the license agreement.
2. Financially protect the facility against the default of a license agreement.
3. Solidify the contractual relationship.

Event characteristics that are considered in developing a deposit schedule include but are not limited to:

1. Contractually Obligated Revenue
2. Total Room Night Usage
3. Peak Room Night Usage
4. Number of Annual Bookings by Client
5. Length of Time Between Signing of Contract and Event Date
6. Payment History
7. Reference Checks

The General Manager will approve all contracts, which will include the deposit schedule.

CHECKS RECEIVED GUIDELINE:

The following is the procedure used for handling and processing checks received by mail.

1. The Receptionist/Administrative Assistant in charge of mail opens all mail and Fed Ex packages and removes all checks stamping them FOR DEPOSIT ONLY immediately. *Note: All PERSONAL mail should be sent to your home or marked PERSONAL.*

2. The Senior Sales Manager adds the check to the "Cash Receipts Log" (a copy is made and kept in a binder). The deposit log includes:
   a. Date received
   b. Received from
   c. Check number
   d. Check amount
   e. Event name
   f. Event code
   g. Service of deposit code

3. The Senior Sales Manager gives the stamped check to the Receptionist/Administrative Assistant who will fill out the deposit slip (to include the check number, company name and amount) on same day of receipt. He/she will also give a copy of the check to the Accounting Manager along with any additional correspondence that accompanied the check.

4. The deposit is verified by the GM before being sealed in the deposit bad.

   The money is then deposited in the account no less than twice weekly.

5. If the check is a deposit for an event, the Receptionist/Administrative Assistant puts a copy of the check along with the original contract and any additional correspondence in the event file and enters it as received in the "Event Data" file (in Access).

6. At the end of the month, the Accounting Clerk reconciles the deposit log to the bank statement.

If the check is to pay for the expenses for the event, the Receptionist/Administrative Assistant matches a copy of the check with the invoice and files it in the event file.

RENTAL RATE PROCEDURE

Rental rates are divided in meetings and exhibit rates. The main difference between them is that "meetings" rates include a room set-up, space for exhibit is provided without a room set.

Room rental rates are intended to be used as a guideline and in most cases cannot be applied as shown on the rate sheets as a lot of other elements than time and space size come into consideration such as:

- Time of year
- Day of the week
- Booking window
- Overall revenue from the event
- Booking frequency
- Room Nights
- Multi-Year Contract
- Economic impact of the event on the city

A few indicators of how we "price" our space:

- Our facility has a different value on a Monday night versus a Saturday night or a day in March versus in July. March is considered a high season month in our market, July tends to be slower.
- A meeting room might be less expensive for an event in two months than for an event in six months. The closer we are to the booking date, the more flexibility we have on rates, as the date is closer to expire.
- A consumer show promoter wanting to do a show on Saturday with a Friday move-in day pays more for the space per day than a promoter wanting to do a 3 day show with one move-in day.
- An event held on a national holiday will likely receive discounted rental rates.

RENTAL RATES

Exhibit Rates-Consumer Shows, Trade Shows & Conventions

All rates are quoted based on a combination of factors that include:

- Room Nights
- Food & Beverage
- Booking Window
- Month of Year
- Day of Week
- Time of Day
- Community Involvement
- Multi-Year Contract
- History

Notes:

- Show days include normal air conditioning time
- Half daily rental rates apply on move-in and move-out days
- During move-in/move-out days, rental rates are based on a 12-hour usage maximum
- Non-profit group discounts may be available during off peak months and days
- Exhibits or displays utilizing a non-exhibit area are subject to rental charge

Services, Facilities & Equipment included in rental fees:

- Facility shall provide a one-time, daily cleaning of the premises throughout the tenancy, including aisles, lobbies and rest rooms. Cleaning shall not include individual booths.
- House lighting, ventilation and air conditioning provided one hour prior to event time on show days. Facility will provide work lighting on move-in/move-out days.

Meeting Rates

All rates are quoted based on a combination of factors that include:

- Room Nights
- Food & Beverage
- Booking Window
- Month of Year
- Day of Week
- Time of Day
- Community Involvement
- Multi-Year Contract
- History

Notes:

- Non-profit group discounts available at non-peak season and days.
- Should portions of the pre-function area be used for exhibition, a per net square foot rate will apply.
- We reserve the right to limit the extent of the exhibit for fire code regulations.
- All exhibition floor plans must be pre-approved for fire code regulations.

Services, Facilities & Equipment included in rental fees:

- One time room set (i.e.; conference, theater, classroom or round tables).
- One (6' x 8') riser and two (8') skirted table for each meeting room.
- Registration area is allocated on a priority basis, with Exhibit Hall receiving highest priority.
- Facility shall provide daily cleaning of premises throughout tenancy, including lobbies & restrooms.
- House lighting, ventilation and air-conditioning provided one hour prior to event time on event days. Facility will provide work lighting on move-in/move-out days.

Additional Services & Equipment Available:

-**Food & Beverage** services are provided in-house and by approved outside caterers [list available upon request]. Arrangements for these services shall be made through the Sales and Event Management.

-**Audio/Video** equipment and services are available at our facility and arrangements for these services can be made through Event Manager.

-**Cleaning** services are provided; arrangements for these services can be made through management.

-**Electrical** services are exclusive in-house and arrangements shall be made through Event Services or Exhibitors Services.
-**Equipment** services (i.e. tables, chairs, etc.) are available at our facility and arrangements for these services can be made through Sales or Event Management.

-**Security & Personnel** services for events are provided exclusively by FACILITY. Arrangements for these services can be made through Event Management.

-**Telephone, Data & High Speed Internet Access** services are provided exclusively in-house. Arrangements for these services can be made through Event Management.

Las Cruces Convention Center

LEAD SHEET

STEP ONE: Greeting
Establish Rapport
Use Listening Skills

STEP TWO: Qualify the Customer

Callers Name: _____ Title: _____

Company Name/Address: _____

Purpose of Program: _____

_____

Determine Customer Needs/Full Program Agenda:

DATE	FUNCTION	SET-UP	#PPL

Are the dates flexible: YES / NO

Has your meeting ever been held at this facility: YES / NO

Where have you held this in the past: _____

History/Past practices of group: _____

What other facilities are you looking at: _____

Who will make the final decision on location: _____

Goal date for making final decision: _____ Budget: _____

REQUEST FOR EXEMPTION FROM BOOKING POLICY

Name of Group: _____

_____

Dates of group: _____

_____

Peak room nights: _____

Total room nights: _____

Meeting space needed at LCCC: _____

_____

Time Frame: _____

REASON FOR EXEMPTION

_____

_____

_____

_____

_____

_____ Date: _____

Phil San Filippo, Executive Director – Las Cruces CVB

_____ Date: _____

David Hicks – General Manager, LCCC

Attachment "A"

~~PRE-OPENING SERVICES AND~~ SETTLEMENT OF DISPUTED CLAIMS PURSUANT TO A PRE-OPENING SERVICES AND MANAGEMENT AGREEMENT AND TERMINATING SAME BY ENTERING INTO A MANAGEMENT AGREEMENT.

This ~~Pre-Opening Services and~~ Management Agreement (this "**Agreement**") is made as of the 1st day of October, ~~2008~~2013 ("**Effective Date**"), by and between the City of Las Cruces, New Mexico, a home rule municipality ("**Owner**"), and Global Spectrum, LP, a Delaware limited partnership ("**Manager**").

RECITALS

1. The Owner ~~is constructing and will own~~owns owns a convention center in the City of Las Cruces known as the Las Cruces Convention Center (the "**Facility**");

~~1. and~~

2.

a. ~~the Owner issued a Request For Proposal Number 07-08-224 entitled "Management and Operation Services for The Las Cruces Center" (the "RFP") which by this reference is made a part of this Agreement, and Manager submitted a proposal, dated March 8, 2008 (the "Proposal"), which proposal by this reference is made a part of this Agreement, and in the event of any inconsistencies among the terms of this Agreement, the RFP and the Proposal, this Agreement shall control, followed by the Proposal, followed by the RFP; and~~ Owner and Manager are parties to that certain Pre-Opening Services and Management Agreement dated October 1, 2008, pursuant to which Owner engaged Manager to provide certain pre-opening services and to manage and operate the Facility ("Original Agreement").

b. Various disputes and controversies have arisen between the parties under the Original Agreement and the parties desire to resolve all disputes thereunder and by so doing terminate it and in its place and stead enter into this Agreement.

~~2.~~3. ~~the Owner desires to engage Manager to provide certain pre-opening consulting services with respect to the Facility prior to the date the Facility is opened for business to the general public ("**Opening Date**"), which the parties currently anticipate to be January 2011, and~~Owner and Manager intend that Manager continue to manage and operate the Facility~~, on behalf and for the benefit of the Owner, following the Opening Date, and Manager desires to accept such engagement, pursuant to the terms and conditions contained herein; and~~ pursuant to this Agreement, and that this Agreement shall supersede and replace the Original Agreement as of the Effective Date herein; and to avoid further disputes and to resolve various issues between the Owner and the Manager; and

4. ~~WHEREAS, a~~All references to "the Facility" in this Agreement shall be deemed to include, and Manager's duties hereunder shall cover, the entire facility complex,

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including but not limited to the building, meeting rooms, common areas, lobby areas, executive and other offices, storage and utility facilities, and the entrances, grounds, sidewalks and parking areas surrounding the Facility and adjacent thereto.

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 acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1
SCOPE OF SERVICES

Section 1.1. Engagement.

~~(a) Owner hereby engages Manager during the Pre-Opening Period (as defined in Section 3.1) to perform the pre-opening services described in Exhibit A-1, attached hereto.~~

~~(b) Owner hereby engages Manager following the Opening Date~~(a) Owner hereby engages Manager to act as the sole and exclusive manager and operator of the Facility, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described in Exhibit A-~~2~~ attached hereto.

(~~c~~b) Manager hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement and in the Global Spectrum's Las Cruces Convention Center Operations Manual, ~~(~~as defined herein.~~)~~.

Section 1.2 Lease of Liquor License. ~~Upon execution of this~~The parties recognize that under the Original Agreement, Owner ~~will apply~~applied for a governmental liquor license pursuant to § 60-6A-101, NMSA ~~1978.~~ 1978, as amended, and that Owner ~~shall then lease~~leased to Manager, as a part of ~~this~~the Original Agreement, the liquor license, to be used exclusively for the operation of the Facility. ~~Manager agrees to designate~~The parties agree that Owner shall maintain such liquor license, and the parties shall maintain such lease agreement, for the duration of this Agreement. Manager agrees to maintain a qualified employee to serve as the designated representative to meet the requirements for issuance and maintenance of the license. Manager agrees that all activities by Manager associated with the operation of the license shall strictly conform to New Mexico law and the regulations of the New Mexico Alcohol and Gaming Division of the New Mexico Regulation and Licensing Department. All income and proceeds derived from alcohol sales shall be considered "Revenue" and shall be deposited as provided in Section 9.2.

Section 1.3 Contingency. Manager's obligations under this Agreement are contingent upon and subject to the Owner making available, in a timely fashion, the funds budgeted for and/or reasonably required by Manager to carry out such obligations during the Term. Manager shall not be considered to be in breach or default of this Agreement, and shall have no liability to the Owner or any other party, in the event Manager does not perform any of its obligations hereunder due to failure by the Owner to timely provide such funds.

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Attachment "A"

Section 1.4 Owner's Authorization of Expenditures. Notwithstanding any provisions of this Agreement to the contrary, the terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the City of Las Cruces for the performance of this Agreement for subsequent fiscal years. If sufficient appropriations and authorizations are not made by the City Council for a subsequent fiscal year, this Agreement ~~may~~ shall be terminated at the end of the then current budget year ~~at the end of the then current fiscal year upon no less than sixty (60) days written notice given by Owner to Manager~~. The Owner is expressly not committed to the expenditure of funds until such time they are programmed, budgeted, and encumbered, for expenditures by the Owner; provided that any sums properly committed by Manager hereunder prior to being advised that such funds may not be budgeted, encumbered or approved shall nevertheless be payable by the Owner. The Owner's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final~~, provided that the Owner shall not be permitted to fail to appropriate or authorize such funds as a means of replacing Manager with a substitute private management company~~.

ARTICLE 2
COMPENSATION

Section 2.1 Management Fee. As consideration for the performance of Manager's obligations hereunder, as set forth throughout this Agreement, including those duties described on Exhibit A hereto, and for the corporate support and oversight provided by Manager in performaing these functions, the Owner shall pay Manager a fixed management fee ("**Fixed Management Fee**"), which ~~(i)~~ from the Effective Date ~~through December 31, 2008to~~ to June 30, 2014 shall be ~~be Three Thousand Dollars ($3,000) per month, (ii) from January 1, 2009 to June 30, 2009 shall be Four Thousand Dollars ($4,000) per month, (iii) from July 1, 2009 to June 30, 2010 shall be Five Thousand Dollars ($5,000) per month, (iv) from July 1, 2010 to the Opening Date shall be Seven Thousand Eight Hundred Seventy Five Dollars ($7,875) per month, (v) from the Opening Date through the first anniversary thereof, shall be Nine Thousand Four Hundred Fifty Dollars ($9,450) per month~~Eight Thousand Three Hundred Thirty-Three Dollars and 33 cents ($8,333.33) per month. As part of the settlement of disputed claims between the Owner and the Manager, the Manager~~The parties also~~ agrees that the Fixed Management Fee under the Original Agreement for the months of August and September, 2013 shall, retroactively, be $8,333.33 per month for a total of $16,666.66, and any additional amounts paid to Manager in those months for the Fixed Management Fee shall be refunded by Manager to Owner and shall be paid by October 1, 2013~~.~~. If this Agreement is extended beyond June 30, 2014, the Fixed Management Fee for each subsequent Operating Year (beginning with July 1, 2014) shall be increased over the fee from the previous year by the percentage increase in the Consumer Price Index for the local City of Las Cruces area, as public by the United States Department of Labor, Bureau of Labor Statistics or such other successor or similar index The Fixed Management Fee shall be payable monthly to Manager in arrears, on the 30th day of each month of the Term (prorated as necessary for any partial months). Manager shall be entitled to pay itself such amount from the Operating Account, in accordance with Section 8.1 of this Agreement.

Section 2.2 Incentive Fee. In addition to the Fixed Management Fee, Manager shall be entitled to receive an Incentive Fee on account of each Operating Year of the Term, except that~~, T~~the Owner shall not pay to Manager an Incentive Fee for the 2013-14 Operating Year. The parties, in good faith, shall discuss the structure and criteria of the~~an~~ Incentive Fee, with the goal of agreeing on such structure and criteria for determining the Incentive Fee no later than January 31, 2014.

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which once agreed, shall apply to the year commencing July 1, 2014. The parties shall thereafter seek to agree on the structure and criteria for the Incentive Fee by ~~and each subsequent year thereafter on~~ January 31st prior to ~~the next~~ each succeeding Operating Year, which once ~~and if~~ agreed upon, shall be applied to such ~~the~~ subsequent years. Notwithstanding anything to the contrary contained herein, in no event shall the Incentive Fee for any Operating Year exceed the Fixed Management Fee for such Operating Year. ~~The parties shall in good faith discuss the structure and criteria for the Incentive Fee payable on account of an Operating Year shall be equal to fifteen percent (15%) of Revenue (as defined in Section 9.2) in excess of the Benchmark. The "Benchmark" shall be equal to the projected Revenue in the approved Operating Budget for the first full (12 month) Operating Year, and shall be pro-rated for any Operating Years of less than 12 months, based on the number of days elapsed in such shortened Operating Year out of 365. Once established, the Benchmark shall remain unchanged throughout following execution of this Agreement, with the goal of agreeing on such structure and criteria no later than May 31, 2014 which, once agreed, shall apply to the year commencing July 1, 2014 (assuming the this Agreement is extended for such year) and any future years of the Term.~~ The Incentive Fee due to Manager for each Operating Year shall be paid to Manager within 30 days following completion of the year-end audit for such Operating Year; but in no event later than 120 days following the year-end.

~~Section 2.3 Commercial Rights Commission. In addition to the above, Manager shall receive a commission ("**Commercial Rights Commission**") equal to fifty percent (50%) of all revenue generated from each and every sale by Manager (or any third party engaged by Manager) of commercial rights at or with respect to the Facility, including without limitation naming rights, pouring rights, advertising signage, premium seating (including suites, club seats and party suites), sponsorships, the branding of food and beverage products for resale and memorial gifts. Naming rights for the Facility must be approved in advance by the City Council. Manager shall deposit gross revenues generated by the sale of commercial rights into the Facility Operating Account, and the Owner shall pay Manager the Commercial Rights Commission on a monthly basis, within 5 days of the end of the month for which such commission is due.~~

Section 2.3 Commericial Rights Commission. The Manager shall have no rights to receive any Commercial Rights Commissions for or in the Facility. The Owner retains the exclusive right to sell Commercial Rights for the facility and to obtain Commercial Rights Commisions for or in the Facility.

ARTICLE 3
TERM; TERMINATION

Section 3.1 Term.

a. The initial term ("**Initial Term**") of this Agreement shall begin on ~~the~~ October 1, 2013, though signed on different dates, and, unless sooner terminated pursuant to the provisions of Section 3.2 below, shall expire on ~~the fifth (5th) anniversary of the Opening Date (the "**Term**")~~ June 30, 2014.

b. Owner may thereafter extend the Initial Term for five (5) successive one (1)-year periods, each beginning on July 1 and ending on the following June 30, provided Owner has given Manager written notice of each such extension no later than ninety (90) days in advance of the date on which such extension would take effect.

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c. The Initial Term plus any such extension periods is referred to herein as the "**Term**". The period of time beginning on ~~the Effective Date~~October 1, 2013 and ending on ~~the Opening Date shall be referred to herein as the "**Pre-Opening Period**". The period of time beginning on the Opening Date and ending on the following June 30, shall be the first (1st) "**Operating Year**",~~ June 30, 2014, and each successive twelve (12) month period beginning on July ~~1 (or shorter period with respect to the last Operating Year)~~ 1 during the Term shall be referred to herein as an additional "**Operating Year**".

d. Prior to the end of the term, at the request of either the Owner or the Manager, the parties shall engage in good faith discussions regarding a new agreement for the management and operation of the facility following the end of the Term. This requirement to discuss and negotiate terms for a new management agreement shall not obligate either party to commit to any such new agreement or to the terms of any such new agreement.

Section 3.2 Termination.

(a) This Agreement may be terminated, ~~(i)~~(i) -if the Term was initially extended by Owner~~, without liability, on the third (3rd) anniversary of the Opening Date, by providing Manager with written notice of termination~~ beyond June 30, 2014, by Owner without cause at any time after July 1, 2014, provided that Owner has given Manager at least ~~sixty (60~~one hundred twenty (120) days ~~in advance~~prior written notice of such ~~date~~termination, or (ii) by either party upon thirty (30) days written notice, if the other party fails to perform or comply with any of the material terms, covenants, agreement or conditions hereof, and such failure is not cured during such thirty (30) day notification period.

(b) In the event this Agreement expires or is terminated prior to the end of the Term, the Owner shall, in addition to all other amounts due to Manager hereunder, -reimburse Manager for any actual ordinary and necessary expenses incurred by Manager in withdrawing from the provision of services hereunder in connection with such termination. The exact amount of such ordinary and necessary expenses shall be negotiated at the time of termination but the parties specifically agree that they shall include the reasonable costs actually incurred by Manager due to termination or assignment of contracts, leases, licenses and other agreements entered into by Manager pursuant to this Agreement. The Owner's payment of such expenses will occur only after Manager has provided reasonable evidence of the incurrence of such expenses. Except for reimbursement of the above stated expenses and payment of all accrued fees, Manager shall have no right or remedy, at law or in equity, against Owner for a termination permitted by this Agreement ~~pursuant to Section 3.2 (a)(ii), except that, in the event the Facility re-opens at any time during the Term, this Agreement shall, at the option of Manager, once again become effective and Manager shall manage and operate the Facility under the terms hereof, except that the term shall be extended for a period of time equal to the period of time in which the Facility was closed~~.

(c) Upon termination or expiration of this Agreement for any reason, Manager shall (i) promptly discontinue the performance of all services hereunder, (ii) deliver or otherwise make available to the Owner all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facility as may have been accumulated by

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Manager in performing its obligations hereunder, whether completed or in process, and (iii) assign to the Owner all contracts or leases entered into by Manager in furtherance of its duties hereunder, who shall accept such contracts and perform all obligations thereunder following the expiration or termination date.

~~(d) The remedies described in this Section 3.2 shall be in addition to any other remedies the parties may be entitled to, either by virtue of the terms of this Agreement, at law or in equity, as a result of a breach or termination of this Agreement are exclusive.~~

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ARTICLE 4
OWNERSHIP; USE OF THE FACILITY

Section 4.1 Ownership of Facility, Data, Equipment and Materials. The Owner will at all times retain ownership of the Facility, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Facility. Any data, equipment or materials furnished by the Owner to Manager or acquired by Manager as an Operating Expense and paid for by Owner, to be used at the Facility, shall remain the property of the Owner, and shall be returned to the Owner when no longer needed by Manager to perform under this Agreement. Notwithstanding the above, Owner shall not have the right to use any third party software licensed by Manager for general use by Manager at the Facility and other facilities managed by Manager, the licensing fee for which is proportionately allocated and charged to the Facility as an Operating Expense; such software may be retained by Manager upon expiration or termination hereof provided that the Facility data contained in such software ~~is made available~~ shall be provided to Owner in an electronic format that can be accessed without the proprietary licensed software.

Section 4.2 Right of Use. The Owner hereby gives Manager the right and license to use the Facility, and Manager accepts such right of use, for the purpose of performing the services herein specified, including the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance and management of the Facility. The Owner shall provide Manager with a sufficient amount of suitable office space in the Facility and with such office equipment as is reasonably necessary to enable Manager to perform its obligations under this Agreement. In addition, the Owner shall make available to Manager, at no cost, parking spaces adjacent to the Facility for all of Manager's full-time employees and for the Facility's event staff.

Section 4.3 Observance of Agreements. The Owner agrees to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any leases, bonds, debentures, loans and other financing and security agreements to which the Owner is bound in connection with its ownership or use of the Facility.

Section 4.4 Use by the Owner. Subject to availability, the Owner shall have the right to use the Facility or any part thereof rent-free for meetings, seminars, training classes or other non-commercial uses, provided that Owner shall promptly reimburse Manager, for deposit into the Operating Account, for any out-of-pocket expenses incurred by Manager (such as set-up and take-down personnel, security expenses and other expenses) in connection with such use. Such non-commercial use of the Facility by the Owner shall not compete with, nor conflict with; paying events

booked by Manager, and shall be booked in advance upon reasonable notice to Manager. Upon request of the Owner, Manager shall provide to the Owner a list of available dates for Owner use of the Facility. ~~For purposes of calculating Manager's Incentive Fee, Manager shall receive a "paper" credit for (i) all Operating Expenses incurred by the Facility in connection with any such events, and (ii) an amount equal to the difference between the published Facility rate and the discounted (or waived) rate charged to the Owner.~~ .

Section 4.5 Use by NMSU. Owner is a party to a Ground Lease Agreement dated March 12, 2007 (the "**Ground Lease**") with the Regents of New Mexico State University ("**NMSU**"), which Ground Lease allows for seven (7) rent-free uses of the Facility per year as well as a discounted rate for additional meetings. Manager agrees to honor the terms of the Ground Lease regarding such uses. ~~All such uses shall be subject to the last sentence of Section 4.4 above, and Manager shall supply Owner with documentation for the purposes of calculating the Operating Expenses and the "paper" credit described under Section 4.4 in connection with such uses.~~

ARTICLE 5
PERSONNEL

Section 5.1 Generally. All Facility staff and other personnel shall be engaged or hired by Manager, and shall be employees, agents or independent contractors of Manager (or a subsidiary or affiliate thereof), and not of the Owner. Manager shall select, in its sole discretion, the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel, so long as said personnel expenses are within the approved Operating Budget. ~~The Owner specifically agrees that Manager shall be entitled to pay its employees, as an Operating Expense, bonuses, benefits and reimbursables in accordance with Manager's then current employee manual, which may be modified by Manager from time to time in its sole discretion (provided increased costs resulting from such modifications are within the approved Operating Budget).~~

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Section 5.2 General Manager. Personnel engaged by Manager will include an individual with managerial experience in similar facilities to serve as a full-time on-site general manager of the Facility (the "**General Manager**"). The General Manager will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Facility, supervision of employees, and management and coordination of all activities associated with events taking place at the Facility.

Section 5.3 Non-Solicitation. During the Term and for a period of one (1) year after the end of the Term, Owner shall not solicit for employment, or encourage to cease rendering services to Manager, any management-level employee of Manager with whom the Owner has had dealings by virtue of the engagement of Manager hereunder, including the General Manager, Assistant General Manager, Business Manager or any department head. In the event Owner breaches or threatens to breach this Section 5.3 with respect to any such employee of Manager, Owner shall be entitled to equitable relief, including an injunction to enjoin Owner from breaching or continuing to breach such provision, without

the necessity of posting a bond. Nothing in this paragraph shall prevent Owner from engaging any Manager employee who approaches the Owner regarding employment on an unsolicited basis.

Section 5.4 Use of Interns. The Owner has agreed to the use of interns from NMSU as a part of the Ground Lease. As a condition of entering into this Agreement, Manager agrees to facilitate the use and training of five paid interns per year through the Hotel, Restaurant and Tourism Management program at NMSU. The cost in connection therewith shall be an Operating Expenses.

ARTICLE 6

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~~Section 6.1 Establishment of Pre-Opening Expense Budget. Attached hereto as Exhibit B is the expense budget prepared by Manager covering the period from the Effective Date through December 31, 2008. Such budget is deemed approved by the Owner by virtue of the Owner's execution of this Agreement, but may be adjusted by Manager from time to time, subject to the approval of the Owner (such approval not to be unreasonably withheld or delayed). No later than November 30, 2008, Manager shall submit to Owner an expense budget covering the period from January 1, 2009 to June 30, 2009. No later than March 31, 2009, Manager shall submit to Owner an expense budget covering the period from July 1, 2009 to June 30, 2010. No later than March 31, 2010, Manager shall submit to Owner an expense budget covering the period from July 1, 2010 to the Opening Date. Each such budget shall be subject to the approval of Owner, which approval shall not be unreasonably withheld. Each such expense budget described in this Section 6.1 is referred to herein as a "**Pre-Opening Expense Budget**".~~

~~Section 6.2 Funding of Expenses During Pre-Opening Period. The Owner shall pay for all expenses incurred by Manager in connection with the performance of its obligations under this Agreement during the Pre-Opening Period (the "**Pre-Opening Expenses**"), in accordance with this Section 6.2. Upon execution hereof, the Owner shall establish a bank account (the "**Pre-Opening Expense Account**"), and shall transfer to such account an amount equal to the projected Pre-Opening Expenses for the first month (or portion thereof), as set forth in the applicable Pre-Opening Expense Budget. On or before the first day of each succeeding month during the Pre-Opening Period, the Owner shall transfer to the Pre-Opening Expense Account an amount equal to the projected Pre-Opening Expenses for such month, as set forth in the applicable Pre-Opening Expense Budget. Manager may access such account periodically, as needed, for the purpose of withdrawing funds to pay Pre-Opening Expenses, including without limitation the Fixed Management Fee.~~

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ARTICLE 7
OPERATING BUDGET

Section 7.1 Establishment of Operating Budget.

(a) The parties agree that the Operating Budget for the 2013-14 Operating Year ~~shall be~~is the budget approved by Owner for such time period under the Original Agreement, provided that appropriate amendments to such budget shall be made to reflect (i) the change in management fees as specified in Article 2 above, and (ii) any changes in the long-term sales approach as set forth in the Marketing Plan attached as Exhibit "C" and as described in subsection (t) of Exhibit "A". Manager agrees that ~~at least ninety (90) days prior to the Opening Date in respect of the first (1st) Operating Year, and~~ no later than ~~March 1~~February 28th prior to the commencement of each subsequent Operating Year in respect of such year, it will prepare and submit to the Owner a line item budget for the Facility (as approved by the Owner pursuant to Section 7.2, the "**Operating Budget**"). Each annual Operating Budget shall include a projection of gross revenues and Operating Expenses, presented on a monthly and annual basis. The Operating Budget shall serve as an estimate of expected revenue and expenses for the Facility. The Owner agrees to provide Manager with all information in its possession necessary to enable Manager to prepare the Operating Budget. Owner acknowledges that each Operating Budget is an estimate only, and Manager does not guarantee that the Facility will achieve the revenue or expense targets contained therein. The parties acknowledge that Owner intends to fund the Facility's annual operating deficit (to the extent one exists) from designated revenues generated by the City of Las Cruces convention center fee and lodger's tax.

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(b) The Manager's ~~projected~~ expenses in each annual Operating Budget approved by Owner shall ~~and may~~shall include all expenses expected to be incurred by Manager in connection with its operation of the Facility, including but not limited to, the following expenses on a line item basis, all of which shall be deemed to be "**Operating Expenses**" and shall be payable by Manager pursuant to the terms set forth in Article 8 below: (i) employee payroll, benefits, bonus and other costs related to staffing the Facility, but not including relocation expenses for personnel, (ii) cost of operating supplies (including general office supplies), (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) the Fixed Management Fee, (viii) printing and stationary costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of Manager employees, (xv) cost of employee uniforms and identification, (xvi) exterminator, snow and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xviii) parking expenses, (xix) utility expenses, (xx) office expenses, (xxi) audit, accounting and legal fees, (xxii) all bond and insurance costs, including but not limited to personal property, liability, and worker's compensation insurance, (xxiii) commissions and all other fees payable to third parties (e.g. commissions relating to food and beverage and merchandise concessions services), if applicable, (xxiv) expenses relating to the operation by Manager of food and beverage concessions, if applicable, (xxv) Taxes (including without limitation the New Mexico gross receipts tax on Manager's receipt of its compensation hereunder), and (xxvi) ~~the Commercial Rights Commission, and (xxvii)~~ costs

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to settle or defend claims asserted against Manager arising out of its activities hereunder where Manager is not found to be ~~grossly~~ negligent or otherwise to have engaged in intentional misconduct. The term "Operating Expenses" does not include debt service on the Facility or the Incentive Fee.

Section 7.2 Approval of Operating Budget. Each annual Operating Budget shall be subject to the review and approval of the Owner, which approval shall not be unreasonably withheld or delayed. In order for the Owner to fully evaluate and analyze such budgets or any other request by Manager relating to income and expenses, Manager agrees to provide to the Owner such reasonable financial information relating to the Facility as may be requested by the Owner from time to time. If extraordinary events occur during any Operating Year which could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, Manager may submit an amendment to such budget for review and approval by the Owner~~(~~, which approval shall not be unreasonably withheld or delayed~~)~~. If the Owner fails to approve any annual Operating Budget, ~~(~~or any proposed amendment thereto~~)~~, the Owner shall promptly provide Manager the specific reasons therefor and its suggested modifications to Manager's proposed Operating Budget or amendment in order to make it acceptable. The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties, including, if applicable, negotiation of a mutually acceptable modification to the economic terms of this Agreement.

Section 7.3 Adherence to Operating Budget. Manager shall use all reasonable efforts to manage and operate the Facility in accordance with the Operating Budget. Without the prior consent of the Owner, Manager shall not exceed, commit or contract to expend any sums in excess of the aggregate amounts allowed in the Operating Budget ~~or otherwise~~ and as approved by Owner, except if (i) such additional expenditure is necessary to perform an Emergency Repair, in which event Manager shall notify Owner prior to making such repair, (ii) expenses for services provided to the Facility by unaffiliated third parties, the cost of which is not within the reasonable control of Manager, such as the costs of utilities and insurance; and (iii) for increased costs resulting from events scheduled pursuant to Section 4.4. Manager agrees to report in writing to Owner, as promptly as practicable after becoming aware of such, any significant change or variance in the bottom line number in the Operating Budget, and any material increase in the total costs~~(~~, as opposed to any particular line item cost~~)~~, from that provided for in the Operating Budget~~(~~, unless such change, variance or increase is a result of, or offset by, a corresponding increase in Revenue~~)~~. In the event Manager desires to hold one or more events at the Facility which would require expenditures in excess of those available in the approved Operating Budget, Manager shall notify Owner so Owner can obtain and provide approval for such expenditure.

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ARTICLE 8
FUNDING

Section 8.1 Source of Funding. ~~Following the Opening Date,~~ Manager, as agent for the Owner~~, as agent for the Ow~~. ~~ner,~~ shall pay all items of expense related to the operation, maintenance, supervision and management of the Facility from funds in the Operating Account, which Manager may access periodically for this purpose. The Operating Account shall be funded with amounts generated by the operation of the Facility (as described below), or otherwise made available by the Owner. ~~Owner shall ensure sufficient funds are available in the Operating Account by depositing, on a quarterly basis (on the Effective Date, and subsequently on each of January 1, April 1, July 1 and October 1), the budgeted or otherwise approved funds to pay for upcoming expenses for that quarter. Manager shall have no liability to Owner or any third party in the event Manager is unable to perform its obligations hereunder, or under any third party contract entered into pursuant to the terms hereof, due to the fact that sufficient funds are not made available by Owner in a timely manner.~~ The Owner shall provide a one-time facility operating fee to establish a minimum balance of $50,000 for the Operating Account. This one-time facility operating fee shall be provided at the beginning of the Agreement, but in any event, no later than October 15, 2013 to be deposited in the Operating Account. At the end of each month, the Manager shall provide a reconciliation of the Operating Account to the Owner reflective of inflows and outflows for the previous month. In the even that the Operating Account is less than the minimum balance established herein for the facility operating fee ($50,000), the Owner shall provide an additional payment to the Manager for deposit into the Operating Account to restore the $50,000 minimum balance. Should the Operating Account exceed the $50,000 minimum balance at the end of any month, the Owner shall not be required to provide such additional payment. Any such payment provided by the Owner to the Manager, shall be requested in writing by the Manager to the Owner by the fifth (5th) business day of the following month, with reimbursement provided by the Owner to the Manager by the 15th of the month in which reimbursement was requested. At the end of the operating year or as requested by the Owner with reasonable notice to the Manager, the Manager shall reimburse any amount above the $50,000 minimum balance in the Operating Account. If at any time additional funds are required by Manager to pay Operating Expenses, Manager may request such funds.

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Section 8.2 Advancement of Funds. Under no circumstances shall Manager be required to pay for or advance any of its own funds to pay for any Operating Expenses. In the event that, notwithstanding the foregoing, Manager advances its own funds to pay Operating Expenses, Owner shall promptly reimburse Manager for the full amount of such advanced funds, plus interest at a rate to be mutually agreed by the parties, if Owner fails to reimburse Manager within thirty (30) days of Manager's request for reimbursement (if the parties do not agree on the interest rate, the rate that shall apply shall be the Prime rate, as published daily in the Wall Street Journal, plus one percent (1%)).

ARTICLE 9
PROCEDURE FOR HANDLING INCOME

Section 9.1 Event Account. Manager shall deposit as soon as practicable following receipt, in an account in a local qualified public depository to be designated by the Owner in writing

("**Event Account**"), all revenue received from ticket sales and similar event-related revenues which Manager receives in contemplation of, or arising from, an event, pending completion of the event. Such monies will be held in escrow for the protection of ticket purchasers, the Owner and Manager, to provide a source of funds as required for payments to performers and for payments of direct incidental expenses in connection with the presentation of events that must be paid prior to or contemporaneously with such events. Promptly following completion and final settlement of such events, Manager shall transfer any remaining balance in such account to the Facility Operating Account. The Event Account shall be the account established under the Original Agreement by Manager in the name of ~~Owner~~Manager, as agent for the City, and under ~~Owner~~the Manager's federal identification number. As between Manager and Owner, and to the extent the applicable funds are in Manager's possession, Manager shall be responsible for paying any ticket refunds required due to a postponement or cancellation of a ticketed event. To the extent a promoter/licensee of the Facility has in its possession proceeds from ticket sales that are required to be refunded to ticket purchasers, Manager shall use reasonable commercial efforts to ensure that such promoter/licensee makes such refunds. The specific practice for paying such refunds shall be set forth in the Operations Manual.

Section 9.2 Facility Operating Account. Except as provided in Section 9.1, all Revenue derived from operation of the Facility shall be deposited by Manager into an account in a local qualified public depository to be designated by the Owner in writing ("**Facility Operating Account**") as soon as practicable upon receipt, but no less often than once each business day. The Facility Operating Account shall be the account established ~~by the Owner,~~under the Original Agreement by Manager in the name of Manager, as agent for the ~~Owner~~City, and under ~~the Owner~~Manager's federal identification number. "**Revenue**" shall mean all revenues generated by Manager's operation of the Facility, including but not limited to event ticket proceeds income, rental income, merchandise income, food and beverage income, income from any sale of Commercial Rights, advertising sales income, sponsorship income, equipment rental fees, box office income, miscellaneous operating income, and parking income, but shall not include monies collected (or to be collected) for the benefit of and paid to third parties (for example, event promoters).

Section 9.3 Transfer of Event or Facility Operating Accounts. In the event of receipt of notice of termination of this agreement as provided for in Article 3, Manager would provide to Owner an accounting of all funds in both accounts within ten (10) days of Manager's receipt of the notice of termination. Funds deposited in either account would be transferred to Owner or to accounts directed by the Owner within fifteen days of the effective date of termination. Following termination, Owner shall assume responsibility for all contractual obligations related to deposits placed in both the events and facility operating accounts.

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ARTICLE 10
FISCAL RESPONSIBILITY; REPORTING

Section 10.1 Records. Manager agrees to keep and maintain, at its office in the Facility, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its operations in connection with its management of the Facility. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations of Manager under this Agreement and shall be kept for a period of three years after the close of

each Operating Year, up to the date of termination of this Agreement. In the event of termination, as outlined elsewhere herein this Agreement, the Manager shall provide the Owner with the current and three prior Operating Year's records, within fifteen (15) days of the effective date of termination. The Owner or its authorized agent shall have the right to audit and inspect such records from time to time during the Term, upon reasonable notice to Manager and during Manager's ordinary business hours.

Section 10.2 Monthly Financial Reports. Manager agrees to provide to the Owner, within thirty (30) days after the end of each month during the Term, financial reports for the Facility including a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for such month and year to date in accordance with generally accepted accounting principles. In addition, Manager agrees to provide to the Owner a summary of bookings for each such month, and separate cash receipts and disbursements reports for each event held at the Facility during such month. Additionally, Manager shall submit to Owner, or shall cause the applicable public depository utilized by Manager to submit to the Owner, on a monthly basis, copies of all bank statements concerning the Event Account and the Facility Operating Account. The Owner shall provide a form for reporting such information that the Manager shall submit in accordance with this Section.

Section 10.3 Audit. Manager agrees to provide to the Owner~~, within one hundred twenty (120) days,~~ following the end of each Operating Year, a certified audit report on the accounts and records as kept by Manager for the Facility. Costs associated with obtaining such certified audit report shall be an Operating Expense of the Facility. Such audit shall be performed by an external auditor approved by the Owner, and shall be conducted in accordance with generally accepted auditing standards. Manager shall use reasonable commercial efforts to cause the auditors to provide (a) an audited trial balance to the City by September 10 (or if such date is not a business day, then on the next business day following September 10) following the end of each Operating Year, and (b) the certified audit report by September 30 (or if such date is not a business day, then on the next business day following September 30) following the end of each Operating Year.

ARTICLE 11
CAPITAL IMPROVEMENTS

Section 11.1 Schedule of Capital Expenditures. Manager shall annually, at the time of submission of the annual Operating Budget to the Owner, provide to the Owner a schedule of capital improvements necessary at the Facility and requiring a Capital Expenditure (as defined below), for the purpose of allowing the Owner to consider for inclusion such projects in its budget for the ensuing year and to prepare and update a long-range capital expenditure budget. For purposes of this paragraph, "**Capital Expenditures**" shall mean all expenditures for building additions, alterations, or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than $5,000 and the depreciable life of the applicable item is, according to generally accepted accounting principles, is in excess of five (5) years.

Section 11.2 Responsibility for Capital Expenditures. The Owner shall be solely responsible for all Capital Expenditures at the Facility; provided, however, the Owner shall be under no obligation to make such Capital Expenditures. Notwithstanding the foregoing, Manager shall have the right to make Capital Expenditures at the Facility for "**Emergency Repairs**" (defined as the repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Facility threatening persons or property), and shall be promptly reimbursed by Owner for any such expenditures.

ARTICLE 12
AGREEMENT MONITORING AND GENERAL MANAGER

Section 12.1 Contract Administrator. Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Each party shall notify the other of the name of its contract administrator within thirty (30) days of execution hereof. Any and all references in this Agreement requiring Manager or Owner participation or approval shall mean the participation or approval of such party's contract administrator.

ARTICLE 13
INDEMNIFICATION

Section 13.1 Indemnification by Manager. Manager agrees to defend, indemnify and hold harmless Owner and its parent, subsidiary and affiliate companies, and each of their respective directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "**Losses**") suffered by such parties, arising out of or in connection with any (a) grossly negligent act or omission, or intentional misconduct, on the part of Manager or any of its employees or agents in the performance of its obligations under this Agreement, or (b) breach by Manager of any of its representations, covenants or agreements made herein; except to the extent such Losses arise out of or relate to Owner's negligence, intentional misconduct, or failure to comply with the terms of this Agreement.

Section 13.2 Indemnification by Owner. Owner represents that the New Mexico Constitution, as interpreted by the New Mexico Attorney General, prohibits Owner from indemnifying Manager. In the event there is a substantive change in New Mexico law permitting Owner to contract for indemnification for any acts of Owner under this Agreement, the parties shall meet and negotiate an indemnification amendment to this Agreement within the limitations defined by such court. Notwithstanding the foregoing, Owner recognizes that it shall be solely responsible for any third party claims arising out of Owner's failure to timely pay any amount it is required to pay under the terms of Article 8 above.

Section 13.3 Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this Article 13, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its

option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than twenty (20) days after any third party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 13.4 Survival. The obligations of the parties contained in this Article 13 shall survive the termination or expiration of this Agreement.

ARTICLE 14
INSURANCE; BONDS

Section 14.1 Types and Amount of Coverage. Manager agrees to obtain insurance coverage in the manner and amounts as set forth in Exhibit ~~C~~B, attached hereto, and shall provide to the Owner promptly following the Effective Date a certificate of certificates of insurance evidencing such coverage. Manager shall maintain such referenced insurance coverage at all times during the Term, and will not make any material modification or change from these specifications without the prior approval of the Owner. Each insurance policy shall include a requirement that the insurer provide Manager and the Owner at least thirty (30) days written notice of cancellation or material change in the terms and provisions of the applicable policy. The cost of all such insurance shall be an Operating Expense.

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Section 14.2 Rating; Additional Insureds. All insurance policies shall be issued by insurance companies rated no less than A VIII in the most recent "Bests" insurance guide, and licensed in the State of New Mexico or as otherwise agreed by the parties. All such policies shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved. The commercial general liability policy, automobile liability insurance policy and umbrella or excess liability policy to be obtained by Manager hereunder shall name Owner as an additional insured. The workers compensation policy to be obtained by Manager hereunder shall contain a waiver of all rights of subrogation against the Owner. Manager shall require that all users of the Facility, including without limitation licensees, ushers, security personnel and concessionaires, provide to the Owner and to Manager certificates of insurance evidencing insurance appropriate for the types of activities such user is engaged in. If Manager subcontracts any of its obligations under this Agreement, Manager shall either: (a) cover all subcontractors under its policies of insurance, or (b) require each subcontractor not so covered to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, and name Manager and the Owner as additional insureds.

ARTICLE 15
MISCELLANEOUS

Section 15.1 No Discrimination. Manager agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental disability or serious medical condition, or spousal affiliation and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental disability or serious medical condition, or spousal affiliation.

Section 15.2 Use of Facility Names and Logos. Manager shall have the right to use throughout the Term (and permit others to use in furtherance of Manager's obligations hereunder), without restriction and for no charge, the name and all logos of the Facility, on Manager's stationary, in its advertising of the Facility, and whenever conducting business of the Facility; provided, that Manager shall take all prudent and appropriate measures to protect the intellectual property rights of the Owner relating to such logos. All intellectual property rights in any Facility logos developed by the Manager or the Owner shall be and at all times remain the sole and exclusive property of the Owner. Manager agrees to execute any documentation requested by the Owner from time to time to establish, protect or convey any such intellectual property rights.

Section 15.3 Facility Advertisements. The Owner agrees that in all advertisements placed by the Owner for the Facility or events at the Facility, whether such advertisements are in print, on radio, television, the internet or otherwise, it shall include a designation that the Facility is a "Global Spectrum managed facility".

Section 15.4 Force Majeure. 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 occurrences outside its reasonable control, including without limitation: (a) fire, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion occurring at the Facility, or (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation, or (c) labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement. Notwithstanding the foregoing, a party's failure to make payments due hereunder shall not be considered to be a force majeure.

Section 15.5 Assignment. Neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld; however, Manager may, without the prior written consent of Owner, assign this Agreement to an affiliate, parent or subsidiary of Manager where such assignment is intended to accomplish an internal corporate purpose of Manager as opposed to materially and substantially altering the method of delivery of services to Owner. Any purported assignment in contravention of this Section shall be void.

Section 15.6 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when

Attachment "A"

delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

If to the Owner:

City of Las Cruces
City Manager ~~Terrence Moore, City Manager~~Robert L. Garza, P.E.
Attn: Chief Operating Officer
PO Box 20000
Las Cruces, New Mexico 88004

If to Manager:

Global Spectrum, L.P.
3601 S Broad Street
Philadelphia, PA 19148-5290

With a copy to:

City Attorney ~~Fermin Rubio~~Harry S. (Pete) Connelly
City of Las Cruces
PO Box 20000
Las Cruces, New Mexico 88004

With a copy to:

General Counsel
Comcast Spectacor, L.P.
3601 South Broad Street
Philadelphia, Pennsylvania 19148-5290

CVB Executive Director Phil San Filippo
Agreement Manager
City of Las Cruces
PO Box 20000
Las Cruces, NM 88004

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The designation of the individuals to be so notified and the addresses of such parties set forth above may be changed from time to time by written notice to the other party in the manner set forth above.

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Section 15.7 Severability. If a court of competent jurisdiction or an arbitrator determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 15.8 Prior Agreements. This Agreement (including the Owner's request for proposals, Manager's proposal, the Operations Manual and the exhibits and schedules referenced herein) supersedes~~incorporates~~~~supersedes~~ and ~~includes~~replaces~~replaces~~ all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof, including without limitation the Original Agreement, which Original Agreement is deemed terminated as of the Effective Date (provided that any liabilities accruing under the Original Agreement through the Effective Date and not fully satisfied thereunder shall remain in effect and survive termination thereof). Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written. ~~In the event of any inconsistencies among the terms of this Agreement, the Owner's request for proposal and Manager's proposal, this Agreement shall control, followed by Manager's proposal, followed by the Owner's request for proposal.~~

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Section 15.9 Governing Law. The Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of New Mexico, without regard to its conflict of laws principles. Disputes not otherwise resolved by the parties shall be brought in the Third Judicial District Court of Dona Ana County, New Mexico.

Section 15.10 Amendments. 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 an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 15.11 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 15.12 Relationship of Parties. Manager and Owner acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Facility, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between Owner and Manager. In operating the Facility, entering into contracts, accepting reservations, and conducting financial transactions for the Facility, Manager acts on behalf of and as agent for Owner (but subject to the limitations on Manager's authority as set out in this Agreement) and assumes no independent contractual liability with respect to any obligation incurred in operating the Facility or performing its obligations under this Agreement so long as Manager does not exceed the authority granted by this Agreement.

Section 15.13 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

Section 15.14 Settlement of all Disputed Claims. All disputes between the parties under the Original Agreement are hereby amicably resolved and this Agreement is substituted therefore and the Parties hereby release one another from any and all claims they may have against one another concerning the Original Agreement.

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[SIGANATURE PAGE FOLLOWS]

Attachment "A"

IN WITNESS WHEREOF, each party hereto has caused this Pre-Opening Services and Management Agreement to be executed on behalf of such party by an authorized representative as of the date first set forth above.

CITY OF LAS CRUCES,
NEW MEXICO

By: _____
Name: _____
Its: _____

GLOBAL SPECTRUM, L.P.

By: Global Spectrum, Inc.,
its general partner

By: _____
Name: _____
Title: _____

Attachment "A"

EXHIBIT A-1
~~PRE-OPENING DUTIES~~

~~During the Pre-Opening Period, Manager shall perform the following duties:~~

~~(a) Develop an Operations Manual ("**Operations Manual**") for the Facility, which shall contain recommended terms with respect to the management and operation of the Facility following the Opening Date, including policies and procedures to be implemented in operating the Facility. A template for the Operations Manual shall be provided on or about the Effective Date, and Manager shall tailor the template to the specifics of the Facility within ninety (90) days of the Effective Date.~~

~~(b) Establish and work with CVB staff to develop prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments, at the Facility and to recommend such for CVB Advisory Board and City Council. Manager may deviate from established rate schedule when entering into any such agreements if determined by Manager, using reasonable business judgment, to be necessary or appropriate with respect to specific situation.~~

~~(c) Submit to the Owner recommendations regarding the selection of food/beverage service provider(s) at the Facility. The parties acknowledge that if the City desires that Manager perform the food and beverage service, and Manager agrees to do so, Manager shall earn additional compensation (above the fees described in this Agreement) for the provision of such services, such compensation subject to the mutual agreement of the parties.~~

~~(d) As agent for the Owner, procure, negotiate, execute (as agent on behalf of the Owner), administer and assure compliance with service contracts with respect to the Facility, including without limitation contracts for ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, electricity, steam, gas, fuel, maintenance, telephone, staffing personnel including guards and ushers, extermination and other services which are deemed by Manager to be either necessary or useful in operating the Facility following the Opening Date. Manager shall obtain the prior approval of the Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term longer than the term set forth in the Management Agreement. All such agreements shall provide for termination in the event the Facility is not constructed or completed for any reason. Notwithstanding the foregoing, contracts or purchases for non-event related goods or services under $20,000 may be entered into using Manager's normal procurement methods, and contracts or purchases for non-event related goods or services must be made on a demonstrated competitive basis with input from Owner.~~

~~(e) As agent for the Owner, procure, negotiate, execute (as agent on behalf of the Owner), administer and assure compliance with vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements required in the ordinary course of business in operating the Facility. The Owner acknowledges and agrees that Manager may enter into any such contract (including a contract for food and beverage concessions or to sell advertising on behalf of the Facility) with an affiliate of Manager, provided that such contract is on demonstrated commercially competitive terms. Manager shall obtain the prior approval of the Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such~~

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~~contract with a term longer than the term set forth in the Management Agreement. All such agreements shall provide for termination in the event the Facility is not constructed or completed for any reason. Owner's representative may participate in the selection process conducted by Manager for "major" service contracts, defined as services costing in excess of $20,000 per year.~~

~~(f) Require that all material vendor/license agreements entered into by Manager during the Term contain standard indemnification and insurance obligations on the part of each vendor/licensee, and provide the Owner, named as additional insured, with a copy of all such agreements within thirty (30) business days of their date of execution.~~

~~(g) Assist the Owner with its review of the design of the Facility, and make recommendations to the Owner with respect to such design.~~

~~(h) Develop and recommend a proposed inventory of furniture, fixtures and equipment to be used at the Facility, and assist the Owner with its procurement of such furniture, fixture and equipment.~~

~~(i) Prepare and submit to the Owner a list of operating supplies necessary for the start-up of the Facility, and assist the Owner with its procurement of such operating supplies.~~

~~(j) Advise the Owner on any construction and operational issues with respect to the Facility that may arise during the Term. The Owner acknowledges that Manager's employees, agents and subcontractors are not, nor do they purport to be, certified architects, engineers or general contractors, and that any advice concerning construction will be limited to the operational aspects of such construction.~~

~~(k) Assist the Owner in developing and implementing a telecommunications plan for the Facility.~~

~~(l) Arrange for and otherwise book events at the Facility working with CVB staff in accordance with a booking schedule to be developed by Manager.~~

~~(m) Develop, with input from the Convention and Visitors Bureau, and submit to the Owner pre-opening and operational sales, marketing, public relations, advertising, promotion, and event booking strategies and plans aimed at maximizing revenues from the Facility.~~

~~(n) Advise the Owner on risk management and insurance needs at the Facility, as more fully described in Article 14 of the Agreement.~~

~~(o) Plan, promote and execute, in conjunction with the Owner, a "grand opening" event or events at the Facility.~~

~~(p) Engage, supervise and direct all personnel at the Facility that Manager deems necessary to perform the pre-opening services described herein, and conduct staff planning, retention~~

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~~and training programs with respect to such personnel as determined to be necessary by Manager in its sole discretion.~~

~~(q) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to the Owner upon request, in accordance with Section 10.1 of the Agreement.~~

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~~(r) Submit to the Owner in a timely manner financial and other reports detailing Manager's activities in connection with the Facility, as set forth in Section 10.2.~~

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~~(s) Cause such other acts and things to be done with respect to the Facility, as determined by Manager in its reasonable discretion to be necessary for the management and operation of the Facility prior to the Opening Date.~~

Attachment "A"

~~EXHIBIT A-2 POST OPENING~~ DUTIES

Manager's obligations ~~following the Opening Date (except as otherwise expressly noted)~~ shall consist of the following obligations, all of which are subject to the terms hereof and the controls and restrictions in the Operations Manual:

(a) Manage all aspects of the Facility in accordance with the Operations Manual and the terms of this Agreement, including but not limited to managing purchasing, payroll, fire prevention, security, crowd control, routine repairs, preventative maintenance, janitorial services, promotions, advertising, energy conservation, security, box office, admission procedures, parking, and general user services.

(b) Establish and work with CVB staff to develop prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments, at the Facility and to recommend such for CVB Advisory Board and City Council. Manager may deviate from established rate schedule when entering into any such agreements if determined by Manager, using reasonable business judgment, to be necessary or appropriate with respect to specific situation. Manager shall also work with the City to develop food and beverage rates. Manager shall on an annual basis analyze the local market for the cost of food and beverage at comparable catering facilities and shall ensure that its rates are at or above the local average rates for comparable fare.

(c) As agent for the Owner, procure, negotiate, execute (as agent on behalf of the Owner), administer and assure compliance with service contracts with respect to the Facility, including without limitation contracts for ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, electricity, steam, gas, fuel, maintenance, telephone, staffing personnel including guards and ushers, extermination and other services which are deemed by Manager to be either necessary or useful in operating the Facility. Manager shall obtain the prior approval of the Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term longer than the Term. Notwithstanding the foregoing, contracts or purchases for non-event related goods or services under $20,000 may be entered into using Manager's normal procurement methods, and contracts or purchases for non-event related goods or services must be made on a demonstrated competitive basis with input from Owner.

(d) As agent for the Owner, procure, negotiate, execute, administer and assure compliance with vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements required in the ordinary course of business in operating the Facility. The Owner acknowledges and agrees that Manager may enter into any such contract (including a contract for food and beverage concessions or to sell advertising on behalf of the Facility) with an affiliate of Manager, provided that such contract is on demonstrated commercially competitive terms. Manager shall obtain the prior approval of the Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term longer than the Term. The parties may also agree that Manager provide the food and beverage service on an "in-house" basis, in which case Manager and Owner shall mutually agree on the compensation to be paid in consideration of such additional service.

Attachment "A"

(e) Require that all material vendors and licensees of the Facility execute vendor/license agreements containing standard indemnification and insurance obligations on the part of each such vendor/licensee, and provide the Owner named as additional insured with a copy of all such agreements within thirty (30) business days of their date of execution.

(f) ~~Provide~~Continue to utilize the standard form advertising and sponsorship contracts, user/rental agreements and license agreements developed and approved by Owner under the Original Agreement for use at or with respect to the Facility. ~~Manager shall submit such form agreements to the Owner for review and comment, and the parties shall work together to finalize such forms. Once finalized, Manager shall use such forms in furtherance of its duties hereunder, and~~Manager shall not materially deviate from the terms contained in such forms without obtaining the prior approval of the Owner (which shall not be unreasonably withheld). Manager's sole responsibility with regard to providing legal advice or assistance hereunder shall be to provide such standard form contracts.

(g) Operate and maintain the Facility, including the equipment utilized in connection with its operation and any improvements made during the term of this Agreement, in the condition received, normal wear and tear excepted.

(h) Arrange for and otherwise book events at the Facility in accordance with~~a~~ booking ~~schedule to be~~~~guidelines~~ guidelines developed by Manager with input from CVB. The current booking guidelines are attached hereto as Exhibit "D". The booking guidelines shall be reviewed annually by Manager and the City, and may be changed upon the mutual agreement of Manager and the ~~City Manager~~CVB Executive Director. Unless otherwise provided in the booking guidelines, Manager agrees that, (a) without the prior approval of the ~~City Manager~~VB Executive Director, it will not hold event space for longer than 90 days without a deposit if there is another event requesting such space for that time, and (b) it shall not, without the prior approval of the ~~City Manage~~CVB Executive Director~~r~~, contract for any "local" event (i.e., an event which does not generate hotel room nights) more than twelve (12) months before the event date. In the event Manager has the ability to book either a "local" event or a convention that generates hotel room nights, Manager shall give the convention priority in booking.

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(i) Hire or otherwise engage, pay, supervise, and direct all personnel Manager deems necessary for the operation of the Facility in accordance with Article 5 of the Agreement, and conduct staff planning, retention and training programs as determined to be necessary by Manager in its sole discretion.

(j) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to the Owner upon request, in accordance with Section 10.1 of the Agreement.

(k) Submit to the Owner in a timely manner financial and other reports detailing Manager's activities in connection with the Facility, as set forth in Section 10.2 of the Agreement.

Attachment "A"

(l) Prepare a proposed annual operating budget and submit such proposed budget to the Owner, both in accordance with Article 7 of the Agreement.

(m) Pay all Operating Expenses and other expenses incurred in connection with the operation, maintenance, supervision and management of the Facility with funds in the Operating Account or otherwise provided by the Owner, as described in Article 8 of the Agreement.

(n) Secure, or assist the Owner (or any other third party, as applicable) to secure, or maintain, as applicable, all licenses and permits necessary for the operation and use of the Facility for the specific events to be held therein, and for the general occupancy of the Facility, including without limitation all necessary food and liquor licenses, and renewals thereof. The Owner shall cooperate in this process to the extent reasonably required, and any costs associated with this process shall be an operating expense of the Facility, payable by funds from the Facility Operating Account.

(o) Collect in a timely manner and deposit in the Event Account 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 described in Section 9.1 of the Agreement.

(p) Collect in a timely manner and, except as described in (o) above, deposit in the Facility Operating Account all Revenue (as defined in Section 9.2 of the Agreement).

(q) Subject to the Owner making available sufficient funds in a timely manner, pay, with Owner funds, any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the Owner at the Facility, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests, or from any others using or occupying all or any part of the Facility (collectively, "**Taxes**").

(r) ~~Establish and maintain~~Maintain an ongoing relationship with various local boards and committees and departments of the City of Las Cruces, The Greater Las Cruces Chamber of Commerce and the Hispano Chamber de Las Cruces as reasonably requested by the Owner from time to time.

(s) Plan, prepare, implement, coordinate and supervise all public relations and other promotional programs for the Facility.

(t) Prepare, maintain and implement on a regular basis, subject to the Owner's approval, a marketing plan for the advertising and promotion of the Facility and Facility events, which may contain but not be limited to the following elements: (i) market research, (ii) market position, (iii) marketing objectives, (iv) marketing strategies, (v) booking priorities, (vi) targeted events - local, regional, national and international, (vii) targeted meetings, conventions and trade shows, (viii) industry advertising campaign, (ix) internal and external support staff, (x) advertising opportunities at the local,

regional and national level, (xi) attendance at various trade shows, conventions and seminars, (x) incentive formulas for multiple event presenters, (xi) merchandising and retail, (xii) food and beverage, (xiii) a plan for the sale of commercial rights, including without limitation naming rights, pouring rights, advertising signage, sponsorships (including event sponsorships), branding of food and beverage products for resale, and memorial gifts, (xiv) a plan regarding national, regional and local public relations and media relations, (xv) development of an in-house advertising agency, and (xvi) policies regarding the use of trade/barter. The current marketing plan, as approved by the City, is attached to this Agreement as Exhibit C.

~~(u) Use reasonable efforts to sell, license, or otherwise grant commercial rights at or in connection with the Facility, including but not limited to naming rights, pouring rights, advertising signage, sponsorships, the branding of food and beverage products for resale and memorial gifts (collectively, the "**Commercial Rights**").~~

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(~~v~~u) ~~Promptly following the Opening Date, cause a written inventory to be taken of all furniture, fixtures, office equipment, supplies, tools and vehicles at the Facility, and deliver a written report of the foregoing to Owner. Manager shall document~~Document all major damage to, or loss in, ~~such~~Facility inventory during the Term as soon as such damage or loss is discovered by Manager, and ~~Manager shall~~ promptly notify Owner of such damage or loss.

(~~w~~v) Purchase, on behalf of Owner and with Owner funds, and maintain during the Term all materials, tools, machinery, equipment and supplies necessary for the operation of the Facility.

(~~x~~w) As agent for the Owner, manage risk management and Facility insurance needs, as more fully described in Article 14 of the Agreement.

(~~y~~x) Make and be responsible for all routine and minor repairs, maintenance, preventative maintenance, and equipment servicing. Manager shall be responsible for ensuring that all repairs, replacements, and maintenance shall be of a quality and class at least equal to that of the item being repaired, replaced or maintained. Any replacement of an item in inventory, or any new item added to the inventory, which is paid for by the Owner, shall be deemed the property of the Owner.

Attachment "A"

EXHIBIT B

~~**PRE-OPENING EXPENSE BUDGET**~~

~~**October 1, 2008 to December 31, 2008**~~

Attachment "A"

~~EXHIBIT C~~
INSURANCE

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• At all times during this Agreement, Manager shall:

(a) maintain commercial general liability insurance, including products and completed operations, bodily injury and property damage liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Facility, or otherwise arising under this Agreement;

(b) maintain umbrella or excess liability insurance;

(c) maintain commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles;

(d) maintain appropriate workers compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the State of New Mexico; and

(e) maintain professional liability insurance and self-insured employment practices liability coverage;

In the case of the general liability, automobile and excess/umbrella policies, the City of Las Cruces will be named as additional insured.

• Such liability insurance shall be maintained in the following minimum amounts throughout the Term:

Commercial General Liability
$1,000,000 per occurrence

$1,000,000 personal and advertising injury

$1,000,000 products-completed operations aggregate

Automobile Liability
$1,000,000 per accident (PI and PD combined single limit)

$1,000,000 uninsured/underinsured motorist

Umbrella or Excess Liability
$5,000,000 per occurrence and aggregate

Workers Compensation
Workers Compensation: Statutory
Employer's Liability: $100,000 each accident-bodily injury by accident

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$500,000 policy limit-bodily injury by disease

$100,000 each employee-bodily injury by disease

Professional Liability/Errors & Omissions (Claims Made)
$1,000,000 each occurrence/aggregate

Policy is to include:
- Entity Coverage

Crime Coverage

Type: Blanket Crime Bond
Limit: $500,000

Attachment "A"

EXHIBIT C
MARKETING PLAN

Attachment "A"

EXHIBIT D
BOOKING GUIDELINES

Attachment "A"

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