



City of Las Cruces®

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Council Action and Executive Summary

Item # 26 Ordinance/Resolution# 14-167

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of April 7, 2014
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING AN AMENDMENT TO THE MANAGEMENT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND GLOBAL SPECTRUM, LP RELATED TO THE MANAGEMENT AND INCENTIVE FEES FOR THE OPERATIONS OF THE LAS CRUCES CONVENTION CENTER THROUGH JUNE 30, 2015.

PURPOSE(S) OF ACTION:

To enact a management and incentive fee for Global Spectrum.

COUNCIL DISTRICT: ALL		
<u>Drafter/Staff Contact:</u> Philip J. San Filippo	<u>Department/Section:</u> Community & Cultural Services/CVB	<u>Phone:</u> 575-541-2166
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On September 16, 2013, the Las Cruces City Council approved Resolution No. 14-058 whereby establishing a new management agreement for the operations of the Las Cruces Convention Center between the City and Global Spectrum, LP (henceforth "Global Spectrum"). The management agreement was set for an initial period expiring June 30, 2014 to allow for the City and Global Spectrum to improve operations and expand business opportunities in keeping with the desires of the City. The City staff have been quite pleased with the change in direction provided by Global Spectrum under the new Management Agreement, primarily in the area of marketing to and appropriate pricing toward more convention and trade show uses. As such, in order to ensure continued timely operations of the Convention Center, the City Manager has authorized the one-year extension under his authority granted by the Management Agreement. However, as the management fee and incentive fee were waived by Global Spectrum for the initial term, City Council approval is required for the next one-year term.

In accordance with the new Management Agreement, the City and Global Spectrum propose to establish each of the following:

- 1) Management Fee for the period equal to \$102,500; and

(Continue on additional sheets as required)

- Incentive Fee equal to a maximum payment of 50% of the Management Fee tied to overall gross revenue but is based on various performance criteria for the entire period.

The management fee is to cover Global Spectrum's administrative and overhead expenses for operating the Las Cruces Convention Center on the City's behalf; is accounted for in their annual budget; and is paid monthly throughout the fiscal year. The incentive fee is based solely on established performance criteria that is outlined within the proposed Amendment; will not exceed a maximum of 50% of the total management fee for the year; and is paid within 120 days of the close of the fiscal year for which it is earned.

The Convention and Visitor's Bureau (CVB) have accounted for both the Management and Incentive Fees within their proposed FY2015 budget submittal to the City Manager for his consideration, subject to City Council's approval of this proposed Resolution. Further, the Resolution authorizes the City Manager to continue to sign any future extensions, including amendments to the management and incentive fees for the remainder of the term of the original Management Agreement, through June 30, 2019.

SUPPORT INFORMATION:

- Resolution.
- Exhibit "A", Amended Agreement.

SOURCE OF FUNDING:

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

BUDGET NARRATIVE

The Convention and Visitor's Bureau (CVB) have accounted for both the Management and Incentive Fees within their proposed FY2015 budget submittal to the City Manager for his consideration, subject to City Council's approval of this proposed Resolution.

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 amending the management agreement to provide a management and incentive fee for one year to Global Spectrum for the operations of the Las Cruces Convention Center for FY2015.
2. Vote "No"; this will not approve the Resolution, thus not amending the management agreement to provide a management and incentive fee for one year to Global Spectrum for the operations of the Las Cruces Convention Center for FY2015.
3. Vote to "Amend"; this will require direction from Council to staff on how to proceed.
4. Vote to "Table"; this will require direction from Council to staff on how to proceed.

REFERENCE INFORMATION:

1. Resolution No. 14-058

RESOLUTION NO. 14-167**A RESOLUTION APPROVING AN AMENDMENT TO THE MANAGEMENT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND GLOBAL SPECTRUM, LP RELATED TO THE MANAGEMENT AND INCENTIVE FEES FOR THE OPERATIONS OF THE LAS CRUCES CONVENTION CENTER THROUGH JUNE 30, 2015.**

The City Council is informed that:

WHEREAS, the City of Las Cruces (henceforth "the City") and Global Spectrum, LP (henceforth "Global Spectrum") entered into a new management agreement on September 16, 2013, as authorized by City Council Resolution No. 14-058, to resolve disputed claims between the parties related to the Las Cruces Convention Center's previous management; and

WHEREAS, for future continued, efficient long-term operations, the City agreed to have Global Spectrum continue as manager of the Convention Center for the period of October 1, 2013 through June 30, 2014 (remainder of FY2014); and

WHEREAS, throughout FY2014, the City and Global Spectrum have worked together to forge a relationship that will support the hospitality industry and grow our meeting and convention business in a positive direction at the Convention Center; and

WHEREAS, as authorized under the Management Agreement of September 16, 2013, the City has the right to negotiate, amend, and extend the relationship between the City and Global Spectrum for the period of July 1, 2014 through June 30, 2015 (FY2015); and

WHEREAS, the City and Global Spectrum wish to continue to build upon this relationship and the City Manager has extended the Management Agreement for FY2015 as authorized by the original Management Agreement; and

WHEREAS, not authorized under the new Management Agreement was the establishment of a management fee and incentive fee for FY2015, which was waived by Global Spectrum for FY2014, but now requires City Council approval; and

WHEREAS, City Staff and representatives from Global Spectrum have agreed to a management fee and qualifying incentive fee based on performance that is outlined within the proposed amendment for FY2015.

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

(I)

THAT the Amendment to the Management Agreement between the City and Global Spectrum, as shown as Exhibit "A" attached hereto and made part of this Resolution, is hereby approved.

(II)

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

(III)

THAT the City Manager is hereby authorized to sign any future Amendments to the Management Agreement, including and specific to future management fees, incentive fees, and extensions, between the City and Global Spectrum on the City's behalf, for the remaining periods of the original Management Agreement through June 30, 2019.

(IV)

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 _____, 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by _____

Seconded by _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Smith: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Levatino: _____

APPROVED AS TO FORM:



City Attorney

AMENDMENT #2 TO MANAGEMENT AGREEMENT

This Amendment #2 to Management Agreement (this "Amendment") is made as of the ___ day of _____, 2014 between the City of Las Cruces, New Mexico ("City") and Global Spectrum, L.P. ("Manager").

WHEREAS, City and Manager are parties to a Management Agreement dated October 1, 2013 (the "Management Agreement"), pursuant to which the City engaged Manager to manage and operate the Las Cruces Center (the "Facility"); and

WHEREAS, City and Manager agreed to Amendment #1 to the Management Agreement dated _____ (the "Amendment #1"), pursuant to which the City agreed to engage Manager to continue to manage and operate the Las Cruces Center (the "Facility") through the period from July 1, 2014 through June 30, 2015 for the same terms and conditions as the Management Agreement (the Management Agreement, as amended by Amendment #1, is referred to herein as the "Agreement"); and

WHEREAS, the City and Manager now desire to further amend the Agreement as described herein.

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. All capitalized terms in this Amendment not defined herein shall have the meaning given to such terms in the Agreement.
2. Effective as of July 1, 2014, Article 2 (Compensation) of the Management Agreement shall be amended and restated in its entirety, to read as follows:

**"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 July 1, 2014 to June 30, 2015 shall be Eight Thousand Five Hundred Forty One Dollars and 66 cents (\$8,541.67) per month. If this Agreement is extended beyond June 30, 2015, the Fixed Management Fee for each subsequent Operating Year (beginning with July 1, 2015) shall be increased over the fee from the previous year by two and a half percent (2.5%). 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. The Incentive Fee shall not exceed fifty

EXHIBIT "A"

percent (50%) of the Fixed Management Fee in each such Operating Year. The Incentive Fee shall be computed as follows:

- A. Convention Business Incentives. A "Convention" is defined as any event in the Center which generates at least 50 peak room nights and 150 total room nights. Manager is eligible to earn towards its Incentive Fee an amount equal to up to 20% of the Fixed Management Fee in the applicable Operating Year, as follows:
- If actual Revenue from Convention business exceeds Revenue from Convention business as projected in the Operating Budget by more than 5% but less than or equal to 10%, Manager shall receive towards its Incentive Fee an amount equal to 5% of the Fixed Management Fee.
 - If actual Revenue from Convention business exceeds Revenue from Convention business as projected in the Operating Budget by more than 10%, Manager shall receive towards its Incentive Fee an amount equal to 10% of the Fixed Management Fee.
 - Additionally, Manager shall earn towards its Incentive Fee an amount equal to 5% of the Fixed Management Fee if the actual number of Convention events in the applicable Operating Year is 5% or more than the number projected in the Operating Budget.
 - Additionally, Manager shall earn towards its Incentive Fee an amount equal to 5% of the Fixed Management Fee if the actual total annual attendance for Convention events is 5% or more than the number projected in the Operating Budget.
- B. Non-Convention Business Incentives. "Non-Convention" business is defined as all business/events that are not considered to be a "Convention". Manager is eligible to earn towards its Incentive Fee an amount equal to up to 15% of the Fixed Management Fee in the applicable Operating Year, as follows:
- If actual Revenue from Non-Convention business exceeds Revenue from Non-Convention business as projected in the Operating Budget by more than 10% but less than or equal to 15%, Manager shall receive towards its Incentive Fee an amount equal to 7.5% of the Fixed Management Fee.
 - If actual Revenue from Non-Convention business exceeds Revenue from Non-Convention business as projected in the Operating Budget by more than 15%, Manager shall receive towards its Incentive Fee an amount equal to 15% of the Fixed Management Fee.
- C. Qualitative Factors. Manager is eligible to earn towards its Incentive Fee an amount equal to up to 15% of the Fixed Management Fee in the applicable Operating Year, as follows: The City shall, in its good faith discretion, evaluate Manager's performance in each Operating Year in the following categories:
- Results of Customer Service Surveys
 - Partnership with the CVB
 - Overall Financial Performance
- The City shall score Manager in each such category on a scale of 1 to 5 (with 5 being the highest). For each point awarded, Manager shall receive toward its Incentive Fee a

EXHIBIT "A"

percentage point of the Fixed Management Fee. For example, if the City gives Manager a 5, 4 and 5 in the three categories, Manager's total score would be 14 and Manager would receive towards its Incentive Fee an amount equal to 14% of the Fixed Management Fee in 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. If for any reason an Operating Year is less than 12 full months, the budget numbers described in subparts A and B above shall be pro-rated based on the number of days actually elapsed out of 365.

Section 2.3 Commercial 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 Commissions for or in the Facility."

For the sake of clarity, the parties agree that the modifications to Article 2 as set forth above shall not take effect until July 1, 2014, and that prior to such date the compensation terms in Article 2 of the Management Agreement (without modification by Amendment #1) shall apply.

3. All references to the Agreement in the Agreement or in any other document referencing the Agreement shall be deemed to refer to the Agreement as amended hereby. Except for the modifications set forth above, all of the provisions of the Agreement shall remain unmodified and in full force and effect.

4. This Amendment shall be governed by and construed in accordance with the laws of the State of New Mexico, without regard to conflicts of law.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the date first set forth above.

GLOBAL SPECTRUM, L.P.

CITY OF LAS CRUCES

By: _____
Name:
Its:

By: _____
Name:
Its: