



Date: March 18, 2019

To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Steven W. Hicks, Director, General Services Department

Subject: Fourth Amendment to the Management Agreement by and among City and County of Durham and Global Spectrum, L.P.

Executive Summary

The City and County of Durham propose to amend the management agreement with Global Spectrum, L.P. (Global Spectrum), specifically to extend the agreement by ten years through June 30, 2029. Other revisions include: incentive fee revisions to maximize financial performance, \$500,000 capital project contribution, clarification of corporate citizenry qualitative criteria, and deletion of community events from use by Owners. The Durham Convention Center Authority voted to recommend a contract modification at the February 28, 2019 Board meeting.

Recommendation

The Department of General Services recommends that City Council:

To authorize the City Manager to execute the 4th amendment to the Management Agreement by and between the City and County of Durham and Global Spectrum, L.P. for the Durham Convention Center.

Background

After experiencing two fiscal years of challenges with business operations for the Convention Center, resulting in reduced revenue and increased budget deficits, the City and County hired Hunden Strategic Partners ("Hunden") in 2009 as part of the City and County's due diligence regarding future operation and maximizing the full potential of the DCC. Hunden reviewed the DCC operations, financials and provided a written report for the Owners. The report by Hunden (with Thomas & Gibbs, CPAs) was issued in February, 2010, comparing the DCC to other similar municipally-owned convention center operations and provided the following recommendations:

- Reduce the current annual operating deficit to \$ 1 million or less
- Complete planned facility modifications to improve efficiency and update outdated systems
- Implement a new management agreement to incentivize the management company
- Create value in the Convention Center, by cutting operational costs and maximizing revenue
- Immediately seek proposals for a new operating agreement from the current operator and from third-party managers

The Hunden report was shared with City and County management, the DCC Authority and the then-current management company. After review, analysis and discussion, City, County and

DCC Authority determined it was in the best interests of the public owners, to issue a Request for Proposals to test the marketplace and receive competitive proposals for management of the DCC. The result of the nationwide RFP process was selection of Global Spectrum as the management company for the DCC.

In February 2011, the City and County of Durham (Owners) authorized execution of a pre-opening/construction period management consulting agreement with Global Spectrum, L.P. (Global Spectrum) and a five year management agreement for management of the jointly owned Durham Convention Center (DCC). The five year Management Agreement was effective July 1, 2011. Thereafter, the Owners executed the first Amendment to the Management Agreement, dated November 2, 2011, to include the definition of the Convention Center Plaza and include the Convention Center Plaza as part of the definition of the "Facility". The second Amendment was effective March 25, 2013 and focused on adjusting the first year incentive dollar amount in order to account for operation of the facility for ten (10) months, rather than the anticipated twelve (12) months of FY 2011-12.

On July 1, 2014, the existing contract entered the optional years which ended June 30, 2016. Owners did not have to take action to continue the agreement for the option period. On April 24, 2014, the Durham Convention Center Authority Board voted to amend the agreement for five (5) additional years. Thereafter, in December, 2014, the Owners executed the third amendment to the management agreement extending the agreement through June 30, 2019, with other changes including funding cycle adjustments, DCC plaza management responsibility, operational process revisions and facility maintenance plans operational guidelines.

Additionally, in December, 2014, the Owners executed a new DCC Interlocal Cooperative Agreement which included updates to property definition, contract administrator powers and duties, removal of invalid operational references and management of joint venture fund and capital expenditures.

Global Spectrum has improved the financial performance of the DCC since it began full operation in FY 12. Below is a snapshot of budgeted and actual subsidy performance. Global Spectrum continues to provide quality performance and has improved the financial performance of the DCC beyond the original projections from the Hunden report.

	<u>Budgeted Subsidy</u>	<u>Actual Subsidy</u>
FY07	(\$1,052,215)	(\$1,099,832)
FY08	(\$912,042)	(\$794,590)
FY09	(\$898,302)	(\$898,960)
FY10	(\$909,148)	(\$1,263,568)
FY11	(\$1,010,835)	(\$1,393,226)
FY12	(\$636,712)	(\$297,223)
FY13	(\$573,045)	(\$104,068)
FY14	(\$332,028)	(\$167,080)
FY15	(\$306,695)	(\$14,578)
FY16 *plaza added	(\$464,605)	(\$33,619)

FY17	(\$428,680)	(\$139,585)
FY18	(\$361,775)	\$21,927
FY19 *projected	(\$286,533)	(\$277,957)

Issues/Analysis

Amending the management agreement and extending the contract for an additional ten (10) years is consistent with the recommendations of the Durham Convention Center Authority, who actively monitor and provide oversight to the Owners. Amending the incentive fee calculation methodology provides an increased financial incentive for the Manager to maximize financial performance of the facility to the benefit of both the Manager and Owners. The contract term will be July 1, 2019 through June 30, 2029. At year 5 of the 10 year agreement, specifically the conclusion of the operating year for FY 23-24, the parties will review the Manager's financial performance and will discuss any recommended changes to the formula for the financial performance component of the incentive fee calculation. The discussion will include review of Manager's 5-year operating history. Any changes in the formula will not be made solely to reduce Manager's potential to earn the Financial Performance component, but rather to ensure that increasing Revenues are benefitting both the Owners and Manager equitably. If, after good faith negotiations, agreement is not made, either party may terminate the Agreement with at least 60 days prior written notice.

Additional changes to the contract include:

- **Incentive fee calculations:**
Replaces financial performance methodology with revised revenue benchmarks and percentages to be paid to Manager; places a cap of \$300,000 on total financial incentive per year; qualitative incentive fee may be earned based up to 30% of flat management fee; and, revised language for corporate citizenry.
- **Capital project contribution:**
Manager agrees to contribute \$500,000 for projects that will increase the value and operational performance of the Convention Center, as agreed upon by Owners and Manager
- **Use by Owners**
Deletes reference to "community events" in the "use by owners" section of the agreement. The agreement previously identified 3 days per year for community events. In order to remove the Owners as arbiters of qualified events, this clause is recommended for deletion and clearer terms regarding use by Owners are included.

Alternatives

Council may choose not to authorize the Manager to execute this 4th amendment to the Management Agreement and pursue an alternate solution to DCC management services. The DCCA Board and City and County Staff recommend this amendment as an appropriate modification of the contract, acknowledging, to date, successful operation and management services at the DCC

Financial Impact

The exact financial impact of the amended agreement will be dependent upon the actual performance of the Manager along with the annual financial results from operations. In any

event, the incentive compensation to the Manager will not exceed \$300,000 in any one year. The formula for calculation of the incentive is as follows:

Incentive Fees will be granted based on reaching qualitative and quantitative benchmarks. The Incentive Fees are divided between two categories: Financial Performance and Customer and Corporate Service, as described below. The amount of Incentive Fee Manager may earn under Customer and Corporate Service each Operating Year shall be capped at thirty percent (30%) of the Flat Management Fee for such year. The amount of the total Incentive Fee Manager may earn each Operating Year (Financial Performance plus Customer and Corporate Service) shall not exceed three hundred thousand dollars (\$300,000).

- (a) **Financial Performance** – Manager shall be paid a percentage of Revenue each Operating Year, as follows:

<u>Revenue each Operating Year</u>	<u>Percentage to be Paid to Manager</u>
From \$0 to \$2,500,000	0%
From \$2,500,001 to \$2,900,000	25%
In excess of \$2,900,000	30%

- (b) **Customer and Corporate Service** – This component of the Incentive Fee shall be earned, based upon the sole, but reasonably exercised, discretion of the Owners, by Manager's performance in the following four categories of qualitative performance. Each of the following categories can earn Manager up to the percentage of that Operating Year's Flat Management Fee, as set forth next to the category (for a maximum amount of 30% of the each Operating Year's Flat Management Fee for this component):

1. Overall Management Performance (up to 15% of the Flat Management Fee): Evaluated based upon factors including but not limited to adherence to Operating Plan and Budget; success of the Facility; ease of working relationship with Owners; transparency; clear reporting to Owners; and effective marketing.
2. Corporate Citizenry (up to 5% of the Flat Management Fee): Evaluated based on the Manager's ability to form a strong business partnership with the Discover Durham, Durham Convention Center Authority Board, as well as other Durham businesses and educational entities. The Owners will award the incentive funds based on an annual evaluation performed by Discover Durham and other stakeholders as identified by the Owners and Authority Board.
3. Customer Service (up to 5% of the Flat Management Fee): Customer Service performance will be measured through an annual customer service survey. This survey will be created and distributed by Manager with approval of content by the Owners. Results will be returned in duplicate to both Manager and Owner. Additional criteria used to judge customer service and the survey results include properly, courteously and promptly resolving all claims and customer complaints arising from use of the Facility.
4. Asset Management (up to 5% of the Flat Management Fee): Evaluated based on Manager's maintenance of the Facility and its contents in good operating condition throughout the year. The criteria used to evaluate Manager's asset management performance shall include but not be limited to:

- a. Cleanliness of the DCC
- b. Providing scheduled maintenance, keeping the facility in good maintenance and repair
- c. Developing a preventive maintenance plan
- d. Providing training of staff in preventive maintenance plan and procedures
- e. Providing Owners regular reports on the preventive maintenance program
- f. Providing Owners periodic reports on energy efficiency measures and results
- g. Adherence to minimum performance standards for the facility's operation, such standards to be jointly developed by Owner and Manager

SDBE Summary

This item does not require review by the Equal Opportunity/Equity Assurance Department.