

**AGREEMENT FOR THE MANAGEMENT AND
OPERATION OF THE CONVENTION CENTER**

**BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
GLOBAL SPECTRUM, LP, DBA SPECTRA VENUE MANAGEMENT**

PREAMBLE

This Agreement for the Management and Operation of the Santa Clara Convention Center ("Agreement") is entered into between the City of Santa Clara, California, a chartered California municipal corporation ("City") and Global Spectrum, LP, a Delaware limited partnership, doing business as Spectra Venue Management ("Spectra" or "Contractor") as of March 12, 2019. City and Spectra may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. In 1984, City executed a Management Agreement with the Santa Clara Chamber of Commerce & Convention-Visitors Bureau ("Chamber") for the management and operation of the Santa Clara Convention Center ("Convention Center") and Convention-Visitors Bureau, which included, among other items, the responsibility for performing services necessary to direct and manage all Convention Center operations including marketing and promoting the Convention Center, booking of events; hiring of staff; and daily operations of the center including accounting, catering, security, janitorial, and maintenance;
- B. In 2018, City commissioned a performance audit on the management and operation of the Convention Center and received audit findings on September 18, 2018 ("2018 Audit Report"), which is incorporated by reference as if fully stated herein;
- C. Based on the audit findings, the Council directed the City Manager to issue a 180- day notice to terminate the Management Agreement with Chamber, while simultaneously engaging in a competitive procurement process for the management and operation of the Convention Center and take necessary actions to stabilize its operations and to minimize further impact to public resources and assets;
- D. On September 18, 2018, City issued a termination notice for the Convention Center Management Agreement with the termination being effective on March 18, 2019;
- E. On October 17, 2018, City issued a Request for Proposal ("RFP") to select a qualified firm to manage and operate the Convention Center, which is incorporated by reference as if fully stated herein;

- F. Following an evaluation process consisting of review of and scoring by a seven member evaluation panel of written qualifications; oral presentations; fee proposals and Best and Final Offer, City staff recommended to City Council the selection of Spectra as the operator of the Convention Center based on the Spectra bid;
- G. On or about January 10, 2019, Spectra submitted to City a "Financial Proposal, which is incorporated by reference as if fully stated herein; and
- H. On or about February 5, 2019, City Council approved a resolution authorizing City staff to negotiate with Spectra for management services necessary to operate the Convention Center with the objective of execution of an agreement to take effect on or about March 18, 2019.

NOW, THEREFORE, in consideration of the following mutual promises, covenants and agreements, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Spectra agree as follows:

SECTION 1. AGREEMENT DOCUMENTS

- 1.1. The documents forming the entire Agreement between City and Spectra shall consist of this Agreement and the following Exhibits and other documents as follows:

Exhibit A – Definitions

Exhibit B – Insurance Requirements

Exhibit C – Labor Compliance Addendum

Exhibit D – Schedule of Required Submittals and Review

The documents listed below, which are on file with the City Clerk, are hereby incorporated by reference:

Spectra Best and Final Offer, dated January 22, 2019

Spectra Financial Proposal, dated January 10, 2019

Spectra Proposal, dated December 7, 2018

City of Santa Clara Request for Proposal (RFP), dated October 17, 2018

- 1.2. **Integration.** This Agreement, including the Exhibits and documents incorporated by reference as set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the terms and conditions in the body of this Agreement (including its Exhibits) and the documents incorporated by reference as set forth above, the terms and conditions in the body of this Agreement

(including its Exhibits) shall govern and control. In the event of any inconsistency between the documents incorporated by reference as set forth above, the inconsistency shall be resolved by giving precedence in the order such documents are listed above (i.e., the later document shall control and govern).

SECTION 2. PURPOSE

The purpose of this Agreement is to provide for the management and operation of the Convention Center by Spectra consistent with the goals of the City. The Convention Center shall be operated in the public interest. The Convention Center is owned by the City to create positive economic impact, to stimulate growth for the region, and to provide access to the community. Spectra recognizes these goals in programming for the Convention Center.

Spectra shall exercise its commercially reasonable best efforts to optimize use of the Convention Center in a manner that both (1) serves the public and community interest through economic impact and driving business activity within the City, and (2) attracts convention and conference events that will bring out of town visitors and attendees to the City. City seeks to protect its investment in the Convention Center and requires Spectra to support this objective through focused sales and marketing of the facility, transparent fiscal management, high quality service and supervision of capital planning for repairs and routine maintenance of the Convention Center.

SECTION 3. SPECTRA'S REPRESENTATIONS AND WARRANTIES

Spectra represents, warranties and maintains the following:

- 3.1. Spectra maintains that it has the experience, expertise and resources necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Spectra's representations regarding its skills and knowledge.
- 3.2. There are no actions, suits or proceedings pending or, to the knowledge of Spectra, threatened against or affecting Spectra which could have a Material Adverse Effect on the ability of Spectra to honor its obligations under this Agreement or that involve the enforceability of this Agreement, at law or in equity.
- 3.3. Spectra is not in default in violation of, operating under, or subject to, any order, writ, injunction, decree or demand of any court or any governmental authority.
- 3.4. The consummation of the transactions hereby contemplated and the performance of this Agreement will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, partnership agreement, corporate charter, bylaw, or other agreement or instrument to which Spectra is a party or by which it or any of its assets may be bound or affected.

- 3.5. Spectra is not insolvent (as such term is defined in the Bankruptcy Code of 1978, 11 U.S.C. Section 101, et seq., as amended) and will not be rendered insolvent by execution of this Agreement or the consummation of the transactions contemplated hereby.

SECTION 4. TERM OF AGREEMENT

- 4.1. **Initial Term.** Except as otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment, the term of this Agreement shall begin on March 18, 2019 ("Effective Date") and expire on 11:59 pm on June 30, 2024 ("Initial Term"). Notwithstanding the Effective Date, this Agreement shall be binding on the parties upon full execution hereof.
- 4.2. **Option Terms.** Upon expiration of the Initial Term, City has the option and sole discretion to extend this Agreement, according to all terms and conditions, for a subsequent term of five (5) years ("Option Term One") by serving notice to Spectra no later than 180 days from the expiration of the Initial Term. Upon expiration of Option Term One, City has the option and sole discretion to extend this Agreement, according to all terms and conditions, for a subsequent term of five (5) years ("Option Term Two") by serving notice to Spectra no later than 180 days from the expiration of Option Term One. The Initial Term plus any such renewal terms is sometimes referred to herein as the "Term".
- 4.3. **No Automatic Renewals.** There shall be no automatic renewal of this Agreement upon the expiration of the Initial Term or either Option Terms.

SECTION 5. SCOPE OF SERVICES

5.1. Engagement

City hereby engages Spectra to act as the sole and exclusive manager to operate, maintain and manage the Convention Center in accordance with the terms set forth in this Agreement, and in compliance with agreed-upon performance expectations and city, state, and federal rules, regulations, and laws. Spectra will be acting as an agent on behalf of City as the principal only for the purposes described in this Agreement.

5.2. Standard for Performance

- 5.2.1. The standard for performance of services by Spectra will be in accordance with the express provisions of this Agreement and in accordance with international industry standards and best practices. Without limiting the generality of the foregoing, Spectra agrees to perform and furnish management services, systems, and materials needed to operate, supervise, manage, and maintain the Convention Center with the highest quality and efficient manner possible, consistent with the operations of other similar facilities.
- 5.2.2. Notwithstanding the foregoing or any other provision of this Agreement, the standard of performance, satisfaction of Performance Measures, and compliance by Spectra with all of the terms of this Agreement, both

individually and in the aggregate, shall at all times be subject to Funds Availability sufficient to enable Spectra to satisfy the performance standards set forth herein and to perform each of its obligations hereunder, and all of the provisions of this Agreement shall be subject to Funds Availability. Spectra shall not be considered to be in breach or default of this Agreement, and shall have no liability to the City or any other party, in the event such that Spectra does not or cannot perform any of its obligations that are hereunder due to failure by the City to timely provide funds that are reasonably required by Spectra to perform its duties hereunder.

5.3. Grant of Authority

Subject to the policies, procedures, budgets, and guidelines set forth in this Agreement, as may be amended from time to time by mutual agreement, Spectra is hereby delegated full, actual, and exclusive authority by City (including, without limitation, exclusive as to City) over the day-to-day management and operation of the Convention Center, and all activities therein, and hereby assumes responsibility for the administration of all contracts affecting the management and operation of the Convention Center. It is understood and agreed that, while Spectra has certain reporting obligations to City under this Agreement, Spectra is granted and shall have full and exclusive authority to operate the Convention Center in a manner determined by Spectra and without seeking the approval from City except as specifically required under this Agreement.

5.4. Administrative and Management Services

During the Term, Spectra shall do the following with respect to the Convention Center:

- 5.4.1. Develop administrative policies and procedures, and update as necessary, to address the execution and implementation of these services.
- 5.4.2. Operate and manage all aspects of the Convention Center, including, but not limited to, procurement (which shall be consistent with City Code as amended from time to time), payroll, fire prevention, security, routing, repairs, preventative maintenance, janitorial services, promotions, energy conservation, admission procedures, booking systems, and general user services. Except as otherwise required by this Agreement, Spectra is not obligated to continue any service agreements entered into between the Chamber and any third parties. All outdoor advertising shall be subject to approval by City.
- 5.4.3. Enter into service agreements with third parties and perform contractual oversight of the same for services at the Convention Center, including but not limited to audio/visual and food and beverage. All such agreements shall be entered into by Spectra as agent on behalf of the City. Unless the Parties amend this Agreement per Section 26, Spectra shall not be obligated to provide food and beverage service.

- 5.4.4. Develop plans, policies and procedures, and operate and manage all technology functions of the Convention Center, including web presence, point of sale and event registration, which shall include a venue technology audit at Spectra's expense within the first three (3) months of the commencement of this Agreement.
- 5.4.5. Develop plans, policies and procedures, including regarding expenditures, for capital improvements and major facility and equipment upgrades and repairs, based on priorities developed in conjunction with City staff, and subject to City approval.
- 5.4.6. Administer all agreements, contracts and memoranda of understanding that are required in the ordinary course of business of operating the Convention Center, including, but not limited to services, events, concessions, catering, novelties/merchandise, advertising, equipment, and licenses.
- 5.4.7. Hire, maintain and supervise a staff of trained employees and/or contractors at the Convention Center as Spectra determines to be reasonably necessary to perform the Services under this Agreement and consistent with the City's Retention Ordinance.
- 5.4.8. Hire, subject to the approval of City (such approval not to be unreasonably withheld), and supervise, a General Manager to oversee all Convention Center administration, operations and programs.
- 5.4.9. Except as otherwise provided in this Agreement, collect, for the City's account, all revenues generated through the operation of the Convention Center and, with funding provided by the City, make expenditures required to operate and maintain the Convention Center, without causing any commingling of funds between accounts for the Convention Center and Spectra's operations and business units unrelated to the Convention Center.
- 5.4.10. Develop short and long- term objectives in accordance with City priorities for the Convention Center to enhance financial success of the Convention Center and report same to City on a monthly basis.
- 5.4.11. Upon reasonable advance notice, Spectra shall permit City representatives to view the general ledger from Spectra's accounting software program by attending Spectra's on-site Convention Center offices on an in-person basis. Additionally, Spectra shall grant City unlimited "real-time" and "read-only" access to view Spectra's accounting software program on-line, and such access shall include accounting activity, such as source documents that substantiate transactions entered into the system.
- 5.4.12. Submit reports and proposals to City, including as stated in Exhibit D.
- 5.4.13. Attend and participate in such meetings of City Council and City Committees as are reasonably and timely requested by the Contract Administrator.

- 5.4.14. Assure compliance with City's insurance requirements and manage claims as required to minimize risk to City.
- 5.4.15. Initiate any and all legal actions or proceedings to collect charges, rentals, or other income generated by and due to City, or to cancel or terminate any license, use, concession agreement, or other contract for the breach thereof or default thereunder by any contractor; provided, however, Spectra is not required to initiate legal proceedings if, in the reasonable judgment of Spectra and City the parties mutually agree in writing that the cost of such proceedings will outweigh any expected recovery. Legal expenses for actions approved under the terms of this Section shall be included as an Operating Expense of the Convention Center to the extent that such cost and expense is not recovered or recoverable by Spectra with reasonable due diligence from the contractor or from any insurance proceeds (including, without limitation, proceeds from any insurance policy that Spectra is required to maintain hereunder).
- 5.4.16. Purchase at its own cost, and secure for the City "advertising spots" in conjunction with Comcast and its corporate affiliates, according to an advertising plan whereby City and Spectra mutually agree on the content and market for each "advertising spot." The value of such spots to be secured by Spectra shall be Sixty Five Thousand Dollars (\$65,000) annually, for which the City shall bear no expense as an Operating Expense.
- 5.4.17. Extend advertising discounts, including "Friends and Family" rates, through Comcast and its corporate affiliates, for advertising, marketing and promotion of the Convention Center, Convention Center events, and/or the destination of Santa Clara.

5.5. **Operating Services**

During the Term, Spectra shall do the following with respect to the Convention Center:

- 5.5.1. Ensure that the Convention Center is maintained in good order and repair and in a clean, safe, and sanitary condition, in coordination with the City and the Convention Center Maintenance Management District ("Maintenance District").
- 5.5.2. Provide operation, maintenance, and repair services, by competent and qualified employees or subcontractors, of all material and operational aspects of the Convention, including but not limited to the following:

1. Regular day-to-day maintenance requirements;
 2. Interior structure and finishes, including paint, paneling, flooring and carpeting;
 3. Heating, ventilation and Cooling (HVAC), mechanical, electrical, and plumbing systems, equipment and fixtures;
 4. Telecommunication systems, including for internet connectivity, telephones;
 5. Seating and furniture, and related equipment;
 6. Elevators, escalators, stairwells and hallways;
 7. Signage, sound and lighting systems, equipment and fixtures;
 8. Fire and security monitoring systems; and
 9. Landscaping and exterior grounds requirements within the Convention Center premises that are not the responsibility of the Maintenance District, including stone inset surfaces adjacent to the 200 Ballroom Section of the Convention Center.
- 5.5.3. Maintain all Convention Center systems, equipment and fixtures in a manner that meets or exceeds manufacturer's recommendations for maintenance taking into account the age thereof.
- 5.5.4. Enter into any necessary or desirable agreements and execute any lease, license or agreement with third party entities for the use and occupation of spaces within the Convention Center for purposes that are consistent with Section 2 of this Agreement, including but not limited to third party operation of retail and service businesses, during the Term of this Agreement. In no instance is Spectra authorized to enter into any lease, license or agreement that grants a third party continuous and exclusive use or occupation of Convention Center property for a period greater than thirty (30) days, without the express written consent of City. All such lease, license or agreements shall be entered into by Spectra as agent for the City. Any such lease, license or agreement for use and occupation granted to third parties shall be for no longer than the Term of this Agreement.
- 5.5.5. Identify opportunities through its relationship with its corporate affiliates, including Comcast, to raise visibility and awareness and secure new business for the Convention Center.
- 5.5.6. Establish and provide the Contract Administrator on an annual basis with a schedule of preventive maintenance and renovation action items that Spectra determines, in its considered judgment, are necessary to be addressed in order to maintain the Convention Center in a superior condition with a goal of differentiating the Convention Center from other facilities of similar size across the US.

- 5.5.7. Provide the Contract Administrator with a report, within sixty (60) days after the last day of each Operating Year, of all Convention Center maintenance that was performed during the preceding year and of all Convention Center maintenance scheduled for the then current year. This report shall include a list of the breakdowns of all major pieces of installed and portable equipment for that year.

5.6. Program Management Services

Spectra shall provide, or cause to be provided, program and facility management services for conventions, trade shows, performing arts, community events, sporting events, family shows, and all other events at the Convention Center. Spectra shall also do the following:

- 5.6.1. Develop and implement a customer service program to provide exceptional customer service to all visitors and guests of the Convention Center. The City may, at its cost, contract with a third party to conduct customer surveys on a monthly basis. Spectra will develop a communication plan and make the customer database available to be used for this purpose. The goal will be to have at least 75% of the Convention Center licensees, and at least 3% or more of the event attendees, fill out a written survey and to have one (1) to two (2) a month to agree to an interview. The data collected will be sent to the City directly by the third party with copies sent to Spectra.
- 5.6.2. Develop an agreed-upon contract for Convention Center rental, electrical, and other event services for conventions, trade shows, community events, and other events as may be required.
- 5.6.3. Develop, as part of the Operating Budget, proposed revenue and rental/charge structures and procedures related to facility use, equipment use, and services provided by the Convention Center.
- 5.6.4. Actively collaborate with any future Destination Marketing Organizations ("DMO"), as designated by City, as follows:
 - 5.6.4.1. Spectra will work with DMO to attract, secure and book new and ongoing business at the Convention Center in accordance with an agreed-upon booking policy.
 - 5.6.4.2. Spectra will manage venue operations and control the booking calendar at the Convention Center, and Spectra's sales team(s) will have the sole responsibility to attract, secure and book short-term business, and act in partnership with the DMO sales team to book long-term business.
 - 5.6.4.3. Spectra and the DMO will work as one to represent the Convention Center regionally, nationally, and internationally, through joint sales missions, a single sales and marketing plan, and a common

room night booking goal that will guarantee collaboration.

5.6.4.4. Spectra will actively work with co-interested entities and community partners (such as the Santa Clara Tourism Improvement District ["TID"], Jones Lang LaSalle Incorporated ["JLL"], and other relevant community groups) to develop the most efficient structure of the new DMO that will lead to the greatest economic impact for City and maximize collaboration between the Convention Center, DMO, and community partners.

5.6.5. Secure from N3RD Street Games its commitment to annually bring a gaming tournament to the Convention Center for five (5) years.

5.6.6. Secure, host and execute Spectra's Annual Leadership Meeting at the Convention Center one (1) time within the first five (5) years of the Initial Term of this Agreement.

5.7. **Non-compete**

During the Term, Spectra will not enter into any agreements to manage any other Convention Center within One Hundred (100) miles of the Convention Center without City's consent. This restriction shall not prevent or limit Spectra from providing food service or other ancillary services to any other facilities, other than management services.

SECTION 6. **KEY PERFORMANCE INDICATORS**

6.1. The Key Performance Indicators ("KPI") for evaluating Spectra's performance shall be based on categories set forth in Section 6.2 below and performance goals established in the Adopted Operating Budget from year to year, and the Weighted Percentage assigned to each category, as set forth in this Section.

6.2. **KPI and Goals.** The KPI are as follows (As defined in Exhibit A – "Definitions"):

1. Gross Revenue
2. Net Income
3. Room Nights Consumed
4. Economic Impact
5. Customer Service Survey Results Scores
6. Event Mix
7. Community Benefit

6.3. **Adoption of Goals.** The performance goals with respect to the KPI included in Section 6.2 for a particular Fiscal Year shall be developed by Spectra annually and approved by the City.

6.4. **Weight of Indicators.** A weighted percentage to each KPI ("Weighted Percentage") shall apply purposes of measuring Spectra's performance under this Agreement.

1. Gross Revenue – 15%
2. Net Income – 50%
3. Room Nights Consumed – 10%
4. Economic Impact – 10%
5. Customer Service Survey Results Scores – 5%
6. Event Mix – 5%
7. Community Benefits – 5%

6.5. **Calculation of KPI.** Within 120 days after the end of each Fiscal Year, a weighted percentage will be calculated as the product of the extent to which Spectra met or exceeded the KPI goals for the subject Fiscal Year multiplied by the Weighted Percentage assigned to such KPI (the "Weighted Achievement Percentage").

6.6. **KPI Remediation Plans.** If any KPI is not achieved in a single Operating Year, it shall not constitute a default of this Agreement, but City may require and request that Spectra develop a plan designed to ensure achievement of the KPI in the subsequent Operating Year ("KPI Remediation Plan"). Within 45 days of City's request, Spectra shall develop a KPI Remediation Plan, which shall be subject to City approval. The purpose of any KPI Remediation Plan shall be to outline actions that Spectra can practically implement and also goals with respect to each KPI that Spectra can reasonably achieve within the subsequent Operating Year. If Spectra implements the actions in a City-approved KPI Remediation Plan, but fails to achieve any goals as set forth therein, it shall not constitute a default of this Agreement. This Section shall not otherwise modify the Parties' respective rights and remedies to enforce this Agreement.

SECTION 7. OPERATING BUDGET

7.1. Initial Operating Budget

The existing FY 2018/19 Operating Budget (as previously adopted by the City) will constitute the Adopted Operating Budget for the period from the Effective Date through June 30, 2019, provided that such budget shall be deemed amended to including expenses for Spectra's management fees, incremental labor costs and Transition Expenses anticipated to be incurred in such period.

7.2. Establishment of Operating Budget

7.2.1. 2019-2020 Operating Year. Spectra shall submit to the City, on or before May 1, 2019, its proposed Operating Budget for the 2019-20 Operating Year. The Parties shall work together towards developing a final Operating Budget for the 2019-20 Operating Year no later than May 15, 2019.

7.2.2. 2020-2021 Operating Year and thereafter. No later than February 1 of each succeeding Operating Year (beginning February 1, 2020), Spectra shall submit to the City a proposed two-year operating budget (the "Proposed Operating Budget") which shall include Spectra's good faith projection of Revenue and Operating Expenses, presented on a monthly and annual basis, for the next two Operating Years. City agrees to provide to Spectra all information in its possession to enable Spectra to prepare each Operating Budget. City will review the Proposed Operating Budget and the City and Spectra will work toward developing a final Proposed Operating Budget by March 15. Since City budgets on two-year alternating operating and capital cycles, Spectra shall submit revisions, if necessary, to the Adopted Operating Budget in the second year of the Operating Budget in accordance with the dates above, and any revisions shall be subject to City Council approval. The Proposed Operating Budget will address each of the following:

1. Property operation and maintenance;
2. Furnishings, fixtures, and equipment purchases and replacement and repair;
3. Anticipated event and other income at the Convention Center, such as sponsorship revenue; and
4. Proposed performance goals in accordance with Section 6 of this Agreement.

7.2.3. In addition to the foregoing items, Spectra shall provide a summary income statement with the Proposed Operating Budget (each of which shall support such Proposed Operating Budget).

7.2.4. Spectra shall prepare each Proposed Operating Budget with appropriate diligence and after giving due consideration to all relevant factors affecting the operation of the Convention Center, including, without limitation, reasonably anticipated market and economic conditions applicable to the Fiscal Year and operation of the Convention Center in accordance with the terms of this Agreement. The Proposed Operating Budget shall be subject to the approval in writing by City, and City hereby agrees to examine each Proposed Operating Budget submitted to it. If found reasonable and proper, City will approve in writing such Proposed Operating Budget, it being contemplated that the Proposed Operating Budget will be agreed upon by the parties hereto and approved by the City Council on or

before June 30th of the Fiscal Year during which said Proposed Operating Budget is submitted.

- 7.2.5. If City objects in the manner provided above to any such Proposed Operating Budget submitted by Spectra, the Parties shall then attempt to mutually agree upon a Proposed Operating Budget satisfactory to both City and Spectra, and if the City and Spectra are not able to mutually agree thereto, Spectra shall operate under the terms of the operating budget counter-proposed by City.
- 7.2.6. The Proposed Operating Budget, as approved by City and Spectra, shall then be submitted to the City Council for approval. Once approved, the Proposed Operating Budget shall become the "Adopted Operating Budget".
- 7.2.7. Spectra shall use all reasonable efforts to manage and operate the Convention Center in accordance with the Adopted Operating Budget. However, City acknowledges that notwithstanding Spectra's experience and expertise in relation to the operation of facilities similar to the Convention Center, the projections contained in each Adopted Operating Budget are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond Spectra's control, and that Spectra shall have no liability if the numbers within the Adopted Operating Budget are not achieved. Spectra agrees to notify the City within 30 days if the actual bottom line number in the Adopted Operating Budget for any month is 10% or more from that provided for in the Adopted Operating Budget. In such case and if requested by the City, Spectra agrees to work with the City to develop and implement a plan (or changes to the then current plan) to limit Operating Expenses to be incurred in the remaining months of such Operating Year with the goal of achieving the Adopted Operating Budget.

SECTION 8. MANAGEMENT OF REVENUE AND EXPENDITURES

8.1. Generally

Spectra is authorized to invoice customers for products sold and services rendered. Revenues from operations of the Convention Center will be recognized and recorded in accordance with generally accepted accounting principles ("GAAP").

8.2. Event Account

To the extent the Convention Center collects advance funds for events and use of the Convention Center, including advance ticket sales, Spectra shall deposit such funds as soon as practicable following receipt in a bank account designated and owned by the City ("Event Account"). Promptly following completion of an event, Spectra shall transfer all funds in the Event Account related to such event, including interest accrued thereon, into the Operating Account. Event expenditures shall not be paid from the Event Account, but shall be paid from the Operating Account

8.3. Operating Account

Except as provided in Section 8.2, all Revenue derived from operation of the Convention Center shall be deposited by Spectra into a separate bank account designated and owned by the City (the "Operating Account"), as soon as practicable upon receipt (but not less often than once each business day). The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Operations Manual, but the Parties specifically agree that Spectra shall have authority to sign checks and make withdrawals from such account, subject to the limitations of this Agreement, without the need to obtain a co-signature of the City.

8.4. Funding of Budgeted Operating Expenses

Spectra shall pay all items of expense for the operation, maintenance, supervision and management of the Convention Center with the funds in the Operating Account, which Spectra may access periodically for this purpose. The Operating Account shall be funded with amounts generated by operation of the Convention Center (as described in Section 8.3 above), or otherwise made available by City through a City subsidy. To ensure sufficient funds are available in the Operating Account, City will deposit in the Operating Account, beginning on or before the Effective Date, at amount equal to the budgeted or otherwise approved expenses for the following two (2) month period. City shall thereafter, on or before the 1st day of each succeeding month following the Effective Date, deposit in the Operating Account funds in the amount of at least the budgeted or otherwise approved expenses for the next rolling month, leaving at all times an extra month of funding in the Operating Account. In the event the account accumulates a surplus greater than the amount of budgeted expenses of the following two (2) month period, the City may withdraw such funds up to the amount in excess of the budgeted expenses for such following two (2) month period. Spectra shall have no liability to the City or any third party in the event Spectra 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 to Spectra to pay Operating Expenses in a timely manner. Under no circumstances shall Spectra 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, Spectra advances its own funds to pay budgeted Operating Expenses, the City shall promptly reimburse Spectra for the full amount of such advanced funds.

8.5. Approved Annual Budget Compliance and Modification

Spectra shall, with written notice to City and after approval by the City Council, as required, be entitled to modify the Adopted Operating Budget to respond to unanticipated increases or decreases in Gross Revenues or Operating Expenditures.

8.6. Reserves

To set aside funding for specific purposes in the future, or for unforeseen circumstances, the City shall maintain various reserves as follows:

8.7. Capital Improvement Reserve

Annually through the Operating Term of this Agreement, the City shall allocate resources to a reserve (the "Capital Improvement Reserve") for City-approved Capital Improvement and Repairs. This allocation is subject to City Council approval and appropriation, and will only be made if there are sufficient uncommitted funds available and there is no need to provide additional fiscal support for any of the following:

1. Funding of anticipated operating deficits; and
2. Expenditures for active capital improvement projects or emergency repairs.

8.8. Other Reserves

The City may from time to time and in coordination with Spectra establish other reserves for various purposes related to the Convention Center.

8.9. Intentionally Omitted

8.10. Operating Account Audit

In addition to the audit rights of City stated elsewhere herein, City may conduct one (1) or more audits of the books and records of Spectra relating to the Operating Account (including, without limitation, all Operating Revenues and Operating Expenses related thereto) (the "Operating Account Audit"). The Operating Account Audit may be conducted up to two times per Operating Year, at the discretion of City's Director of Finance, upon ten (10) business days advance written notice to Spectra, and shall be performed by the External Auditor. Costs for the Operating Account Audit will be paid by Spectra from the Operating Account and will be allocated as Operating Expense of the Convention Center; provided, however, such costs shall be recorded below the line of Gross Operating Profit.

SECTION 9. CAPITAL IMPROVEMENT EXPEDITURES

9.1. Preventative and Corrective Maintenance

Spectra shall develop and execute a review process acceptable to City to report and summarize preventative and corrective maintenance activities of the Convention Center. In addition, Spectra shall participate in meetings with City-designees at dates and times mutually agreeable to the Parties, to report to City a review of completed, ongoing, and planned preventive and corrective maintenance activities of the Convention Center. Spectra shall identify any maintenance requirements. Spectra shall address and prioritize in the Capital Improvement Program those deficiencies that are under Spectra's control to correct.

9.2. Capital Improvement Program

- 9.2.1. On or before October 1st preceding each Operating Year (unless otherwise indicated), Spectra shall submit to the Contract Administrator a report consisting of the following (collectively the "Capital Improvement Program Report"):
1. A building system condition assessment report of the Convention Center; and
 2. A proposed list of Capital Improvements and Repairs which Spectra recommends to be undertaken at the Convention Center during the next five-year period.
- 9.2.2. Notwithstanding the foregoing, the first Capital Improvement Program Report shall be due by May 15, 2019, and shall be updated on or before December 1, 2019. Since the City budgets on two-year cycles, alternating between operating and capital budgets, any changes to the budget in the second year of the Adopted Biennial Budget shall be submitted in accordance with the dates above.
- 9.2.3. Spectra's proposed budgets shall include the estimated costs of design, materials, construction, inspection, and the proposed contingency for each identified Capital Improvement and/or Repair in Spectra's proposed Capital Improvement and Repair budget, and shall be based on Spectra's knowledge of the Convention Center and related construction costs, Spectra's knowledge of revenue-enhancing strategies, and Spectra's role in maintaining the quality of the Convention Center. Spectra shall not obtain nor be required to obtain any bids in connection with its preparation of the Capital Improvement Program Report. The final Capital Improvement Program Report will be submitted to City for approval on or before March 1st of each Operating Year as part of City's annual budget process.
- 9.2.4. City's approval of the annual Capital Improvement Program Report will be tentative only, and implementation of any portion of the recommendations set forth in the Capital Improvement Program Report will be subject to the availability of funds in the Capital Improvement Reserve and Contract Administrator approval. Neither Party shall be required by the other to make additional deposits to the Capital Improvement Reserve or pay for budgeted items from its separate funds without such Party's prior written consent, which consent may be granted or withheld in such Party's sole and absolute discretion. The budget recommended by Spectra as set forth in the Capital Improvement Program Report, as and when approved by City, shall become the Capital Budget for the Convention Center for the Operating Year immediately following City approval. In no event shall Spectra be required to fund any Capital Improvement or Repairs from its own account except as provided in Section 9.3.
- 9.2.5. Other than Emergency Capital Repairs and Replacements, Spectra may not make any Capital Improvements or Repairs that are outside of the

Adopted Operating Budget, are not included in the Capital Budget, or not otherwise approved in advance by City in writing.

9.3. Spectra Investments for Capital Improvements

Spectra shall invest and expend funds for capital improvements at the Convention Center, as proposed in Spectra's initial Capital Improvement Program Report and approved by City according to this Section, as set forth below. Capital investments shall be amortized on a straight-line over the time periods set forth below. In the event that this Agreement expires or terminates for any reason whatsoever (including without limitation if due to a breach or default by Spectra, or if the Term is not extended beyond the Initial Term or Option Term One, as applicable) prior to full amortization of each investment, the City shall be obligated to reimburse Spectra for only the unamortized portion.

1. During the first 12 months of the Initial Term, Spectra shall invest One Million One Hundred Fifty Thousand Dollars (\$1,150,000) into expenditures for capital improvements and repairs to occur in that same time period that correspond with City-approved items stated in a Capital Improvement Program Report. Such investment shall amortize over a fifteen (15) year period beginning on the Effective Date.
2. During the first 12 months of the Option Term One (year 6 of this Agreement), if applicable, Spectra shall invest Five Hundred and Fifty Thousand Dollars (\$550,000) into expenditures for capital improvements and repairs to occur in that same time period that correspond with City-approved items stated in a Capital Improvement Program Report. Such investment shall amortize over a ten (10) year period beginning on the first day of year 6 of the Term.
3. During the first 12 months of the Option Term Two (year 11 of this Agreement), if applicable, Spectra shall invest Three Hundred Thousand Dollars (\$300,000) into expenditures for capital improvements and repairs to occur in that same time period that correspond with City-approved items stated in a Capital Improvement Program Report. Such investment shall amortize over a five (5) year period beginning on the first day of year 11 of the Term.

9.4. Unanticipated Capital Repairs and Replacements

In the event that Spectra becomes aware of the need for a capital repair or replacement that was not anticipated, but is necessary for the continued operation of any of the Convention Center, Spectra shall immediately notify the Contract Administrator of the nature of the repair or replacement and of the estimated cost of the repair or replacement. The Contract Administrator will make a recommendation to City on how to proceed within thirty (30) days of the request from Spectra. If the City authorizes Spectra to perform the recommended repair or replacement, and

Spectra performs the repair or replacement, then the costs for doing so will be included as a line item in the Adopted Annual Budget for Capital Improvements.

9.5. Emergency Capital Repairs and Replacements

City may make Emergency Capital Repairs and Replacements consistent with established City procedures for handling civil emergencies. If Spectra reasonably determines that any delay would present a material risk to human life or the structural integrity of one or more of the Convention Center, or would prevent the holding of a scheduled event, Spectra may immediately commence Emergency Capital Repairs and Replacements. In all other events, Spectra shall notify the City at an emergency number provided to Spectra, and shall either receive City's prior approval or wait 48 hours without receiving a response before commencing Emergency Capital Repairs and Replacements. In the event that Spectra performs the Emergency Capital Repair or Replacement, the line item in the Adopted Operating Budget for capital improvements will be increased by the cost thereof.

9.6. Authorization and Implementation of Work

- 9.6.1. Spectra shall implement the design and construction of Capital Improvements and Repairs only after the Capital Improvement Program Report and Capital Budget have been approved. Spectra shall exercise its supervisory responsibilities with respect to Capital Improvements and Repairs with the objective that all work and materials shall be of the highest quality appropriate to the uses for which such improvements and materials are intended, and as are reasonably consistent with the nature of the improvements and the amount budgeted therefore.
- 9.6.2. To the extent that Spectra advances payments for the cost of the Capital Improvements or Repairs, Spectra shall be promptly reimbursed for such cost from the Capital Improvement Reserve. Spectra may charge the cost of Spectra's employees who provide direct labor to the implementation of the Capital Improvements and Repairs; provided, however, Spectra shall not be reimbursed for any costs of Spectra's off-site corporate staff or overhead related to overall supervision of such activity.
- 9.6.3. Spectra shall comply with the following general requirements in the course of causing the Capital Improvements and Repairs to be completed:
 1. In the event, and to the extent, that any Capital Improvements and Repairs constitute a "public works project," according to City Charter and Code and applicable California statutes, Spectra shall observe all public bidding requirements.
 2. All applicable approvals of plans and specifications, permits, and all other approvals and documents required by City Charter and Code and applicable California statutes, shall be fully applicable to, and obtained by Spectra or the applicable contractor for work

projects carried out by Spectra under this Agreement.

3. Where applicable City Charter and Code and California statutes require it based on specified threshold, Spectra shall require the general contractor performing work on the project to provide payment and performance bonds in the amount of the total value of all construction contracts entered into for such construction work.
4. Construction Documents, permits, and City's standard specifications may be modified only by field order changes.
5. Inspection of the work shall be performed on a regular basis by City's Department of Public Works in its normal course of business, and Spectra shall coordinate and execute all building code requirements.
6. If, at any point during construction, City determines that the work is not being performed in a manner that complies with this Section, City shall have the right to stop the construction and direct Spectra to correct the deficiency.
7. Require the general contractor and all subcontractors performing work on the project to provide insurance coverage as required by this Agreement.
8. All applicable federal, state and local laws and policies regarding public works construction shall be adhered to, including, but not limited to, the payment of prevailing wages.
9. Provide full sets of Construction Drawings, Specifications and "as-built" record drawings to City for each capital project executed.

SECTION 10. FISCAL RESPONSIBILITY AND ACCOUNTABILITY

10.1. Monthly and Quarterly Reporting

- 10.1.1. Each month and calendar quarter, Spectra will prepare and deliver to City a report describing the use and operation of the Convention Center for the prior period in a format approved by City (hereinafter referred to as "Monthly Report" and "Quarterly Report," and together as "Reports"). The Reports will include information on the activities associated with the operation, management, supervision, and maintenance of the Convention Center, and shall include KPIs and a financial analysis (balance sheet, profit and loss statement, cash flow statement, and forecast) of how the Convention Center is operating. The Reports will also include information included in the Monthly "Dashboard" Report that is referred to in Section 10.1.3.
- 10.1.2. City retains the right to demand and access all financial records that are presently available and directly related to the operation and management

of the Convention Center. At City's request, the Parties will meet to discuss these reports on a quarterly basis.

10.1.3. Spectra will prepare a monthly "dashboard" report that will be distributed to the Contract Administrator that will combine the following metrics and KPIs (as defined in Exhibit A - Definitions):

1. Gross Revenue
2. Net Income.
3. Room Nights Consumed.
4. Economic Impact.
5. Customer Service Survey Results Scores.
6. Event Statistics.
7. Event Mix.
8. Community Benefit
9. City-wide events

10.1.4. The dashboard reports for each month will be due by the 30th day following such month. The City acknowledges and agrees that certain of the foregoing metrics (such as Gross Revenue and Net Income) will be available and included in the monthly "dashboard" reports due in connection with the first (1st) month of this Agreement, but the others will not be available and provided until July 1, 2019.

10.2. Annual Performance Audit and Financial Statement Audit

Within 180 days after the end of each Operating Year, Spectra agrees to provide to the City a certified audit report on the accounts and records as kept by Spectra for the Convention Center. Costs associated with obtaining such certified audit report shall be an Operating Expense. Such audit shall be performed by an external auditor approved by the City, and shall be conducted in accordance with generally accepted auditing standards. City (through its Director of Finance or other authorized officer or designee) may also cause a performance audit ("Performance Audit") to be conducted and completed by a Performance Auditor (the person or firm so selected referred to herein as the "Auditor") or by the City Auditor. The Performance Audit shall assess Spectra's performance during the previous Operating Year using the KPIs and Performance Measures, taking into account applicable funding levels both under this Agreement. A draft report of the Performance Audit shall be made available for comment by City and Spectra prior to completion of the audit. The Performance Audit will include the Performance Measures agreed each year as part of the budget process.

10.3. 2018 Audit

Spectra shall operate and perform management duties in accordance with the recommendations and outcomes from Tap International's September 18, 2018 Final Report titled "Santa Clara Convention Center and Convention-Visitor Bureau: Restructuring Operations can Strengthen Accountability, Performance, and Revenue, a copy of which may be obtained from the City Clerk's Office.

10.4. City Services

City will continue to provide (or make available to Spectra's use, if beneficial to the Adopted Operating Budget) those goods and services, at the option of Spectra, that are expressly to remain the responsibility of City as contained within the Adopted Operating Budget. In no event shall such goods and services include those that are deemed to be the responsibility of Spectra as stated in this Agreement. Spectra may exercise its option to receive such goods and services from the City upon 90 days' notice to City.

10.5. Taxes and Assessments.

10.5.1. Payment of Taxes, Fees.

Spectra shall be responsible for collecting any sales and use tax assessed on the services provided to customers of the Convention Center and remit such sales and use taxes to the applicable taxing authority on the City's behalf.

10.5.2. Possessory Interest Tax.

The sole purpose of this Agreement is for Spectra to provide operation management services. Should assessor for the County of Santa Clara determine that Spectra's right to operate and manage the Convention as set forth in this Agreement creates a possessory interest subject to a possessory interest tax, City shall reimburse Spectra for any possessory interest tax or taxes imposed upon Spectra as a result of its operation and management of the Convention Center, and the amount of such reimbursement shall not be allocated to any of the financial formulas or results of operation under this Agreement.

10.5.3. Income Taxes

Spectra shall timely pay all state, federal and local income taxes arising from Spectra's Management Fees and Incentive Fees actually received by Spectra under this Agreement. Spectra is not responsible for, and City shall indemnify and hold Spectra harmless from, any tax liabilities arising from the Operating Revenues of the Convention Center.

10.5.4. Taxes – Hold Harmless

Spectra shall protect, defend, indemnify and hold City harmless from any liability, loss, or damage, including interest and penalties, resulting from any failure by Spectra to pay applicable taxes on its income received hereunder.

10.6. Internal Control Structure

Spectra shall maintain an internal control structure designed to provide assurance that City and Convention Center are safeguarded from loss or unauthorized use, that transactions are executed in accordance with this Agreement, and that financial records are reliable for the purpose of preparing financial statements. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures. City's Director of Finance, or

designee, may review such controls at any time during this Agreement, and may commission an agreed upon procedures audit from the External Auditor. Spectra shall cooperate and provide any information relevant to the review of Director of Finance, City's Internal Auditor, and the External Auditor.

10.7. Duty to Keep City Informed

Spectra shall keep City's Director of Finance and/or Contract Administrator informed and advised of all material financial and other matters concerning the Convention Center and the operation thereof, and give due consideration to suggestions which City's designees or consultants may offer with respect thereto from time to time.

10.8. Covenant of Spectra Regarding Notes/Guarantees/Loan Agreements

Spectra covenants and agrees that it will not, and nothing herein shall be deemed to authorize Spectra to, execute any notes, guarantees, loan agreements or other evidences of indebtedness, or borrow any money on behalf of City or Convention Center or as a part of the Operating Expenses herein authorized. Spectra has no power or authority to enter into any mortgage, deed of trust, security agreement, or any other instrument (other than for the licensing of the use of the Convention Center expressly authorized herein) encumbering all or any part of the Convention Center or any accounts or other personal property arising from or attributable to the Convention Center or its operations.

SECTION 11. AGREEMENT MONITORING

11.1. Monitoring Designee

Spectra shall designate a specific individual to monitor the Agreement who, as of the Effective Date, shall be Spectra's onsite General Manager.

11.2. Authority of Contract Administrator

City agrees that its City Manager shall name a specific individual as the Contract Administrator. The Contract Administrator shall have such authority as set forth in this Agreement. The Contract Administrator shall be the primary liaison between Spectra and City on all matters relating to this Agreement where City Council or City Manager approval is not otherwise required by applicable law, and shall have the primary responsibility for monitoring and assessing the quality of services provided and contract compliance by Spectra. Spectra can rely on any approvals or instructions given by the City's Contract Administrator that are not inconsistent with the authority set forth herein as being binding against the City.

11.3. City Right to Audit

- 11.3.1. City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this

Agreement, to audit the books and records of Spectra for the purpose of verifying any and all charges made by Spectra in connection with compensation under this Agreement.

11.3.2. Spectra agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. In the event an audit reveals theft or malfeasance on the part of Spectra that results in a loss to the City, Spectra shall reimburse the City for the loss.

11.3.3. Spectra shall submit to City any and all reports concerning its performance under this Agreement that may be reasonably requested by City in writing. Spectra agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Spectra's Services hereunder.

SECTION 12. COMPENSATION

12.1. Fixed Management Fee

In consideration for Spectra's complete performance of all materials and Services, City shall pay to Spectra a Fixed Management Fee, to be calculated as follows:

1. For the period from the Effective Date to June 30, 2020, the Fixed Management Fee shall be in the amount of thirteen thousand seven hundred fifty dollars (\$13,750) per month.
2. In the second year of the Initial Term (July 1, 2020 to June 30, 2021), and in each year thereafter, the amount of the Fixed Management Fee shall increase in accordance with the percentage increase in the Consumer Price Index ("CPI"), using the San Francisco-Oakland-Hayward index, not seasonally adjusted, base period equal to 1982-1984. For purposes of this annual adjustment, the percent shall be calculated by comparing the percentage change of the most recent "annual" CPI, with the previous year.

For example, the first year of eligibility will be in July 2020, and the adjustment shall be calculated based on the percentage change between the 2019 and 2018 annual indexes.

3. In no year shall the increase amount exceed three percent (3%) over the preceding year. If the CPI goes down in any year, the Fixed Management Fee shall remain unchanged.

City shall pay the Fixed Management Fee monthly, in advance, by the first (1st) day of the applicable month. The Fixed Management Fee may be reviewed by City upon the conclusion of any Term, to determine if any adjustment should be made; provided, however, any adjustment shall be subject to the mutual agreement of Spectra.

12.2. Incentive Fee

In addition to the Fixed Management Fee, City shall pay to Spectra an annual incentive fee (the "Incentive Fee"). The Incentive Fee shall be paid each year within 90 days after the end of the Operating Year. The Incentive Fee shall be determined each year according to the following measures ("Incentive Fee Measures"):

12.2.1. Quantitative Incentive Measures.

As a portion of the Incentive Fee, Spectra shall receive a percentage of improvement in the Net Operating Income over the Net Operating Income Benchmark, which shall be the average annual Net Operating Income from Fiscal Years ending June 30, 2018 and 2019 ("Quantitative Incentive Measure"). The percentage of improvement to be paid to Spectra shall be based on the following "Steps":

Step	Amount of Improvement Over Benchmark	Percentage to City	Percentage to Spectra
1	≤ \$ 164,999.99	100.0	0.0
2	\$ 165,000.00 to \$ 499,999.99	92.0	8.0%
3	\$ 500,000.00 to \$999,999.99	90.0	10.0%
4	≥ \$1,000,000	88.0	12.0%

The above percentages are paid at their respective step, and not retroactive to the previous step(s)

12.2.2. Qualitative Incentive Measures.

Additionally, as a separate portion of the Incentive Fee, Spectra may receive up to \$20,000 annually based upon performance in the performance measures set forth below ("Performance Measures") (with the percentage of such \$20,000 for which Spectra is eligible for set forth next to each category below):

1. Results of Customer Service Surveys (10%)

This category of Performance Measure is assigned a weighted percentage of 10%. Spectra will ask the decision-maker of each event to rate their overall satisfaction with the product and services provided. Spectra will create a standard survey instrument containing a series of product and service rating metrics, including the following summary question: "Based on the services provided, please rate our overall performance." The post facility use survey data will be sent directly to the Contract Administrator for review. In addition,

Spectra will work on developing an attendee survey to be distributed to convention attendees, subject to approval of the convention sponsor and funding availability. Periodically, Contract Administrator and Spectra shall review and discuss the survey data and identify, as necessary, areas for additional Spectra attention and improvement.

2. Achievement of Economic Impact Goals (40%)

This category of Performance Measure is assigned a weighted percentage of 40%. By managing the strategic mix of business in accordance with the agreed upon booking policy and visitor types, Spectra will focus on total attendance for events and direct spending associated with the Convention Center. Components of this Performance Measure will include measurement of hotel room nights booked, and attendance of local, out-of-town, and exhibit visitors.

3. Achievement of Annual Mix of Event Goals (20%)

This performance measure is weighted at 20%, and shall be based on the agreed upon number and type of events at the Convention Center.

4. Community/Stakeholder Involvement (10%) (City, DMO, hotels, labor unions, etc.) – This Performance Measure is weighted at 10% and is the level of agreed upon inclusion of city partners.

5. Repairs & Maintenance/Capital Planning/Asset Protection (20%)

This is weighted at 20%. This evaluates whether Spectra is managing the Convention Center in accordance with the operations and capital plan.

12.3. Rebate of Incentive Fees

If in any Operating Year starting with the 2020-21 Operating Year, Spectra does not achieve the annual budgeted Net Operating Income in the Adopted Operating Budget (the difference between the budgeted Net Operating income and the actual Net Operating Income in such year being the "Deficit"), Spectra shall rebate to the City up to fifty percent (50%) of its earned Incentive Fees in such year on a dollar-for-dollar basis to offset the Deficit. In no event shall Spectra be required to rebate more than fifty percent (50%) of its Incentive Fee in such year (or any subsequent year).

12.4. Maximum Compensation

The maximum compensation to be paid to Spectra in any Operating Year, aggregate of the Fixed Management Fee and the Incentive Fee, shall not exceed Four Hundred Thousand Dollars (\$400,000) per Operating Year.

SECTION 13. OWNERSHIP, USE OF FACILITIES, MATERIALS AND RESOURCES

13.1. City Ownership. Except as otherwise expressly provided herein, City will retain ownership of the Convention Center, including, but not limited to, all real estate, technical and other equipment, furniture, displays, fixtures and similar property, including any improvements made during any Term of this Agreement.

Ownership of assets purchased from the Operating Account or any other City funds is and shall remain with City.

City shall own all data and other electronic files generated by Spectra through the use of either City's or Spectra's data processing programs and software in operating the Convention Center.

No property rights described in this Section will accrue to Spectra. Spectra shall have no authority to sell or otherwise dispose of any personal or real property owned or leased by City without the prior written approval of City.

- 13.2. **City Use and Access.** Except as otherwise expressly provided herein, City shall have unrestricted access to the Convention Center during normal operating hours for any reason, including for use(s) of the Convention Center intended to benefit the broader community in Santa Clara). The Parties will develop a policy, to be approved by City Council, that shall set forth the purposes, requirements, and cost accounting of the Convention Center for those uses intended to benefit the broader community ("Convention Center Community Benefit Policy").
- 13.3. **Material Prepared Pursuant to this Agreement.** All material and records, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared solely under this Agreement shall be the property of City but Spectra may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. Spectra grants City a copyright license to use such writings and documents. Spectra shall not permit the reproduction or use thereof by any other person, except as otherwise expressly provided in this Agreement. Spectra agrees to execute any documentation reasonably requested by City through the Contract Administrator from time to time to establish, protect, or convey any intellectual property rights in such writings and documents.
- 13.4. **Public Records Disclosures.** Spectra acknowledges that records and material developed, collected, prepared or caused to be prepared under this Agreement and in management of the Convention Center are subject to disclosure requirements under public records laws, including the California Public Records Act ("PRA"). Should either Party receive a PRA request regarding this Agreement or Spectra's management of the Convention Center, the Parties shall cooperate and coordinate any response, as necessary, according to a PRA policy to be developed and agreed upon by the Parties.
- 13.5. **Spectra Use of Materials.** Spectra may not take and or use, for its own purposes, any customer or exhibit lists or similar materials developed by City (including through Spectra in its performance under this Agreement) for the use of Convention Center unless written consent is granted by City.

- 13.6. **City Brand and Trademarks.** Spectra shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.
- 13.7. **Spectra Ownership.** Except as otherwise provided herein, Spectra shall own all property acquired by Spectra with funds from the Management Fee or the Incentive Fee, or from interest earned on such funds.
- 13.8. **Spectra Confidential Materials.** All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Spectra and all other written information submitted to Spectra in connection with the performance of this Agreement shall be held confidential by Spectra and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Spectra which is otherwise known to Spectra or becomes generally known to the related industry shall be deemed confidential.

SECTION 14. PERSONNEL

14.1. General

All employees of Spectra, or of any subcontractor, will be employees of Spectra and/or those same subcontractor(s), and not of City. Subject to the requirements in of the City's Retention Ordinance and applicable requirements and obligations otherwise set forth in this Agreement, including in this Section, Spectra has sole discretion to select the number, function, qualifications, and compensation, including salary and benefits, of its employees, and shall control the terms and conditions of employment relating to such employees.

14.2. General Manager

Personnel engaged by Spectra will include an individual with managerial experience in similar facilities to serve as a full-time on-site general manager of the Convention Center (the "General Manager"). Hiring of the General Manager by Spectra shall require the prior approval of City, which approval shall not be unreasonably withheld or delayed. By execution of this Agreement, the City approves the hiring of Mr. Kelly Carr as General Manager. In the event of a vacancy in the General Manager position, Spectra may, upon notice to City, temporarily fill such position with an interim General Manager for up to 60 days after consultation with City, but without the necessity of obtaining the City's approval. The General Manager will have general supervisory responsibility for Spectra and will be responsible for day-to-day operations of the Convention

Center, supervision of employees, and management and coordination of all activities associated with events taking place at the Convention Center.

14.3. Local Hiring and Contracting

Spectra shall make reasonable efforts to recruit, employ, and contract with qualified individuals and businesses that are part of the work force and business community within the City of Santa Clara, and to provide employment, contracting, and business participation opportunities to residents of the City of Santa Clara, including women, minorities, and economically disadvantaged individuals.

14.4. Labor Relations

The Parties agree that Spectra's performance under this Agreement and the ongoing operations of the Convention Center are sufficiently vulnerable to disputes related to organized labor, and resulting interruptions in service and operations at the Convention Center, and that labor peace is essential to the Parties' common interests under this Agreement. Therefore, to avoid any interruption to the operations and management of the Convention Center, Spectra hereby affirms that it will make commercially reasonable efforts in order to assure labor peace during any Term of this Agreement.

SECTION 15. INDEMNIFICATION AND DEFENSE

15.1. Spectra's Obligation

To the extent permitted by law, Spectra agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, the negligence or willful misconduct of Spectra in connection with the Services performed by Spectra pursuant to this Agreement – including claims alleging negligence or willful misconduct by Spectra's employees or persons contracting with Spectra to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to defend and indemnify shall not apply if such liability is alleged to be the result of or arise out of City's sole negligence or willful misconduct.

15.2. Employment-related Claims

Spectra's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall extend to those claims brought by Spectra employees against City alleging that City is an employer of the claimant(s) (either alone, or jointly with Spectra), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

15.3. Health Care Coverage

To the extent Spectra is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Spectra warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Spectra's responsibilities under the Act.

SECTION 16. INSURANCE REQUIREMENTS

During the term of this Agreement, Spectra shall provide and maintain in full force and effect, as an Operating Expense, insurance policies as set forth in Exhibit B.

SECTION 17. TERMINATION

17.1. Intentionally Omitted

17.2. **Termination for Default.** A party that fails to perform any of its material obligations under this Agreement shall be in default ("defaulting party"). The other party ("non-defaulting party") shall notify the defaulting party in writing upon reasonable discovery of a default, and the non-defaulting shall have at least thirty (30) days from its receipt of such written notice to cure the default. If the defaulting party fails to cure within such time period, the non-defaulting party may terminate this Agreement immediately upon written notice to the defaulting party. Any such termination shall be in addition to all other remedies provided by law.

17.3. **Non-Funding.** City's funding of this Agreement shall be on a fiscal year basis and is subject to annual appropriations as described elsewhere herein. Spectra acknowledges that City, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of City to appropriate funds for purposes of this Agreement. Accordingly, the Parties agree that the Initial Term and any Option Periods are contingent upon the appropriation of funds by the City. This Agreement will terminate upon no less than ninety (90) days prior written notice to Spectra if funds necessary to continue the Agreement are not appropriated.

17.4. Except as otherwise stated herein, the Parties each have the right to terminate the Agreement to take effect on the last day of the Initial Term, or the last day of any Option Term that is exercised.

17.5. Post-Termination Obligations.

17.5.1. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services, including the transfer of management and operation functions to any contractor(s) as designated by City. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Spectra will deliver to City all City

information or material that Spectra has in its possession, including that specifically produced or acquired for the performance of this Agreement.

17.5.2. Also upon termination or expiration of this Agreement for any reason, (i) Spectra shall promptly discontinue the performance of all services hereunder, (ii) the City shall promptly pay Spectra all fees due Spectra up to the date of termination or expiration (subject to pro-ration if the Term ends other than at the end of the Operating Year), (iii) City shall pay to Spectra all Operating Expenses incurred by Spectra through the end of the Term that have not previously been paid, including costs of accrued but unused vacation time and other end of employment payments due to Spectra's employees whose employment is being terminated Spectra; and (iv) without any further action on part of Spectra or City, the City shall, or shall cause the successor Facility Spectra to, assume all obligations arising after the date of such termination or expiration, under any agreements, contracts, licenses, memorandums of agreement, booking commitments and any other Convention Center agreements entered into by Spectra in furtherance of its duties hereunder. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

SECTION 18. ASSIGNABILITY

City and Spectra bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City.

Spectra shall ensure that any third party contractors performing services at the Convention Center through Spectra shall indemnify and hold harmless the City (and Spectra) for their negligence or willful misconduct, and provide insurance appropriate for the activity in which they are engaged, naming the City (and Spectra) as an additional insured.

SECTION 19. WAIVER

Waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments as required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

SECTION 20. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

SECTION 21. COMPLIANCE WITH LAWS

- 21.1. Spectra shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Spectra's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered.
- 21.2. Spectra has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).
- 21.3. Spectra shall comply with the provisions of City's Labor Compliance Addendum, attached hereto as Exhibit C.

SECTION 22. AMERICANS WITH DISABILITIES ACT

To the extent that the structural and architectural elements and condition of the Convention Center permit without modification, Spectra shall be solely and fully responsible to comply with the Americans with Disabilities Act of 1999 ("ADA") in connection with: (1) any use of the Convention Center by guests or services provided by Spectra to customers, and (2) modifying its policies, practices, and procedures to comply with the ADA. Spectra shall develop a work plan to correct or avoid any violations or non-compliance with the ADA; provided, however, implementation of any such plan shall be subject to approved funding. No later than December 31, 2019, Spectra engage a third party, as an Operating Expense, to perform an assessment of the Convention Center for ADA compliance and notify City of any compliance issues.

SECTION 23. NONDISCRIMINATION

Spectra shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

SECTION 24. CONFLICTS OF INTEREST

Spectra certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Spectra and that no person associated with Spectra has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Spectra is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Spectra will advise City if a conflict arises.

SECTION 25. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
manager@santaclaraca.gov

And to Contractor addressed as follows:

GLOBAL SPECTRUM, LP
Attention: President
150 Rouse Blvd., 3rd Floor
Philadelphia, PA 19112
John_Wentzell@ComcastSpectacor.com

With a copy to Spectra's General Counsel
(Brian_Rothenberg@ComcastSpectacor.com) at the same office address.

The Business Day the email is sent shall control the date notice is deemed given. An email transmitted after 1:00 p.m. on a Friday or a day preceding a City-observed holiday when City Administrative Officers are closed shall be deemed to have been transmitted on the following Business Day.

SECTION 26. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

SECTION 27. SEVERABILITY

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

SECTION 28. BINDING ON SUCCESSORS

Except as stated elsewhere herein, this Agreement binds and inures to the benefit of the Parties and their respective successors and assigns.

SECTION 29. HEADINGS

The headings of the sections and exhibits of this Agreement are inserted for convenience only; they do not constitute part of this Agreement and are not to be used in its construction.

SECTION 30. THIRD PARTY BENEFICIARIES

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

SECTION 31. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

SECTION 32. INTENTIONALLY OMITTED

SECTION 33. DATA SECURITY

- 33.1. Spectra must secure, protect at all times, and implement commercially reasonable measures to prevent, unauthorized access to any personal identifying information, financial account information, and information designated in writing by the City as "restricted City information" (collectively, "Confidential Information"), whether in electronic format or hard copy. At a minimum, Spectra must encrypt and password-protect electronic files, store and process Confidential Information only in North America, and adhere to any security applicable standards. Standards arise from the service and data processed and may include National Institute for Standards and Technology CSF/800-14/800-53/800-82, International Organization for Standardization 15408/27001/27002, International Society for Automation ISA-62443 series, Payment Card Industry PCI-DSS, Underwriters Laboratory, Health Insurance Portability and Accountability Act, Federal Risk and Authorization Management Program FedRAMP, US Department of Justice/Federal Bureau of Investigation Criminal Justice Information Services Security Policy, et al, as applicable based on the scope of Manager's services hereunder. This includes data saved to host locations, computers, connected devices, and storage devices.
- 33.2. When Confidential Information, regardless of its format, is no longer required by the Spectra to execute the work required by this Agreement, the information must be redacted or destroyed through appropriate and secure methods, to ensure the information cannot be viewed, accessed, and reconstructed.
- 33.3. Without limiting the foregoing, the parties agree that the City shall maintain in the City's name the Merchant ID for all credit card transactions processed by Spectra under this Agreement. Manager shall comply with all current Payment Card Industry Data Security Standards ("PCI Standards") and guidelines that may be

published from time to time by Visa, MasterCard or other associations as they relate to the physical storage of credit card data.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

SECTION 34. EXECUTION

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:



BRIAN DOYLE
City Attorney

Dated:

3/12/2019



DEANNA J. SANTANA
City Manager

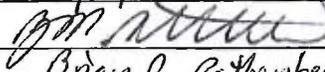
"City"

GLOBAL SPECTRUM, LP
a Delaware Limited Partnership
doing business as Spectra Venue Management

Dated:

3/12/19

By (Signature):



Name:

Brian P. Rothenberg

Title:

President, Global Spectrum, LLC, its general partner

Principal Place
of Business

Address:

150 Rouse Blvd, Philadelphia, PA 19112

Email Address:

Brian.Rothenberg@Comcast.spectravcn.com

Telephone:

() 215-952-5723

Fax:

() N/A

"Spectra"

ATTACHMENTS AND EXHIBITS

- A. Definitions**
- B. Insurance Requirements**
- C. Labor Compliance Addendum**
- D. Schedule of Required Submittals and Review**

EXHIBIT A – DEFINITIONS

1. **Adopted Operating Budget** has the meaning set forth in Section 7.2.6.
2. **Agreement Documents** has the meaning set forth in Section 1.1.
3. **Business Day** refers to Monday through Friday, between 9:00 a.m. and 5 p.m. (all times herein are Pacific Standard Time), except days when City's administrative offices are closed.
4. **Capital Budget** means the amount budgeted for Capital Improvements and Repairs, as set forth from year to year in the Adopted Operating Budget.
5. **Capital Improvement and Repairs** means those improvements, repairs and replacements of capital items at the Convention Center, including fixtures, machinery and/or equipment (as distinguished from normal and routine maintenance) which are necessary to improve, repair or replace, over time, capital items which are subject to wearing out after a useful life. Examples are roofs, floors, carpeting, chairs, tables, audio-video equipment and mechanical systems. Capital Improvements and repairs can also be those improvements that are not required to repair or replace faulty or worn out capital items, but are made to improve the quality or functioning of the Convention Center. These Capital Improvements and Repairs can be forecasted and budgeted for. As an example, the cost of replacement of a boiler due to normal wear and tear is a normal Capital Improvement and Repair. Without limiting the foregoing, a Capital Improvement includes any expenditure for repair or replacement of an item that costs over \$5,000 and is depreciable, according to generally accepted accounting principles, over at least five (5) years.
6. **City Council** means the governing body of the City.
7. **City-wide events** refer to events where more than 500 rooms are consumed "on peak".
8. **Community Benefits** refer to an effect of Convention Center use and operations that serve the community and citizenry of Santa Clara, City/community use of the Convention Center, community partnerships and local contracting/hiring.
9. **Contract Administrator(s)** refers to individuals who are City-designated agents and/or employees acting on behalf of the City for the purpose of managing and overseeing ongoing performance under this Agreement, as described in Section 11.2.
10. **Convention Center** refers to the premises, buildings and improvements, and the business and operations and activities taking place thereon, of the Santa Clara Convention Center located at 5001 Great America Parkway, Santa Clara, CA 95054.
11. **Customer Service Survey Results Scores** refer to the quantitative results from surveys conducted by a third party based on survey questions developed by Parties collaboratively and ultimately agreed upon before distribution.
12. **Economic Impact** refers to direct sales, jobs, tax revenues, and income in Santa Clara causing impact to lodging, restaurants, retail, recreation, transportation and other businesses, using the Destinations International Economic Impact Calculator.
13. **Effective Date** has the meaning set forth in Section 4.1.
14. **Emergency Capital Repairs and Replacements** means those capital repairs and replacements that must be accomplished immediately, or as soon as possible, in order to remove a hazard to health or safety, ensure the structural integrity of the Convention Center, or resolve a condition that causes any portion of the Convention Center to be non-operational.
15. **Event** refers to any use of the Convention Center by a third party.
16. **Event Mix** refers to a summary of event based on designations that include but are not limited to event type, citywide single-day events, multi-day events, number of attendees,

- event names/users, and consumer shows in a given period (calendar year, fiscal year, quarter, etc.).
17. **Event Statistics** refers to figures related to an event including attendance, tickets sold, etc.
 18. **External Auditor** means the independent certified public accountant mutually selected by City and Spectra.
 19. **Fiscal Year** means the annual period beginning July 1 and ending June 30.
 20. **Fixed Management Fee** means the fee described in Section 12.1.
 21. **Funds Availability** refers to the City making available to Spectra, in a timely fashion, the funds budgeted for the Convention Center in the Operating Budget according to Section 7 of this Agreement.
 22. **Gross Revenue** refers to total amount of sales recognized for a reporting period, prior to any deductions.
 23. **Incentive Fee Measures** has the meaning set forth in Sections 12.2.1 and 12.2.2.
 24. **Net Income** means income minus cost of goods sold, expenses and taxes for an accounting period.
 25. **Net Operating Income** means the difference of Operating Revenue minus Operating Expenses, according to the definition of each term herein.
 26. **Operating Account** has the meaning set forth in Section 8.3.
 27. **Operating Account Audit** has the meaning set forth in Section 8.10.
 28. **Operating Expenses** means: All expenses incurred by Spectra in connection with its operation, promotion, maintenance and management of the Convention Center, including but not limited to the following, which shall be subject to and restricted by any mutually-approved policy to be developed by the Parties: (i) employee payroll, benefits, relocation costs, severance costs, bonus and related costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales, and public relations costs, not including Spectra's annual investment of \$65,000 towards advertising as set forth in Section 5.4.16, (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 or repairs, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of Spectra 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 and accounting fees, (xxii) legal fees, (xxiii) all bond and insurance costs, including but not limited to personal property, liability, and worker's compensation insurance, (xxiv) commissions and all other fees payable to third parties (e.g. commissions relating to food, beverage and merchandise concessions services and commercial rights sales), (xxv) cost of complying with any laws, (xxvi) costs incurred by Spectra to settle or defend any claims asserted against Spectra arising out of its operations at the Convention Center on behalf of the City, not including claims relating directly to disputes between the City and Spectra under this Agreement; (xxvii) costs incurred under contracts and agreements with third parties relating to Convention Center operations, (xxviii) amount of any deductible or self-insured retention under insurance policies; (xxix) taxes (not including taxes on income earned by Spectra hereunder), and (xxx) Transition Costs. The term "Operating Expenses" does not include debt service on the Convention Center, Capital Expenditures, property taxes, insurance on the Facility or the City's property or

contents within the Convention Center, or the Incentive Fee, all of which costs shall be borne by the City.

29. **Operating Revenue or Revenue** means the gross revenues generated from the operation of the Convention Center and includes, without limitation, event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income paid to the City, gross income from any sale of Commercial Rights, gross service income, equipment rental fees, box office income, and miscellaneous operating income, but shall not include event ticket proceeds held by Manager in trust for a third party and paid to such third party.
30. **Operating Term or Term** means the then-current period of the Initial Term plus any Option Terms, each as defined in Section 4.
31. **Operating Year** means each 12-month period of time during the Term beginning on July 1 and ending on June 30.
32. **Performance Auditor** means an independent hospitality or convention center industry consultant mutually selected by City and Spectra who has not less than five years' experience in reviewing, consulting for, and/or auditing hospitality and convention center business operations located in similar municipal markets.
33. **Proposed Operating Budget** has the meaning set forth in Section 7.2.
34. **Retention Ordinance** shall mean the City's Worker Retention Ordinance for Building Maintenance, Food Service and Security Workers.
35. **Room** refers to hotel rooms.
36. **Room Nights Consumed** means the total number of room nights hosted in a given period related to events at the Convention Center.
37. **Services** refers to the performance requirements described in Section 5.
38. **Spectra Employees** means all persons employed by Spectra.
Transition Expenses means mean the out-of-pocket costs incurred prior to the Effective Date, or to be incurred after the Effective Date, by Spectra in connection with its activities related to the transition of management of the Convention Center to Spectra, as set forth in a mutually agreed transition budget.

EXHIBIT B – INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement, as an Operating Expense, the following insurance policies from insurance companies authorized to do business in the State of California. With regard to those claims for which Contractor owes City defense and indemnity, these policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each Occurrence

\$4,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million

dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto. Is this applicable to this agreement? If not, it can be deleted.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office, which approval shall not be unreasonably withheld.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit B, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

EXHIBIT C – LABOR COMPLIANCE ADDENDUM

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

J. Prevailing Wage Requirements

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.

7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those you fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

K. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

L. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a

waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.

EXHIBIT D – SCHEDULE OF REQUIRED SUBMITTALS AND REVIEW

A. OPERATING BUDGET

NO LATER THAN DATE	REQUIREMENT	REFERENCE
May 1, 2019	Spectra submits Proposed Operating Budget for 2019-20 Operating Year	§ 7.2.1
May 15, 2019	Parties finalize Operating Budget for 2019-20 Operating Year	
February 1*	Spectra submits Proposed Operating Budget for subsequent Operating Year	§ 7.2.2
March 15*	Parties finalize Proposed Operating Budget for subsequent Operating Year	

B. CAPITAL IMPROVEMENT EXPENDITURES

NO LATER THAN DATE	REQUIREMENT	REFERENCE
May 15, 2019	Spectra submits first Capital Improvement Program Report	§ 9.2.2
December 1, 2019	Spectra submits updates to first Capital Improvement Program Report	
October 1*	Spectra submits Capital Improvement Program Report for subsequent Operating Year	§ 9.2.1
March 1*	Spectra submits a final Capital Improvement Program Report for subsequent Operating Year	§ 9.2.3

* beginning 2020 and each year thereafter