

**AGENDA REQUEST FORM**  
**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

Meeting Date <b>5/20/2014</b>	<b>Open Agenda</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Special Order Request</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		Agenda Item Number <b>II-5</b>

<b>TITLE:</b> Agreement with Select Spectrum, LLC	
<b>REQUESTED ACTION:</b> Approve the agreement with Select Spectrum, LLC.	
<b>SUMMARY EXPLANATION AND BACKGROUND:</b> The FCC allows EBS license holders to lease excess EBS capacity to commercial providers. This agreement will enable Select Spectrum, LLC to market the District's EBS spectrum for potential revenue generation. Select Spectrum was recently awarded an agreement by Palm Beach County schools as a result of an RFP process. The School Board of Broward County, Florida will utilize The School Board of Palm Beach County, Florida's RFP to market its EBS asset for potential revenue generation. This is a companion item to Agenda item II-4 which will amend an earlier marketing consultant agreement with Cirpass, LLC to conclude that Agreement and any obligations associated with it.  This agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.	
<b>SCHOOL BOARD GOALS:</b>  ___ • Goal 1:      High Quality Instruction ___ • Goal 2:      Continuous Improvement ___ • Goal 3:      Effective Communication	
<b>FINANCIAL IMPACT:</b> Select Spectrum will receive compensation on a contingency basis as outlined in Attachment Exhibit B.	
<b>EXHIBITS: (List)</b>  Select Spectrum, LLC Agreement	
<b>BOARD ACTION:</b> <div style="text-align: center;"><b>APPROVED AS AMENDED</b> <i>See Amendment attached.</i></div> <small>(For Official School Board Records' Office Only)</small>	<b>SOURCE OF ADDITIONAL INFORMATION:</b> Dr. Phyllis Schiffer Simon - <i>PSS</i> 754-321-1000 BECON General Manager  <div style="display: flex; justify-content: space-between;"><small>Name</small><small>Phone</small></div>

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
**Tracy Clark – Public Information Officer**

Approved in Open Board Meeting on: \_\_\_\_\_

**MAY 20 2014**

By: \_\_\_\_\_

School Board Chair

## II-5 Amendment – May 20, 2014 Regular Meeting

### Motion to Amend (Carried)

Motion was made by Mrs. Korn, seconded by Mrs. Rupert and carried, to amend Exhibit B, Fee Schedule, page 3, paragraph H, section c., add language as follows: In the event that the lessee defaults on payments to SBBC and Select Spectrum is rehired to re-market the EBS licenses for lease, Select Spectrum agrees to apply previous payments made towards any new agreement commissions.

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of this 20<sup>th</sup> day of May, 2014, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

(hereinafter referred to as "SBBC"),

a body corporate and political subdivision of the State of Florida,

whose principal place of business is

600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**SELECT SPECTRUM, LLC**

(hereinafter referred to as "Select Spectrum"),

whose principal place of business is

820 Great Cumberland Road, McLean, Virginia 22102

**WHEREAS**, SBBC has been granted EBS spectrum licenses from the Federal Communications Commission (FCC) and utilizes these licenses to provide instructional and educational television services to schools; and

**WHEREAS**, the FCC allows EBS license holders to lease excess capacity of the spectrum to commercial providers for broadband services; and

**WHEREAS**, SBBC previously released an RFP for the lease of excess capacity in April 2009 and was not successful in negotiating a fair market agreement for the spectrum; and

**WHEREAS**, SBBC is once again interested in finding a qualified operator with whom to negotiate leasing terms that benefit the District; and

**WHEREAS**, SBBC previously entered into an agreement with Cirpass, LLC on March 16, 2010 to negotiate with Clearwire on behalf of SBBC on Clearwire's RFP response to license excess EBS capacity (hereafter referred to as "Cirpass Agreement"); and

**WHEREAS**, SELECT SPECTRUM has successfully negotiated and concluded major transactions for EBS spectrum leases and has advised clients on a total of 63 completed spectrum transactions; and

**WHEREAS**, SBBC is terminating the Cirpass Agreement as referenced in the First Amendment to Agreement with Cirpass, as SBBC was unable to negotiate an acceptable offer with Clearwire and the RFP was closed out; and

**WHEREAS**, Section 6A-1.012(6), Florida Administrative Code, and Part II (N) of School Board Policy 3320, in lieu of requesting competitive solicitations from three (3) or more sources, authorize SBBC to make purchases at or below the specified prices from contracts awarded by other district school boards, when the proposer awarded a contract by another district school board will permit purchases at the same terms, conditions and prices (or below such

prices) awarded in such contract, and such purchases are to the economic advantage of SBBC; and

**WHEREAS**, The School Board of Palm Beach County, Florida (SBPBC) awarded a contract on July 17, 2013 for the procurement of Educational Broadband Service Spectrum Excess Capacity Lease Marketing Services ("EBS Marketing Services") to Select Spectrum, and Select Spectrum is willing to permit SBBC to purchase services at the same terms, conditions and prices (or below such prices) awarded in SBPBC's contract, and such purchases are to the economic advantage of SBBC; and

**WHEREAS** SBBC desires to enter into a new agreement with Select Spectrum, LLC, a Virginia limited liability corporation located at 820 Great Cumberland Road, McLean, VA, 22102, for the purposes of providing EBS Marketing Services for SBBC.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

#### **ARTICLE 1 - RECITALS**

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

#### **ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Contract.** This Agreement shall be for the term of one (1) year beginning March 18, 2014 through March 18, 2015. This Agreement may be extended for two additional one (1) year terms upon mutual agreement of the parties. All terms, conditions, covenants and conditions of this Agreement shall apply during the initial term and any renewal term(s), if any. The initial term and all renewal terms shall collectively be referred to as the "Term" under the same terms and conditions as set forth herein.

2.02 **Services.** Select Spectrum shall provide EBS Marketing Services set forth in **Exhibit "A"** which is attached hereto and incorporated herein by reference and as specified in Select Spectrum's proposal, submitted in response to RFP No. 13C-007C issued by SBPBC, which is also attached hereto and incorporated herein by reference.

2.03 **Cost of Services.** Select Spectrum shall be paid for services as set forth in **Exhibit "B"** which is attached hereto and incorporated herein by reference.

2.04 **Priority of Documents.** In the event of conflict between the provisions of the Agreement and the provisions contained in documents incorporated herein by reference, the provisions of the following documents shall take precedence in this order:

- a) this Agreement; then
- b) Exhibits A and B to this Agreement; then

- d) Select Spectrum's proposal submitted in response to RFP No. 13C-007C issued by SBPBC.

2.05 **Inspection of Select Spectrum's Records by SBBC.** Select Spectrum shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Select Spectrum's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by Select Spectrum or any of Select Spectrum's payees pursuant to this Agreement. Select Spectrum's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. Select Spectrum's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **Select Spectrum's Records Defined.** For the purposes of this Agreement, the term "Select Spectrum's Records" shall include, without limitation, any documents that would substantiate, reconcile or refute any fees, charges and/or expenditures related to this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Select Spectrum's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Select Spectrum pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide Select Spectrum reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to Select Spectrum's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) **Failure to Permit Inspection.** Failure by Select Spectrum to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any Select Spectrum's claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by Select Spectrum in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Select Spectrum. If the audit discloses billings or charges to which Select Spectrum is not contractually entitled, Select Spectrum shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspector General Audits. Select Spectrum shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

**2.06 Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Dr. Phyllis Schiffer-Simon  
BECON General Manager  
6600 SW Nova Drive  
Davie, FL 33317

To Select Spectrum: Robert Finch  
820 Great Cumberland Road  
McLean, VA, 22102

**2.07 Background Screening:** Select Spectrum agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of Select Spectrum or its personnel providing any services under the conditions described in the previous sentence. Select Spectrum shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Select Spectrum and its personnel. The parties agree that the failure of Select Spectrum to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Select Spectrum agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in

Select Spectrum's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.08 **Indemnification.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By Select Spectrum: Select Spectrum agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Select Spectrum, its agents, servants or employees; the equipment of Select Spectrum, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Select Spectrum or the negligence of Select Spectrum's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Select Spectrum, SBBC or otherwise.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized

in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records



disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

**3.10 Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

**3.11 Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

**3.12 Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

**3.13 Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

**3.14 Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits A and B attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without

unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, regarding indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.


**FOR SBBC**

(Corporate Seal)

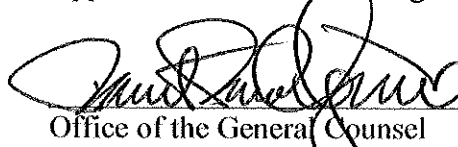
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By   
Patricia Good, Chair

ATTEST:

  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 02/02/14  
Office of the General Counsel

**FOR SELECT SPECTRUM**

(Corporate Seal)

ATTEST:

SELECT SPECTRUM, LLC

By Robert Finch  
Robert Finch, President

\_\_\_\_\_, Secretary

-or-

Witness

Mr. Finch

Witness

**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Virginia

COUNTY OF Fairfax

The foregoing instrument was acknowledged before me this 23 day of

May, 2014 by Robert Finch of

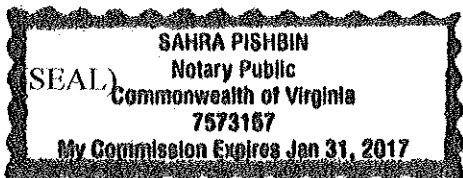
Name of Person

Select Spectrum, LLC on behalf of that entity. He/She is personally known to me or

produced VA ID as identification and did/did not first take an oath. Type of Identification

My Commission Expires: 11/31/2017

Sahra Pishbin  
Signature - Notary Public



Sahra Pishbin  
Printed Name of Notary

7573157  
Notary's Commission No.

\\Vignola\\Allwork-US\\contracts\\review\\1314year\\130729selectspectrum