

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

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Meeting Date: June 16, 2020 [X] Consent [ ] Regular  
[ ] Ordinance [ ] Public Hearing

Departments: Tourist Development Council  
Facilities Development & Operations

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I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve:

- A) Finding that it is beneficial to the health, safety and welfare of the County due to the impacts of the COVID19 epidemic to extend for 12 months the County’s Agreement (“Agreement”) with Ovations Food Services, L.P. d/b/a Spectra Food Services & Hospitality (“Spectra”); and
- B) A Second Amendment (“Amendment”) to the Agreement with Spectra for food and beverage operations services at the Palm Beach County Convention Center (“Convention Center”) extending the term for an additional 12 months through September 30, 2021.

**Summary:** Spectra was selected as the food & beverage operator of the Convention Center in 2010 through a competitive Request for Proposals (RFP) process. Spectra’s initial contract (R2010-096) was extended in 2015 (R2015-1409) for one renewal period of 5 years which expires on September 30, 2020. Under the Agreement, Spectra manages the day-to-day operations and marketing of food and beverage services at the Convention Center. Due to the ongoing COVID19 emergency, this Amendment will extend the term of the contract for 12 months, providing staff sufficient time to re-solicit the contract. TDC and FDO intend to develop an RFP this summer and to advertise the solicitation in late 2020 with an anticipated award early summer of 2021. Under the Agreement as well as this Amendment, Spectra receives: 1) an annual management fee of \$50,000 which has been adjusted for inflation over the term of the contract; 2) 7% of the net profit and 3) an opportunity to earn an incentive fee of up to 1% of gross sales up to \$2.5 million of gross sales and additional up to 2% over \$2.5 million of gross sales not to exceed \$4 million, if certain performance measures are achieved in the areas of financial, marketing, sales and customer service. The County receives: 1) 93% of the net profit of food and beverage operations and 2) cash/credits for certain sponsorships and rebates on certain food and beverage products. In addition to extending the term for 12 months, the Amendment revises the sponsorship/rebate program and updates County standard language on non-discrimination, scrutinized companies and public records. The Amendment also adds a termination for convenience clause so that the County can terminate the contract with 120 days’ notice. The Tourist Development Council (TDC) Board has approved the contract extension for 12 months. The Office of Equal Business has approved this extension. **(TDC/FDO) Countywide (LDC)**

**Background & Justification:** The County’s existing food and beverage operator contract with Spectra for the PBC Convention Center is set to expire September 30, 2020. The County intends to issue a competitive RFP for food and beverage service at the Convention Center in late 2020. Staff is requesting a 12 month extension of the County’s existing Food & Beverage Contract with Spectra from October 1, 2020 through September 30, 2021. The TDC Board supports the 12 month extension while an RFP is prepared and issued in late 2020. The Amendment updates Section 10.4.2 regarding Sponsorships and Rebates for the extended term. The Amendment also updates certain County standard language on non-discrimination, scrutinized companies and public records and adds County termination for convenience with 120 days’ notice. The Agreement has always contained a provision for mutual waiver of special/consequential damages in Section 13.4.

**Attachments:**  
Second Amendment to Food and Beverage Services Contract – Ovations Food Services, L.P.

Recommended by: [Signature] 5/15/20  
Department Director Date

[Signature] 5/16/20  
Department Director Date

Approved by: [Signature] 6/12/20  
County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	<u>0</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>0</u>	<u>\$50,000</u>	<u>0</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>0</u>	<u>0</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<b>NET FISCAL IMPACT</b>	<u><u>0</u></u>	<u><u>\$50,000*</u></u>	<u><u>0</u></u>	<u><u>-0-</u></u>	<u><u>-0-</u></u>

\*Management Fee, in addition, Spectra earns 7% of net profit on an annual basis and potential to earn up to 1% incentive fee of up to \$2.5 million in gross sales and additional up to 2% over \$2.5 million but not to exceed \$4 million

# ADDITIONAL FTE POSITIONS (Cumulative)

Is Item Included in Proposed Budget? Yes X No \_\_\_\_\_

Does this item include the Use of Federal Funds? \_\_\_\_\_ Yes x No

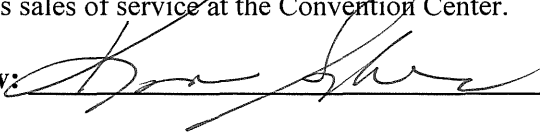
Budget Account Nos:

Fund 1450 Dept 800 Unit 7420 Object \_\_\_\_\_

Reporting Category


**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

Funds will derive from gross sales of service at the Convention Center.

C. Departmental Fiscal Review:  \_\_\_\_\_


**III. REVIEW COMMENTS:**

**A. OFMB Fiscal and/or Contract Development & Control Comments:**

 5/20/2020  
OFMB  
LM  
5/22

 7/31/2020  
Contract Dev. and Control

**B. Legal Sufficiency:**

  
for D. Colfman 06/03/2020  
Assistant County Attorney

**C. Other Department Review:**

This summary is not to be used as a basis for payment.

**SECOND AMENDMENT TO AGREEMENT BETWEEN PALM BEACH COUNTY  
AND CONTRACTOR FOR FOOD AND BEVERAGE OPERATIONS SERVICES AT  
THE PALM BEACH COUNTY CONVENTION CENTER**

**This Second Amendment** (“Amendment”) is made and entered into on \_\_\_\_\_ 2020 with an effective date of October 1, 2020, by and between **Palm Beach County** (“County”), a political subdivision of the State of Florida and **Ovations Food Services, L.P. d/b/a Spectra Food Services & Hospitality**, a limited partnership organized under the laws of Pennsylvania, authorized to conduct business in the State of Florida (“Contractor”).

**WITNESSETH**

**WHEREAS**, effective on July 1, 2010, the parties hereto entered into the Food and Beverage Operations Services Agreement (R2010-0965) which was amended effective on October 1, 2015 (R2015-1409) (collectively hereinafter the “Agreement”) under which the Contractor provides food and beverage services to the County for its Palm Beach County Convention Center located at 650 Okeechobee Boulevard in West Palm Beach, Florida (“Center”); and

**WHEREAS**, the term of the Agreement commenced on July 1, 2010 for an initial term of five (5) years and three (3) months through September 30, 2015, and was extended effective October 1, 2015 for an additional term of five (5) years through September 30, 2020; and

**WHEREAS**, the Operator has indicated a willingness and demonstrated the ability to continue to provide food and beverage services to the County for its Center according to the terms and provisions set forth in the Agreement and this Amendment; and

**WHEREAS**, the parties desire to extend the term of the Agreement and amend and modify certain provisions of the Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants, promises and representations contained herein, the Parties agree as follows:

1. **Recitals.** The above recitals are true and correct and incorporated herein by reference.
2. **Term Extended.** The term of the Agreement shall be extended for twelve (12) months through September 30, 2021 (Extended Term).
3. **Agreement Modifications and Additions.** The following provisions of the Agreement are modified as follows:

**Section 8.10 of the Agreement is deleted in its entirety and replaced with the following new provision:**

8.10 Nondiscrimination

8.10.1 The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Contractor warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

8.10.2 As a condition of entering into this Agreement, the Contractor represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the Contractor shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The Contractor shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. The Contractor understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the company from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Contractor shall include this language in its subcontracts.

**Effective as of October 1, 2020, Section 10.4.2 of the Agreement shall be deemed deleted in its entirety and replaced with the following new provision:**

10.4.2 Sponsorships, Rebates and Incentives. Contractor shall use its best efforts during the one year Extended Term to work with its suppliers to obtain rebates and other financial incentives to use certain food, non-alcoholic beverages and other supplies, the benefit of which rebates and incentives will inure to the benefit of the County.

A. Funding in the amount of Six Thousand Dollars (\$6,000) will be derived from a “pouring rights” sponsorship for the one year Extended Term from a beverage company negotiated by Spectra and approved by the County.

B. The beverage supplier will provide an in-kind value of Seventeen Hundred Dollars (\$1,700) for the one year Extended Term in the form of marketing support, services or loaned equipment for use at Convention Center events.

C. The beverage supplier will contribute a rebate of Two Dollars (\$2.00) per case of various beverage product purchased for the one year Extended Term of this contract with no minimum of cases purchased and rebates over the one year Extended Term providing a minimum dollar value of Two Thousand Three Hundred Dollars (\$2,300).

D. Contractor’s food service vendors, excluding the beverage vendor, will return to the County Eight Thousand Dollars (\$8,000) for the one year Extended Term;

E. Additional vendors and/or suppliers will provide Eight Thousand Dollars (\$8,000) for the one year Extended Term which will be applied as a credit to the Profit and Loss Statement for the Center.

In the event the sponsorship opportunities set forth above in subsections A through E become unavailable to the Contractor or County, Contractor will provide alternative funding acceptable to the County: sponsorship funding in the amount of Twenty-six Thousand Dollars (\$26,000) for the one year Extended Term being the obligation of the Contractor.

**Section 12.4 of the Agreement is deleted in its entirety and replaced with the following new provision:**

12.4 Termination for Convenience by County. This Contract may be terminated by the County without cause upon one hundred twenty (120) days’ written notice to the Contractor. Unless the Contractor is in breach of this Contract, the Contractor shall be paid for services rendered to the County’s satisfaction through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the County, in writing, the Contractor shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the County.

- D. Continue and complete all parts of the work that have not been terminated.

**The following new sections are added to Article 15 of the Agreement:**

**15.17 Scrutinized Companies**

15.17.1 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Contractor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if Contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the County.

15.17.2 **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Contractor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

15.17.3 If the County determines, using credible information available to the public, that a false certification has been submitted by Contractor, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

15.18 **Public Records** Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Contractor: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Contractor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Contractor is specifically required to:

- A. Keep and maintain public records required by the County to perform services as provided under this Agreement.
- B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Contractor further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- 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 for

the duration of the contract term and following completion of the Agreement, if the Contractor does not transfer the records to the public agency.

D. Upon completion of the Agreement, the Contractor shall transfer, at no cost to the County, all public records in possession of the Contractor unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically by the Contractor must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Contractor to comply with the requirements of this section shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Contractor acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT [RECORDSREQUEST@PBCGOV.ORG](mailto:RECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT 561-355-6680.**

**4. All Other Terms Affirmed.** In all other respects, the terms and conditions of the Agreement shall remain in full force and effect and are hereby ratified and affirmed by the parties hereto.

**5. Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflicts of law.

**THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY**

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to the Agreement to be executed as of the day and year first above written.

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

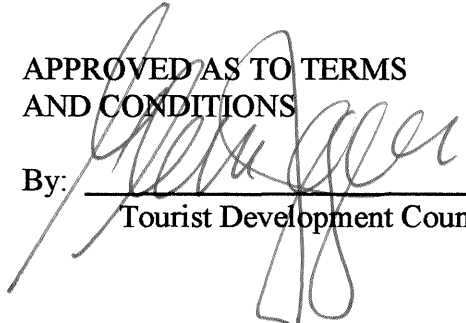
By: \_\_\_\_\_  
Dave Kerner, Mayor

APPROVED AS TO  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
Tourist Development Council



OVATIONS FOOD SERVICES, L.P.

By: Oventions Food Services, LLC, its general  
partner

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

Name and Title Printed: Jim Petralan  
EUP: CFO

(SEAL)





## Natalia Restrepo

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**From:** Jackie Binns A.  
**Sent:** Monday, May 18, 2020 3:28 PM  
**To:** LaChance, John; Ernie Pena-Roque  
**Cc:** Natalia Restrepo  
**Subject:** RE: Spectra COI

John, Ernie,

We have everything now. Ms. Kleinman just sent proof of the excess/umbrella policy and reminded me that we have crime (dishonesty bond) on file and still valid, so Spectra is in now compliance with the required insurance.

Thank you both,

*Jackie*

Jacqueline Binns  
Property & Casualty Insurance and Claims Manager  
Risk Management Department  
100 Australian Av  
West Palm Beach, FL 33406  
[jbinns@pbcgov.org](mailto:jbinns@pbcgov.org)  
561-233-5422

**From:** Jackie Binns A.  
**Sent:** Monday, May 18, 2020 10:25 AM  
**To:** 'LaChance, John' <[John.LaChance@spectrap.com](mailto:John.LaChance@spectrap.com)>; Ernie Pena-Roque <[ERoque@palmbeachfl.com](mailto:ERoque@palmbeachfl.com)>  
**Cc:** Natalia Restrepo <[NRestrepo@pbcgov.org](mailto:NRestrepo@pbcgov.org)>  
**Subject:** RE: Spectra COI

Yes.  
Thank you,

*Jackie*

Jacqueline Binns  
Property & Casualty Insurance and Claims Manager  
Risk Management Department  
100 Australian Av  
West Palm Beach, FL 33406  
[jbinns@pbcgov.org](mailto:jbinns@pbcgov.org)  
561-233-5422

**From:** LaChance, John [<mailto:John.LaChance@spectrap.com>]  
**Sent:** Monday, May 18, 2020 10:24 AM  
**To:** Jackie Binns A. <[JBinns@pbcgov.org](mailto:JBinns@pbcgov.org)>; Ernie Pena-Roque <[ERoque@palmbeachfl.com](mailto:ERoque@palmbeachfl.com)>  
**Cc:** Natalia Restrepo <[NRestrepo@pbcgov.org](mailto:NRestrepo@pbcgov.org)>  
**Subject:** RE: Spectra COI



**SPECTRA**

**BRIAN ROTHENBERG**

Executive Vice President and General Counsel

150 Rouse Boulevard

Philadelphia, PA 19112

O: 215.952.5723

[Brian.Rothenberg@SpectraXP.com](mailto:Brian.Rothenberg@SpectraXP.com)

May 5, 2020

**LETTER OF AUTHORIZATION**

I, Brian Rothenberg, the Executive Vice President and General Counsel of Ovations Food Service, L.P. d/b/a Spectra Food Services & Hospitality ("Ovations"), hereby authorize Jim Pekala, Ovations' Executive Vice President and CFO, to sign, initial, accept and execute, for and on behalf of Ovations, the Amendment to Agreement between Palm Beach County and Ovations for Food and Beverage Operations Services at the Palm Beach County Convention Center, and any related documents.

Sincerely,

Brian Rothenberg

Executive Vice President & General Counsel