

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 15, 2021

☒ **Consent** ☐ **Regular**
☐ **Ordinance** ☐ **Public Hearing**

Department:
Submitted By: Facilities Development & Operations
Submitted For: Tourist Development Council

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Third Amendment ("Amendment") to the Agreement with Ovations Food Services, L.P. d/b/a Spectra Food Services & Hospitality ("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, 2022.

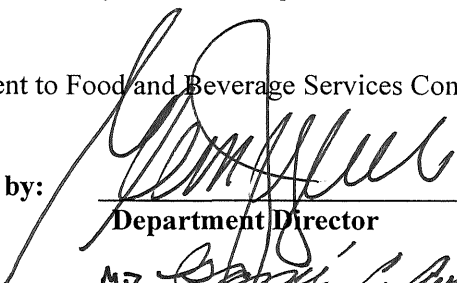
Summary: Spectra was selected as the food & beverage operator of the Convention Center in 2010 through a competitive Request for Proposals (RFP) process. Spectra's initial contract (R2010-0965) was renewed in 2015 (R2015-1409) for one renewal period of 5 years through September 30, 2020. In 2020, the Agreement was extended by the BCC for an additional 12 months (R2020-0640) due to the ongoing COVID-19 crisis which extension expires September 30, 2021. 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 COVID-19 emergency, this Third Amendment will extend the term of the contract for 12 months, providing staff sufficient time to re-solicit the contract. Facilities Development and Operations (FDO) and the Tourist Development Council (TDC) intend to advertise the solicitation in early 2022 with an anticipated award early in the summer of 2022. The Director of FDO recommends this emergency extension as it is deemed beneficial to the interests, health, safety and welfare to the County. This contract is exempt from the Purchasing Code, but Staff has complied with the requirements of Purchasing Code Section 2-54(b) since this is an extension of a competitively procured contract. 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 adds County standard language on E-Verify. The TDC Board has approved the contract extension for 12 months. As an emergency extension, this contract extension is exempt from the Equal Business Opportunity Ordinance. **(FDO/TDC) Countywide (MWJ)**

Background & Justification: The County's existing food and beverage operator contract with Spectra for the PBC Convention Center is set to expire September 30, 2021. The County intends to issue a competitive RFP for food and beverage services at the Convention Center in early 2022. Staff is requesting a 12 month extension of the County's existing Food & Beverage Contract with Spectra from October 1, 2021 through September 30, 2022. The TDC Board supports the 12 month extension while an RFP is prepared and issued in early 2022. The Amendment updates Section 10.4.2 regarding Sponsorships and Rebates for the extended term. The Amendment also adds certain County standard language on E-Verify. The Agreement has always contained a provision for mutual waiver of special/consequential damages in Section 13.4.

Attachments:

Third Amendment to Food and Beverage Services Contract – Ovations Food Services, L.P.

Recommended by:



Department Director

5/11/21
Date


Department Director

5/11/21
Date

Approved by:


County Administrator

5/25/21
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
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>

NET FISCAL IMPACT 0 \$50,000* 0 -0- -0-

*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 Agency 800 Org 7420 Object _____

Reporting Category

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

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

C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

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

Balyn Brown 5/18/21
OFMB 9A 5/14/21 MG 5/17/21 ASD 5/17

J. J. Jacobson 5/24/21
Contract Dev. and Control
5-21-21 TW

B. Legal Sufficiency:

[Signature] 5/25/21
Assistant County Attorney

C. Other Department Review:

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

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

This Third Amendment (“Amendment”) is made and entered into on _____ 2021 with an effective date of October 1, 2021, 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) and amended again effective October 1, 2020 (R2020-0640) (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 renewed effective October 1, 2015 for an additional renewal term of five (5) years through September 30, 2020, and was extended effective October 1, 2020 for a twelve (12) month extension; 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, 2022 (Extended Term).

3. **Agreement Modifications and Additions.** The following provisions of the Agreement are modified as follows:

Effective as of October 1, 2021, 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.

Effective immediately, the following new section is added to Article 15 of the Agreement:

15.19 E-Verify - Employment Eligibility.

15.19.1 Contractor warrants and represents that it is in compliance with Section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov) and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the Contractor's subcontractors performing any duties and obligations of this Contract are registered with the E-Verify System and beginning January 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

15.19.2 Contractor shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. Contractor shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Contract which requires a longer retention period.

15.19.3 County shall terminate this Contract if it has a good faith belief that Contractor has knowingly violated Section 448.09(1), Florida Statutes as may be amended. If County has a good faith belief that Contractor's subcontractor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, County shall notify Contractor to terminate its contract with the subcontractor and Contractor shall immediately terminate its contract with the subcontractor. If County terminates this Contract pursuant to the above, Contractor shall be barred from being awarded a future contract by County for a period of one (1) year from the date on which this Contract was terminated. In the event of such contract termination, Contractor shall also be liable for any additional costs incurred by County as a result of the termination.

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.

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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:

JOSEPH ABRUZZO
CLERK & COMPTROLLER

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


By: _____
Deputy Clerk

By: _____
Mayor

APPROVED AS TO
LEGAL SUFFICIENCY

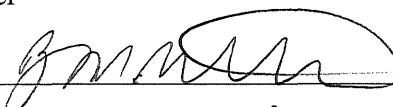
APPROVED AS TO TERMS
AND CONDITIONS

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: Brian Rothenberg,
President

Witness Signature

PATRICIA BUTLER

Print Witness Name

(SEAL)