

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

=====

Meeting Date: September 13, 2022 [X] Consent [] Regular
[] Ordinance [] Public Hearing

Departments: Facilities Development & Operations
Tourist Development Council

=====

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Contract with Ovations Food Services, L.P. d/b/a OVG Hospitality (“Ovations”) for food and beverage operation services at the Palm Beach County Convention Center (“Convention Center”) from October 1, 2022 through September 30, 2027 (the “Agreement”). Ovations will receive 7% of the net profit of the food and beverage operations and the County will receive 93% of the net profit.

Summary: The Agreement provides for Ovations to manage, operate and market food and beverage operations services at the Convention Center for 5 years with the option for one 5-year renewal. Ovations will be paid 7% of the net profit from the food and beverage operations. Ovations will also make a capital contribution for new equipment and other fixtures of \$1,250,000 during the initial term of the Agreement and of \$500,000 during the renewal term, if the option to renew is exercised by the parties. Ovations’ capital contribution will be amortized over the term of the Agreement. The County receives: 1) 93% of the net profit of food and beverage operations and 2) cash/credits for potential sponsorships and rebates on certain food and beverage products that Ovations might secure through regular course of business. The contract contains a mutual waiver of consequential damages clause which has been reviewed by the County Attorney’s Office. The solicitation for this contract was advertised on March 25, 2022 in accordance with the Equal Business Opportunity Ordinance, Ovations was the only respondent, with the final selection taking place on May 23, 2022. The solicitation was presented to the Goal Setting Committee (Committee) on March 16, 2022. The Committee established Affirmative Procurement Initiatives (API) of a Small Business Enterprise (SBE) evaluation preference of up to 15 points based on the level of SBE participation for the selection of the food and beverage operator and a minimum mandatory contract goal of 10% SBE participation of which 5% must be Minority or Women Business Enterprise (M/WBE) participation on the purchase of food, including catering, disposable paper & plastic products, non-alcoholic beverages and professional services. Ovations committed to 22% M/WBE participation on the purchase of food, including catering, disposable paper & plastic products, non-alcoholic beverages and professional services. (TDC/FDO) Countywide (MWJ)

Background & Justification: Ovations has provided food and beverage operation services for the Convention Center since 2010. Earlier this year, the County issued a Request for Proposals for food and beverage services. There was only one respondent though 3 firms did attend the mandatory pre-proposal meeting. Ovations’ proposal was found to be responsive and was evaluated by a selection committee that included members from the Tourist Development Council (TDC) and County Administration. The Agreement with Ovations provides that Ovations will receive 7% of the net profit of food and beverage operations and that Ovations will make a capital contribution for new equipment and other fixtures of \$1,250,000 during the initial term of the Agreement and of \$500,000 during the renewal term if the option to renew is exercised by the parties. Ovations’ capital contribution will be amortized over the term of the Agreement.

Continued on Page 3

Attachments:
Food and Beverage Services Contract – Ovations Food Services, L.P.

Recommended by: *M. Dominic C. Royal* Department Director 8/23/22 Date

Approved by: *Donald A. Miller* for County Administrator 9/9/2022 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	<u>0</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>0</u>	<u>0</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	<u><u>0</u></u>	<u><u>\$0*</u></u>	<u><u>0</u></u>	<u><u>-0-</u></u>	<u><u>-0-</u></u>

*Ovations earns 7% of net profit on an annual basis

ADDITIONAL FTE
POSITIONS (Cumulative)

Is Item Included in Proposed Budget? Yes No

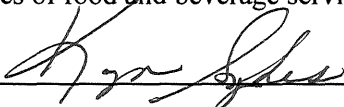
Does this item include the Use of Federal Funds? Yes No

Budget Account No: Fund 1450 Agency 800 Org 7420 Revenue Source 4752

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: 

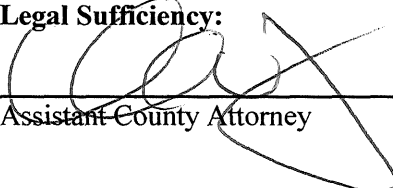
III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Development Comments:

 8/26/22
OFMB JA 8/26 SW 8/26/22

 9/17/22
Contract Development and Control

B. Legal Sufficiency:

 9/8/22
Assistant County Attorney

C. Other Department Review:

Department Director

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

Background & Justification (cont.): An analysis and overview of the key changes reflected in the Agreement, as compared to the existing contract with Ovations (R2010-0965 as amended by R2015-1409, R2020-0640 and R2021-0795) follows.

Financial Terms

Under the current contract, Ovations receives: 1) an Annual Management Fee (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 \$2.5M 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. The County receives 1) 93% of the net profit of food and beverage operations, and 2) cash/credits for certain sponsorships/rebates. Under the recommended Agreement the County will receive 93% of the net profit and Ovations will receive 7%. The Agreement does not provide for payment of an Annual Management Fee nor an Incentive Fee. The definition of Net Profit and Allowable Expenses, which affects the calculation of Net Profit, remains unchanged.

The recommended Agreement provides for losses to be calculated quarterly with a total profit reconciliation at the end of fiscal year. The current contract provides for losses to be calculated on a monthly basis and does not provide for an annual reconciliation. The modification included by County Staff as part of the solicitation process, incorporates knowledge gained from the resulting impacts of the COVID19 pandemic, and should serve to account for seasonal business climate variations.

Capital Improvements

Under the existing contract Ovations was not required to make capital improvements. The recommended Agreement provides that Ovations will make a capital contribution for new equipment and other fixtures of \$1,250,000 during the initial term of the Agreement and of \$500,000 during the renewal term, if the option to renew is exercised by the parties. Capital improvements will be amortized on a straight-line basis over the term of the contract and, if the contract is terminated prior expiration of the term, the County will be required to pay Ovations any remaining unamortized amounts. Title and ownership to the capital improvements will vest on the County upon substantial completion of each project.

Sponsorships/Rebates

The existing contract required Ovations to secure \$130,000 of sponsorship funding/rebates over the 5-year term. The recommended Agreement does not require a secured amount but rather, it requires Ovations to use commercially reasonable efforts to obtain rebates/sponsorship which will inure to the benefit of the County. Changes in the tourism industry as a result of the COVID19 pandemic are the leading reason for the modification of this component of the financial proposal submitted by Ovations and recommended by the final selection committee.

Staffing/Liquidated Damages

Under the existing contract, the General Manager of Food & Beverage and the Executive Chef, are deemed essential positions required to ensure adequate operations. As such, Ovations is required to appoint (when necessary) a permanent replacement within 90 days of either position becoming vacant. Failure to do so for either position results in liquidated damages payable to the County in the amount of \$50,000. Ovations has indicated that, given current market conditions, it can no longer agree to said terms. As a result, the Agreement provides an extended term of 180 days for appointment of a permanent replacement for either position and reduces the liquidated damages to \$25,000. County Staff is recommending this modification in light of the significant changes that the tourism industry has, and continues to, experience as a result of the COVID19 pandemic including but not limited to, recruitment and retention of personnel.