



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

Date: October 5, 2017

To: Recreation and Park Commission
Operations Committee

Through: Philip A. Ginsburg, General Manager

From: Dana Ketcham, Director of Property Management and Reservations

Subject: Joseph L. Alioto Performing Arts Piazza (Civic Center Plaza) – License to Install Food and Beverage Kiosk

Agenda Item Wording:

Discussion and possible action to authorize the Department to enter into a license agreement with the Civic Center Community Benefit District for the public purpose of installing and operating a food and beverage kiosk on Joseph L. Alioto Performing Arts Piazza (Civic Center Plaza) for a period of up to 9 years with terms substantially the same as the term sheet dated September 25, 2017.

Strategic Plan

Objective: 1.2: Strengthen the quality of existing Parks & Facilities

Objective: 2.3: Work with partners and neighborhood groups to activate parks through organized events, activities and unstructured play

Objective: 3.3: Cultivate increased philanthropic support

Background:

The Recreation and Park Department (the “Department”) is partnering with The Trust for Public Land (“TPL”) on improvements to the two playgrounds at Joseph L. Alioto Performing Arts Piazza (“Civic Center Plaza”). The playgrounds were 20 years old and in need of renovation. They serve an area where open space is limited including the Tenderloin, Western Addition, Hayes Valley, and South of Market neighborhoods. The playgrounds are also used by many daycares, school children and visitors to the surrounding cultural institutions including the Library and the Asian Art Museum. The renovation will create unique, artful, safe and inviting play areas for families and children of different ages and will fit in the context of Civic Center and also increase programming opportunities with the cultural institutions.

The playground renovations are a generous gift from the Helen Diller Family Foundation. The Foundation has supported a number of programs and institutions in the Bay Area and throughout the world, including award-winning playground renovations in the city, such as the Helen Diller



Play Area at Julius Kahn Playground in the Presidio and the recent Helen Diller playground in Mission Dolores Park.

TPL is a national non-profit organization that works in partnership with the Department and communities to ensure that everyone has access to quality parks and open space. Some of the recent playground renovation efforts resulting from this partnership include Hayes Valley Playground, Balboa Park, and Boeddeker Park.

During the community outreach and design process for the playground renovation at Civic Center Playground, community members when asked what other activities they would like to see at Civic Center Plaza, talked about park amenities like food and seating as well as an area to relax and gather near the playgrounds with their children and families. Because of the community feedback, TPL worked with Helen Diller Family Foundation to provide additional resources and funding for this much-needed community hub serving families living in the Civic Center and Tenderloin neighborhoods.

The Helen Diller Family Foundation through TPL has donated funds to support Civic Center Community Benefit District (“CCCBD or Licensee”) to create a street café kiosk and central gathering place at Civic Center Plaza on the southeast corner of the Plaza adjacent to the Playgrounds. The donation to the CCCBD is of the completed street café kiosk. The CCCBD’s mission is to provide essential services, including activation that complements those provided by City agencies.

The street café, to be located at the corner of Grove and Larkin Streets, will be housed in a kiosk, and will offer a variety of food and drink selections as well as movable tables and seating for the public to relax and enjoy recreation activities at Civic Center Plaza. Designed by WRNS, the street café has a light and transparent structure that will preserve the grand views of Civic Center Plaza and allow visibility of the playgrounds when the renovations are completed. While the street café kiosk is built to last, it can be removed to make way for another long-term future use in Civic Center Plaza.

In addition to the playgrounds, the Department offers Zumba classes, youth soccer, adult bocce ball, adult kickball, and volleyball games as well as food trucks in partnership with Off-The-Grid on a weekly basis and the kiosk will supplement those services.

The Department is proposing to enter into a license agreement with the CCCBD to authorize it to install and operate the kiosk on Civic Center Plaza. All proceeds from the operation of the kiosk other than administrative overhead will be used to fund kiosk maintenance and additional support services in the playgrounds and Civic Center Plaza generally. By helping to activate Civic Center Plaza and securing needed support for the park, the agreement will serve a public purpose. The Department believes the CCCBD is an ideal partner for this purpose, and that a competitive bid is impractical in this circumstance, due to the CCCBD’s partnership with the Helen Diller Family Foundation and TPL, its location in the community, and its existing work and mission to maintain and activate the Civic Center area.

The Department has been informed that the CCCBD intends to select Bi-Rite, a family-owned San Francisco institution since 1940, to be the initial operator of the street café kiosk, which will provide a variety of fresh foods and ice cream. As an active community member in the San Francisco neighborhoods in which it operates, Bi-Rite supported this opportunity to deepen its

existing partnerships in the Civic Center and Tenderloin neighborhoods, and to bring its delicious ice cream and freshly prepared foods to this new space.

The street café kiosk design has been reviewed and approved by the Planning Department and the Historic Preservation Commission through the successful application for a Certificate of Appropriateness. Following the subsequent CEQA determination, a Categorical Exemption was received for the project. If and when the project design is approved, The Trust for Public Land will be overseeing the construction of the street café kiosk.

Overview of the License Agreement Term Sheet

Use: Installation and operation of a temporary 640 square foot food and beverage kiosk (the “Kiosk”) at Civic Center Plaza in the area identified in Exhibit A (which includes both the Kiosk and the surrounding area) (the “License Area”).

Improvements: The Kiosk shall be installed in the Plaza for the CCCBD by the Trust for Public Land (TPL) in accordance with the plans and specifications approved in advance and in writing by the Department’s General Manager.

Operation of Kiosk: CCCBD shall engage a professional food and beverage service provider (the “Operator”) to operate the food and beverage kiosk for a fair market license fee equal to the higher of minimum base rent or a percentage of Operator’s gross revenues from all sales at rates to be negotiated by the CCCBD. The agreement between the CCCBD and Operator (the “Operating Agreement”) shall be subject to the prior written approval of the Department.

Hours of Operations: Licensee shall require the Operator to actively sell food and beverages from the Kiosk to the general public Monday-Friday: 7:30 am to 5:30 pm during daylight savings and 8 am to 4 pm during standard time and Saturday: 10 am to 4 pm. The Kiosk may be closed on Thanksgiving Day, Christmas Day, 4th of July, New Year’s Day and one additional identified holiday per year. There shall be no limitation on additional business hours provided that operation can only be during the hours that Civic Center Plaza is open to the public.

Term: 3-year initial term, with an automatic option by the CCCBD to renew for 2 additional 3 year terms as long as CCCBD is not in default of the License Agreement. The Department may terminate the License Agreement after 3 years if the Department requires Kiosk to be removed as a regulatory matter. CCCBD may terminate at any time upon written notice to the Department should repair or damage to the Kiosk exceed the maintenance reserves dedicated for repair and maintenance of the Kiosk.

Financial Terms: The CCCBD shall allocate some of the Operating Agreement fees towards a reasonable administrative fee (the “Administrative Fee”) paid to the CCCBD for the management and oversight of the Kiosk and associated revenues. The Administrative Fee shall include Licensee’s management, accounting, insurance, legal and overhead costs, but shall exclude repair and maintenance costs.

- First 18 months of operation: monthly Administrative Fee of \$850 plus \$425 per month for the first 10 months to cover legal fees incurred in connection with License Agreement and other related agreements
- Month 19 forward of operation: monthly Fee of \$900
- 1st 3-year Option term: monthly Fee of \$1,000

- 2nd 3-year Option term: monthly Fee of \$1,200

Except for the Administrative Fee, all other Operating Agreement fees and payments shall be deposited in the Operating Maintenance Account described below.

Operating Maintenance Account for Kiosk: The fees collected by the CCCBD from the Operator (after deduction of the Administrative Fee defined above) shall be placed in a separate account (“Operating Maintenance Account”), which shall require Department prior written approval for any disbursements in excess of \$2,500.

Funds in the Operating Maintenance Account shall be used solely for Licensee’s required maintenance of the Kiosk (the “Kiosk Expenses”) and, as requested by the Department, to provide supplemental services such as ambassadors, tables and chairs and free events for the newly renovated Civic Center Playgrounds and Plaza (the “Other Plaza Expenses”), provided that the neither the CCBD nor the Department shall not request use for Other Plaza Expenses if it would cause the Operating Maintenance Account to hold less than the Base Amount (as defined below).

Funds in the Maintenance Operating Account may only be used for Kiosk Expenses until such times as funds have accumulated to equal or exceed \$25,000 (the “Base Amount”). The Base Amount may over time decrease or increase with approval by the Department commensurate with the Kiosk actual maintenance cost history and anticipated expenses.

Funds in excess of the Base Amount may then be expended first to replenish that Non-routine Maintenance Account (described below) so that it has a balance of \$30,000 and then from time to time, as reasonably requested by the Department, towards Other Plaza Expenses.

Licensee shall have sole discretion to approve all Kiosk expenditures under \$2,500, as long as they are related to the Kiosk maintenance obligations. Expenditures of the account in excess of \$2,500, and any expenditure for Other Plaza Expenses, shall be authorized by the Department in advance and in writing. Licensee shall retain invoices, receipts and any other proof of payment for all expenditures.

Non-routine Maintenance Account for Kiosk or Playgrounds : TPL is providing the Licensee with \$30,000 to be placed in Licensee’s separate account with a bank approved by the Department (“Non-routine Maintenance Account”), to establish a reserve for the purpose of non-routine repairs and maintenance of the Kiosk and the Playground. Any expenditure from this account shall be authorized by the Department in advance. In the event that the Non-routine Maintenance Account is depleted below \$30,000, the Department and Licensee shall work in good faith to find ways to replenish the account including grants and donations or transfer of funds from the Operating Maintenance Account if funds in the account exceed the Base Amount.

Menu items and pricing: Licensee shall require the Operator to provide menu items and pricing prior to starting operations to the General Manager, and obtain the General Manager’s approval. Licensee shall encourage the Operator to ensure that at least 25% of the meals offered on the menu meet the nutritional standards set forth in SF Administrative Code Section 4.9-1(e).

Sustainable Foods: Licensee shall require the Operator to use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of the business on the License Area.

Seating Area Tables and Chairs: Licensee shall allow the Operator to provide tables and chairs for use of its customers and the general public, and require that the tables and chairs be of good quality, attractive and in keeping with the image and operation of the Kiosk and the Plaza.

Maintenance: Licensee shall maintain all aspects of the Kiosk at all times. The Department shall have no obligation to maintain or otherwise fix or repair any deficiencies with the Kiosk, except that the Department will power wash the grounds surrounding the Kiosk on a monthly basis. If the Licensee does not have sufficient reserve funding in the Maintenance Account to perform the necessary repairs or maintenance, Licensee may terminate the agreement and the Department may elect to take ownership of the Kiosk upon the License termination.

Quarterly reports: Licensee shall prepare and submit quarterly operating reports to the Department including a detailed accounting of all income and expenses and an accounting of the quarterly income reported by the Operator, including any percentage rent overage paid by the Operator, when applicable.

Termination: Upon termination of the License Agreement, the Licensee shall transfer title and ownership of the Kiosk to the Department, subject to any required approvals. Pending approvals the Department shall have the right to make any needed repairs to the Kiosk. Upon acceptance of the Kiosk by the Department, Licensee shall disburse any remaining maintenance funds to the Department along with a final income and expense report within 45 days of the termination date and assign the Operating Agreement to the Department. In addition, if the Licensee elects to terminate the License Agreement early for any reason including, but not limited to, insufficient Operating Maintenance Account funds for Kiosk maintenance, and the Operator is not in default under the Operating Agreement, Licensee shall assign its interest and obligations in the Operating Agreement to the Department, with the Operator submitting monthly base rent, quarterly income reports and percentage rent to the Department as of the date of such assignment. In such event, the Department shall assume the Licensee's Kiosk maintenance obligations under the Operating Agreement.

Personnel: Licensee shall require the Operator to hire, employ and or assign experienced, qualified food and beverage service, maintenance, repair, management and any other such persons necessary or advisable for the proper operation of the Kiosk and performance of Operator's obligations under the Operating Agreement. Licensee shall hire, employ and or assign experienced, qualified maintenance, repair, management and any other such persons necessary or advisable for the proper maintenance of the Kiosk and performance of Licensee's obligations under the License Agreement.

Special Events: The Plaza is a popular location for public and private events. The Plaza may be partially or completely closed to accommodate such events. The Department retains the authority, in its sole discretion, to prohibit the Operator from operating during the length of the special event, and the Licensee shall require the Operator to partially or completely close for business upon written notice from the Department, which shall be communicated to both the Licensee and the Operator. Additionally, the Department shall have the right to prohibit Licensee from performing any maintenance or capital improvements to the Kiosk during special events, unless otherwise authorized in writing by the General Manager or in the event of an emergency.

Upon notice from the Department, the Licensee shall require the Operator to be closed during a permitted event that closes or restricts access to the Plaza generally to the public. 2017 events that would trigger these requirements, and that are exempt from the \$2,000 fees listed below, are SF

Pride and the Comedy Festival. Any future events that trigger this requirement would include a condition that the Event sponsor (promoter) be required to pay the Operator \$2,000 per day for the closure unless they are civic celebrations sponsored by the City of San Francisco ("City) and or the Department. Licensee shall not be obligated to pay anything to the Operator for any closure required by Department or City.

Utilities: The Licensee shall not be responsible for the cost of electrical and water utilities as the Department shall provide those services as reasonably necessary for the operation of the kiosk on the terms of the agreement for the duration of the License Agreement including any extended terms.

Waste Management: Licensee shall require the Operator to (i) keep the Kiosk free of food, spills, and debris and in a neat, clean, orderly and attractive condition at all times, (ii) provide adequate garbage, compost and recycling receptacles to serve the Kiosk customers, (iii) empty such receptacles as often as needed to keep them from overflowing during Kiosk operational hours and (iv) secure the receptacles when the Kiosk is closed. Licensee shall require the Operator to also be responsible for keeping the area inside the Park and within approximately 150 feet around the Kiosk (see Exhibit A), excluding the Playgrounds and streets, clean and free of garbage relating to Operator's operation. The Department will empty the waste receptacles at the Kiosk four times per day.

Existing Concessions: Two concessions currently operate within the Plaza: Annie's Hot Dogs and Off the Grid. These concessions may continue to operate under their existing agreements with the Department; provided however, that Department will require Off the Grid activation to move their activities to Larkin Street. Under the terms of the License Agreement, the Department shall consult with the Licensee and its Operator before extending those agreements.

Staff Recommendation:

Department staff recommends that the Commission authorize the General Manager to negotiate and enter into on behalf of the Department a License agreement with the CCCBD.

Supported By:

CCCBD Board of Directors (unanimously approved)
Emerald Fund
Asian Art Museum
Bill Graham Civic Auditorium
SF Public Library

Opposed By:

No known opposition

Attachments:

Exhibit A – Term Sheet dated September 25, 2017