

Memorandum

Agenda Item 5

TO: Bay Area Headquarters Authority

DATE: October 28, 2015

FR: Executive Director

W. I. 9130

RE: Contract – Concession Agreement: Ada’s Café (\$325,000)

This memorandum asks for Authority approval to enter into a five (5) year concession agreement with Ada’s Café, on a sole source basis, in an amount not to exceed \$325,000, to provide café services at 375 Beale Street in the small retail space located in Suite #103, with an option on the part of Ada’s Café to extend the agreement for up to five (5) additional years in one-year increments.

Background

BAHA plans to develop a joint space that would house a Regional Resource Center and a retail coffee shop on the 1st floor (Suites #103 and #105). Similar to the design and operational concept for the Agency floors, the two operations would be co-located within two joining suites which allows their mutual customers the benefit of walking freely between the units.

BAHA worked with Cushman & Wakefield to lease the retail location in Suite 103, including tours and distribution of marketing materials. While there was interest in the space from various food service providers, Ada’s Café submitted a detailed proposal to provide café services while providing employment opportunities for disabled adults.

Below is a brief history and background of Ada’s Café:

- Kathleen Foley-Hughes is the Executive Director and has over 25 years of experience as an event planner, fundraiser, and professional caterer.
- She is the founder and funder of two successful vocational education food service programs for disabled students within the Palo Alto Unified School District.
- The name Ada's Cafe also has another derivation - the Americans with Disabilities Act – passed by Congress and signed into law by President George H. W. Bush in 1990 to ensure equal opportunities for people with disabilities.
- Through catering business and the newest venture – Ada’s Café at the Mitchell Park Library and Community Center in Palo Alto – serves as a place to provide job opportunities for disabled individuals.
- Ada’s Café is a 501(c)(3) nonprofit organization.

Based on the nature of the lease terms proposed by Ada's Café, BAHA staff recommend implementing the arrangement as a sole source concession agreement, similar to the agreement for cafeteria services at the MetroCenter building. The Ada's proposal (considered by BAHA in closed session in August 2015) included a lease rental that would only cover operating costs. Outside legal counsel recommended that an operating agreement rather than a lease be used, to provide BAHA with an additional layer of protection in the event of an Ada's Cafe bankruptcy. In a bankruptcy a lease of the proposed type could become an asset of the bankruptcy estate and the space re-let for a profit without regard to the lease terms governing subletting, including BAHA consent and profit sharing. Given the change in format from lease to contract, even though the lease was marketed and advertised with only one formal offer presented, it is necessary to request sole source approval of the concession agreement in compliance with BAHA contracting procedures.

This new strategy keeps BAHA in control of a turn-key space that is functional for Ada's or subsequent retailers in the future. BAHA will be responsible for design and construction of the café, along with ownership of all improvements, equipment, machinery and other personal Café Property it purchases at a cost not to exceed \$325,000 for design and construction services. Ada's will be responsible for all other equipment and furnishings (estimated at \$275,000) and all costs associated with the food service operations. Under the terms of the concession agreement, Ada's will not pay a minimum annual guarantee or any rent, but is responsible for paying all allocable operating expenses (annual estimate \$13-15/rsf). Ada's Café is neither a small business nor a disadvantaged business enterprise and currently has no subcontractors.

Recommendation

Staff recommends this Authority authorize the Executive Director or his designated representative to negotiate and enter into a sole source concession agreement with Ada's Café to provide café services in Suite #103 at 375 Beale Street in an amount not to exceed \$325,000 for the design and construction costs.



Steve Heminger

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REQUEST FOR AUTHORITY APPROVAL

Summary of Proposed Concession Agreement

Concessionaire:	Ada's Café, a 501(c)(3) nonprofit corporation created in 2008, whose mission is training, employing and empowering people with disabilities in a commercial food service environment Palo Alto, California
Term:	5 years with an option on the part of Ada's Café to extend for up to five (5) additional years; not to exceed 10 years
Space:	Approximately 760 Rentable Square Feet (RSF), 1 st floor, Suite 103
Rent:	Base Rent - \$0.00 with Ada's paying allocable operating expenses (annual estimated at \$13-15/rsf)
Delivery:	12/1/2015 – available for design/build-out (approximate)
Commencement:	5/1/2016 (approximate)
Design/Build Out:	BAHA contribution towards design and construction of retail space not to exceed \$325,000
Funding Source:	FY 2015-16 BAHA Commercial Development Fund
Fixtures and Equipment:	Ada's responsible for equipping and furnishings (approximately \$275,000); BAHA will have to purchase at fair market value at end of agreement term
Security Deposit:	\$2,500 upon execution of the Concession Agreement
Parking:	One designated parking space at \$300/month
Motion by Authority:	That the Executive Director or his designee is authorized to negotiate and enter into a concession agreement with Ada's Café to provide café services at 375 Beale Street as described above and in the Executive Director's Memorandum dated October 28, 2015, and the Treasurer and Auditor is directed to set aside funds in an amount not to exceed \$325,000 for such concession agreement.

BAHA Chair:

Dave Cortese

Approved:

Date: November 4, 2015