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OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2019 APR 11 PM 5:42

TO: Sabrina B. Landreth
City Administrator

FROM: Ryan Russo
Director, DOT

SUBJECT: Uptown Bike Station

DATE: March 18, 2019

City Administrator Approval

Date:

3/27/19

5

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing An Amendment And Extension Of A Cooperative Agreement With The Bay Area Rapid Transit District (BART) For Support Of The Operations And Management Of The Uptown Bike Station And Approving A Contribution In An Amount Not To Exceed One Hundred Sixty-Five Thousand Dollars (\$165,000.00)

EXECUTIVE SUMMARY

The Uptown Bike Station, in operation since February 2015, provides attended and secure bicycle parking and ancillary services for up to 130 bicycles at the storefront level. Its current five-year lease expires on June 30, 2019; however, the lease includes an option to extend the term. The Bay Area Rapid Transit District (BART) is negotiating a three-year lease extension agreement which they will sign, contingent upon the City of Oakland's (City) approval of the resolution to extend a Cooperative Agreement (Agreement) with BART and contribute three-years' worth of operating funds. The current Agreement, attached, committed the City to contributing to operating funds for the first five-year lease term, and committed BART to signing and managing a lease commitment, overseeing operations of the Bike Station, and assuming responsibility for covering any cost overruns.

BART is currently designing a new bike station facility to serve the 19th Street BART Station. The site for this facility is a BART-owned parcel adjacent to the Paramount Theater on Broadway in Oakland (currently a surface parking lot). A BART-owned facility will reduce operating costs. Thus, staff propose a three-year extension of the existing lease to continue operations until the new facility is completed.

The Uptown Bike Station meets bike parking needs, is compatible with the urban streetscape, enlivens an otherwise vacant storefront, and is a joint City-BART partnership. The City's \$165,000.00 contribution of Measure B bicycle and pedestrian funds will be paid to BART over the three-year lease term of the Bike Station.

Item: _____
Public Works Committee

BACKGROUND / LEGISLATIVE HISTORY

The Alameda Countywide Bicycle Plan recommends secured and attended bicycle parking near BART station entrances and highlights the 19th Street BART Station as a location in need based on bike rack and locker occupancy and theft rates. The 2007 Oakland Bicycle Master Plan identifies Uptown Oakland as the most important location for a bike station after the MacArthur BART station area.

Based on these recommendations, the City, in partnership with BART, applied and was awarded in January 2012 a Safe Routes to Transit grant of \$531,000.00 from Regional Measure 2 funds to design and construct a new bicycle parking facility near the 19th Street BART Station for uptown workers, residents, and business patrons.

In August 2013, City Council approved Resolution No. 84632 C.M.S. to accept Safe Routes to Transit grant funds and authorize the City to enter into an Agreement with BART to support the operations and management of the Uptown Bike Station.

The facility, in operation since February 2015, has capacity to park 130 bikes with a valet style parking program. BART manages the operation of the Bike Station with BikeHub, who provides bicycle retail and repair services which are designed to support and encourage bicycle access.

ANALYSIS AND POLICY ALTERNATIVES

The Bike Station is located at 1775 Broadway, at the corner of 17th Street near the 19th Street BART Station entrance. This location serves bicyclists using BART and major AC Transit routes, and also serves as a convenient location near many downtown Oakland workplaces and destinations. Bicycle racks both inside of BART and on the sidewalks near the BART entrances are full on weekdays, and this Bike Station provides a safe and convenient location for free all day bike storage.

The City of Oakland's Bicycle Plan identifies the 19th Street BART Station as an important location for a bike station. Since completion in 2015, the Station has been successful by many measures. The bike parking fills to capacity daily, and some bicyclists are even turned away in the late morning, demonstrating the high demand for high quality and secure bike parking in downtown Oakland. A survey conducted by BART from December 2018 also revealed the following positive findings:

- 95% of respondents indicated that the bike station made it more likely they would use their bike for this trip
- 95% were very satisfied with the services provided
- 87% of users were taking BART in conjunction with their use of the bike station
- 51% of the users are female (*most studies show women to be approximately 25% of commute cyclists*)

The Uptown Bike Station aligns with transportation, environmental and economic development policy by encouraging bicycle usage. The bike station brings life to what was otherwise a previously empty storefront and provides a modestly positive economic impact by encouraging bicyclists to travel to and through downtown Oakland, thereby potentially increasing economic activity and sales tax income. Given the demonstrated encouragement of bicycle trips to downtown and BART, the Bike Station also has a small but measurable impact on greenhouse gas reductions.

Due in large part to the success of the current facility, BART is currently designing a new and larger bike station on property it owns adjacent to the Paramount Theater. This facility, when completed, will be owned and operated by BART and will require no City subsidy. City operating support of the Bike Station will provide continuity of service for three years until the new station is constructed. This support totals approximately 2.2% of bicyclists and pedestrian funds received annually through Measures B and BB.

Should the City decline to provide operating support, BART could terminate the lease and the patrons would not have access to this free and secure bicycle parking until the new BART facility is open in 2022. The City would also lose the positive environmental, transportation, and economic impacts of the current Bike Station.

FISCAL IMPACT

A three-year lease extension will cost the City \$165,000.00 for the period of July 1, 2019 to June 30, 2022. This commitment totals 2.2% of pedestrian and bike funds received annually in Measure B and BB. Staff is proposing to fund \$50,000 annually in FY 2019/20 and FY 2020/21 from Fund 2212 Measure B Bicycle and Pedestrian Funds. A final balloon payment of \$65,000 will be proposed in the next budget cycle, resulting in a total investment of \$165,000 over the three-year term. Funding for the three-year term, from FY 2019-20 to FY 2021-22, will be contingent upon the availability in each year's budget adopted by the City Council.

PUBLIC OUTREACH / INTEREST

The Uptown Bike Station proposal was presented to the City's Bicycle and Pedestrian Advisory Committee (BPAC) at their July 2011 and January 2019 meetings. The BPAC reaction to the project was positive and they voted to endorse the extension of the Cooperative Agreement between the City and BART. Prior outreach was also completed with Walk Oakland Bike Oakland and East Bay Bicycle Coalition.

BART conducted a survey in December 2018 to assess user satisfaction with the station. The survey revealed positive findings, as summarized in *the Past Performance, Evaluation and Follow-Up* section below.

COORDINATION

This project is a joint City-BART partnership. In light of the approaching end of the lease term, the City and BART have been coordinating to negotiate a lease extension and renew the Agreement. BART assumes legal responsibility for the Uptown Bike Station location, lease, overall operations of the station, and any cost overruns. The City Attorney and Budget offices have reviewed this report.

SUSTAINABLE OPPORTUNITIES

Economic: This project will provide safe and secure bicycle parking for visitors to downtown Oakland, with positive impacts on downtown shops and businesses in the vicinity.

Environmental: This project encourages bicycle access to BART and downtown Oakland, thereby decreasing commute and other trips by automobile, with positive impacts on particulate and greenhouse gas pollution.

Social Equity: Bicycling is an affordable means of transportation available to all regardless of economic class. Safe and secure bicycle parking helps provide access to jobs in Oakland and anywhere on the BART system for residents within approximately two miles of the BART station.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt A Resolution Authorizing An Amendment And Extension Of A Cooperative Agreement With The Bay Area Rapid Transit District (BART) For Support Of The Operations And Management Of The Uptown Bike Station And Approving A Contribution In An Amount Not To Exceed One Hundred Sixty-Five Thousand Dollars (\$165,000.00).

For questions regarding this report, please contact Bruce Williams, Funding Program Manager, at 510-238-7229.

Respectfully submitted,



Ryan Russo
Director
Oakland Department of Transportation

Reviewed by:
Wladimir Wlassowsky, P.E.,
Assistant Director
Oakland Department of Transportation

Ariel Espiritu Santo
Strategic Planning and Administration Manager
Oakland Department of Transportation

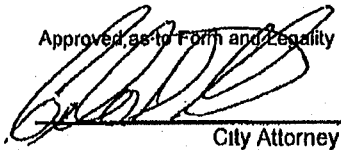
Prepared by:
Bruce Williams
Funding Program Manager
Oakland Department of Transportation

Attachments:

- A. Resolution No. 84632 CMS
- B. Current Cooperative Agreement

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Approved as to Form and Legality

City Attorney

2013 AUG 29 AM 10:25

84632

RESOLUTION NO. _____ C.M.S.

Introduced by Councilmember _____

CITY OF OAKLAND RESOLUTION TO ACCEPT THE 2012 METROPOLITAN TRANSPORTATION COMMISSION'S (MTC) REGIONAL MEASURE 2 SAFE ROUTES TO TRANSIT GRANT OF FIVE HUNDRED THIRTY-ONE THOUSAND DOLLARS (\$531,000.00) FOR THE UPTOWN BIKE STATION; COMPLY WITH REGIONAL MEASURE 2 POLICY AND PROCEDURES IN THE IMPLEMENTATION OF THE GRANT; AUTHORIZE THE CITY ADMINISTRATOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE BAY AREA RAPID TRANSIT DISTRICT (BART) FOR SUPPORT OF THE OPERATIONS AND MANAGEMENT OF THE STATION; AND CONTRIBUTE OPERATING FUNDS IN AN AMOUNT NOT TO EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)

WHEREAS, the City of Oakland (City) desires to encourage bicycle access to downtown Oakland by improving the safety and security of bicycle storage; and

WHEREAS, attended bike stations provide a secure place to store bicycles for long periods of time; and

WHEREAS, BART currently subsidizes bike stations in several locations throughout the system, including Fruitvale BART, MacArthur BART, and Downtown Berkeley; and

WHEREAS, the City's Bicycle Master Plan identifies the 19th Street BART station area as an important location for a bike station; and

WHEREAS, the Safe Routes to Transit grant program SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2, provides funds to implement projects which encourage improvements bicycle and pedestrian access to transit; and

WHEREAS, the City, jointly with BART, applied for and received a grant to construct the Uptown/19th Street Bike Station (Project) in the vicinity of the 19th Street BART station; and

WHEREAS, in order to implement the Project, BART and the City desire to complete a Memorandum of Understanding (MOU) outlining their responsibilities during both the construction and operations phases of the Project; and

WHEREAS, the MOU requires both BART and the City to directly fund any operating costs during the first five years of Project Operation, with a City of Oakland maximum contribution of Two Hundred and Fifty Thousand Dollars (\$250,000.00) over the five year period; and

WHEREAS, Regional Measure 2 identified projects eligible to receive funding under the

Regional Traffic Relief Plan; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

WHEREAS, allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

WHEREAS, the City of Oakland is an eligible sponsor of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

WHEREAS, the Uptown/19th Street Bike Station is eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

WHEREAS, the Regional Measure 2 allocation request, attached hereto in the Initial Project Report and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which the City of Oakland is requesting that MTC allocate Regional Measure 2 funds; now, therefore, be it

RESOLVED, that the City accepts the award of capital funds to construct the Project; and be it

FURTHER RESOLVED, that the City approves the Draft Memorandum of Understanding with BART, and instructs the City Administrator or her designee to finalize and sign this agreement, and be it

FURTHER RESOLVED, that the City dedicates funding to support bike station operations during the first five years of operation of the Project in an amount not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) from Measure B Bicycle and Pedestrian Funds: Fund (2212), Organization (30275), Project Number to be determined.

FURTHER RESOLVED that the City, and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); and be it further

FURTHER RESOLVED, that the City certifies that the project is consistent with the Regional Transportation Plan (RTP); and be it

FURTHER RESOLVED, that the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and be it

FURTHER RESOLVED, that the Regional Measure 2 phase or segment is fully funded, and results in an operable and useable segment; and be it

FURTHER RESOLVED, that the City approves the updated Initial Project Report, attached to this resolution; and be it

FURTHER RESOLVED, that the City approves the cash flow plan, attached to this resolution; and be it

FURTHER RESOLVED, that the City has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the updated Initial Project Report, attached to this resolution; and, be it

FURTHER RESOLVED, that the City is an eligible sponsor of projects in the Regional Measure 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(c); and be it

FURTHER RESOLVED, that the City is authorized to submit an application for Regional Measure 2 funds for the Uptown/19th Street Bike Station in accordance with California Streets and Highways Code 30914(c); and be it

FURTHER RESOLVED, that the City certifies that the projects and purposes for which RM2 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and be it

FURTHER RESOLVED, that there is no legal impediment to the City making allocation requests for Regional Measure 2 funds; and be it

FURTHER RESOLVED, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of the City to deliver such project; and be it

FURTHER RESOLVED, that the City agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and be it

FURTHER RESOLVED, that the City indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of (agency name), its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it

FURTHER RESOLVED, that the City shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and be it

FURTHER RESOLVED, that assets purchased with RM2 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the Metropolitan Transportation Commission (MTC) shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 2 funds were originally used; and be it

FURTHER RESOLVED, that the City of Oakland shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with Regional Measure 2 Toll Revenues; and be it

FURTHER RESOLVED, that the City of Oakland authorizes its City Administrator, or her designee to execute and submit an allocation request for the construction phase with MTC for Regional Measure 2 funds in the amount of up to \$531,000.00, for the project, purposes and amounts included in the project application attached to this resolution; and be it

FURTHER RESOLVED, that the City Administrator, or her designee is hereby delegated the authority to make non-substantive changes or minor amendments to the Initial Project Report as he/she deems appropriate; and be it

FURTHER RESOLVED, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the City of Oakland application referenced herein.

SEP 17 2013

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON-MCELHANEY, KALB, KAPLAN, ~~REID~~ SCHAAF and PRESIDENT KERNIGHAN - 7

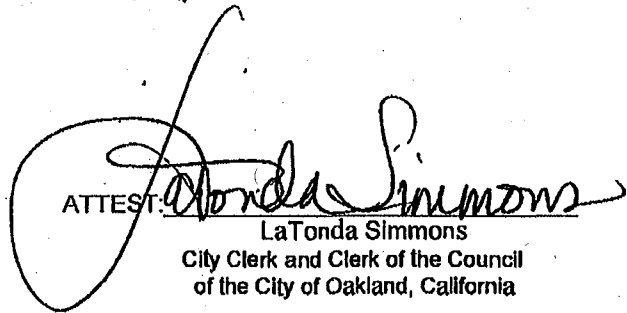
NOES - 0

ABSENT - 0

ABSTENTION - 0

excused - Reid - 1

ATTEST:



LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

19th STREET BART BIKE STATION COOPERATIVE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the 27 day of 2014 February 2014, by and between the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART", or the "District") and the CITY OF OAKLAND, CALIFORNIA ("City").

RECITALS

THIS AGREEMENT is made with reference to the following facts:

- A. BART currently operates a rack storage facility for approximately 124 bicycles on the concourse level at its 19th Street Station ("Station"). City currently operates a locker storage facility for approximately 8 bicycles on the street level. Both BART and City desire to develop an expanded and improved bicycle storage facility at or near the 19th Street Station ("Bike Station").
- B. By no later than September 30, 2014, BART intends to enter into a lease (the "Lease") for a term of five (5) years ("Lease Term") with a landlord ("Landlord"). BART will lease between 1,000 to 3,000 rentable square feet of space at or near the 19th Street Station, Oakland, California (the "Premises") for the Bike Station.
- C. BART has entered, as of July 2013, into a Management Services Agreement (BART Agreement No. 6M6063) (the "MSA") with Alameda Bicycle, Inc. ("Operator"), attached hereto as **Exhibit A** and made a part hereof, whereby Operator will, among other things, manage and operate bicycle storage services at BART's Embarcadero, Fruitvale, Berkeley, and Ashby Stations. The MSA includes an option, which can be exercised at BART's discretion, to operate the 19th Street Bike Station.
- D. BART may sublease a portion of the Premises and/or assign the Lease and the Premises to Operator to ensure Operator's activities comply with Lease terms and to permit complementary retail bicycle services on a portion of the Premises. Retail bicycle services may include bicycle maintenance and repair, bicycle rentals, sale of bicycle accessories, and community bicycle education classes ("Bicycle Support Services").
- E. This Agreement provides for the City's contribution toward capital costs ("Capital Costs") of the Bike Station including the Lease tenant improvements ("Tenant Improvements"), and the allocation between BART and the City for payment and administration of the Bike Station's operating costs (e.g., staffing for the Bike Station and rent and utilities for the Premises, management of operating service, lease, sublease agreements, etc.) ("Operating Expenses") for the term of this Agreement.

- F. The total amount of compensation under the current multi-site MSA, that would be properly allocable to Operating Expenses for the 19th Street Bike Station is estimated to be between \$75,000 and \$81,000 per year, and will be pro-rated based on the actual Lease commencement date.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual premises and obligations set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereby agree as follows:

1. Term. The term of this agreement ("Term") shall commence on the date of its execution and shall terminate on the date the Lease terminates ("Lease Termination Date"), unless otherwise agreed by the Parties.
2. BART Contribution. Subject to Section 4 hereof, BART agrees to fund the annual amounts indicated as "BART Contributions" in Exhibit "B" and, for operating contingencies, up to 25% in excess of such amounts ("BART Contribution").
3. BART Responsibilities. Subject to Section 4 hereof, BART will: (A) fund its BART Contribution for the Lease Term, (B) perform its obligations under the Lease; and (C) manage the MSA and Lease obligations including, without limitation, providing all necessary planning and construction management assistance to City for the Lease tenant improvements.
4. Prerequisites to BART Contribution. BART's contribution is contingent upon: (A) BART's ability to negotiate a reasonably priced Lease and approval of said Lease by the BART Board of Directors; (B) receipt of the City Contribution and the City's Capital Cost Contribution, and (C) BART Board of Directors' approval of an allocation for the BART Contributions, if required by BART policies and procedures.
5. City Contribution. Subject to Section 8 hereof, City agrees to fund a maximum of Fifty Thousand Dollars (\$50,000) per Lease Year, for a total amount not to exceed Two Hundred And Fifty Thousand Dollars (\$250,000), toward Operating Expenses ("City's Contribution"). To help support the operation of the Bike Station for the Lease Term, City's Contribution shall be paid to BART in one lump sum. BART shall provide City at least one hundred and twenty (120) days' written notice of the anticipated public opening date for the Bike Station, and City shall pay the City's Contribution no later than sixty (60) days prior to the anticipated public opening date for the Bike Station.
6. City Capital Cost Contribution. Subject to Section 8 hereof, in addition to the City's Contribution, City is the recipient of \$531,000 in grant funds from Safe

Routes to Transit Grant No. RM2 # 20.43 from the Metropolitan Transportation Commission ("SR2T Grant"), which City plans to apply in its entirety to capital costs and tenant improvements for the Bike Station ("City's Capital Cost Contribution").

7. City Responsibilities. Subject to Section 8 hereof, City agrees to: (A) fund the City Contribution on the date set forth in Section 5 hereof; (B) manage grant implementation, including the SR2T Grant; (C) fund the City Capital Cost Contribution by processing the SR2T Grant for the Bike Station capital costs and tenant improvements; and (D) manage an agreement between Operator and City for the execution of the Tenant Improvements.
8. Prerequisites to City Contributions. City's contributions hereunder are contingent upon: (A) the Oakland City Council adopting resolutions (1) accepting the SR2T Grant for allocation to the Bike Station; and (2) approving an allocation of the City's Contribution; (B) submission by Landlord or Operator, as the case may be, of the plans and specifications described in Section 9 to the City; and (C) BART's funding its BART Contribution.
9. Tenant Improvements. City agrees to submit proposed (preliminary and final) Lease tenant improvement plans and specifications to BART and to Landlord for review and approval, prior to beginning work on the Tenant Improvements.
10. Project Budget. BART and the City have agreed on a budget ("Budget") for Operating Expenses for the period from the effective date of this Agreement through the Lease Term which Budget is attached hereto as **Exhibit B**.
11. Performance Evaluation. Within sixty (60) days of the beginning of the second Lease Year and each subsequent Lease Year thereafter, BART and the City, in collaboration with the Bike Station Operator, will review and assess the Budget and accrued Operating Expenses. If, at each respective annual evaluation meeting during the term of this Agreement, (A) the Bike Station has exceeded the Budget, and no alternative funding has been secured, or (B) annual customer usage of the Bike Station is found to be substantially inferior to the Parties' expectations, either Party shall have the option of terminating this Agreement in writing within sixty (60) days of the start of the respective new Lease Year, unless BART and the City mutually agree otherwise. All actual costs and expenses that may be incurred for early termination shall be apportioned pursuant to Section 14 hereof. Also, upon such termination by either party: (1) BART shall return to City a pro-rated share of the City Contribution for the remaining Lease Term (e.g., a return of \$50,000 for each remaining Lease Year in the Lease Term, or pro-rated for a partial Lease year); and (2) BART will take title to the Tenant Improvements under the provisions of Section 9 hereof.
12. Bicycle Retail and Other Support Services; Separation of Public and Private Interests. Retail activities will be limited to less than half of the total Premises in

a location designated by BART (the "Retail Space"). Operator may utilize the Retail Space to accommodate Bicycle Support Services in accordance with Recital D.

13. Fixtures of Bike Station. Upon termination of the Lease, BART shall take title to all removable materials, equipment, and appurtenances constructed and installed for the Bike Station and funded by the SR2T Grant, provided that BART must thereafter use such improvements only for use at an Oakland BART Station. Such materials shall include but not be limited to bicycle-parking racks, security devices, lighting, or any other transferable physical improvements necessary for the operation of the Bike Station, which were not permanently affixed to and became part of the real property at the Premises.
14. Termination. BART shall ensure that the Lease and the MSA make customary provision for possible early termination. If either Party defaults on any of the obligations in this Agreement, ~~either~~ ^{the non-defaulting} Party may exercise the option to terminate this Agreement. The defaulting party shall assume all actual termination costs which shall include but not be limited to any remaining lease payments and any actual and direct damages and costs associated with early termination of the MSA or the Lease. Should termination arise, despite each party's fulfillment of obligations in this Agreement and pursuant to Section 11, Performance Evaluation, hereof, termination costs shall be shared equally between BART and the City, provided BART returns to the City a pro-rated share of City's Contribution for the remaining Lease Term as described in Section 11.
15. Default. If either Party to this Agreement materially defaults on any of its obligations under this Agreement, the non-defaulting party may exercise the option to terminate this Agreement and exercise any other right or remedy now or hereafter available under the laws of the State of California for such material default or breach. Without limiting its remedies as provided herein, if the City, as a non-defaulting party, elects to terminate the Agreement, BART shall return to the City a pro rata amount of the City's Contribution allocated for the remaining Lease Term as of the date of default.

COO
3-5-14

Neither party shall be in default unless a party fails to perform obligations required under this Agreement within a reasonable time, but in no event later than thirty (30) days after written notice by the non-defaulting party specifying wherein the defaulting party has failed to perform such obligation; provided, however, that if the nature of defaulting party's obligation is such that more than thirty (30) days are required for performance, then the party shall not be in default if it commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

16. BART Indemnity. BART hereby agrees to indemnify, defend, protect and hold harmless City, its officers, agents, volunteers and employees (individually and collectively, "Indemnitees") from and against, any and all liabilities, claims,

actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and costs (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by BART's performance of or failure to perform any services under this Agreement.

If any action or proceeding is brought against Indemnitees by reason of any of the matters against which BART has agreed to indemnify Indemnitees as provided above, BART, upon notice from City, shall defend Indemnitees at BART's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

17. City Indemnity. City hereby agrees to indemnify, defend, protect and hold harmless BART, its officers, directors, agents, volunteers and employees (individually and collectively, "Indemnitees") from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and costs (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by City's performance of or failure to perform any services under this Agreement.

If any action or proceeding is brought against Indemnitees by reason of any of the matters against which City has agreed to indemnify Indemnitees as provided above, City, upon notice from BART, shall defend Indemnitees at City's expense by counsel acceptable to BART, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

18. Exception to Indemnity. The provisions of Sections 16 and 17 hereof do not apply to Claims occurring as a result of BART's or City's respective sole negligence or willful acts or omissions.
19. Nondiscrimination. In connection with the performance of services under this Agreement, BART shall not, on the grounds of race, religious creed, color, national origin, ancestry, handicap, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or

group of persons in any manner prohibited by Federal, State or local laws. Failure by BART to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as is deemed appropriate.

For purposes of this Section 19, "sexual orientation" shall mean a preference for heterosexuality, homosexuality or bisexuality; or having a history of, or being identified with, any such preference.

20. Assignment. Neither BART nor City shall assign any rights nor transfer any obligations under this Agreement without the prior written consent of the other in its respective sole and absolute discretion, and any such unauthorized assignment or transfer shall be void. Such clause shall not be construed to apply to the MSA, Lease, or any other agreement that BART executes to fulfill its management obligations under this Agreement.
21. Warranties. Neither City nor BART make any warranties, representations or agreements, either express or implied, beyond such as are explicitly stated herein.
22. BART Representative. Except when approval or other action is required to be given or taken by the Board of Directors of BART, BART's Manager of Access Programs, Customer Access Department, or such person or persons as he shall designate in writing from time to time, shall represent and act for BART.
23. City Representative. Except when approval or action is required by the City Council of Oakland, the City Administrator or such person or persons as he or she shall designate in writing from time to time, shall represent and act for City.
24. Notices. All communications relating to the day-to-day activities of the Bike Station shall be exchanged between BART's designated representative and City's representative. All other notices and communications deemed by either party to be necessary or desirable to be given to the other party shall be in writing and may be given by personal delivery to a representative of the parties or by mailing the same, postage prepaid, or transmitting it by commercial courier, addressed as follows:

To BART: San Francisco Bay Area Rapid Transit District
Customer Access Department
300 Lakeside Drive, 16th Floor
Oakland, CA 94612

Title: Manager of Access Programs, Customer Access
Department

To City: City of Oakland
Transportation Planning and Funding Division
250 Frank Ogawa Plaza, Suite 4344
Oakland, CA 94612

Title: Senior Transportation Planner

The address to which mailings are to be made may be changed from time-to-time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above, and if given by commercial courier as of the date accepted by the addressee.

25. Binding on Successors. All the terms, provisions, and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors, assigns, and legal representatives.
26. Applicable Law. This Agreement, its interpretation, and all work performed hereunder, shall be governed by the laws of the State of California applicable to contracts to be performed within the State, without reference to conflicts of law principles.
27. Modification. This Agreement may be modified or amended only by written instrument signed by both BART and City.
28. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of BART and the City, and their successors and assigns. No other person shall have or acquire any right or action based upon any provisions of this Agreement, including, without limitation, Landlord or the Operator.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the day and year first above written.

**SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT**

CITY OF OAKLAND

By: *Jan Chun*
Title: General Manager

By: *Deborah Barnes*
Title: Manager, Contracts + Compliance

City of Oakland

Approval as to Legal Form:

By: 

Title: Senior Deputy City Attorney

Legal Counsel

19th Street Bike Station Cooperative Agreement

Exhibit "A"

Exhibit "B"

Estimated Budget & Contributions

19th Street Bike Station

Exhibit B, Estimated Budget and Contributions

	Staffing, Supervision, Marketing, Maintenance	Rent, Utilities	Total Operating Expenses	BART Contribution	City Contribution
Year 1	\$75,240	\$20,996	\$96,236	\$46,236	\$50,000
Year 2	\$77,152	\$21,729	\$98,881	\$48,881	\$50,000
Year 3	\$79,113	\$22,462	\$101,575	\$51,575	\$50,000
Year 4	\$81,074	\$23,194	\$104,268	\$54,268	\$50,000
Year 5	\$83,035	\$23,927	\$106,962	\$56,962	\$50,000
TOTAL	\$395,614	\$112,308	\$507,922	\$257,922	\$250,000

DRAFT

City Attorney's Office

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2019 APR 11 PM 5:42

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION TO AUTHORIZE A THREE-YEAR EXTENSION OF A COOPERATIVE AGREEMENT WITH THE BAY AREA RAPID TRANSIT DISTRICT (BART) FOR SUPPORT OF THE OPERATIONS AND MANAGEMENT OF THE UPTOWN BIKE STATION; AND APPROVE THE CONTRIBUTION OF OPERATING FUNDS IN AN AMOUNT NOT TO EXCEED ONE HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$165,000.00)

WHEREAS, the City of Oakland (City) desires to encourage bicycle access to downtown Oakland by improving the safety and security of bicycle storage; and

WHEREAS, attended bike stations provide a secure place to store bicycles for long periods of time; and

WHEREAS, the City's Bicycle Master Plan identifies the 19th Street BART Station area as an importation location for a bike station; and

WHEREAS, the Uptown Bike Station (Project) is one of many bike stations subsidized by BART throughout the system, including Fruitvale BART, MacArthur BART, and Downtown Berkeley; and

WHEREAS, the Project has been successful since it began operations in February 2015 by a number of measures, including full usage of station bike parking daily, high user satisfaction with the services provided, and high percentage (87%) of users taking BART in conjunction with their use of the bike station; and

WHEREAS, the City has partnered with the Bay Area Rapid Transit District (BART) for the last five years to contribute funds for the operations and management of the Uptown Bike Station; and

WHEREAS, BART assumes legal responsibility for the Uptown Bike Station location, lease, overall operations of the station, and any cost overruns; and

WHEREAS, the current five-year lease for the Uptown Bike Station expires on June 30, 2019; and

WHEREAS, in order to extend the Project until a new bike station adjacent to the Paramount Theater on Broadway is completed, BART and the City desire to renew their Cooperative Agreement outlining their responsibilities for the operations of the Project for a period of three years; and

WHEREAS, BART is requesting a maximum contribution from the City of One Hundred and Sixty-Five Thousand Dollars (\$165,000.00) over a three-year period, with Fifty Thousand Dollars (\$50,000.00) in each of the first two years of the lease term and Sixty-Five Thousand Dollars (\$65,000.00) in the third year of the lease term; and

WHEREAS, funds are proposed for funding from Measure B Bicycle and Pedestrian Funds (2212) in the FY 2019-21 biennial budget, and will also be proposed in the FY 2021-23 biennial budget for the final funding year; and

WHEREAS, Measure B Bicycle and Pedestrian pass-through funds to support the operation costs of the Uptown Bike Station is an allowable use of these funds; now, therefore, be it

RESOLVED, That the City approves the three-year extension of the existing Cooperative Agreement with BART, and instructs the City Administrator or her designee to finalize and sign this agreement through June 30, 2022; and be it

FURTHER RESOLVED, That the City provides funding to support bike station operations during the next three years of operation of the Project in an amount not to exceed One Hundred and Sixty-Five Thousand Dollars (\$165,000.00) from Measure B Bicycle and Pedestrian Funds; Fund (2212), with Fifty Thousand Dollars (\$50,000.00) in each of the first two years of the lease term and Sixty-Five Thousand Dollars (\$65,000.00) in the third year of the lease term.

FURTHER RESOLVED, That funding for each year, from Fiscal Year 2019-20 to Fiscal Year 2021-22, will be contingent upon the allocation in the adopted budget by the Council; and

FURTHER RESOLVED, That all proposed funding shall be allocated in the Measure B Bicycle and Pedestrian pass-through Fund (2212); Mobility Management Organization (35247); Project to be determined; and

FURTHER RESOLVED, That the City Administrator or designee is hereby authorized to complete all required negotiations, certifications, assurances and documentation required to accept, modify, extend and/or amend the proposed cooperation agreement, except for any additional increase(s) in the agreement costs; and be it

FURTHER RESOLVED, That the City Attorney shall review and approve the proposed agreement(s) as to form and legality, and copies of the agreement(s) shall be filed with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California