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OFFICE OF THE CITY CLERK
OAKLAND

2013 AUG 29 AM 10: 24 **AGENDA REPORT**

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Brooke A. Levin
Interim Director, PWA

SUBJECT: Uptown Bike Station

DATE: July 31, 2013

City Administrator
Approval

Date

8/28/13

COUNCIL DISTRICT: #3

RECOMMENDATION

Staff recommends that the City Council approve a 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 (BART) District 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).

EXECUTIVE SUMMARY

In January 2012, the City of Oakland (City), in partnership with BART, was awarded 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. This facility will provide attended and secure bicycle parking and ancillary services for up to 150 bicycles at the storefront level.

This facility is located on 20th Street near Broadway, and BART is negotiating a lease agreement which they will sign, based upon the City's approval of the resolution to accept funds, enter into an MOU with BART (*Attachment A, Draft Memorandum of Understanding between the City of Oakland and BART*), and contribution of five-years worth of operating funds to the project (not to exceed \$250,000.00). The attached MOU commits the City to contributing these operating funds, commits BART to signing and managing a lease commitment, an operating contribution, oversight of operations of the Bike Station, and responsibility for covering any cost overruns.

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There is no current operating plan beyond the first five years of operation; neither the City nor BART are proposing a continued operating subsidy at this time. The City's dedication of Measure B bicycle and pedestrian funds for operations is a one-time event and towards the end of the initial lease term the City and BART will review the project and determine next steps.

OUTCOME

Should City Council approve this Resolution, the City will submit an allocation request to MTC for up to \$531,000.00 in grant funds to use for design and construction of tenant improvements for a new and much-needed Bike Station in Uptown on 20th Street near Broadway and the 19th Street BART Station (*Attachment B, Allocation Request to MTC*). The resolution also instructs the City Administrator to finalize and sign a draft MOU with BART governing the development and operation of the Bike Station.

The Uptown Bike Station proposal 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 \$250,000.00 contribution to five years of operations will be a one-time transfer to BART, which is assuming legal responsibility for the Uptown Bike Station location, lease, overall operations of the station, and any cost overruns. This is a similar arrangement to that of BART and the City of Berkeley for the downtown Berkeley BART Station.

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 which is now being constructed as part of the Transit Village project.

Significant investments that have already been made by the City, its transit partners, and private developers in the Uptown area transit hub include:

- Five million dollars in the Uptown Transit Hub, incorporating widened sidewalks, new roadway, utility relocation, basement protection, street lights, custom bus canopies, upgraded windscreens and rain gutter system, benches, trash receptacles, signage, and Nextbus digital displays for real-time bus schedule information (AC Transit).
- Over a million dollars in improvements in the 17th Street Alley, which serves as the southernmost entrance/exit to the 19th Street BART Station (City and BART).
- Developments and streetscape projects in the Uptown District of downtown extending from 15th Street through 20th Street along Broadway and Telegraph Avenue are either underway or will begin soon. Projects focus on enhancing the pedestrian experience and traffic calming with new corner bulb-outs, new historic and retrofitted street light fixture disabled access

ramps, new trees, tree grates and benches (provided through City streetscape projects, the Uptown Business Improvement District, and private developers).

- The Lakeside Green Streets project, funded by Measure DD and a federal One Bay Area Grant, will reconstruct roadways and paths at Harrison and Lakeside and 20th Street. The project includes new bike lanes and will significantly improve bicycle access to downtown Oakland from neighborhoods around Lake Merritt.

Realization of the Bike Station would continue this trend of investment in needed transportation facilities in the Uptown area. The City, in partnership with BART, applied for a Safe Routes to Transit Grant for the Uptown Bike Station in August of 2011 and was awarded the grant in January of 2012.

In order to access the awarded grant funds, MTC requires a resolution from the Oakland City Council pledging to implement the project, and further requires the submission of an allocation request specifying the schedule and budget for the project. Between January 2012 and the present date, the City and BART project staff have worked on two parallel efforts: the identification of a suitable and feasible site, and the development of a draft MOU covering the joint responsibilities of BART and the City during both the capital and operating phases of the proposed Bike Station. Both of these conditions have been met, and the City is now prepared to submit an allocation request to MTC.

ANALYSIS

Need

The Bike Station will be located at 1970 Broadway, which is on 20th Street across from the 19th Street BART Station and visible from AC Transit Uptown Transit Center. This location will serve bicyclists using BART and major AC Transit routes, and will also serve as a convenient location near many downtown Oakland workplaces and destinations. Current racks both inside of BART and on the sidewalks near the BART entrances are full on weekdays. Thefts and bike damage regularly occur at on-street parking racks, discouraging all-day storage of bicycles.

Characteristics of Berkeley and Other Oakland Bike Stations

The City of Berkeley has an attended Bike Station on Shattuck Avenue, approximately one block from one of the BART Station entrances. The City obtained a grant to develop the facility, and BART signed a lease on this storefront location. Support for the operation of the Berkeley Bike Station is shared by Berkeley and BART. The City of Berkeley pays \$60,000 per year to BART for the operations and management of their storefront station, while BART covers the remainder of operating costs.

The City has two BART-related bike stations which are managed differently from Berkeley's Bike Station and from each other. The attended Fruitvale BART Bike Station was financed and constructed by the Fruitvale Transit Village development. The Fruitvale Bike Station space is leased for a low cost by BART (it is not in a prominent storefront location), and a Management Service Agreement is in place with an operator. The MacArthur BART Bike Station will be similarly financed and constructed as Fruitvale. However, unlike Fruitvale, it is located on BART property so there is no lease cost, and there will be no ancillary services at this facility and no attendants; it offers only a card key system for entry and exit.

The proposed 1,200 square foot Uptown/19th Street Bike Station will be funded similarly to the Berkeley bike station. Capital improvements will be funded by the Safe Routes to Transit Grant, if accepted by City Council. BART will sign a lease on this prominent storefront location, and support for operations will come from both BART and the City as described on page 5 of this report.

*Uptown Bike Station:
Grant Award and Capital (Tenant) Improvements*

The Safe Routes to Transit grant award of \$531,000.00 is only available for capital improvement (not operations). The grant will allow the City to transfer sufficient funds (on a reimbursement basis) to the property owner to pay for capital/tenant improvements required for the Bike Station. Design of the improvements will be completed by the property owner and/or operator subject to approval by the City and BART. These improvements include racks, security, and possibly bike repair and space for limited accessory sales (which do not require a City zoning permit or CEQA clearance).

*Uptown Bike Station:
Lease Agreement and Responsibility*

BART will be fully responsible for signing and paying for the lease costs with the property owner of 1970 Broadway. BART will perform its obligations under the lease, review and monitor the sublease to the operator, and manage the Management Services Agreement (MSA) with the operator. Lease obligations include providing all necessary planning, preliminary and final engineering, and construction management services for the capital improvements. BART has an existing MSA with a bike station operator for its other bike station facilities and the agreement can be extended to include this new location.

Uptown Bike Station:

Operations Responsibility and BART Management and Oversight

It has not been City or BART policy or practice to operate bike stations outside of their respective facilities. However, since the need for facilities is pressing, BART has been supporting a bike station in a storefront in downtown Berkeley. Support for the operations of the Uptown Bike Station will be shared by BART and the City, as has been done for the Berkeley bike station, since the two facilities are very similarly situated. The City of Berkeley pays more, (\$60,000/year as opposed to \$50,000 proposed for Oakland) to BART for the operations and management of their storefront bike station, which is larger than the proposed Uptown site. BART's management obligation for the Uptown Bike Station includes advertising, awarding, and administering a new Master Service Agreement for bike station operations from 2013 to 2018, which will provide for operation of the Bike Station for the five-year term of the Agreement. Staffing and Rent for the facility is estimated to total \$507,922.00 over the five year period of the Agreement, or approximately \$100,000 per year. The City will contribute a maximum of \$50,000 per year over the five-year period of the lease (total: \$250,000.00). BART, in addition for being responsible for all other oversight and related costs has agreed to contribute the remaining operating costs currently estimated at \$257,922, and has also agreed to reserve an addition 25% of total estimated costs for potential cost overruns.

Uptown Bike Station:

Post 2018 Operations

The MOU establishes that BART and the City intend to construct and jointly fund the bike station for five years. While the intent is to operate the facility on a permanent basis, the parties recognize that it is impossible to commit to a long term operating subsidy at this time. At the end of each year during the initial five year agreement, BART and the City will review the performance of the Bike Station both in regards to costs and usage. The MOU outlines that early termination is possible if operations funding is insufficient and no alternate sources exist, or if usage does not meet expectations. During the latter years of initial five year operating period, BART and the City will review the success of the bike station, projected operating costs, and potential sources of operating funds, and determine whether to extend or alter the MOU. At that point, City Council will have another opportunity to decide on the next stage of the Bike Station facility and operations. At this time, staff does not propose a continuing operating subsidy using Measure B Bicycle and Pedestrian Funds (Fund 2212).

Should BART and/or the City seek to terminate the agreement and end operation of the bike station in 2018 or earlier, an orderly process will be made to terminate the lease and remove the fixtures (primarily bike racks). In the MOU, the City and BART agrees that these fixtures will revert to BART but must be used in another space serving an Oakland BART station in order to meet MTC requirements that the transportation facilities will continue to be used for a public purpose.

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POLICY ALTERNATIVES

<i>Alternative # 1</i>	Do not accept the grant, approve the MOU or commit operating funds.
<i>Pros</i>	The City would save \$250,000 in Measure B Bicycle and Pedestrian Funds from 2013-2018.
<i>Cons</i>	No on-street bike station will be built, and bicyclists will lack a safe, attended facility in which to store their bicycles.
<i>Reason for not recommending</i>	The current proposal will produce a significant improvement in bicycle access to downtown Oakland with a modest City investment of funds. Further, the funds contributed by Oakland can ONLY be spent on bicycle and pedestrian projects.

PUBLIC OUTREACH/INTEREST

The Uptown Bike Station proposal was presented to the City's Bicycle and Pedestrian Advisory Committee (BPAC) at their July, 2011 meeting. The BPAC reaction to the proposed grant application was enthusiastic and they voted to endorse the application. Prior outreach was completed with Walk Oakland Bike Oakland and East Bay Bicycle Coalition.

COORDINATION

The application for Safe Routes to Transit Funds was completed jointly with BART. Since receiving the grant award, BART and the City have been coordinating to identify a suitable location for the BART station and to create the MOU. The City Attorney and Budget offices have reviewed this report.

COST SUMMARY/IMPLICATIONS

Cost of Project:
Capital Phase

The current cost estimate for the capital phase of the project (design and construction) is \$467,000.00, well below the grant award of \$513,000.00. This discrepancy is entirely because the grant application assumed a different location from the current site. The current site is a fully modern office building location with minimal structural requirements, while the application assumed an older building with larger leasable area and more substantial renovation requirements. The project is fully achievable within the grant and requires no additional city investment.

Cost of Project:

Operating Phase

Operating Costs for the project are estimated at approximately \$96,000.00 per year in the first year of operations, and are comprised primarily of leasehold cost (\$21,000.00) and personnel costs (\$75,000.00). The City's share of these costs is identified in the draft MOU as \$50,000.00 per year.

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Projected Total Operating Costs	\$96,236	\$98,881	\$101,575	\$104,268	\$106,962	\$507,922
City of Oakland	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$250,000
BART	\$46,236	\$48,881	\$51,575	\$54,268	\$56,962	\$257,922

Funding of Project:

Capital Costs

The total Safe Routes to Transit Grant award is for \$531,000.00, well in excess of the current project cost; there is no required local match for these funds. These funds may *only* be used to fund capital expenses (including design phase costs). Unused funds will revert to the grantor for reprogramming.

Funding of Project:

Operating Costs

In the draft MOU with BART, the City has committed to contribute \$50,000 per year for five years towards the operations of the facility, or a total of \$250,000 in one lump sum from the FY 13/14 budget. These funds are available in Measure B Bike and Pedestrian Funds: Fund (2212), Organization (92260), Account (57411), Project (C428410). BART is responsible for all other operating costs.

Overall Fiscal Impact:

The fiscal impact of accepting the grant and completing the capital project will have minimal impact on the operations of the City as all of the hard construction costs will be covered with grant funds and associated design costs will be covered by the grant.

This project creates a precedent in that it uses Measure B Bicycle and Pedestrian pass-through funds to support the operation costs of a non-city facility. This use is an allowed one for these

funds, but city practice, until this time, has directed Measure B pass through funds for capital projects or internal City staff costs to implement bicycle and pedestrian projects and programs.

Funding the operations of the station will have a measurable fiscal impact to the Bicycle program by devoting approximately one/seventh of the annual pass-through Measure B Bike and Pedestrian funds dedicated to bicycle projects to funding this project over five years. This fund source currently provides capital support for projects such as bike lane striping and paving, bike parking, and signage. Should the terms of the MOU be extended beyond five years, this impact could continue into the future. However, at this time, staff does not propose future use of Measure B pass through funds for this purpose.

The completed project should have a modest positive fiscal impact to the City by filling an empty storefront and encouraging bicyclists to travel to and through downtown Oakland, thereby potentially increasing economic activity and sales tax income.

FISCAL/POLICY ALIGNMENT

The completed project aligns with transportation, environmental and economic development policy by encouraging bicycle usage. The bike station will bring life to a currently empty storefront, and should have a modestly positive economic impact by increasing use and economic activity in downtown Oakland.

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.

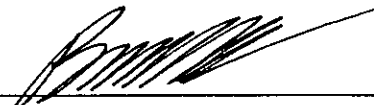
Social Equity: Bicycling is an affordable means of transportation available to all regardless of economic class. Safe and secure bicycle parking helps provide access to jobs in Oakland and anywhere on the BART system for residents within approximately two miles of the BART station.

CEQA

This project is exempt under CEQA.

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

Respectfully submitted,



BROOKE A. LEVIN
Interim Director, Public Works Agency

Reviewed by:
Michael J. Neary, P.E., Assistant Director
Department of Engineering and Construction

Iris Starr, AICP, Division Manager
Transportation Planning and Funding

Prepared by:
Bruce Williams,
Transportation Funding Program Manager
Transportation Planning and Funding Division

Attachments

- A. Draft Memorandum of Understanding between the City of Oakland and BART
- B. Allocation Request to MTC

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Attachment A

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19th STREET BART BIKE STATION COOPERATIVE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the _____ day of _____, 2013, 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 96 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") for approximately 1,221 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 _____, 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 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") and will be limited to approximately 400 square feet of the total approximately 1221 square feet of the Premises in a location designated by BART (the "Retail Space").
- 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.

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- 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 services 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.

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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; and (C) fund the City Capital Cost Contribution by processing the SR2T Grant for the Bike Station capital costs and 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 finding its BART Contribution.
9. Tenant Improvements. BART agrees to submit proposed Lease tenant improvement plans and specifications to City for review and approval, provided that City's approval shall be limited to: (1) review for consistency with project intent as described herein; and (2) compliance with SR2T Grant requirements. City's review shall be returned to BART in no less than twenty business (20) days from receipt of the plans and specifications. Both BART and City agree to assist Landlord or Operator in submitting the documentation required pursuant to Section 8(B) above.
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. [Bruce/Steve: Should the "substantially inferior to the Parties' expectations" with respect to annual customer usage be defined in this agreement?]
All actual costs and expenses that may be incurred for early termination shall be

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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. 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 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 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.

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

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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

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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:

BART/City Redline 8-23-13

Preliminary and Tentative: For Discussion Purposes Only

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.

BART/City Redline 8-23-13

Preliminary and Tentative: For Discussion Purposes Only

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: _____

By: _____

Title: _____

Title: _____

BART/City Redline 8-23-13
Preliminary and Tentative: For Discussion Purposes Only

19th Street Bike Station Cooperative Agreement

Exhibit "A"

[Insert copy of Management Services Agreement to Operate
BART's Bike Facilities Agreement No. 6M6063]

BART/City Redline 8-23-13
Preliminary and Tentative: For Discussion Purposes Only

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

RM-2 Initial Project Report

DEFINED SEGMENT FUNDING PLAN

(Amounts Escalated in Thousands)

Project Title:														Project ID:	
Agency:														Plan Date: 07/30/13	
RM-2 DELIVERABLE SEGMENT: Fully Funded Phase or Segment of Total Project															
Fund Source	Phase	Prior	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future Committed	TOTAL
		Prior	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future Committed	TOTAL
RM-2 SEGMENT FUNDING TOTAL															

Comments:

[Complete this spreadsheet only if RM-2 funds are dedicated to deliver a specific phase or deliverable segment of the overall total project]
Enter funds on the RM-2 Deliverable Phase or Segment, ONLY if the RM-2 Phase or Segment is different from the overall total project. The RM-2 Segment must be Fully Funded and result in a operable or useable segment.
Enter only funds Committed to the RM-2 Funded Segment and only if different from Total Project. Enter amounts in thousands and escalated to the year of funding. DO NOT enter uncommitted funding - The RM-2 Phase or Segment must be fully funded.
Eligible Phases: ENV (or PA&ED), PS&E, R/W or CON. For planning activities use ENV. For Vehicles, Equipment or Operating use CON. OK to use CT R/W SUP or CT CON SUP for Caltrans support, but not necessary (optional).

Regional Measure 2 – INITIAL PROJECT REPORT

Regional Measure 2 Initial Project Report (IPR)

Project Title: 19th Street/Uptown Bike Station

RM2 Project No. RM2 20.43

Allocation History:

	MTC Approval Date	Amount	Phase
#1:			
#2			
#3			

Total: \$

Current Allocation Request:

IPR Date	Amount Being Requested	Phase Requested
9/1/2013	\$467,322	Design and Construction

Regional Measure 2 – INITIAL PROJECT REPORT

I. OVERALL PROJECT INFORMATION

A. Project Sponsor / Co-sponsor(s) / Implementing Agency

City of Oakland and Bay Area Rapid Transit District

B. Project Purpose

Construct an attended Bike Station near the 19th Street BART Station in downtown Oakland. The new street-level facility will provide capacity for approximately 130 bicycles.

C. Project Description (please provide details)

Project Graphics to be sent electronically with This Application

The project will house up to 130 bicycles at an attended storefront, street-level facility in Oakland adjacent to the 19th Street BART station in Uptown. The facility will be available for use by BART and AC Transit commuters, as well as workers and business patrons. The facility will be operated weekdays (Monday – Friday) from 6:00 am to 8:00 pm. There will be no charge for single day use. The Bike Station will provide a small retail space for sale of basic bike accessories and offer fee-based bike maintenance.

The project will be in leased space, and tenant improvements will be completed to install all furnishing required to complete a fully functioning bicycle station. BART and the City have developed a street-level Bike Station plan that includes site-specific facility designs, a preliminary cost estimate, funding plan, and implementation schedule.

The proposed project will establish the Bike Station in a commercial retail space near a BART entry to best serve visitors, employees and Downtown residents. BART and the City have identified a preferred site at 1970 Broadway, Suite 150 (1221 square feet), located directly across the street from a BART entrance and the AC Transit hub. BART will sign a five-year lease on this site that will include an option to extend the lease an additional five years.

D. Impediments to Project Completion

BART and the City have worked together to develop a timeline for project completion. BART and the City of Oakland have reached terms on a contract that we expect to be finalized by July 31, 2013. BART and the building owner have reached agreement on the terms for the lease, and the lease is expected to be finalized shortly. BART and the sublease partners have reached agreement on the terms of the sublease agreements. We are planning a compressed design and construction phase to deliver this project as soon as possible.

Regional Measure 2 – INITIAL PROJECT REPORT

E. Operability

In addition to the project capital costs covered by this grant, the Oakland Bike Station has ongoing annual operational costs. The five-year Bike Station Operating Budget for this project is supported by a combination of funds provided by the City of Oakland and BART. The City and BART have taken the following actions to fully fund this project:

- City has committed \$50,000 per year not to exceed \$250,000 over five years to provide operations funding.
- BART has committed \$50,000 per year in operating funds in their recently passed FY 2013/14 budget.

II. PROJECT PHASE DESCRIPTION and STATUS

F. Environmental –

Does NEPA Apply: Yes No

As reuse of an existing building, the facility does not require environmental analysis

G. Design –

Conceptual design has been completed. Final design, including construction drawings and city permitting will take place from October 2013 to December 2013

H. Right-of-Way Activities / Acquisition –

None required

I. Construction / Vehicle Acquisition –

Construction (tenant improvements) will take place from March 2014 to June 2014.

III. PROJECT BUDGET

J. Project Budget (Escalated to year of expenditure)

Phase	Total Amount - Escalated - (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	
Design - Plans, Specifications and Estimates (PS&E)	\$65
Right-of-Way Activities /Acquisition (R/W)	
Construction / Rolling Stock Acquisition (CON)	\$402

Regional Measure 2 – INITIAL PROJECT REPORT

Total Project Budget (in thousands)	
-------------------------------------	--

K. Project Budget (De-escalated to current year)

Phase	Total Amount - De-escalated - (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	
Design - Plans, Specifications and Estimates (PS&E)	\$65
Right-of-Way Activities /Acquisition (R/W)	
Construction / Rolling Stock Acquisition (CON)	\$402
Total Project Budget (in thousands)	\$467

L. Project Budget – Deliverable Segment (Escalated to year of expenditure)

Phase	Total Amount - Escalated - (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	
Design - Plans, Specifications and Estimates (PS&E)	\$65
Right-of-Way Activities /Acquisition (R/W)	
Construction / Rolling Stock Acquisition (CON)	\$402
Total Project Budget (in thousands)	\$467

M. Project Budget – Deliverable Segment(De-escalated to current year)

Phase	Total Amount - De-escalated - (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	
Design - Plans, Specifications and Estimates (PS&E)	\$65
Right-of-Way Activities /Acquisition (R/W)	
Construction / Rolling Stock Acquisition (CON)	\$402
Total Project Budget (in thousands)	\$467

IV. OVERALL PROJECT SCHEDULE

Phase-Milestone	Planned (Update as needed)	
	Start Date	Completion Date
Environmental Document	Na	n/a
Environmental Studies, Preliminary Eng. (ENV / PE / PA&ED)	n/a	
Final Design - Plans, Specs. & Estimates (PS&E)	October 1, 2013	December 1, 2013
Right-of-Way Activities /Acquisition	n/a	

Regional Measure 2 – INITIAL PROJECT REPORT

(R/W)		
Construction (Begin – Open for Use) / Acquisition / Operating Service (CON)	March, 2014	June, 2014

V. ALLOCATION REQUEST INFORMATION

N. Detailed Description of Allocation Request

Describe the scope of the allocation request. Provide background and other details as necessary.

Amount being requested (in escalated dollars)	\$467,000
Project Phase being requested	Design and Construction
Are there other fund sources involved in this phase?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Date of anticipated Implementing Agency Board approval the RM2 IPR Resolution for the allocation being requested	September 17, 2013
Month/year being requested for MTC Commission approval of allocation	September, 2013

O. Status of Previous Allocations (if any)

P. Workplan

Workplan in Alternate Format Enclosed

TASK NO	Description	Deliverables	Completion Date
	Consensus on project scope and funding plan		January 2013
	Final lease negotiations		August 2013
	Sublease negotiations		September 2013
	Contract with city for operations		October 2013
	BART Board approval of lease agreement		November 2013

Regional Measure 2 – INITIAL PROJECT REPORT

	Final Design complete		December 2013
	Operator/tenant improvements agreement		December 2013
	Construction agreement		January 2014
	City permitting complete		February 2014
	Groundbreaking		March 2014
	Construction completed		June 2014
	Bike Station Opening Day		June 2014

Q. Impediments to Allocation Implementation

Risk of losing property. We have no indication that the property is at risk, but until the lease has been secured there is no guarantee.

VI. RM-2 FUNDING INFORMATION

R. RM-2 Funding Expenditures for funds being allocated

The companion Microsoft Excel Project Funding Spreadsheet to this IPR is included
S. Next Anticipated RM2 Allocation Request.

VII. GOVERNING BOARD ACTION

Check the box that applies:

- Governing Board Resolution attached
- Governing Board Resolution to be provided on or before:

September 17, 2013

VIII. CONTACT / PREPARATION INFORMATION

Contact for Applicant's Agency

Name: Bruce Williams

Phone: 510-238-7229

Title: Senior Transportation Planner

E-mail: bwilliams@oaklandnet.com

Address: 250 Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612

Regional Measure 2 – INITIAL PROJECT REPORT

Information on Person Preparing IPR

Name: Bruce Williams

Phone: 510-238-7229

Title: Senior Transportation Planner

E-mail: bwilliams@oaklandnet.com

Address: 250 Frank Ogawa Plaza, 4th floor, Oakland, CA 94612

Applicant Agency's Accounting Contact

Name: Elma Flores

Phone: 510-238-6385

Title: Budget and Grants Administrator

E-mail: eflores@oaklandnet.com

Address: 250 Frank Ogawa Plaza, 4th floor, Oakland, CA 94612

Revised IPR 120905.doc

RM-2 Initial Project Report

**RM-2 FUNDING CASH FLOW PLAN For Allocation
(RM-2 Allocation Funding Only)**

(Amounts Escalated in Thousands)

Project Title:							Project ID:						
Agency:							Plan Date: 07/30/13						
RM-2 CASH FLOW PLAN													
RM-2 Expenditures	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future	TOTAL
ENV/PA&ED													
PS&E										65			65
RAW													
CON										402			402
Prior	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future	TOTAL
RM-2 CASH FLOW PLAN TOTAL													
										467			467

Comments: BART and Oakland staff costs assigned to PS&E phase (as per application). Architects fees split between PS&E and Con.

Provide the expected RM-2 expenditures -- by phase and year. (This is the amount of the allocation needed for that fiscal year to cover expenditures through June 30th of that fiscal year).

Enter RM-2 amounts in thousands and escalated to the year of funding. The total amount cannot exceed the amount identified in the RM-2 legislation.

Eligible Phases: ENV (or PA&ED), PS&E, RAW or CON. For planning activities use ENV. For Vehicles, Equipment or Operating use CON. OK to use CT RAW SUP or CT CON SUP for Caltrans support, but not necessary (optional).

Regional Measure 2 Program
Estimated Budget Plan

Please complete this form based the proposed allocation for your project. The scope should be consistent with the funding you are requesting the MTC allocate. Projects with complementary fund sources, should list the estimated cost of the entire work scope. Note that this information may not only represent the RM2 funding. A separate EBP needs to be completed for each allocation request or each phase of such request.

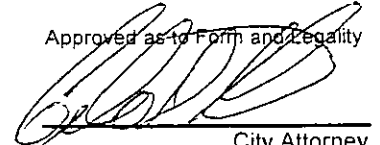
TITLE OF PROJECT 19th Street/Uptown Bike Station	RM2 Legislation ID (and project subelements if any) RM2 #20.43
NAME AND ADDRESS OF IMPLEMENTING AGENCY City of Oakland 250 Frank Ogawa Plaza Oakland, CA 94612	

DETAIL DESCRIPTION	ESTIMATED HOURS	RATE/HOUR	TOTAL ESTIMATED COST (Dollars)
1 DIRECT LABOR of implementing Agency (Specify by name & job function)			
City of Oakland - Bruce Williams , Transportation Planning	200	45.91	9,182
BART - Steve Beroldo, Bicycle Facilities	200	51.00	10,200
			0
			0
TOTAL DIRECT LABOR			19,382
2 OVERHEAD & DIRECT BENEFITS (Specify)			
Overhead	80%	19,382	
Direct Benefit			
TOTAL OVERHEAD & DIRECT BENEFIT			15,506
3 DIRECT CAPITAL COSTS (include engineer's estimate on construction, right-of-way, or vehicle acquisition)			
	1300	250	325000
TOTAL DIRECT CAPITAL COSTS			325,000
4 CONSULTANTS (Identify purpose and/or consultant)			
Architect (design phase & construction oversight)			45,000
TOTAL CONSULTANTS			45,000
5 OTHER DIRECT COSTS (Specify & explain costs, if any)			
Equipment/Furnishing			62,500
TOTAL OTHER DIRECT COSTS			62,500
6 TOTAL ESTIMATED COST			467,388

Comments:

Date: 7/30/2013

OAKLAND CITY COUNCIL


City Attorney

2013 AUG 29 AM 10:25

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.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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