



Office of the City Manager

07

CONSENT CALENDAR  
January 25, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Department of Public Works  
Subject: Lease and Cooperative Agreement: Downtown Berkeley Bike Station

RECOMMENDATION

1. Adopt the first reading of an Ordinance authorizing the City Manager to execute a lease agreement with BART for retail space at the Center Street Garage for a fifteen-year lease term commencing February 1, 2021, and expiring on January 31, 2036.
2. Adopt a Resolution authorizing the City Manager to execute a cooperative agreement with the Bay Area Rapid Transit District (BART) for the continued operation of the Downtown Berkeley Bike Station in its Center Street Garage location for a three-year term commencing July 1, 2020, and expiring on June 30, 2023, in an amount not to exceed \$225,000.

FISCAL IMPACTS OF RECOMMENDATION

The City's contribution to the Bike Station operations by way of the cooperative agreement is not to exceed \$75,000 per year, for a total contract amount not to exceed \$225,000. Funding for FY 2022 is available in the amount of \$75,000 and the subsequent fiscal years will be subject to appropriation in Capital Improvement Fund 501.

The City would receive \$4,112.50 per month in lease revenue for the Bike Station spaces and utilities for the first three years with a 2.0% increase in rent at the start of Years 4, 7, 10, and 13. The total lease revenue for the initial term of the lease is \$770,578.33. Continuation of the lease is contingent upon the renewal of the cooperative agreement. If the cooperative agreement is not renewed, the lease will terminate on the cooperative agreement's termination date. Revenue generated from the lease agreement will be deposited in the Off-Street Parking Fund 835.

CURRENT SITUATION AND ITS EFFECTS

The Downtown Berkeley Bike Station has been in continuous operation since 1999, originally on the concourse level of the Downtown Berkeley BART station, then from a storefront located at 2208 Shattuck Avenue from 2010 to 2018, and then to its current location at 2023 Center Street in the City of Berkeley's Center Street Garage.

BART's initial lease at the Center Street Garage expired on January 31, 2021. Impacts from the pandemic and a protracted negotiation process caused the delay in bringing the agreements to City Council. The City and BART agreed to exercise the holdover section of the previous lease and BART has continued to pay rent and manage the day-to-day operations of the Bike Station within the limits established by the Shelter in Place Order and social distancing requirements. This new lease, if approved, would therefore have a retroactive start date of February 1, 2021, and would terminate January 31, 2036. The fifteen-year lease also includes one five-year option to extend.

Under the new lease and cooperative agreement, BART would continue to manage day-to-day operations of the Bike Station including performing its obligations under the Lease, reviewing and monitoring any sublease agreements, and managing the private company which operates the Bike Station. According to BART, in April 2018 the Bike Station parked 105 bikes on an average weekday or about 2,300 securely parked bikes per month. Currently, the Bike Station is working towards meeting and exceeding 2018 numbers as usage rebounds from pandemic-related closures. Usage is expected to continue to increase.

BART requested that the City's share of funding rise from \$60,000 annually, the amount the City has been paying since 2010, to \$75,000 annually. Staff recommends that the City's share of funding rise at this time.

### BACKGROUND

The Bike Station at Center Street Garage has additional services, such as retail sales of bicycle equipment and parts, and bicycle repairs and rentals as well as a café area. The total number of bike parking spaces is 326 (282 valet spaces and 48 self-park). All services, provided by BART's Downtown Berkeley Bike Station operator, BikeHub, generate revenue that has helped defray annual operating costs in the form of profit-sharing with both BART and the City. Berkeley's profit-sharing funds are reinvested in the Bike Station.

Provision of secure bicycle parking in the Downtown Berkeley Bike Station supports multiple policies in the Berkeley Bicycle Plan; Berkeley Climate Action Plan Goal #5: Accelerate Implementation of the City's Bicycle & Pedestrian Plans; Berkeley General Plan Policy T-43, which calls for expansion of the supply of secure bicycle parking near transit hubs and in commercial areas; and the following specific Downtown Area Plan Policy measures:

Policy AC-5.2: Bicycle Parking. Increase the availability of convenient, secure and attractive short- and long-term bicycle parking throughout Downtown.

a) Increase the availability of secured bicycle parking throughout Downtown, particularly in areas of high use, including bicycle parking options that are sheltered and/or attended.

d) Promote the creation of an at-grade attended or automated bicycle-parking service. Work with BART to consider replacing the existing bicycle station with a joint City/BART aboveground facility, perhaps in a storefront on Shattuck Avenue.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

According to BART, the Bike Station parks approximately 2,300 securely parked bicycles per month. Each of the associated bicycle trips is free of greenhouse gas emissions and thus reduces emissions compared to the more polluting motorized modes of transportation that could have been chosen for many of these trips had secure bicycle parking not been available. These outcomes help achieve the Berkeley Climate Action Plan targets of reducing greenhouse gas emissions 33% below year 2000 levels by year 2020, and 80% below year 2000 levels by 2050. The plan states that, in order to meet these targets, "Transportation modes such as public transit, walking and bicycling must become the primary means of fulfilling our mobility needs." More specifically, Goal #5: Accelerate Implementation of the City's Bicycle & Pedestrian Plans has an implementation action to "Expand and improve secure bicycle parking at all Berkeley BART stations and bus stops."

#### RATIONALE FOR RECOMMENDATION

Despite the City's successful expansion of on-street bicycle parking, there continues to be a shortage of adequate bicycle parking in the downtown area, especially secure, long-term bicycle parking of the type offered at the Downtown Bike Station. Supporting the Downtown Bike Station will help serve that demand while helping the City to meet its Climate Action Plan targets to reduce greenhouse gas emissions.

The City designed and constructed approximately \$310,000 of purpose-built capital improvements in the Center Street Garage Bike Station, including bike racks for valet bicycle parking and an area for BikeLink bicycle lockers, a bicycle accessory retail area, and a café area, including electrical connections and plumbing.

#### ALTERNATIVE ACTIONS CONSIDERED

In the short term, the City could choose not to enter into a new Bike Station cooperative agreement and lease with BART. As a result, the Downtown Bike Station would likely close after the current contract between the City and BART concerning its operations expires. BART management has indicated that BART would not assume the City's current portion of Bike Station operating costs.

#### CONTACT PERSON

Andrew Brozyna, Deputy Director, Public Works - Engineering, 981-6396  
Farid Javandel, Deputy Director, Public Works - Transportation, 981-7061  
Beth Thomas, Principal Planner, Public Works Transportation Division, 981-7068  
Dionne Early, Community Dev. Project Coord., Public Works – Real Property, 981-6453

Cooperative Agreement Amendment:  
Downtown Berkeley Bike Station

CONSENT CALENDAR  
January 25, 2022

Attachments:

1: Ordinance

    Exhibit A: Lease

2: Resolution

3: Cooperative Agreement

ORDINANCE NO. ##,###–N.S.

LEASE AGREEMENT WITH BAY AREA RAPID TRANSIT (BART) FOR BIKE  
STATION RETAIL SPACE AT 2023 CENTER STREET

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Manager, or designee, is hereby authorized to execute a lease agreement with BART to use City property at 2023 Center Street for a 15-year lease term, commencing February 1, 2021, and expiring January 31, 2036, with an option to extend for one additional five-year term. The lease shall be substantially in the form attached hereto as Exhibit “A”.

Section 2. All revenue from said lease shall be deposited in the Off-Street Parking Fund 627 in a specific revenue account to be established for leases at the Center Street Garage location.

Section 3. Copies of this bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen calendar days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## CENTER STREET GARAGE LEASE

THIS LEASE is made on \_\_\_\_\_ 2021 between the CITY OF BERKELEY, a charter city organized and existing under the laws of the State of California ("Landlord") and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district ("BART", or the "Tenant").

### RECITALS

A. Landlord is the owner of the real property consisting of approximately 3,685 square feet of space located on the ground floor of the Center Street Parking Garage at 2023 Center Street, Berkeley, California ("**Premises**") as further described in Exhibit A-1, attached to and made a part of this lease.

B. Tenant entered into a three-year (FY21-23) cost-sharing agreement for the operation of the Downtown Berkeley Bike Station, the Fund Transfer and Cooperative Agreement ("**Fund Agreement**"), attached to and made a part of this Lease as Exhibit E.

C. Tenant is willing to lease the Premises from Landlord pursuant to the provisions stated in this lease and contingent on the Fund Transfer and Cooperative Agreement being in effect as further described in Exhibit E, attached to and made a part of this lease. Should the parties terminate or fail to extend the Agreement, this lease would also be terminated.

D. Tenant wishes to lease the Premises for the purpose of operating a valet and self-service bike parking facility with supporting retail-commercial and café uses.

E. Tenant has examined the Premises and is fully informed of the condition thereof.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the Landlord and Tenant hereby agree as follows:

#### **1. DESCRIPTION OF PREMISES**

Landlord leases to Tenant and Tenant lease from Landlord the Premises described above and as further described in Exhibit E, attached to and made a part of this Lease.

#### **2. TERM**

The term of this Lease shall commence on February 1, 2021 (the "Commencement Date") and shall be for a period of fifteen (15) years. Tenant shall have an option to extend the term for an additional five (5) year period as outlined in Section 32 of this lease. Landlord and Tenant agree to sign and date Exhibit B, attached hereto and acknowledge the Lease

Commencement Date, Rent Commencement Date, and Expiration Date of the Lease. The Lease is contingent on the Fund Transfer and Cooperative Agreement being in effect as further described in Exhibit E, attached to and made a part of this Lease. Should the parties terminate or fail to extend the Agreement, this Lease would also be terminated.

**3. RENT**

- a. Commencing on the Commencement Date, Tenant shall pay to Landlord as monthly rent, without deduction, setoff, prior notice, or demand, the sum of \$4,112.50 per month (the "Rent") in advance of the first day of each month and continuing during the term. Monthly rent for any partial-month shall be prorated at the rate of 1/30th of the monthly rent per day. All rent shall be paid to the Landlord at the address to which notices to Landlord are given. At Tenant's option, rent may be paid automatically on the first day of each month by providing the following to the City: a completed Authorization for Direct Automatic Bill Payment Form with required attachments and signatures. Landlord will provide the form upon your request.
- b. In accordance with California Civil Code 1947.3, Tenant may pay the monthly rent by check or by electronic transfer of funds from their bank account into a bank account of the Landlord. If Tenant plans to pay by electronic transfer of funds then Tenant will request this in writing to Landlord and together the parties shall provide the necessary information for this to happen.

**4. PERIODIC RENT INCREASES**

The monthly rent shall be increased at the commencement of the fourth, seventh, tenth, and thirteenth years of the term ("the adjustment date") to the monthly rent in effect immediately preceding the adjustment date plus two percent (2.0%), as further described in Exhibit B, attached to and made a part of this Lease.

**5. SECURITY DEPOSIT**

a. As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this Lease, Tenant shall deposit with Landlord cash in an amount equal to one month's payment of Rent. Such security shall be deposited on or before the effective date of the Ordinance authorizing this Lease.

b. If Tenant defaults in respect to any of the terms, provisions, covenants, and conditions of this Lease, including but not limited to the payment of rent, Landlord may use the security deposit or any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion

of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

c. Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this lease, or a payment of liquidated damages, or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this Lease, Landlord shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term; however, if Landlord has evidence that the security deposit has been assigned to an assignee of the Tenant, Landlord shall return the security deposit to the assignee. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it. Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord shall return the security deposit no later than thirty (30) days after the Landlord receives possession of the premises.

## 6. LATE CHARGES

Tenant acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Therefore, if any installment of rent or any other sum due from Tenant is not received by Landlord within ten (10) days after such amount is due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs that the Landlord will incur by reason of late payment by the Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to it.

## 7. USE OF PREMISES; OPERATION

a. Tenant will use the Premises for the operation of a valet and self-service bike parking facility with supporting retail-commercial and café uses and agrees to continuously and uninterruptedly occupy and use the leased Premises. Tenant shall not use nor permit the use of the whole or any part of the Premises for any other purpose without the Landlord's prior written consent.

b. Business may be conducted with the public on the leased premises at any time on any day, between the hours of 6:00 AM and 2:00 AM and in accordance with Chapter 23E.68 of the Berkeley Municipal Code and specifically Sections 23E.68.030 *Uses Permitted* and 23E.68.060 *Use Limitations*. Tenant hours of operation, including vacation, holiday, and seasonal schedule changes and/or closures (if any) must be approved by the Director of Public



Works or his/her designee. Approved hours of operation must be posted at the primary public entrance.

c. Tenant agrees to abide by all facility "Rules and Regulations." The current version is attached hereto as Exhibit D and may be amended by the City from time to time.

d. In addition Tenant agrees to abide by all other restrictions on Tenant's use. Tenant agrees that any violation of use restriction shall constitute a default by Tenant under the Lease and that Landlord's notice to Tenant of this or any use restriction shall not be deemed a waiver by Landlord of any other use restriction imposed on the Tenant for the use of the demised Premises.

#### **8. TAXES AND ASSESSMENTS**

a. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and assessment and utility taxation, and that the Tenant will be responsible for the payment of any property taxes and assessments, and utility taxes levied on such interest.

b. Tenant shall pay all taxes on its personal property, fixtures, and on its leasehold or possessory interest in the leased Premises and any other assessment that may be lawfully levied.

#### **9. UTILITIES**

Tenant agrees to pay any and all charges for telephone, water, and other utilities used in the Premises. Tenant shall arrange for refuse collection services by the City of Berkeley. Landlord agrees to pay for electricity and basic refuse collection services. If Tenant's business exceeds the basic refuse collection service, then Tenant shall be responsible and pay for any additional charges associated with its usage.

#### **10. MAINTENANCE AND REPAIR**

a. Tenant is responsible for ensuring that the Premises meet all applicable City of Berkeley codes prior to occupancy under this Lease.

b. Tenant shall keep and maintain in good order, condition, and repair (except for reasonable wear and tear) all portions of the Premises including without limitation, all fixtures, interior walls, floors, ceilings, plumbing, glass, roof, heating, ventilating, and sewage facilities serving the leased Premises, landscaping, and the sidewalk adjacent to the Premises.

c. Tenant shall make all required repairs upon demand by Landlord. Failure to make such repairs within thirty (30) days of the Landlord's demand shall constitute a default by

Tenant.

## 11. IMPROVEMENTS

a. Tenant shall not erect additions or structures nor make nor cause to be made any alterations, improvements, additions, or fixtures that affect the exterior or interior of the Premises nor shall Tenant mark, paint, drill or in any way deface any floors, walls, ceilings, or partitions of the Premises, without first providing thirty (30) days' written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed.

b. Tenant shall require all contractors to provide a labor and materials bond for the full amount of the contract. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon or about the leased Premises and which may be secured by any mechanic's, materialmen's or other lien against the Premises or Landlord's interest therein.

c. All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the property of Landlord and remain with the Premises at the termination of this lease, except that Landlord can elect within thirty (30) days of the termination of the lease to require Tenant, at its cost, to remove any alterations, improvements or additions Tenant has made to the Premises.

d. Tenant shall pay for any heat and air conditioning equipment to be installed in the Premises and shall be responsible for any repairs and maintenance of said equipment during the Term of this lease and during any extension periods and Landlord agrees to install a water meter for the leased Premises and install a finished concrete floor with conduit for a water drain, as provided by Tenant's design of the leased Premises.

e. Tenant shall have the right, but not the obligation, at any time during the term of this lease, to install a back door to the Premises, subject to the approval of Director of Public Works or his/her designee, and City's Planning Department and the Fire Marshall.

## 12. INDEMNIFICATION

Tenant shall indemnify, defend and hold Landlord, its officers, agents, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in, on, or about the Premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this lease, or any act or omission by Tenant, its agents, contractors, invitees or employees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any non-compliance or violation of any laws, Ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of

1979 and the Americans with Disabilities Act of 1990. Except, however, that Landlord shall hold Tenant harmless from all claims of liability for damage resulting from the acts or omissions of Landlord or its authorized representatives.

**13. INSURANCE**

a. Tenant is self-insured, and covenants and agrees that at its cost, Tenant shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000, and property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision, insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. All such insurance shall insure performance by Tenant of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers, and employees as additional insureds and shall provide primary coverage with respect to the City.

b. If the insurance referred to above is written on a Claims Made Form, then following termination of this lease, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.

c. Tenant at its cost shall maintain on all its personal property, tenant's improvements, and alterations, in on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of tenant's improvements or alterations.

d. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord; provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by the Landlord's Risk Manager.

e. Tenant shall forward all insurance documents to: Department of Public Works, Real Property Division, 1947 Center Street, Fifth Floor, Ste. 521, Berkeley, California, 94704.

**14. COMPLIANCE WITH LAW AND SAFETY**

a. Tenant shall observe and comply with all applicable laws, Ordinances, codes,

and regulations of governmental agencies, including federal, state, municipal, and local governing bodies having jurisdiction over any or all of the Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All Tenant's activities must be in accordance with these laws, Ordinances, codes, and regulations.

b. If a death, serious personal injury, or substantial property damage occurs in, on, or about the Premises, Tenant shall immediately notify the Landlord's Risk Management Office by telephone. If any accident occurs on the Premises, Tenant shall promptly submit a written report to Landlord, in such form as Landlord may require. This report shall include the following information: 1) name and address of the injured or deceased person(s), (2) name and address of Tenant's contractor, if any, (3) name and address of Tenant's liability insurance carrier, and (4) a detailed description of the accident.

c. Tenant shall report all existing hazardous materials handled at the site and any hazardous wastes generated at the site to the Toxics Management Division (TMD) on an annual basis and abide by all requirements of the TMD and other state and local environmental agencies. Upon release of hazardous materials or hazardous waste at the property or adjacent to the property, Tenant shall immediately notify the City of Berkeley Toxics Management Division. If the release is significant, the Tenant must report it to 911 and the Office of Emergency Services.

d. To Landlord's actual knowledge, neither the common area of the Building nor the Premises has undergone inspection by a Certified Access Specialist (CASP). The foregoing disclosure does not affect Landlord's or Tenant's respective responsibilities for compliance of construction-related accessibility standards as provided under this lease. A CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

e. Landlord represents to Tenant that, as of the Lease Commencement Date, the restrooms in the building will be available to Tenant and its customers and invitees.

#### 15. **NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

a. If Tenant provides any aid, service or benefit to others on the City's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any

amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, Ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.

b. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, Ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All Tenant's activities must be in accordance with these laws, Ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

16. **CITY NON-DISCRIMINATION ORDINANCE**

Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this Lease, the Tenant agrees as follows:

a. The Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. The Tenant shall permit the Landlord access to records of employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the Landlord, are necessary to monitor compliance with this non-discrimination provision, and will, in addition, fill-out in a timely fashion, forms supplied by the Landlord to monitor these non-discrimination provisions.

17. **NUCLEAR FREE BERKELEY**

Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

18. **OPPRESSIVE STATES – NOT APPLICABLE TO PUBLIC ENTITIES**

19. **BERKELEY LIVING WAGE ORDINANCE**

a. If Tenant is currently subject to the Berkeley Living Wage Ordinance, Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage

Ordinance. If Tenant employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

b. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance (LWO). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in sections 25 and 26 herein.

c. If Tenant is subject to the LWO, Tenant shall include the requirements of the Ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this Ordinance with regard to any employees who spend 25% or more of their compensated time on the leased property.

d. If Tenant fails to comply with the requirements of the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute a default of the lease, upon which City may terminate this lease pursuant to Section 26.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**20. BERKELEY EQUAL BENEFITS ORDINANCE - WAIVED**

a. Tenant hereby agrees to comply with the provisions of the Berkeley Equal

Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

b. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Sections 25 and 26 of this Lease.

c. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute a default of the lease, upon which City may terminate this lease pursuant to Section 26.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach

## **21. PESTICIDES**

All use of pesticides on the Premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

## **22. SIGNS**

Tenant shall not install or letter any signs on the Premises without the prior written consent of the Director of Public Works or his/her designee. All signs on the Premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04.

## **23. DAMAGE OR DESTRUCTION**

If the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, Landlord may elect to terminate this lease or continue this lease in effect by giving notice to Tenant within thirty (30) days of the date of

destruction. If Landlord elects to continue this lease in full force and effect, then Landlord shall restore the Premises and the rent shall be abated, from the date of destruction until the date restoration is completed, in an amount proportionate to the extent to which the destruction interferes with Tenant's use of the Premises. If Landlord fails to give notice of its decision to terminate or continue this lease within the period stated, Tenant may elect to terminate this lease. Tenant waives the provisions of Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Premises.

**24. EMINENT DOMAIN**

If the whole or any portion of the Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If the Premises are totally taken by condemnation, this lease shall terminate on the date of taking. If any portion of the Premises is taken by condemnation, Tenant shall have the right to either terminate this lease or to continue in possession of the remainder of the Premises under the terms of this lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. If Tenant does not terminate this lease within the thirty (30) day period, this lease shall remain in full force and effect except that the fixed rent shall be reduced in the same proportion that the square footage of the Premises taken bears to the square footage of the Premises immediately before the taking. All damages awarded for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of business and of business installations or improvements made by Tenant in accordance with this lease.

**25. DEFAULT BY TENANT**

a. The occurrence of any of the following shall constitute a default by Tenant:

1. Failure to pay rent when due, if the failure continues for 10 days after notice has been given to Tenant.
2. Abandonment and vacation of the Premises (failure to occupy and operate the Premises for 14 consecutive days, without prior written notice from Tenant of a planned closure, shall be deemed an abandonment and vacation).
3. Failure to perform any other provision of this lease if the failure to perform is not cured within 30 days after notice has been given to Tenant. If the default cannot reasonably be cured within 30 days, Tenant shall not be in default of this lease if Tenant commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.



b. Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that Tenant perform the provisions of this lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the notice. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

## 26. LANDLORD'S REMEDIES

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

a. Tenant's Right to Possession Not Terminated. Landlord can continue this Lease in full force and effect, and the Lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due. During the period Tenant is in default, Landlord can enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises. Reletting can be for a period shorter or longer than the remaining term of this lease. Tenant shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from any reletting. No act by Landlord allowed by this paragraph shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, Tenant shall have the right to assign or sublet its interest in this Lease if Tenant obtains Landlord's consent, but Tenant shall not be released from liability.

If Landlord elects to relet the Premises as provided in this paragraph, rent that Landlord receives from reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than rent due from Tenant; second, all costs, including for maintenance, incurred by Landlord in reletting; third, rent due and unpaid under this Lease. After deducting the payments referred to in this paragraph, any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied in payment of future rent as rent becomes due under this lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If on the date rent is due under this Lease, the rent received from the reletting is less than the rent due on that date, Tenant shall pay to Landlord, in addition to the remaining rent due, all costs, including for maintenance, Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this paragraph.

b. Termination of Tenant's Right to Possession. Landlord can terminate Tenant's right to possession of the Premises provided it gives Tenant 90 days of notice prior to termination. No act by Landlord other than giving notice to Tenant shall terminate this Lease.

Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

i. The worth of the unpaid rent that had been earned at the time of termination of this Lease;

ii. If Tenant defaulted, the worth of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of relet that exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

d. Landlord's Right to Cure. Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due within 30 days from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

## **27. ASSIGNMENT AND SUBLETTING**

Tenant shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representative) to occupy or use all or any part of the Premises, without first obtaining Landlord's consent. Assignment, encumbrance, or sublease shall not be permitted if Tenant is behind on Rent payments or is otherwise in default of this Lease. Any assignments, encumbrance, or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

## **28. ENTRY**

Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times, provided Landlord gives a 24-hour prior notice to Tenant, for any of the following purposes: to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under the Lease; to do any acts that may be necessary to protect Landlord's interest in the Premises; or to perform Landlord's duties under this Lease. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises as provided in this section, except damage resulting from the acts or omissions of Landlord or its authorized representatives.

**29. NOTICES**

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Lease and either: i) deposits it with the U.S. Postal Service, registered mail, postage prepaid; or ii) emails it to the other party followed, no later than the next business day, by depositing it with the U.S. Postal Service for delivery by regular mail. For purposes of this Lease, notices shall be addressed as follows, as appropriate:

To the Landlord: City of Berkeley  
Department of Public Works,  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704

With a copy to: City of Berkeley  
Real Property Division  
1947 Center Street, Fifth Floor  
Berkeley, CA 94704  
Email Address: [real\\_property@cityofberkeley.info](mailto:real_property@cityofberkeley.info)

To the Tenant: Heath Maddox  
BART Customer Access,  
2150 Webster Street, 8<sup>th</sup> Floor  
Oakland, CA 94612  
Telephone: 415-728-1352  
Email: [hmaddox@bart.gov](mailto:hmaddox@bart.gov)

With a copy to: Abigail Thorne-Lyman  
BART Real Estate & Property Development  
2150 Webster St. 9<sup>th</sup> Floor  
Oakland, CA 94612  
Telephone: 510-821-8262  
Email Address: [athorne@bart.gov](mailto:athorne@bart.gov)

**30. WAIVER**

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt

and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

**31. EXCUSABLE DELAYS**

If the performance of any act required of Landlord or Tenant is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, acts of the public enemy, fire, floods, epidemics, freight embargoes or other cause beyond the control of the party required to perform an act, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for one hundred and eighty (180) days and if the performance of such act is further delayed, Landlord or Tenant may terminate this lease by giving a thirty (30) day written notice to the other party. Prior to the Lease Commencement Date, and during any delay in performance as described above, Tenant shall be excused from the payment of any rent due under this Lease.

**32. OPTION TO RENEW**

a. Option Period. So long as Tenant is not in default under this lease, either at the time of exercise or at the time the extended term commences, Tenant will have the option to extend the term of this lease for an additional period of five (5) years (the "option period") on the same terms, covenants, and conditions of this Lease, except that the initial monthly rent and yearly rent increases during the option period will be determined as described below. In order to exercise this option, Tenant must give written notice of its election to do so to Landlord at least 180 days, but not more than one (1) year, prior to the expiration date of the initial Lease term. Tenant shall have no other right to extend the term beyond the option period.

b. Option Period Monthly Rent. The Monthly Rent at the commencement of the first year of the Option Period and each year thereafter will be the monthly rent in effect at the end of the Term of this Lease plus two percent (2.0%).

**33. HOLDING OVER**

If Tenant remains in possession of the Premises with Landlord's consent after the expiration of the term of this Lease without having exercised any option to renew this Lease, or after the termination of any such option period, such possession by Tenant shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either party. All provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy.

**34. SURRENDER OF PREMISES, REMOVAL OF PERSONAL PROPERTY**

At the termination of this Lease, Tenant shall: 1) give up and surrender the Premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the Premises and which is owned and was installed by Tenant during the term of this Lease.

**35. TERMS BINDING ON SUCCESSORS**

All the terms, covenants, and conditions of this Lease shall inure to the benefit of and be binding upon the successors and assigns of the parties to this Lease. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment set forth above.

**36. TIME OF ESSENCE**

Time shall be of the essence of each provision of this Lease.

**37. COVENANTS AND CONDITIONS**

Each term and each provision of this Lease performable by Tenant shall be construed to be both a covenant and condition.

**38. GOVERNING LAW**

The laws of the State of California shall govern this Lease.

**39. ENTIRE AGREEMENT, AMENDMENTS**

This Lease and all exhibits attached and any documents expressly incorporated by

reference contain the entire agreement between the parties regarding the lease of the Premises described herein and shall supersede any and all prior agreements, oral or written, between the parties regarding the lease of these Premises. This Lease cannot be altered or otherwise modified except by a written amendment.

**40. CONSENT OF PARTIES**

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this Lease as of the date written on the first paragraph of this Lease.

LANDLORD  
CITY OF BERKELEY

By:  
City Manager

THIS LEASE HAS BEEN  
APPROVED AS TO FORM  
BY THE CITY ATTORNEY  
OF THE CITY OF BERKELEY  
Date: \_\_\_\_\_

REGISTERED BY:

City Auditor

ATTEST:

Deputy City Clerk

TENANT:  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT,  
a rapid transit district

Signature: DocuSigned by:  
*Abigail Thomas Lyman*  
EF8C0EAF4363431...

Title: Acting Director, Real Estate & Prop. Devt

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

City of Berkeley Business License No. \_\_\_\_\_

EXHIBIT A  
TO  
LEASE

Location of Garage

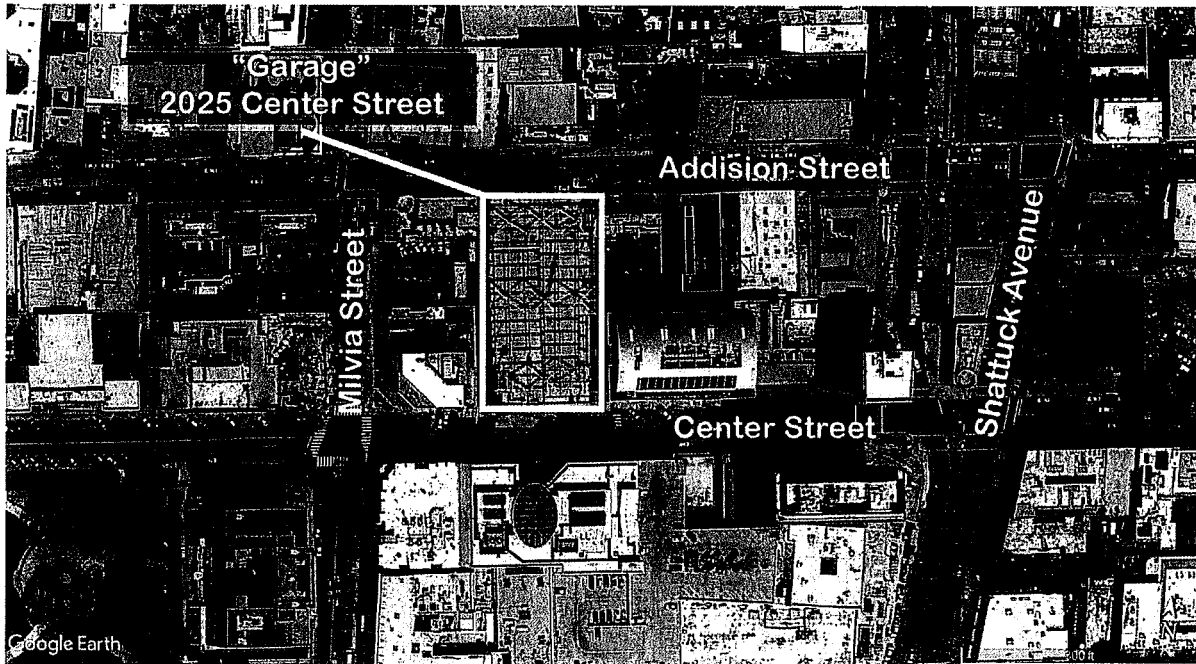
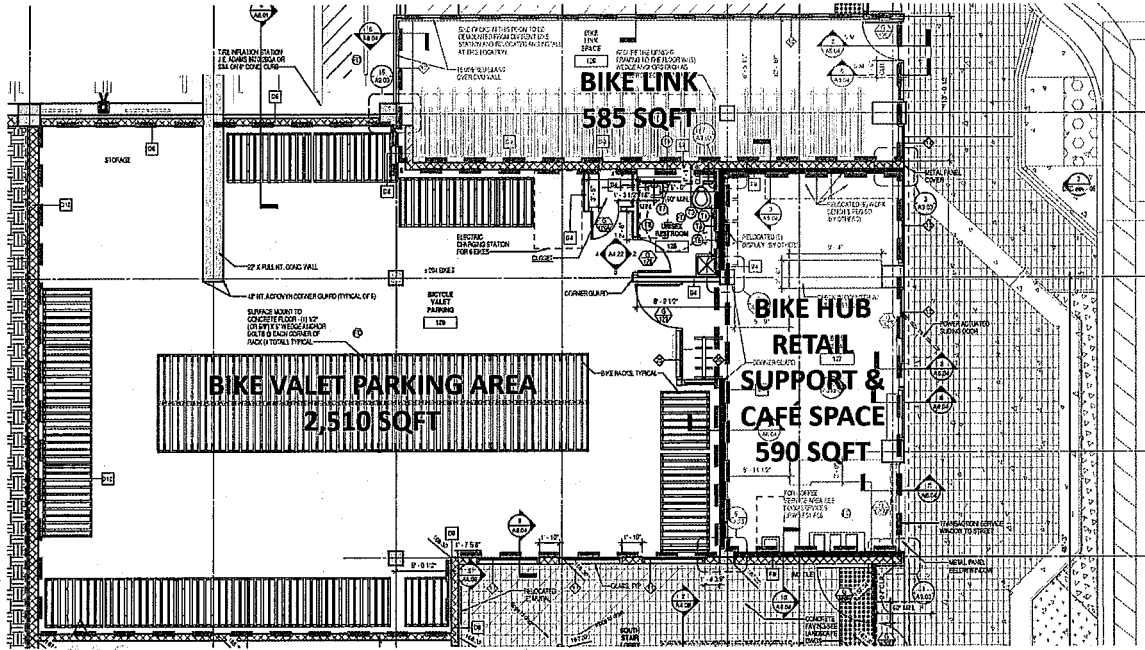




EXHIBIT A-1  
TO LEASE

Site Plan of Premises - 2023 Center Street (Lease Space outlined in bold dash marks)



- **Bike Link** space for 24/7 accessible indoor bicycle parking (585 square feet);
- **Bike Valet Parking** with staff unisex restroom (2,510 square feet); and
- **Bike Hub** Retail Support and Café space (590 square feet)

**EXHIBIT B  
TO  
LEASE**

Agreement Specifying Term of Lease

Attached to and made part of the Lease dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF BERKELEY, a municipal corporation, as Landlord, and BAY AREA RAPID TRANSIT DISTRICT, as Tenant ("**Lease**").

Landlord and Tenant do hereby confirm and acknowledge the following dates:

Lease Commencement Date is February 1, 2021  
Rent Commencement Date is February 1, 2021  
Expiration Date is January 31, 2036, subject to extension as provided in the Lease.

This Agreement shall be binding on the parties hereto, their successor and assigns and all subtenants of Tenant and any other party claiming under or through Tenant. The Lease is in full force and effect as of the date hereof in accordance with its terms, and Tenant is in possession of the Premises. Landlord has fulfilled all of its obligations under the Lease that were required to be fulfilled by Landlord on or prior to the Rent Commencement Date and Tenant has no claim or right of set-off against any Rent (as defined in the Lease) under the Lease.

This Agreement was entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**ATTEST/WITNESS:**

**LANDLORD:**  
CITY OF BERKELEY, a municipal corporation

By: \_\_\_\_\_

Its: City Manager

By: \_\_\_\_\_

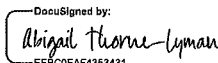
Its: City Attorney

By: \_\_\_\_\_

Its: City Auditor

**ATTEST/WITNESS:**

**TENANT:**  
BAY AREA RAPID TRANSIT DISTRICT

By:  DocuSigned by:  
Abigail Thorne-Lyman  
EF8C0EAF4353431

Its: Director of Real Estate & Property Development

<b>LEASE PAYMENT SCHEDULE FOR 2023 CENTER STREET</b>										
	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR
	1	2	3	4	5	6	7	8	9	
FEBRUARY	1	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
MARCH	2	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
APRIL	3	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
MAY	4	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
JUNE	5	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
JULY	6	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
AUGUST	7	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
SEPTEMBER	8	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
OCTOBER	9	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
NOVEMBER	10	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
DECEMBER	11	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
JANUARY	12	\$ 4,112.50	\$ 4,112.50	\$ 4,112.50	\$ 4,194.75	\$ 4,194.75	\$ 4,194.75	\$ 4,278.65	\$ 4,278.65	\$ 4,278.65
<b>ANNUAL TOTAL:</b>		\$ 49,351.00	\$ 49,352.00	\$ 49,353.00	\$ 50,341.00	\$ 50,342.00	\$ 50,343.00	\$ 51,350.80	\$ 51,351.80	\$ 51,352.80

	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR
	10	11	12	13	14	15
FEBRUARY	1	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
MARCH	2	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
APRIL	3	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
MAY	4	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
JUNE	5	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
JULY	6	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
AUGUST	7	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
SEPTEMBER	8	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
OCTOBER	9	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
NOVEMBER	10	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
DECEMBER	11	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
JANUARY	12	\$ 4,364.22	\$ 4,364.22	\$ 4,364.22	\$ 4,451.50	\$ 4,451.50
<b>ANNUAL TOTAL:</b>		\$ 52,380.61	\$ 52,381.61	\$ 52,382.61	\$ 53,431.03	\$ 53,432.03
<b>FIFTEEN YEAR TOTAL:</b>					<b>\$ 770,578.33</b>	

LEASE START MONTH: FEBRUARY

LEASE START DAY: 1ST

LEASE START YEAR: 2021

LEASE TERMINATION DATE: JANUARY 31, 2036

Calculations include a 2.0% rate increase every three years.

**EXHIBIT C  
TO  
LEASE**

Restrictions and Prohibited Uses

Tenant shall not use or permit the use of the Premises for any other business or purpose, except as set forth in this Lease and in strict accordance with the Rules and Regulations. No part of the exterior shall be used for an automatic teller machine. No part of the Premises shall be used for any use that would increase the demand or requirement for parking in the Garage in excess of that required by the Permitted Use. No part of the Premises shall be used in a way that endangers the health or safety of any user of the Garage. **THESE PROHIBITIONS AND RESTRICTIONS SHALL NOT BE DEEMED TO APPLY TO LANDLORD, BUT ONLY TO TENANT UNDER THIS LEASE.** Landlord shall have the right, in Landlord's sole and absolute discretion, to waive all or any of the prohibitions set forth herein upon such matters, terms and conditions as Landlord, in its sole discretion, may determine.

**EXHIBIT D  
TO  
LEASE**

Center Street Garage Rules and Regulations

Landlord has the right to change Center Street Garage Rules and Regulations at any time.

**A. Tenant shall be obligated to do the following:**

- i. Keep the Premises, including both sides of all glass clean, orderly and sanitary;
- ii. Keep the outside areas adjacent to the Premises clean, orderly and free of debris, rubbish, obstructions and merchandise;
- iii. Display the certificate of occupancy (if required by applicable law) for the Premises in the Premises and provide Landlord with a copy of the Certificate of Occupancy (or jurisdictional equivalent) for the Premises;
- iv. Keep the Premises free of garbage and trash and remove the same from the Premises to containers approved by Landlord;
- v. Maintain the Premises free of insects, rodents, vermin and other pests;
- vi. Keep all mechanical apparatus free of vibration and noise -- live music or any other use of amplifiers or speakers is prohibited;
- vii. Procure and maintain at its sole cost and expense any permits and licenses required in the transaction of Tenant's business;
- viii. Conduct its business in all respects in a manner in accordance with first-class store operations;
- ix. Load and unload goods at such times in the areas and through such entrances as may be designated by Landlord;
- x. Keep its show windows dressed, using only professionally prepared signage which must be submitted to Landlord for approval prior to installation;
- xi. Keep its show windows and exterior signs illuminated from dusk until at least 10:00 p.m. every day;
- xii. No office equipment of any kind (other than normal office equipment) shall be operated by Tenant without Landlord's prior written consent, nor shall Tenant use or keep in the Retail Space any flammable or explosive fluid or substance.

- xiii. Landlord will not be responsible for lost or stolen personal property, money, or jewelry from the Premises or Common Areas.
- xiv. Restrooms, toilets, urinals and washbasins shall not be used for any purpose other than those for which they were constructed, and no rubbish, newspapers, food, or other substance of any kind shall be thrown into them. Tenant shall not mark, drive nails, screw or drill into, paint or in any way deface the exterior walls, floor foundations, bearing walls or pillars without the prior written consent of Landlord. The expense of repairing any breakage, stoppage, or damage resulting from a violation of this rule shall be borne by Tenant.
- xv. Tenant shall not sell merchandise from vending machines or allow any coin or token-operated vending machine on the Premises, except those provided for the convenience of Tenant's employees and pay telephones provided for the convenience of its customers.
- xvi. Landlord has the right to require that Tenant provide a copy of the key to the Premises for access by Landlord, or as otherwise required by applicable Laws.
- xvii. Abide by all Rules and Regulations set forth in this **Exhibit D** as may be changed by Landlord from time to time provided that such change not materially impact Tenant's rights or responsibilities under the Lease.

**B. Tenant agrees not to do the following:**

- i. Display any sign visible outside the Premises without first having obtained Landlord's written permission;
- ii. Use the Premises or any other part of the Garage for any use other than allowed by the Lease;
- iii. Cause the accumulation of garbage, trash, rubbish or refuse in the Premises or the Garage;
- iv. Display or store merchandise outside the Premises;
- v. Distribute handbills or other advertising matter or solicit business in the Common Area;
- vi. If parking is otherwise expressly permitted pursuant to the Lease, permit parking of any vehicle for more than 24 hours;
- vii. Attach any awning, antenna, or other projection to the roof or the outside walls of the Premises or the Garage; and
- viii. Use or permit the use of objectionable advertising mediums such as loudspeakers or other mediums that irritate or have the tendency to irritate other tenants within the Retail Space or their customers or invitees.

**EXHIBIT E  
TO  
LEASE**

Fund Transfer and Cooperative Agreement

RESOLUTION NO. ##,###-N.S.

FUNDING AND COOPERATIVE AGREEMENT: BERKELEY BIKE STATION

WHEREAS, on December 8, 2008 by Authorization No. 28 12/8/08, Council authorized Contract No. 8550 with Bay Area Rapid Transit District (BART) for \$60,000 annually for a sum not to exceed \$300,000 to provide operations funding through June 30, 2014 for a Downtown Berkeley Bike Station Expansion; and

WHEREAS, on May 26, 2015 by Resolution 67,032-N.S., Council authorized Contract No. 9965 with BART for \$60,000 annually for a sum not to exceed \$120,000 to provide operations funding through June 30, 2016 for the Downtown Berkeley Bike Station; and

WHEREAS, on July 25, 2017 by Resolution 68,127-N.S., Council authorized Contract No. 10829 with BART for \$60,000 annually for a sum not to exceed \$120,000 to provide operations funding through June 30, 2018 for the Downtown Berkeley Bike Station; and

WHEREAS, the funding under the contract approved in July 2017 was expended to operate the Bike Station in FY 2017 and FY 2018; and

WHEREAS, provision of secure bicycle parking in the Downtown Berkeley Bike Station supports multiple policies in the Berkeley Bicycle Plan; Berkeley Climate Action Plan Goal #5: Accelerate Implementation of the City's Bicycle & Pedestrian Plans; Berkeley General Plan Policy T-43 that calls for expansion of the supply of secure bicycle parking near transit hubs and in commercial areas; and the multiple Downtown Area Plan transportation policy measures; and

WHEREAS, executing a cooperative agreement with BART to provide funding for an additional three years of operation of the Downtown Bike Station at its new Center Street Garage location will enable the provision of continued secure bicycle parking services in Downtown Berkeley; and

WHEREAS, funding of \$75,000 for the first year is subject to appropriation in the FY 2022 Budget from Capital Improvement Fund 501 via the Second Amendment to the Annual Appropriations Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a three-year cooperative agreement with BART, in an amount not to exceed \$225,000 for the continued operation of the Downtown Berkeley Bike Station at its location in the Center Street Garage through June 30, 2023. A record copy of the contract and any amendments is to be on file in the Office of the City Clerk.



## FUND TRANSFER AND COOPERATIVE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2021, by and between the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART" or "District") and the CITY OF BERKELEY, CALIFORNIA ("City").

### RECITALS

THIS AGREEMENT is made with reference to the following facts:

- A. On August 20, 2010, BART and the City entered into a Fund Transfer and Cooperative Agreement for a new bicycle station facility ("Bike Station") near the Downtown Berkeley BART Station. The City agreed to contribute funding to support the operating costs of the Bike Station for a five-year period beginning July 1, 2009 and ending July 1, 2014.
- B. On June 23, 2015, BART and the City entered into a Fund Transfer and Cooperative Agreement for continued operation of the Bike Station near the Downtown Berkeley BART Station. The City agreed to continue to contribute funding to support the operating costs of the Bike Station for a two-year period beginning July 1, 2014 and ending June 30, 2016 for a total not to exceed \$120,000.
- C. On January 19, 2018, BART and the City entered into a Fund Transfer and Cooperative Agreement for continued operation of the Bike Station near the Downtown Berkeley BART Station. The City agreed to continue to contribute funding to support the operating costs of the Bike Station for a two-year period beginning July 1, 2016 and ending June 30, 2018 for a total not to exceed \$120,000, including \$60,000 for FY17 and up to \$60,000 for FY18, prorated based on the number of months before the planned move of the Bike Station to the new Center Street Garage at the end of FY18.
- D. Per the 2010, 2015, and 2018 Cooperative Agreements, BART managed the Bike Station facility with approximately 4,000 rentable square feet of space at 2208 Shattuck Avenue, Berkeley, California since July 1, 2009. The Bike Station on Shattuck Avenue provided parking for 283 bicycles (170 in the attended area and 113 in the adjacent self-serve area). In addition, the Shattuck Bike Station provided ancillary services for bicycle commuters, including bicycle maintenance and repair, bicycle rentals, sale of bicycle accessories, and community bicycle education classes.

- E. Performance evaluations and measures of the Bike Station operations has found that the Shattuck Avenue location of the Bike Station was utilized to substantial capacity and was financially feasible.
- F. The Bike Station was relocated in December 2018 from 2208 Shattuck Avenue to a newly constructed space owned by the City of Berkeley at 2023 Center Street (the "Premises") in the new Center Street Garage. This new Bike Station facility has parking for 326 bikes (282 in the valet area and 48 in the self-park area) and space built for ancillary services for bicycle commuters, including bicycle maintenance and repair, bicycle rentals, and sale of bicycle accessories.
- G. In December of 2018, BART entered into a two-year Lease with the City of Berkeley for the Premises at 2023 Center Street. BART and the City intend to extend this Lease agreement to coincide with the duration of this Fund Transfer and Cooperative Agreement.
- H. BART entered, as of August 1, 2013, into a Management Services Agreement (BART Agreement No. 6M6063) (the "MSA") with an operator ("Operator"), whereby Operator, among other things, manages and operates the Bike Station facilities at the Premises, in addition to providing similar bicycle operation services at eight other BART stations. The initial MSA was extended through October 31, 2021 and BART subsequently competitively bid and awarded a new five-year MSA through October 31, 2026. The annual compensation under the new MSA is approximately \$570,000 and 20-25% of the compensation is allocable to the staffing and management of the Berkeley Bike Stations.
- I. BART has committed to partially fund the Lease and operating expenses incurred under the MSA for FY21 through FY23, as set forth below.
- J. City has agreed to provide \$75,000 per year for a total amount not to exceed \$225,000 in funding for the Bike Station's FY21 through FY23 operating expenses as set forth below in this Agreement. It is not the intent of the City or BART that City be a co-party to the MSA, and nothing contained in this Agreement is to be construed as any other business relationship between the parties other than the contractual relationship as expressly set forth herein.

## **AGREEMENT**

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

1. BART Responsibilities. For FY21 through FY23, BART agrees to fund all Bike Station expenses in excess of the City's contribution. BART further agrees to

manage and assume responsibility for the Bike Station including performing its obligations under the Lease and managing the MSA.

2. City Responsibilities. City will commit \$75,000 per year for three years commencing July 1, 2020, for a total not to exceed \$225,000, to provide funding for the Bike Station, as evidenced by the attached draft resolution of the Berkeley City Council, a copy of which was appended hereto as **Exhibit A** at the time of execution and the final version of which will be incorporated herein by this reference following approval by the Berkeley City Council. BART will submit an annual invoice to City for payment no later than April 30 of each year. City will pay BART within 90 days of receipt of an acceptable invoice.
3. Bicycle Retail and Other Ancillary Services; Separation of Public and Private Interests. The Bike Station will provide certain retail services to bicycle commuters, including service and repair of bicycles and sale of bicycle accessories. The retail bicycle services at the Bike Station will operate from the Bicycle Retail Area of the Premises to be leased to BART. Operator is required to ensure that any retail activities are approved by BART and do not detract from the core function of the Bike Station as a secure bicycle parking facility.
4. Operations of the Bike Station. As described herein and in the Lease, initial core hours of operation for the Bicycle Valet and Bicycle Retail Areas of the Bike Station, including bicycle maintenance and repair services, retail sale of bicycle commuter parts and accessories, bicycle rentals, and coffee retail sales will be from 7 am to 7pm Monday through Friday, year-round, excluding holidays as stipulated in the MSA. Bike Station valet and retail service may include seasonal operations on Saturdays at the discretion of the Operator, subject to BART and City agreement. The BikeLink Space will be available 24 hours a day, 7 days a week. Changes to hours of operation are subject to BART and City agreement.
5. Termination. BART or City may, in their sole discretion, notwithstanding the Lease, choose to close the Bike Station at the Premises after June 30, 2021, if sufficient funding is not secured for operating costs beyond that date. To avoid closure, BART will seek, but does not guarantee, BART Board approval of funding to subsidize future years' expenses at the Premises. City will also seek, but does not guarantee, continued funding for future years' expenses at the Premises.
6. Fixtures of the Bike Station after Termination or upon Relocation from the Premises. If the Bike Station is closed per the Termination provisions of this Agreement, BART will move at its sole costs and expense all Bike Station personal property funded by the Safe Routes to Transit Grant No. 20.15 (bicycle parking racks, security devices, lighting, or any other moveable physical improvements which were not permanently affixed to the Premises) to another location, to support transit use subject to applicable grant requirements. Prior to

considering other locations, if feasible, BART will use best efforts to move the personal property for use at a relocated Berkeley Bike Station.

7. 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.

8. 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.

9. Nondiscrimination. BART shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. BART shall carry out

applicable requirements of 49 CFR Part 26 in the award and administration of U.S. Department of Transportation-assisted contracts. 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.

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.

For purposes of this Section 14, "sexual orientation" shall mean a preference for heterosexuality, homosexuality or bisexuality; or having a history of, or being identified with, any such preference.

10. Assignment. Neither BART nor City shall assign any rights nor transfer any obligations under this Agreement without the prior written consent of the other and any such unauthorized assignment or transfer shall be void.
11. BART and City Warranties. BART and City make no warranties, representations or agreements, either express or implied, beyond such as are explicitly stated herein.
12. BART Representative. Except when approval or other action is required to be given or taken by the Board of Directors of BART, Heath Maddox, or such person or persons as he shall designate in writing from time to time, shall represent and act for BART.
13. 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  
2150 Webster Street, 8<sup>th</sup> Floor  
Oakland, CA 94612  
Attention: Heath Maddox

To City: City of Berkeley  
Public Works Department, Transportation Division  
1947 Center Street, 4<sup>th</sup> Floor

Berkeley, CA 94704

Attention: Farid Javandel

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.

14. 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.
15. 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.
16. Modification. This Agreement may be modified or amended only by written instrument signed by both BART and City.

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 BERKELEY**

By: Val Menotti

By: Dee Williams Ridley

DocuSigned by:

*Val Menotti*

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Title: Chief Planning & Development  
Officer, Planning & Development

Title: City Manager

Approved As To Form:

By: Crystal Matson

By: Sara Stephens

DocuSigned by:

*Crystal Matson*

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Title: Attorney, Office of the General  
Counsel

Title:

**EXHIBIT A**

## RESOLUTION NO. ##,###-N.S.

## FUNDING AND COOPERATIVE AGREEMENT: BERKELEY BIKE STATION

WHEREAS, on December 8, 2008 by Authorization No. 28 12/8/08, Council authorized Contract No. 8550 with Bay Area Rapid Transit District (BART) for \$60,000 annually for a sum not to exceed \$300,000 to provide operations funding through June 30, 2014 for a Downtown Berkeley Bike Station Expansion; and

WHEREAS, on May 26, 2015 by Resolution 67,032-N.S., Council authorized Contract No. 9965 with BART for \$60,000 annually for a sum not to exceed \$120,000 to provide operations funding through June 30, 2016 for the Downtown Berkeley Bike Station; and

WHEREAS, on July 25, 2017 by Resolution 68,127-N.S., Council authorized Contract No. 10829 with BART for \$60,000 annually for a sum not to exceed \$120,000 to provide operations funding through June 30, 2018 for the Downtown Berkeley Bike Station; and

WHEREAS, the funding under the contract approved in July 2017 was expended to operate the Bike Station in FY 2017 and FY 2018; and

WHEREAS, provision of secure bicycle parking in the Downtown Berkeley Bike Station supports multiple policies in the Berkeley Bicycle Plan; Berkeley Climate Action Plan Goal #5: Accelerate Implementation of the City's Bicycle & Pedestrian Plans; Berkeley General Plan Policy T-43 that calls for expansion of the supply of secure bicycle parking near transit hubs and in commercial areas; and the multiple Downtown Area Plan transportation policy measures; and

WHEREAS, executing a cooperative agreement with BART to provide funding for an additional three years of operation of the Downtown Bike Station at its new Center Street Garage location will enable the provision of continued secure bicycle parking services in Downtown Berkeley; and

WHEREAS, funding of \$75,000 for the first year is subject to appropriation in the FY 2022 Budget from Capital Improvement Fund 501 via the Second Amendment to the Annual Appropriations Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a three-year cooperative agreement with BART, in an amount not to exceed \$225,000 for the continued operation of the Downtown Berkeley Bike Station at its location in the Center Street Garage through June 30, 2023. A record copy of the contract and any amendments is to be on file in the Office of the City Clerk.