

STAFF REPORT FOR CALENDAR ITEM NO.: 10.4
FOR THE MEETING OF: June 14, 2018

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a Siting Agreement with Bay Area Motivate, LLC (locally referred to as “Ford GoBike”), providing a non-exclusive license for the placement and operation of a bicycle rental docking station on TJPA property.

EXPLANATION:

Bay Area Motivate, LLC (BAM) (locally referred to as “Ford GoBike”) is an organization that operates a self-service bicycle rental system in several metropolitan areas around the county. In 2013, BAM (through its predecessor) initiated a pilot bike share program in the Bay Area. In 2015, BAM entered a Coordination Agreement with the Metropolitan Transportation Commission, and the cities of Berkeley, Emeryville, Oakland, San Francisco, and San Jose, governing the expansion of BAM’s bike share program in the Bay Area (“Coordination Agreement”). BAM reports that it currently has nearly 300 bike stations and more than 3,600 bikes in its Bay Area network.

BAM has requested permission to install a bike share station at the new transit center. TJPA staff expects certain demand from transit riders, the public, and other facility users for bike share services at the new transit center.

TJPA staff and BAM have identified the west end of the transit center site south of Natoma Street as a suitable location for the placement of a bike share station. The area would be adjacent to TJPA’s planned location for long term bicycle storage. TJPA staff has coordinated and validated the layout of the proposed bike share station with planning, design, construction, future operations, and transit stakeholder requirements of the Transbay Program.

TJPA staff has negotiated the attached form of Siting Agreement with BAM. Some of the key terms include:

- Fees and Costs: BAM bears the full cost for installing the bike share station, acquiring bikes and other necessary equipment, and operating the bike share service (including any necessary software and maintenance of the station and equipment). TJPA intends, however, to pave the license area in advance of the placement of the station; this is an activity TJPA planned to undertake regardless of the BAM proposal. BAM will not pay any fee to TJPA for the use of the license area. BAM will retain all revenues generated by operation of the service at the site (although under the Coordination Agreement BAM may have some obligation to share certain program revenues with MTC and the participating cities).
- Term and Termination: BAM’s right to begin use of the license area under the Siting Agreement begins 30 days after TJPA provides notice of the site’s availability. The Siting Agreement can be terminated by either party at its discretion with 60 days’ notice.

- Insurance and Indemnification: BAM is required to maintain insurance during the term of the Siting Agreement, and name TJPA and other related agencies as additional insureds. BAM is required to indemnify the TJPA for, among other things, certain use and occupation of the license area and BAM's operation of the bike share service.
- Sponsorships and Advertising: A portion of BAM's revenue is generated by sponsorships of the bike share program and related advertising. BAM's sponsorship agreements include certain name recognition and other forms of advertising on BAM stations and equipment. For example, Ford and Alaska Airlines are current sponsors of the program. Although TJPA is not a party to the Coordination Agreement, TJPA aligned the proposed Siting Agreement with the provisions in the Coordination Agreement for sponsorship and advertising in San Francisco. BAM's equipment may display marks for the purpose of publicly identifying and associating the bike share service with one or more of the sponsors or advertisers. BAM may not, however, display any sponsor or advertiser marks that are directly competitive with any other sponsorships or advertisements located on any of the TJPA property.

RECOMMENDATION:

Authorize the Executive Director to execute a Siting Agreement with Bay Area Motivate, LLC, providing a non-exclusive license for the placement and operation of a bicycle rental docking station on TJPA property.

ATTACHMENT:

1. Resolution
2. Siting Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has the authority to, among other things, make and enter into contracts and exercise all powers necessary and proper to carry out the provisions of the Joint Powers Agreement; and

WHEREAS, The TJPA expects certain demand from transit riders, the public, and other facility users for bike share services at the new transit center; and

WHEREAS, Bay Area Motivate, LLC (BAM) (locally referred to as “Ford GoBike”) is an organization that operates a self-service bicycle rental system in several metropolitan areas around the county, and BAM has entered a Coordination Agreement with the Metropolitan Transportation Commission, and several Bay Area cities, including the City and County San Francisco, governing the expansion of BAM’s bike share program in the Bay Area; and

WHEREAS, BAM has requested permission to install a bike share station at the new transit center; and

WHEREAS, TJPA staff has identified a suitable location for the placement of a bike share station, and has coordinated and validated the proposed bike share station with planning, design, construction, future operations, and transit stakeholder requirements of the Transbay Program; and

WHEREAS, TJPA staff has negotiated a proposed form of agreement with BAM; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a Siting Agreement with Bay Area Motivate, LLC, in the form attached, to provide a non-exclusive license for the placement and operation of a bicycle rental docking station on TJPA property, and take such other actions as are reasonable and necessary to implement the Siting Agreement.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 14, 2018.

Secretary, Transbay Joint Powers Authority

SITING AGREEMENT

This Siting Agreement (“Agreement”) is entered into as of _____, 2018 (“Effective Date”) between TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 et seq., located at 201 Mission Street, Suite 2100, San Francisco, California (“TJPA” or “Licensor”) and Bay Area Motivate, LLC, a Delaware limited liability company located at 220 36th Street, Suite 3A, Brooklyn, NY (“Licensee”) with respect to the use by Licensee of that certain space owned by Licensor as more particularly described herein. Each of Licensee and Licensor may be referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS Licensee operates a self-service bicycle rental system in the San Francisco Bay Area (“Service”); and

WHEREAS Licensor is the fee simple owner of the real property located at 85 Natoma Street in San Francisco, as more particularly described on **Exhibit A** hereto, which Exhibit may be amended from time to time by mutual written agreement of the Parties, and all improvements thereon (collectively, “Property”);

WHEREAS Licensee desires to place and operate one or more bicycle rental docking stations (each, a “Station”) in the location designated on the Property as shown on **Exhibit A** hereto (the “Licensed Area”), in the same manner in which it operates other similar stations and the Service throughout the San Francisco Bay Area (and otherwise subject to the terms and conditions of this Agreement);

NOW, THEREFORE, in consideration of the premises above and the promises below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **License.** On the Commencement Date (defined below), Licensor does hereby grant the following non-exclusive licenses (collectively, “License”): (i) to Licensee and its successors and assigns: the right and license to assemble, install, upgrade, alter, renew, maintain, repair, replace, remove, and use the Station and all of Licensee’s related bicycles and other equipment within the Licensed Area (including, subject to Section 9, the right to place advertisements on all such equipment and secure sponsorships related to the Service), and to use and enjoy all rights appurtenant thereto, including the right to enter the Property as may be reasonable and appropriate to exercise all License rights and the right to remove all obstructions as Licensee may deem necessary; (ii) to all Users: the right and license to enter and use the Licensed Area in connection with using the Service, which may include using the Station or any of Licensee’s related bicycles or other equipment within the Licensed Area; and (iii) to Licensee and its successors and assigns: the right and license to enter the Property to enjoy, undertake, or perform any of Licensee’s rights or obligations arising under this Agreement. As used herein, the term “Users” is defined to include Licensee and all of Licensee’s owners, directors, officers, employees, agents, contractors, customers, guests, invitees, successors, and assigns. Licensor acknowledges and agrees that any member of the public at large may become a User simply by using the Service and that each User must be

allowed full access to the Licensed Area, in connection with using the Service. The parties acknowledge that the Licensed Area is generally expected to be accessible to the public 24 hours per day, 365 days per year, and Licenser must not materially interfere with or alter any User's use or enjoyment of the Licensed Area and Station for the purposes described herein, except in cases of special events, temporary construction, or emergencies, during which time Licenser reserves the right, upon seven (7) days' notice to Licensee (except in the case of emergency), to limit or completely close down access to the Property and/or the Licensed Area, including for the Licensee, its Users, and the public at large.

2. **Fee.** Licensee and all other Users have no obligation to pay any fee or rent to Licenser with respect to the License or this Agreement.
3. **Term; Termination.** The term of this Agreement ("Term") shall begin on the Effective Date, but the Licensee's rights under the License shall begin on thirty (30) days written notice from Licenser to Licensee ("Commencement Date"). The Term shall continue until terminated as set forth herein. Either Party may terminate this Agreement for any reason upon sixty (60) days' written notice to the other Party.
4. **Insurance.** Without in any way limiting Licensee's indemnification obligations under this Agreement, On or before the Commencement Date, Licensee must carry, at its expense, and continuing during the Term of this Agreement, insurance coverages at least as broad as:
 - a. Worker's Compensation, as required by the State of California in statutory amounts, with Employers' Liability Insurance, with limits not less than \$1,000,000 each accident, injury, or illness;
 - b. Commercial General Liability Insurance policy with limits of at least \$2,000,000 Per Occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products, and Completed Operations;
 - c. Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including owned, non-Owned and Hired auto coverage, as applicable; and
 - d. Property Insurance against all risks of loss to the Station and any associated personal property at full replacement cost with no coinsurance penalty provision.

The Commercial General Liability policy must name Licenser and the entities identified on **Exhibit B** ("Additional Insureds") as additional insureds, per ISO form # CG 20 26 04 13 or its equivalent, and shall insure against contingent liabilities, if any, of Licenser and the Additional Insureds.

Licensee shall obligate the insurance carriers to notify Licenser, in writing, not less than thirty (30) days prior to the cancellation of the required insurance, or any other change affecting the coverage of the policies.

Licensee hereby grants to Licenser a waiver of any right to subrogation which any insurer of Licensee may acquire against Licenser by virtue of the payment of any loss under such

insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Lessor has received a waiver of subrogation endorsement from the insurer.

Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

On or before the Commencement Date, Licensee shall furnish to Lessor certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A.M. Best's A:VII or higher, that are authorized to do business in the State of California, and that are satisfactory to the TSPA, in form evidencing all coverages set forth above.

Lessor shall retain the right at any time to review the coverage, form, and amount of insurance required hereby. Licensee does each hereby waive, but only to the extent of collected insurance proceeds, all rights of recovery, claims, actions, and causes of action against Licensee and its owners, directors, officers, employees, agents, contractors, customers, guests, invitees, successors, and assigns with respect to damages that may occur to the Station or any personal property by reason of any cause that is insured, regardless of cause or origin, including negligence. Licensee shall give notice to its insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Agreement.

Approval of the insurance by Lessor shall not relieve or decrease the liability of Licensee under this Agreement. If Licensee maintains broader coverage and/or higher limits than the minimums shown above, Lessor requires and shall be entitled to the broader coverage and/or the higher limits maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Licensee.

5. **Indemnification.** Licensee shall indemnify, defend and hold harmless Lessor and the Additional Insureds from any and all claims, demands, causes of action, proceedings or lawsuits brought by third parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs, and expenses arising from or incidental to any Claims (collectively, with Claims, "Losses"), to the extent arising out of: (i) any User's use or occupation of the Licensed Area; (ii) Licensee's operation of the Service; and (iii) the negligent acts or omissions of Licensee, and/or its employees, agents, contractors, affiliates, tenants, and invitees, and/or the Users in the performance of this Agreement. Notwithstanding the foregoing, to the extent that any such Losses arise out of the negligence or willful misconduct of the Lessor, such Losses shall be excluded from Licensee's indemnification, defense and hold harmless obligations hereunder.

6. **Site Preparation.** At no cost or expense to Licensor, Licensee is fully and solely responsible for obtaining all permits and for preparing the Licensed Area for the installation of the Station and Licensor must reasonably cooperate in connection therewith. Licensee acknowledges and agrees that Licensor is making the Property and the Licensed Area available in an “As Is” condition with all faults. Licensor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to any matters related to the Property or the Licensed Area. Licensee acknowledges that it is entering into this Agreement on the basis of Licensee’s own investigation of the condition of the Property and the Licensed Area, and Licensee assumes the risk that adverse conditions may not have been revealed by its investigation.
7. **Station Installation and Removal.** On or after the Commencement Date, Licensee will install the Station within the Licensed Area. Licensee is fully and solely responsible for the installation of the Station. Licensee shall provide site plans to Licensor, for Licensor’s review and written acceptance prior to installation; Licensee shall install the Station in conformance with the approved site plans unless Licensor provides its written approval of deviations from the site plans. Licensee shall be responsible for obtaining all necessary permits and approvals from entities with jurisdiction over the Station and Service. Licensor and Licensee shall use reasonable efforts to coordinate with each other in connection with the installation of the Station. On or before the end of the Term, Licensee will remove the Station and all of Licensee’s related bicycles and other personal property and equipment from the Licensed Area. At no cost or expense to Licensor, Licensee is fully and solely responsible for installing and removing each Station within the Licensed Area, and Licensor must reasonably cooperate in connection therewith. For installation and removal of a Station, Licensee will (a) exercise reasonable care to not damage any property, and (b) pay for repair or replacement of any and all property damage to the extent directly caused by Licensee, reasonable wear and tear, damage by fire or other casualty and taking by eminent domain excepted.
8. **Maintenance.** At no cost or expense to Licensor, Licensee is fully and solely responsible for and shall be obligated to: (i) maintain the Station in good condition (reasonable wear and tear, damage by fire or other casualty and taking by eminent domain excepted); (ii) maintain the improved surfaces of the Licensed Area in good condition, which may include cleaning, sweeping, trash removal, and snow and ice removal, as the case may be (and which maintenance shall not be provided by Licensor); and (iii) communicate with all Users and other third parties, including responding to any and all inquiries made by any of them, and Licensor has no authority to communicate with anyone on Licensee’s behalf. Licensor and Licensee shall use reasonable efforts to coordinate with each other in connection with maintenance of the Station and equipment.
9. **Sponsorships and Advertising.** Licensor acknowledges and agrees that Licensee may secure various sponsorships and advertising (collectively, “Sponsorships and Advertising”) in connection with the Services, and, consistent with local law, Licensee may display on the Station and Licensee’s related bicycles and other equipment within the Licensed Area the names, trademarks, service marks, and logos (collectively, “Marks”) of any of the sponsors and advertisers of the Service for the purpose of publicly identifying and associating the

Service with one or more of the sponsors or advertisers(collectively, “Sponsors and Advertisers”); provided, however, that without the prior written consent of Lessor, Licensee may not display Marks of the Sponsors or Advertisers within the Licensed Area that are directly competitive with any other sponsorships or advertisements located on any of the TJPA property. Notwithstanding the foregoing, Licensee may display Marks of the following Sponsors and Advertisers within the Licensed Area: Ford Motor Company, Alaska Airlines, Inc., and Clover Network, Inc. Licensee shall provide Lessor at least 10 days advance written notice of any proposal to display Marks of a new Sponsor or Advertiser within the Licensed Area. Except as provided in this Section 9, this Agreement shall not confer on Lessor any right to approve, disapprove or otherwise interfere with the Sponsors and Advertisers or the Sponsorships and Advertising. Further, Lessor shall have no right to receive any revenues or other consideration arising out of the Sponsorships and Advertising.

10. **Compliance with Laws, Rules, and Regulations.** All activities and operations of the Licensee shall be in full compliance with all applicable laws and regulations of the federal, state and local governments. Licensee shall comply with all rules and regulations, and safety procedures and protocols adopted by Lessor related to use of the Property or the Licensed Area.
11. **Surrender.** At the end of the Term, Licensee must remove the Station and all of Licensee’s related bicycles and other personal property and equipment from the Licensed Area and must pay for repair or replacement of any and all damage to the Licensed Area directly caused by Licensee, reasonable wear and tear, damage by fire or other casualty and taking by eminent domain excepted.
12. **Assignment.** Licensee may assign this Agreement or any of Licensee’s rights or obligations hereunder to the Metropolitan Transportation Commission or any of its designees or to any of Licensee’s affiliates without Lessor’s consent.
13. **Disputes.** This Agreement is governed by, and must be construed and enforced in accordance with, the laws of California, excluding principles of conflicts of laws. The parties agree that all actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts located within the County of San Francisco, California, and the parties irrevocably submit to the jurisdiction of any state or federal court sitting in that county.
14. **Entire Agreement.** This Agreement contains the complete, final, and exclusive integrated agreement between the Parties with respect to its subject matter and supersedes all other agreements relating thereto. Any amendment to this Agreement must be written and signed by each Party. In the event that any provision(s) of this Agreement shall be illegal or otherwise unenforceable, such provision(s) shall be severed (or modified to render it enforceable), and the remaining provisions hereof shall continue in full force and effect.
15. **Representations.** Each Party (“Promising Party”) represents and warrants to the other Party that, as of the date hereof: (i) the Promising Party has the legal power and authority to enter into this Agreement and to undertake and perform all of its duties and obligations hereunder; (ii) the execution, delivery and performance of this Agreement and the consummation of the

transactions contemplated hereby will not (a) violate any order, judgment, injunction, award or decree of any court, arbitrator or governmental or regulatory body against, or binding upon such Promising Party; (b) violate any statute, law or regulation of any jurisdiction applicable to such Promising Party in connection with the transactions contemplated herein; or (c) to such Promising Party's actual knowledge, violate or constitute a default under any contract, obligation, agreement, license or instrument to which such Promising Party is a party; and (iii) this Agreement is the Promising Party's legally binding and fully enforceable agreement.

16. **Notices.** All notices and other communications provided hereunder must be in writing and are deemed given: (i) on hand-delivery (ii) when sent by email, with confirmation of transmission; (iii) the day after sending by a nationally recognized overnight delivery service (with confirmation of transmission); or (iv) 3 days after sending by certified mail (return receipt requested).

If to Lessor, notices shall be sent to:

Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Attention: Executive Director Mark Zabaneh
Phone: (415) 597-4620
Email: mzabaneh@tjpa.org

With a required copy to:

Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Attention: Deborah L. Miller
Phone: (415) 552-7272
Email: miller@smwlaw.com

If to Licensee, notices shall be sent to:

Bay Area Motivate, LLC
345 Fourth Street
San Francisco, CA 94107
Attention: Emily Stapleton, General Manager
Phone: 415-758-3658
Email: emilystapleton@motivateco.com

With a required copy to:

Bay Area Motivate, LLC
220 36th Street, Suite 3A
Brooklyn, NY 11232

Attention: Justine Lee, General Counsel
Email: justinelee@motivateco.com

17. Miscellaneous. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns. Time is of the essence with respect to the full performance by each Party of each of its duties and obligations arising under this Agreement. This Agreement may be executed in original counterparts, where all counterparts taken together create the binding Agreement. Emailed signatures are sufficient to bind the Party sending the emailed signature.

SIGNATURE PAGE FOLLOWS

The Parties execute this Agreement as of the Effective Date.

LICENSEE:

Bay Area Motivate, LLC,
a Delaware limited liability company

By: *Emily Stapleton*
Print Name: Emily Stapleton
Print Title: General Manager

LICENSOR:

TRANSBAY JOINT POWERS AUTHORITY,
a California joint powers agency

By: _____
Print Name: Mark Zabaneh
Print Title: Executive Director

EXHIBIT A

**PROPERTY ADDRESS AND
DRAWING OF THE LICENSED AREA**

Address: Salesforce Transit Center
Portion located at 85 Natoma Street, San Francisco

EXHIBIT B
ADDITIONAL INSUREDS

Transbay Joint Powers Authority

City and County of San Francisco

Alameda-Contra Costa Transit District

Peninsula Corridor Joint Powers Board - Caltrain

State of California, Department of Transportation

Trustee, the Series 1 Holders, the LC Banks and the Direct Placement Banks, and their officers, agents and employees, as those terms are defined in the “Sublease – TJPA Property, dated as of January 1, 2017, by and between U.S. Bank National Association, in its capacity as Trustee, as Sublessor, and City and County of San Francisco, as Sublessee” recorded in the official records of the City and County of San Francisco on January 17, 2017 as document number 2017-K395369

United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau

Salesforce.com and all legal entities controlling, controlled by, or under common control with, directly or indirectly, salesforce.com

All of the officers, directors, agents, representatives, permitted assigns, and employees of each of the above.

The Additional Insureds listed in this Exhibit shall also include such other parties as the TJPA may request from time to time.



● = PLAN REFERENCE POINT

SITE LOCATION
NOT TO SCALE

Stand Pipe	SP	Parking Meters	PM
Fire Hydrants (High Pressure)	+FH		
Fire Hydrants (Low Pressure)	+FL		
Street Light with Arm	SLA		
Street Light	SL		
Utility Pole	UP		
Signal Pole	SP		
ABBREVIATIONS			
BS	= BUS SHELTER	TC	= TRASH CAN
BR	= BIKE RACK	TYP.	= TYPICAL
CC	= TRAFFIC SIGNAL CONTROLLER CABINET	UC	= UTILITY CABINET
DI	= DRAINAGE INLET	V	= UTILITY VALVE
DF	= LINEAR FEET	UV	= UTILITY VALVE
MB	= MAIL BOX	R/C	= EXISTING RED CURB
MH	= MANHOLE	B/C	= EXISTING BLUE CURB
NS	= NEWSPAPER STAND	Y/C	= EXISTING YELLOW CURB
PB	= PULL BOX	G/C	= EXISTING GREEN CURB
M/C	= MOTORCYCLE	W/C	= EXISTING WHITE CURB

SITE NOTES

- OFF-STREET SITE WITHIN TRANSBAY CENTER (GROUND LEVEL)



VICINITY MAP
NOT TO SCALE

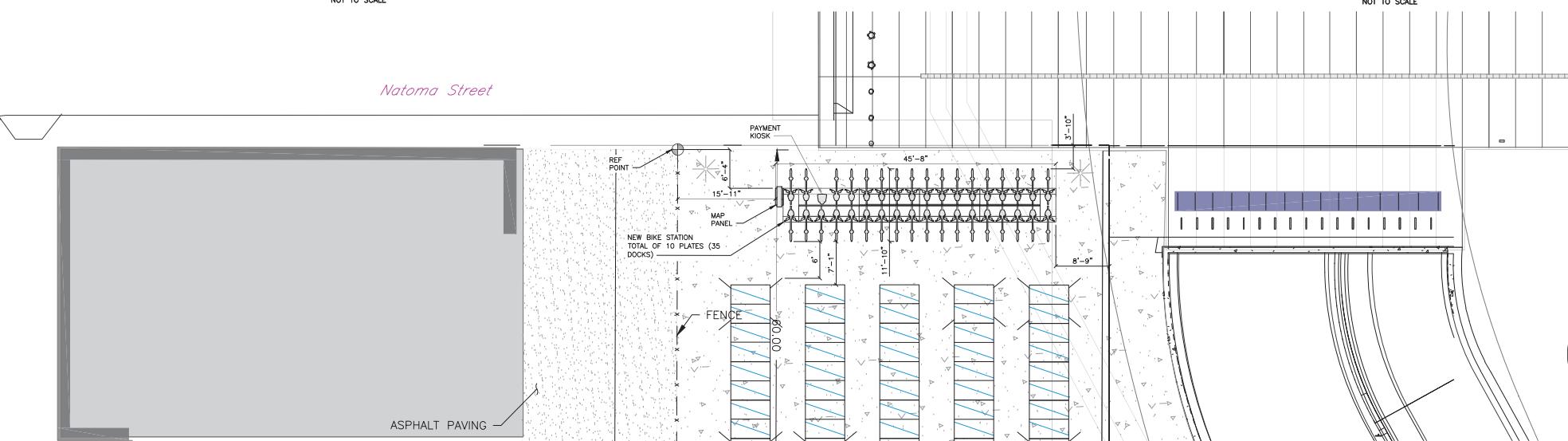


EXHIBIT A

REVISIONS		
NO.	DATE	DESCRIPTION
xx/xx/xx		

motivate
get going

345 4th Street
San Francisco, CA 94107

DRAWN BY:	JCD
DESIGNED BY:	JCD
CHECKED BY:	HMG
DATE:	5/17/18
PROJECT NO:	

Ford GoBike

TJPA

GIVEN DIMENSIONS TAKE PRECEDENCE OVER SCALED MEASUREMENTS

STATION TYPE:	Standard Off-Street
STATION ID:	SF-G29-1
PLATES:	10
DOCKS:	35
KIOSKS:	1

Station Site and Plan
SF-G29-1
TRANSBAY CTR (NATOMA ST AT 2ND ST)