

MEMORANDUM

July 7, 2016

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. Leslie Katz
Hon. Eleni Kounalakis
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Interim Executive Director

SUBJECT: Request Approval to: (1) enter into a Memorandum of Understanding M-16143 with the San Francisco Municipal Transportation Agency and (2) enter into a 9-year 6-month License agreement to use property with Bay Area Motivate LLC, the regional bike share program operator for Port waterfront locations for the purpose of operating a Bike Share program, with a 19-month fee waiver

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Executive Summary

On February 9, 2016, Bay Area Motivate LLC (“Motivate”), the Bay Area Bike Share operator, Port and Mayor’s Office staff presented the Bay Area Bike Share program and agreements to the Port Commission as an informational item.¹ That presentation summarized the new Bike Share program agreement (“Program Agreement”) for the City and County of San Francisco, which was entered into in December 2015. The program agreement authorizes the continuation and expansion of the bike share program through a 10-year term, with two renewal options for 5 years each if certain requirements are met. These requirements include the provision and management of a City of San Francisco bike share system with 4,500 bicycles at no cost to the City of San Francisco; program revenue-sharing; insurance; indemnification; and community benefits. In exchange, Motivate is authorized to add sponsorship branding to program equipment consistent with local advertising ordinances.

Responses to the Port Commission questions made during this February 9, 2016 presentation are provided as **Exhibit A**.

THIS PRINT COVERS CALENDAR ITEM NO. 14B

¹ Commissioners had a number of questions about the program that were not adequately addressed at the February 9 informational presentation; written responses regarding the key issues raised are provided herein as Exhibit E

There are currently five bike share program stations on Port property that were authorized through Port agreements which will expire in August 2016. To renew these agreements in a manner that is consistent with the expectations of the program agreement for the location and operation of bike share stations on Port property, Port staff has negotiated two new bike share agreements and is seeking Port Commission approval of those agreements today. The agreements are (1) A License agreement with Motivate (the "Licensee") and (2) A Memorandum of Understanding ("MOU") with the San Francisco Municipal Transportation Agency ("SFMTA").

Background on the Bay Area Bike Share Program and Regional Agreements

The transportation sector accounts for more than 50 percent of the air pollution in the Bay Area region. In an attempt to reduce air pollution in the region from transportation related activities, the Bay Area Air Quality Management District ("Air District"), the San Francisco Municipal Transportation Agency ("SFMTA") and other Bay Area city transportation agencies, launched a two year Bay Area Bike Share pilot program in August 2013 and expired in 2015. While the pilot program was largely successful, it lacked the scale required to maximize public benefit, which led to a newly formed and expanded agreement. There are two regional agreements that govern the Bay Area Bike Share Program. These agreements, which were negotiated and entered into by the parties concurrently, are: (1) the Program Agreement between MTC and Motivate which provides for the creation and operation of a bike share program in Berkeley, Emeryville, Oakland, San Francisco, and San Jose (the "Program"). And (2) a Coordination Agreement between MTC, Motivate, and the cities of Berkeley, Emeryville, Oakland, and San Jose, and the City and County of San Francisco, by and through the SFMTA.

Motivate, LLC

The current program sponsors (MTC and the agencies listed above), selected Motivate to operate the regional program through a sole-source contract. The bike share sponsors made this selection for the following reasons: (1) Motivate, having purchased the assets and business of the original operator is the existing bike share operator and is in good standing; (2) Motivate is a bike share industry leader, and the largest and most experienced bike share company in the nation; and (3) Motivate offered to deliver a Bay Area bike share system with 7,000 bikes system-wide at no public cost.

Motivate manufactures bike share bikes, stations, and related equipment and currently operates bike share programs in New York City, the District of Columbia, Boston, and Chicago in the United States, as well as programs in Canada and Australia. Motivate is owned by a team of investors including the CEOs of Equinox, a fitness and high performance lifestyle leader and Related Companies, one of the nation's most prominent real estate firms. The leadership at Motivate includes staff from transportation agencies and public private enterprises.

The Program Agreement obligates Motivate to:

- Provide up to 4,500 bike share bikes spread among at least 150 stations within the City of San Francisco at no cost to the City.

- Indemnify the City against most third party claims resulting from the operation of bike share;
- Maintain the City required insurance policies;
- Install the bike share equipment and monitor and maintain the stations on a set schedule
- Provide program discounts for low-income residents qualifying for the PG&E CARE program or Muni Lifeline program;
- Place at least 30 bike share stations (20% of all stations) in San Francisco's ABAG/MTC-designated Communities of Concern
- Share program revenues with Participating Cities if a specified revenue hurdle is exceeded;
- Provide monthly reporting on the program to the agreement partners; and
- Maintain a \$250,000 security deposit for the regional program.

In exchange, Motivate has authorization to install sponsorship branding on the Bay Area bike share equipment consistent with local laws.

SFMTA is responsible for reviewing and permitting the majority of the bike share stations placed on public property in San Francisco (i.e. stations located within public rights of-way that are controlled by the SFMTA). The Port and other third party entities are responsible for reviewing and permitting stations located within their respective jurisdictions. The Program Agreement between MTC and Motivate stipulates that SFMTA will not charge Motivate permitting fees for initial station installations on City property, but the San Francisco Port and Recreation and Parks Departments may charge for installation permits for stations located within their jurisdiction.

License Agreement with Motivate

The License will authorize use of Port property for the installation of a number of bike share stations. Except for the terms described below, the License will be consistent with the Port standard license form, including standard terms regarding revocation, defaults, signs/advertising review, surrender, hazardous materials, indemnification, insurance requirements, and compliance with City, Port and Trust requirements.

Key terms of the agreement include the following:

- 1) A Port station location notification process and siting criteria that requires station locations to be consistent with applicable standards for spacing improvements in public areas located on Port property including areas within the Bay Conservation and Development Commission ("BCDC") jurisdiction and Port tenant leasehold areas.
- 2) Consistent with the regional agreements with MTC and the participating agencies including the City and County of San Francisco through the SFMTA, Motivate's indemnity obligation will not include liability for a claim to the extent that it can be attributed to the Port's gross negligence or willful misconduct.
- 3) A non-compete provision to ensure that there is a pricing difference between the existing bike rental operators on Port property and bike share.

- 4) The continuation of the existing Port bike share stations at: (A) Roundhouse Plaza at The Embarcadero and Sansome Street; (B) The Embarcadero sidewalk bulb-out bordering Seawall Lot 324 between Vallejo and Broadway Streets; (C) Harry Bridges Plaza; (D) The terminus of Steuart Street at Gap Plaza on The Embarcadero, and (E) the terminus of Spear Street on The Embarcadero at Bryant Street.
- 5) An allowance to expand the number of program stations on Port property to 30 additional stations which will be subject to approval by Port staff; and
- 6) Motivate will pay fair market value for bike share stations on Port property by providing monthly payments consistent with the current Port Commission approved parameter rate for improved or paved land or the appropriate land use category for the existing and future bike share stations when they are added. A rent fee increase of 3% annually will be imposed on each anniversary of the agreement commencement date. The proposed monthly rent for the existing stations will be \$1,117.76. This rental fee is based on the total area of the existing bike share stations which is approximately 1,397 square feet and the effective Port Commission minimum per square foot fee for improved land when this agreement was negotiated which was \$.80 per square foot. The existing stations are on improved land, future stations may not be.

Fee Abatement Period

Motivate is seeking an abatement of its obligation to pay a fee for the initial 19 months of the License term. During this initial period, Motivate will be in program build-out mode in which they will have significant capital costs (to purchase the bikes and related equipment and install the stations) and the projected program revenues (including membership revenue and sponsorship funding) will be far below this capital outlay - \$20 Million total revenue (\$11M sponsorship revenue plus \$9M membership revenue) vs. \$55.6 Million costs (\$37.6M capital expenditures plus \$18M operating costs).

Port staff supports granting Motivate's request in acknowledgement of and in response to both the program benefits and the financial reality that Motivate is facing during this start up period, as described in the letter from Motivate attached as **Exhibit B**. The proposed no fee period would start at the commencement of the license agreement, which if approved today is anticipated to be August 1, 2016, and would end on February 28, 2018.

After this 19 month period, Motivate is expected to support the program operating expenses with program membership funding and sponsorships. For reference, please find the complete draft License attached as **Exhibit C**.

Memorandum of Understanding with SFMTA

In order to ensure proper implementation and management of the program and to minimize the Port's potential liabilities in connection with this program, Port and SFMTA have agreed to the terms of an MOU. This MOU is co-terminus with the License and provides that: (1) SFMTA will provide access to the program security fund, program data sharing, and potential revenue sharing based on the program agreement formula; and (2) SFMTA will be responsible for some potential liabilities and damages that the Port is not able to recover

through the License with Motivate or the Program Agreement. In addition, this MOU has a termination provision that allows the Port to terminate the MOU and bike share program license if the obligations under the MOU are not fulfilled. This MOU with SFMTA attached as **Exhibit D**.

Expansion Stations

Motivate is currently evaluating the expansion bike share station locations for the entire program to meet the expansion requirements. On Port property, the Phase I expansion bike share stations under consideration are located at: (1) the Terry Francois Blvd traffic median between Mission Bay Blvd North and South, and bordering the Bayview Boat house; (2) The Third Street sidewalk between Berry Street and the Portwalk at AT&T park; and (3) Steamboat Plaza at SWL 332 (this area is on the west side of the Embarcadero near Brannan Street). Motivate, with Port staff authorization, is seeking agreement from the SF Giants and the San Francisco Office of Community and Investment and Infrastructure (OCII) for approval of proposed locations (2) and (3) above.

Additional Bike Share stations are being studied at: Pier 27 Plaza; Ferry Building area Pier ½ and Ferry Plaza; Pier 70; Seawall Lot 337; and Seawall Lots 320-324. Please refer to **Exhibit E** for more information on the existing and proposed bike share stations.

Regulatory Approvals

The Bay Area regional bike sharing program is subject to environmental review under the California Environmental Quality Act (“CEQA”). On October 19, 2015, the San Francisco City Planning Department has issued a “Cat Ex” CEQA exemption from environmental review (2015-005492 ENV) under Class 3 or Section 15303, the allowance for the construction of new small structures. With respect to other regulatory requirements, the Port and Motivate will jointly seek bike share station approval for stations on Port property and within BCDC jurisdiction. BCDC is supportive of this program and is aware of the proposed Port agreements and proposed number of expansion stations.

Strategic Objectives

The continuation and expansion of the bike share program on Port property will assist with achieving two Port Strategic Plan goals:

- The livability goal of promoting alternative transportation and bicycle access
- The sustainability goal of having 50% of the trips made on Port property be made through clean transportation modes

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached Resolution approving the Memorandum of Understanding No. M-16143 with SFMTA and the License to Use Property No. 16130 with Motivate for a total term of 9 years and 6 months, with a fee abatement period for the initial 19 months of the agreement, and such additional terms and conditions as described in this Memorandum.

Prepared by: Kanya Dorland, Planner, Planning & Development and
Jamie Hurley, Project Manager, Planning & Development

For: Byron Rhett, Deputy Director, Planning & Development

Exhibit A– Response to Questions received at February 9, 2016 Port Commission Hearing

Exhibit B- Letter from Emily Stapleton of Motivate, LLC dated June 6, 2016

Exhibit C- License Agreement with Motivate

Exhibit D- Memorandum of Understanding with San Francisco Municipal Transportation
Authority

Exhibit E – Map of current and proposed station locations on Port property

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 16-21

- WHEREAS, Section B3.581 of the Charter of City and County of San Francisco empowers the Port Commission with the power and authority and duty to use, conduct, operate, maintain, manage, regulate and control the Port area(s) of the City and County of San Francisco; and
- WHEREAS, In cooperation with the Metropolitan Transportation Commission and San Francisco Municipal Transportation Agency (“SFMTA”), the Port proposes to enter into a license with the selected bike share operator, Bay Area Motivate LLC. (“License”), to operate bike share stations on the waterfront; and to enter into a Memorandum of Understanding (“MOU”) with SFMTA covering the bike share program; and
- WHEREAS, The License will maintain the existing five bike share stations and allow 30 additional stations if the station location complies with the Port’s location criteria, regulatory requirements (including Bay Conservation Development Commission public access areas and view corridors), the Americans with Disabilities Act street furniture spacing and circulation requirements; and tenant agreements if applicable; and
- WHEREAS, The License term is for a period of 9 years and 6 months, and includes a fee waiver for the first 19 months because the program: (1) is not expected to generate revenue exceeding operating expenses for 19 months and its capital cost will be financed, (2) is expected to benefit waterfront roadway users and thereby the Public Trust, (3) will not use areas that will interfere or harm with existing uses, and (4) the Port is not expected to spend any funds to support the program; and
- WHEREAS, Motivate will pay a fee for each bike share station on Port property based on the Port’s parameter rates beginning in March 2018; and
- WHEREAS, The License is on the Port’s standard form, terms and conditions, except as noted in the memo to the Port Commission dated July 7, 2016; and
- WHEREAS, The proposed MOU with SFMTA provides access to the program security deposit, program data sharing, formula based revenue sharing, and liability provisions; and
- WHEREAS, Port staff may adjust the number of stations and the size of the stations and may authorize up to 30 additional stations through amendments to the License if the changes comply with the Port’s station location criteria and subject to any necessary regulatory approvals; and

WHEREAS, The San Francisco Planning Department, Environmental Planning Division issued a Class 3 categorical exemption from environmental review under Section 15303 for this project; now therefore be it

RESOLVED, That the Port Commission approves the License 16130 between the Port and the Motivate, LLC on the terms and conditions set forth in the attached Memorandum in substantially the form attached as Exhibit B, including the 19 month fee waiver and authorizes the Executive Director to add up to 30 additional bike share stations on Port property using the criteria set forth in the License, and authorizes the Executive Director or her designee to execute the License; and be it further

RESOLVED, The Port Commission approves the MOU between the Port and SFMTA in the terms and conditions as described in the Memorandum to the Port Commission dated July 7, 2016 and in substantially the form attached as Exhibit C and authorizes the Executive Director or her designee to execute MOU M-16143; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the License and/or the MOU that she, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director or Chief Harbor Engineer of any such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 12, 2016.

Secretary