



office of

COMMUNITY INVESTMENT
and INFRASTRUCTURE

108-0312016-002

Agenda Item **No. 5(b)**
Meeting of October 4, 2016

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee, Executive Director

SUBJECT: Authorizing a Permit to Enter with Bay Area Motivate LLC, a Delaware limited liability company, for a bike share station at Yerba Buena Gardens for a period of ten years, from August 1, 2016 to July 31, 2026; former Yerba Buena Center Redevelopment Project Area

EXECUTIVE SUMMARY

Bay Area Bike Share is a regional bike sharing system with bike share stations across San Francisco and the Peninsula, operated by Bay Area Motivate in partnership with the Metropolitan Transportation Commission ("**MTC**") and participating cities, including the City and County of San Francisco ("**City**"). The system complements existing transit and transportation options, increases multi-modal travel options, and encourages bike use as a healthy, environmentally friendly and congestion-reducing transportation option. Currently, Bay Area Bike Share is comprised of 700 bikes and 70 bike share stations. San Francisco hosts 310 bikes and 35 stations, including a 19-dock bike share station at Yerba Buena Gardens ("**YBG Bike Share Station**").

Edwin M. Lee
MAYOR

Tiffany Bohee
EXECUTIVE DIRECTOR

Mara Rosales
CHAIR

Miguel Bustos
Marilyn Mondejar
Leah Pimentel
Darshan Singh
COMMISSIONERS

In 2013, the Successor Agency to the former San Francisco Redevelopment Agency, commonly known as the Office of Community Investment and Infrastructure ("**Successor Agency**" or "**OCII**"), the City, acting by and through its Municipal Transportation Agency ("**SFMTA**"), and Alta Bicycle Share, Inc., Bay Area Motivate's predecessor ("**Alta**"), entered into a one year permit to enter ("**2013 Permit**") to install the YBG Bike Share Station on OCII-owned property located near the corner of Third and Howard Streets in Yerba Buena Gardens ("**YBG**") pursuant to OCII's Permit to Enter Policy. In October 2014, the Commission on Community Investment and Infrastructure ("**Commission**") approved a second permit to enter with Alta and SFMTA to allow for continued use of OCII's property for the YBG Bike Share Station for a period of two years, through July 31, 2016 ("**2014 Permit**").¹

¹ OCII's Permit to Enter Policy, which was adopted on April 1, 2008 by Resolution No. 13-2008, requires the approval of the Commission for a permit (or series of permits) that would cause the aggregate permit to enter duration to exceed twelve months.

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The YBG Bike Share Station has requested a ten-year permit to enter to allow for continued access to the site for its operation ("**Permit**"). In light of the future transfer of YBG to the City, OCII sought, and received, the support of the City's Department of Real Estate for the Permit. Under the Permit, which is attached as Attachment A to this memorandum, Bay Area Motivate will indemnify OCII and provide appropriate insurance coverage for the term of the Permit. Refer to Attachment B for a location map and photos of the YBG Bike Share Station and Attachment C for a map delineating the permit area and configuration of the station.

Staff recommends authorizing the Permit with Bay Area Motivate for the YBG Bike Share Station.

BACKGROUND

Bay Area Bike Share

In 2013, in an attempt to reduce air pollution in the Bay Area from transportation related activities, the Bay Area Air Quality Management District ("**Air District**"), in association with local and regional partners launched Bay Area Bike Share, a self-service system of short-term rentals of publicly available bikes allowing users to check out a bike from a network of automated bike share stations and return the bike to the same or a different station. Bay Area Bike Share complements existing transit and transportation options and increases multi-modal travel options in the region. Stations are in operation 24 hours a day, 365 days per year, and bikes are redistributed throughout the day to ensure no station is over or under occupied. The Air District, as the overall project lead agency, signed an agreement with Alta to procure the bike share equipment and stations, and implement Bay Area Bike Share by deploying, operating, and maintaining the system components. Alta then partnered with the City, acting by and through SFMTA, to administer and implement Bay Area Bike Share in San Francisco. In October 2014, Bay Area Motivate purchased Alta and assumed operations of Bay Area Bike Share.

In December 2015, MTC and Bay Area Motivate entered into the Bay Area Bike Share Program Agreement ("**Program Agreement**") to provide for an expanded program supported by private funding. Concurrent with the Program Agreement, MTC, Bay Area Motivate, and the cities of San Francisco, Berkeley, Emeryville, Oakland, and San Jose, executed a coordination agreement setting forth the rights, liabilities, and responsibilities of each party with respect to the program and defining the organizational, management and operational structure for the successful development of the expanded program ("**Coordination Agreement**"). In San Francisco, the Coordination Agreement provides for citywide expansion of the Bay Area Bike Share system for a term potentially in excess of twenty years and comprised of approximately 320 stations and 4,500 bikes.

DISCUSSION

The YBG Bike Share Station

In 2013, SMFTA and Alta identified YBG as a prime location for one of San Francisco's initial 35 stations, given its diversity of land uses, visitors and residents. Also, a YBG location would provide connections to existing bikeways and maintain adequate distances from other bike share stations. The location identified for the YBG

Bike Share Station was about 300 square feet of OCII-owned land at Third and Howard, near the Yerba Buena Center for the Arts complex and Moscone Convention Center ("**Permit Area**").

Also in 2013, OCII, SFMTA and Alta entered into the 2013 Permit, which allowed for the installation and operation of the YBG Bike Share Station on the Permit Area. On July 15, 2014 by Resolution No. 51-2014, the Commission conditionally authorized the 2014 Permit for a period of two years, pending approval of the Oversight Board and the State of California Department of Finance ("**DOF**"). On September 8, 2014, by Resolution No. 7-2014, the Oversight Board approved the 2014 Permit. DOF did not trigger a review of the 2014 Permit, and it was thereby deemed approved. The 2014 Permit expired on July 31, 2016.

The YBG Bike Share Station consists of 19 bike docks built from four technical platforms and a map panel. Bay Area Motivate is responsible for the maintenance, operation, and eventual removal of the station as governed by the Program Agreement and Coordination Agreement.

Proposed Permit for YBG Bike Share Station

Bay Area Motivate would like to continue operations of the YBG Bike Share Station on the Permit Area for an additional ten-year period. OCII's Permit to Enter Policy requires Commission approval for a permit (or series of permits) causing the aggregate duration of the permit (or permits) to exceed twelve months. In this case, the aggregate permit duration would be 13 years. With approval of OCII's Long Range Property Management Plan ("**PMP**") by DOF in 2015, Oversight Board and DOF approvals of the Permit are not required.

The purpose of the Permit is solely to provide access to the site for the installation, operation, maintenance and eventual removal of the YBG Bike Share Station. Key terms of the proposed Permit include:

- **Permit Area.** The Permit Area is shown in Attachment C.
- **Term.** The term will be effective for ten years, commencing as of August 1, 2016 and terminating July 31, 2026.
- **Insurance and Indemnification.** Bay Area Motivate will indemnify OCII and provide appropriate insurance coverage for the term of the Permit.
- **Waiver of Fees.** Consistent with the terms of the 2013 Permit and 2014 Permit, Staff is recommending that a fee not be assessed for the Permit because of the significant public benefit provided by Bay Area Bike Share. The YBG Bike Station, as part of the larger Bay Area Bike Share Program, will help meet the City's goal of 20% of trips by bicycle by 2020, which was adopted by the City's Board of Supervisors in 2010 by Resolution 511-10 in order to reduce congestion and improve public health.
- **Assignment.** OCII is in the process of transferring its YBG real estate assets, including the property covered by the Permit Area, to the City for governmental use pursuant to the PMP. The YBG Bike Share Station is consistent with the governmental purposes described in the PMP. According to the terms of the Permit, if the YBG transfer occurs during the Permit term, then OCII's Executive Director

may (1) terminate the Permit, or (2) assign OCII's interest in the Permit to the City upon the transfer of YBG.

- **Primary Point of Contact.** OCII contracts with MJM Management Group ("**MJM**") for on-site property management services at YBG. MJM will continue to act as OCII's primary point of contact for all routine matters related to Bay Area Motivate's access to the Permit Area for maintenance, operations and eventual removal of the YBG Bike Share Station.

CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA")

The installation of the YBG Bike Share Station was categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") Guidelines Section 15303, as a new construction of a small structure. The Permit is an administrative activity that will not result in a physical change in the environment, and is therefore not a project subject to environmental review pursuant to CEQA Guidelines Sections 15378(b)(5) and 15061(b)(3).

STAFF RECOMMENDATION

Given the success to date of Bay Area Bike Share as well as the public benefit of expanding the program throughout the Bay Area, staff recommends authorizing the Permit. In addition, the City, as the future owner of YBG, has reviewed and recommended approval of the Permit.

(Originated by Marie Munson, Senior Development Specialist)



Tiffany Bohee
Executive Director

Attachment A:	Permit for YBG Bike Share Station (without attachments)
Attachment B:	Location Map and Photos of YBG Bike Share Station
Attachment C:	YBG Bike Share Station Permit Area and YBG Station Configuration

PERMIT TO ENTER

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California, commonly known as the Office of Community Investment and Infrastructure ("**Successor Agency**" or "**OCII**"), grants to BAY AREA MOTIVATE LLC, a Delaware limited liability company ("**Bay Area Motivate**" or "**Permittee**"), a non-exclusive permit to enter upon certain Successor Agency-owned real property (defined below as the "**Permit Area**"), located at Yerba Buena Gardens ("**YBG**") near the northeast corner of Third and Howard Streets, upon the terms, covenants and conditions hereinafter set forth in this Permit to Enter ("**Permit**").

RECITALS

This Permit is made with reference to the following facts and circumstances:

A. In 2013, in an attempt to reduce air pollution in the Bay Area from transportation related activities, the Bay Area Air Quality Management District (the "**Air District**") entered into an agreement with Permittee's predecessor in interest for the implementation, in association with local and regional partners including the City and County of San Francisco ("**City**"), a regional bike sharing system ("**Bay Area Bike Share**") that allows users to check out a bike from a network of automated bike stations and return the bike to the same or a different station. The system complements existing transit and transportation options, increases multi-modal travel options in the region, and encourages bike use as a healthy, environmentally friendly and congestion-reducing transportation option. Stations are in operation 24 hours a day, 365 days per year. Thirty-five Bay Area Bike Share stations are currently located in the City, including a bike share station on Successor Agency-owned property located near the corner of Third and Howard Streets in YBG ("**YBG Bike Share Station**").

B. The Successor Agency and Permittee's predecessor in interest entered into a one-year Permit to Enter ("**2013 Permit**") to allow for the installation, operation and eventual removal of the YBG Bike Share Station on the Permit Area pursuant to the Successor Agency's Permit to Enter Policy (adopted on April 1, 2008 by Resolution No. 13-2008, herein the "**Permit to Enter Policy**"). The YBG Bike Share Station consists of 19 docks built from four technical platforms and a map panel. See "**Attachment 1**" showing the location and photographs of the YBG Bike Share Station. See "**Attachment 2**" indicating the Permit Area and the configuration of the station.

C. On July 15, 2014 by Resolution No. 51-2014, the Commission on Investment and Infrastructure ("**Commission**") conditionally authorized a two-year permit with Permittee's predecessor in interest ("**2014 Permit**") for the continued use of the Permit Area, pending approval of the Oversight Board to the Successor Agency ("**Oversight Board**") and the State of California Department of Finance ("**DOF**"). On September 8, 2014 by Resolution No. 7-2014, the Oversight Board approved the 2014 Permit. DOF did not trigger a review of the 2014 Permit, and it was thereby deemed approved.

D. In December 2015, the Metropolitan Transportation Commission ("**MTC**") and Bay Area Motivate entered into an agreement to expand the program using private funding, to achieve maximum public benefit from Bay Area Bike Share. Concurrently, MTC, Bay Area

Motivate, the City and other participating cities—Berkeley, Emeryville, Oakland and San Jose—entered into a companion agreement for the expansion and operation of Bay Area Bike Share. Expanding the bike share system in San Francisco will help achieve the City’s goal of 20 percent trips by bike by 2020, as set forth in the Board of Supervisors Resolution 511-10, adopted on October 26, 2010. The expanded citywide system will provide up to 4,500 bikes spread among at least 320 stations provided at no cost to the City.

E. The term of the 2014 Permit expired on July 31, 2016. Bay Area Bike Share continues to successfully operate, and Bay Area Motivate has requested a ten year permit to enter, from August 1, 2016 to July 31, 2026, to allow continued access to the Permit Area for operation of the YBG Bike Share Station (“**Permit**”). Consistent with the terms of the 2013 Permit and 2014 Permit, the Permit does not include a fee for use of the Permit Area because of the significant public benefit provided by Bay Area Bike Share. The YBG Bike Station, as part of the larger Bay Area Bike Share Program, will help meet the City’s goal of 20% of trips by bicycle by 2020, which was adopted by the Board of Supervisors in 2010 by Resolution 511-10 in order to reduce congestion and improve public health. Bay Area Motivate will continue to be responsible for the maintenance, operation, and eventual removal of the YBG Bike Share Station as governed by the Program Agreement and Coordination Agreement.

F. The Permit to Enter Policy requires Commission approval for a permit (or series of permits) that would cause the aggregate permit (or permits) duration to exceed twelve months. In this case, the aggregate permit duration is 13 years. Therefore, the Commission approved this Permit by Resolution No. ____-2016, adopted at its meeting of October ____, 2016.

G. OCII is in the process of transferring its YBG real estate assets, including the property covered by the Permit Area, to the City for governmental use pursuant to the Successor Agency’s Long Range Management Plan (“**PMP**”). The Permit for the YBG Bike Share Station is consistent with the governmental purposes described in the PMP. On the date the YBG assets transfer to the City, the Permit will transfer to the City, and the City’s Director of Property shall manage the Permit Area, subject to the terms and conditions of the Permit, including its early termination provision. If the City acquires the property containing the Permit Area prior to the termination of this Permit, the City shall use reasonable efforts to promptly notify Permittee of such change in ownership. Permittee and City shall have no contractual relationship nor shall either party be liable to the other in connection with this Permit (except as expressly provided herein) until such change in ownership has occurred.

ACCORDINGLY, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Successor Agency and Permittee hereby agree as follows:

1. **Permit Area:** The Permit Area is more particularly shown on Attachment 2 hereto and made a part hereof. The Permit is non-exclusive and is subject to the rights of ingress and egress by the Successor Agency; the MJM Management Group (“**Gardens Manager**” or “**MJM**”), who provides on-site property management services at YBG; and all others who are authorized to access portions of the Permit Area.

2. **Permitted Use:** The Permittee shall use the Permit Area to install, maintain, operate, and eventually remove the YBG Bike Share Station. This is described herein as the “Permitted Use”. No uses other than those specifically stated herein are authorized hereby.

3. **Time of Entry:** Permittee’s rights and obligations under this Permit shall be effective as of August 1, 2016, at 12:00 a.m. and shall terminate on July 31, 2026, at 11:59 p.m., unless earlier terminated by the Executive Director of the Successor Agency under Section 11 hereof, or earlier terminated by Permittee by cessation of activities/operations, or unless such time is extended by the Executive Director. If, without written objection by Successor Agency, Permittee continues to access the Permit Area for the Permitted Use after the expiration of the Term, this Permit shall continue in effect on a month-to-month basis. Such holding over period shall be on the same terms and conditions of this Permit. Any holdover period shall be terminable by either party upon thirty (30) days' written notice to the other party.

4. **Compensation to Successor Agency:** Permittee shall pay compensation to the Successor Agency:

YES ☐

NO ☒

If yes is checked, Permittee shall pay the Successor Agency:

☐ for duration of the permit to enter or

☐ One cent (\$ 0.01) per square foot per day.

5. **Indemnification:**

a. **General Indemnification:** To the fullest, extent allowable by law, Permittee shall hold harmless, defend at its own expense and indemnify the Successor Agency, the City and County of San Francisco and their respective commissioners members, officers, agents and employees against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, arising directly or indirectly from all acts or omissions to act of Permittee or its officers, agents or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses arising from the gross negligence or willful acts of the person or entity seeking to be held harmless, defended or indemnified, and excluding any and all liability, claims, losses, damages or expenses arising out of any Release (as defined in Section 6f below) or threatened release of any Hazardous Substance (as defined in Section 6d below), pollutant, or contaminant, or any condition of pollution, contamination, or nuisance which shall be governed exclusively by the provisions of Section 6c below. In addition to Permittee's obligation to indemnify Successor Agency, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Successor Agency from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Permittee by Successor Agency and continues at all times thereafter. This section does not apply to permits for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8.

b. Indemnification by Design Professionals: This section applies to any design professional as defined in California Civil Code Section 2782.8 who is or will provide professional services as part of, collateral to, or affecting this Permit with the Permittee ("Design Professional"). Each Design Professional who will provide design services shall defend, hold harmless and indemnify the Successor Agency, the City and their respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional. It is expressly agreed and understood that the duty of indemnification pursuant to this section is to be interpreted broadly to the greatest extent permitted by law, including but not limited to California Civil Code Section 2782.8.

c. No Mechanics' Liens: Permittee shall not permit any mechanics' or other liens to be levied against the Permit Area for any labor or material furnished to Permittee or claimed to have been furnished to Permittee's agents or contractors in connection with the Permitted Use and Permittee shall hold the Successor Agency free and harmless from any and all cost or expense connected with or arising from the Permitted Use.

6. Hazardous Material Acknowledgement and Indemnification

a. Hazardous Material Acknowledgement: Permittee recognizes that, in entering upon the Permit Area and performing the Permitted Use under this Permit, its employees, invitees, subpermittees and subcontractors may be working with, or be exposed to substances or conditions which are toxic or otherwise hazardous. Permittee acknowledges that the Successor Agency is relying on the Permittee to identify and evaluate the potential risks involved and to take all appropriate precautions to avoid such risks to its employees, invitees, subpermittees and subcontractors. Permittee agrees that it is assuming full responsibility for ascertaining the existence of such risks, evaluating their significance, implementing appropriate safety precautions for its employees, invitees, subpermittees and subcontractors and making the decision on how (and whether) to enter upon the Permit Area and carry out the Permitted Use, with due regard to such risks and appropriate safety precautions.

b. Proper Disposal of Hazardous Materials: Permittee assume sole responsibility for managing, removing and properly disposing of any waste produced during or in connection with Permittee' entry and/or Permitted Use of the Permit Area including, without limitation, preparing and executing any manifest or other documentation required for or associated with the removal, transportation and disposal of hazardous substances to the extent required in connection with the Permittee' activities hereunder.

c. Toxics Indemnification: Permittee shall defend, hold harmless and indemnify the Successor Agency, and its respective commissioners, members, officers, agents and employees from and against any and all claims, demands, actions, causes of action or suits (actual or threatened), losses, costs, expenses, obligations, liabilities, or damages, including interest, penalties, engineering consultant and attorneys' fees of every kind, nature and description, resulting from any release or threatened release of a hazardous substance, pollutant, or contaminant, or any condition of pollution, contamination, or nuisance in the vicinity of the Permit Area or in ground or surface waters associated with or in the vicinity of the Permit Area to the

extent that such release or threatened release, or condition is directly created by the Permitted Use undertaken by Permittee pursuant to this Permit or by any breach of or failure to duly perform or observe any term, covenant or agreement in this Permit to be performed or observed by the Permittee, including but not limited to any violation of any Environmental Law (as defined in Section 6e below); provided, however, that Permittee shall have no liability, nor any obligation to defend, hold harmless or indemnify any person for any claim, action, loss, cost, liability, expense or damage resulting from the discovery or disclosure of any pre-existing condition on or in the vicinity of the Permit Area; and provided further that Permittee shall be held to a standard of care no higher than the standard of care applicable to environmental and geotechnical professionals in San Francisco.

d. Hazardous Substances: For purposes of this Permit, the term "**Hazardous Substance**" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U. S. C. Section 9601(14), and in addition shall include, without limitation, petroleum, (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**" or "**PCB**"), PCB-containing materials, all hazardous substances identified at California Health & Safety Code Sections 25316 and 25281(d), all chemicals listed pursuant to California Health & Safety Code Section 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under applicable state or local law.

e. Environmental Laws: For purposes of this Permit, the term "**Environmental Laws**" shall include but not be limited to all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee and community right-to-know requirements, related to the Permitted Use.

f. Release: For purposes of this Permit, the term "**Release**" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance or pollutant or contaminant).

g. Soils Investigation: If the Permitted Use under Section 2 of this Permit includes any soils investigations, then Permittee warrant as follows:

(1) If any soils investigation permitted hereby involves the drilling of holes having a diameter dimension that could create a safety hazard for persons, said holes shall during any drilling operations be carefully safeguarded and shall upon the completion of said drilling operations be refilled (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling.

(2) The Successor Agency has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Permit Area. Permittee have the sole responsibility to locate the same and to protect the same from damage. Permittee shall be solely responsible for any damage to utilities or damage resulting from any damaged

utilities. Prior to the start of the Permitted Use, the Permittee are advised to contact Underground Services Alert for assistance in locating existing utilities at (800) 642-2444. Any utility conduit or pipe encountered in excavations not identified by Underground Services Alert shall be brought to the attention of the Successor Agency immediately.

(3) All soils test data and reports prepared based thereon, obtained from these activities shall be provided to the Successor Agency upon request and the Successor Agency may use said data for whatever purposes it deems appropriate, including making it available to others for use in connection with any development. Such data, reports and Successor Agency use shall be without any charge to the Successor Agency.

(4) Any hole drilled shall, if not refilled and compacted at the end of each day's operation, be carefully safeguarded and secured after the completion of each day's work, as shall the drilling work area and any equipment if left on the Permit Area.

7. Insurance:

a. Permittee shall procure and maintain, for the duration of the Permit, including any extensions, insurance against claims for injuries to person or damages to property which may arise from or in connection with performance of Permitted Use by the Permittee, its agents, representatives, employees or contractors. If Permittee maintains additional coverages and/or higher limits than the minimums shown in this Section 7, the Successor Agency requires and shall be entitled to the additional coverage and/or the higher limits maintained by Permittee.

b. Minimum Scope of Insurance: Coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).

(2) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01- any auto).

(3) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.

(4) Professional Liability Insurance appropriate to Permittee's profession covering all negligent acts, errors and omissions.

c. Minimum Limits of Insurance: Permittee shall maintain limits no less than:

(1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit (\$2,000,000). Applicable Umbrella or Excess Liability limits may be used to meet the terms of this paragraph.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employer's Liability limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease.

(4) Professional Liability Insurance: \$1,000,000 per claim and in the annual aggregate. If the Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained by the Permittee for no less than three (3) years beyond completion of the Scope of Services.

(5) Umbrella Insurance in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

d. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions above \$100,000 must be declared to OCII.

e. Other Insurance Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(1) The "Office of Community Investment and Infrastructure/Successor Agency to the Redevelopment Agency of the City and County of San Francisco, the City, and their respective commissioners, members, officers, agents and employees" are to be covered as additional insureds as respects: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Permittee; and liability arising out of work or operations performed by or on behalf of the Permittee.

(2) For any claims related to this Permit, Permittee's insurance coverage shall be primary insurance as respects to OCII and its respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII and its respective commissioners, members, officers, agents or employees shall be in excess of Permittee's insurance and shall not contribute with it.

(3) Any failure to comply with reporting provisions of the policies shall not affect Permittee's obligation to provide and maintain coverage to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees as set forth in this section.

(4) Each insurance policy required by this clause must be endorsed to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to OCII.

(5) Permittee hereby grants to OCII a waiver of any right to subrogation that any insurer of said Permittee may acquire against OCII by virtue of the payment of any loss under such insurance. Permittee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not OCII has received a waiver of subrogation endorsement from the insurer.

(6) If any of the required policies provide coverage on a claims-made basis:

- i. The Retroactive Date must be shown and must be before the date of the commencement of the Permitted Use.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least three years after termination of the Permitted Use.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the commencement of the Permitted Use, Permittee must purchase "extended reporting" coverage for a minimum of three years after expiration of Permit.

f. Acceptability of Insurers: Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VIII, unless otherwise approved by the OCII's Risk Manager.

g. Verification of Coverage: Permittee must furnish OCII, prior to execution of this Permit and thereafter upon OCII's request, with certificates of insurance and with original additional insured endorsements evidencing coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and additional insured endorsements may be on forms provided by OCII. All certificates and additional insured endorsements are to be received and approved by OCII before the Permitted Use commences. [To the extent OCII requests copies of Permittees policy(ies) of insurance, Permittee shall promptly provide a copy of same but may redact information from the policy if such information is a trade secret under applicable laws.]

h. Subpermittees and Contractors: Permittee shall include all subpermittees and contractors as insureds under its policies or shall furnish separate certificates and endorsements for each subpermittee and subcontractor. All coverages for subpermittees and contractors shall be subject to all the requirements stated herein.

i. Insurance by Permittee: Pursuant to the agreement between Permittee and the MTC, Permittee will be solely responsible for providing the insurance required under this Permit. Therefore, Permittee will provide evidence of insurance to the Successor Agency for the coverages listed in Section 7 of this Permit.

8. **"As Is", Maintenance, Restoration, Vacating:** The Permit Area is accepted "AS IS" and entry upon the Permit Area by Permittee is an acknowledgment by Permittee that all dangerous places and defects in said Permit Area are known to it and are to be made secure and kept in such secure condition by Permittee. Permittee shall maintain the Permit Area so that it will not be unsafe, unsightly or unsanitary. Upon termination of the Permit, Permittee shall vacate the Permit Area and remove the YBG Bike Share Station, including, without limitation, any and all docks, kiosks, map modules, street treatments and street markings located thereon and restore the Permit Area to its condition at the time of entry. The Successor Agency shall have the right without notice to dispose of any equipment left by Permittee after it has vacated the Permit Area. Successor Agency makes no representations or warranties, express or implied, with respect to the environmental condition of the Permit Area or the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any Environmental Laws and regulations of the federal, state and local governments, and gives no indemnification, express or implied, for any costs of liabilities arising out of or related to the presence, discharge, migration or Release or threatened Release of the Hazardous Substance in or from the Permit Area.

9. **Compliance with Laws:**

a. **Compliance with all Laws:** All activities and operations of the Permittee and/or its subpermittees, agents, contractors or employees or authorized entries under this Permit shall be in full compliance with all applicable laws and regulations of the federal, state and local governments.

b. **Nondiscrimination:** The Permittee herein covenants for itself and for all persons claiming in or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, gender identity, marital or domestic partner status, disability (including AIDS or HIV status), national origin or ancestry in the use, occupancy or enjoyment of the Permit Area and Permitted Use.

10. **Temporary Removal or Relocation; Emergency Access:** In the event that OCII desires to undertake essential construction work that would necessitate the temporary removal of the YBG Bike Share Station, OCII shall provide 30 days' advance written notice to Permittee and the parties shall agree in good faith on the removal or relocation of the station; provided that OCII shall not be responsible for any costs of removal or relocation; and further provided that OCII shall limit such temporary removal or relocation requests to no more than one per calendar year during the Term. Without modifying the non-exclusive nature of the Permit, Permittee agrees that OCII may enter the Permit Area at any time, without notice, in the event of an unforeseen emergency posing an imminent threat to public health and safety or public property; provided that, to the extent practicable, OCII shall provide Permittee with 96 hours' written notice of OCII's intention to remove or relocate all or a portion of the YBG Bike Share Station in response to such emergency, and, upon receipt of such notice, Permittee agrees to temporarily remove or relocate the YBG Bike Share Station at its sole expense within such 96 hour period. OCII shall have the right to use any and all means that OCII deems proper to remedy the causes or effects of such emergency. OCII shall not be liable in any manner, and Permittee hereby waives any claims for

damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of OCII's entry onto the Permit Area in such an emergency.

11. Early Termination: This Permit may be terminated by the Successor Agency or its successors-in-interest in its sole discretion upon seven (7) calendar days' written notice to Permittee. Bay Area Motivate may terminate this Agreement for any reason upon thirty (30) days written termination notice to the Successor Agency.

12. Assignment: Permittee may not assign its rights and obligations under this Permit without prior written consent of the Successor Agency, which consent shall be in Successor Agency's sole discretion, except that Permittee may assign this Permit or any of Permittee's rights or obligations hereunder to the MTC or any of its designees, or to any of Permittee's affiliates without Successor Agency's consent; provided that the Permittee shall not be released of its obligations under this Permit until such time as the assignee's written assumption thereof is provided to OCII, on a form acceptable to OCII, to assume all rights and obligations of Permittee under this Permit. Successor Agency may freely assign this Permit, without Permittee's consent, together with Successor Agency's conveyance of its ownership interest in the Permit Area. The Successor Agency anticipates that ownership of the Permit Area (along with YBG) will transfer to the City within the next year, as required under the PMP, and that this Permit will be assigned to the City, unless terminated pursuant to Section 11 above. Upon such time as the City acquires the property containing the Permit Area from OCII, Permittee agrees and acknowledges that it may be required by the City to amend and re-state the terms and conditions of the Permit to be in accordance with the City's regulatory requirements and laws.

13. Entry under Permittee Authority: The Permit granted Permittee for the Permitted Use as defined in Section 2 shall mean and include all subpermittees, agents, representatives, employees and contractors of the Permittee. In this regard, Permittee assume all responsibility for the safety of all persons and property and any contents placed in the Permit Area pursuant to this Permit. All Permitted Use performed in the Permit Area and all persons entering the Permit Area and all property and equipment placed therein in furtherance of the permission granted herein is presumed to be with the express authorization of the Permittee.

14. Governing Law: This Permit shall be governed by and interpreted under the laws of the State of California.

15. Attorneys' Fees: In any action or proceeding arising out of this Permit, the prevailing party shall be entitled to reasonable attorneys' fees and costs. For purposes of this Permit, the reasonable fees of attorneys of either party shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the attorney's services for either party were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the San Francisco City Attorney's Office.

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 facsimile (with confirmation of transmission); (iii) when sent by email, with confirmation of transmission; (iv) the day after sending by a nationally recognized overnight delivery service (with confirmation of transmission);

or (v) three days after sending by certified mail (return receipt requested).

If to Successor Agency, notices shall be sent to:

Successor Agency
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Executive Director
Phone: 415-749-2400
Fax: 415-749-2585
Email: tiffany.bohee@sfgov.org

If to Bay Area Motivate, notices shall be sent to:

Bay Area Motivate LLC
220 Jerrold Avenue, Unit J
San Francisco, CA 94124
Attention: Emily Stapleton, General Manager
Phone: 415-758-3658
Email: emilystapleton@motivateco.com

Bay Area Motivate LLC
5202 Third Avenue
Brooklyn, New York 11220
Attention: Justine Lee, General Counsel
Phone: 646-767-4456
Email: justinelee@motivate.com

17. Supplementary Provisions:

a. Primary Point of Contact. MJM acts as the Successor Agency's primary point of contact for all routine matters related to the Permit Area, and Permittee shall, as an initial matter, contact MJM for all matters related to Permittee's access to, maintenance and operations of, and removal of the YBG Bike Share Station. MJM can be contacted by phone at (415) 820-3550 or email at MMcCue@mjmimg.com.

b. Attachments:

Attachment 1: Location Map and Photos of YBG Bike Share Station
Attachment 2: YBG Bike Share Station Permit Area and YBG Station Configuration

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IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the _____ day of _____, 2016.

SUCCESSOR AGENCY:

**SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN
FRANCISCO**, a public body organized and
existing under the laws of the State of
California

PERMITTEE:

BAY AREA MOTIVATE, LLC,
a Delaware limited liability company

By: _____
Tiffany Bohee
Executive Director

By: _____
Emily Stapleton
General Manager

Authorized by Resolution No. ____ 2016,
adopted on _____, 2016

CITY ACKNOWLEDGEMENT:

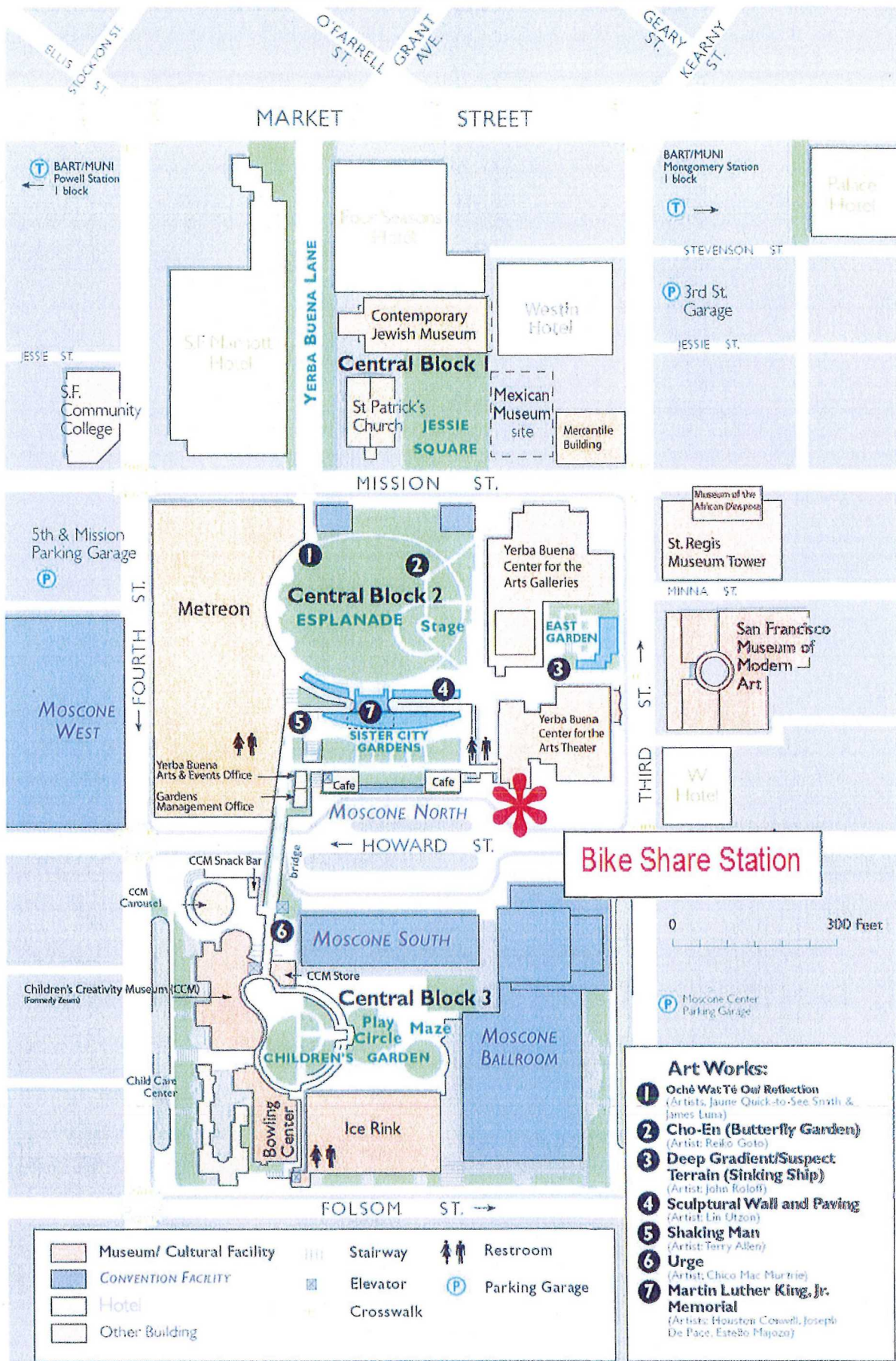
Department of Real Estate

By: _____
John Updike
Director of Property

Attachment B

Location Map and Photos of YBG Bike Share Station

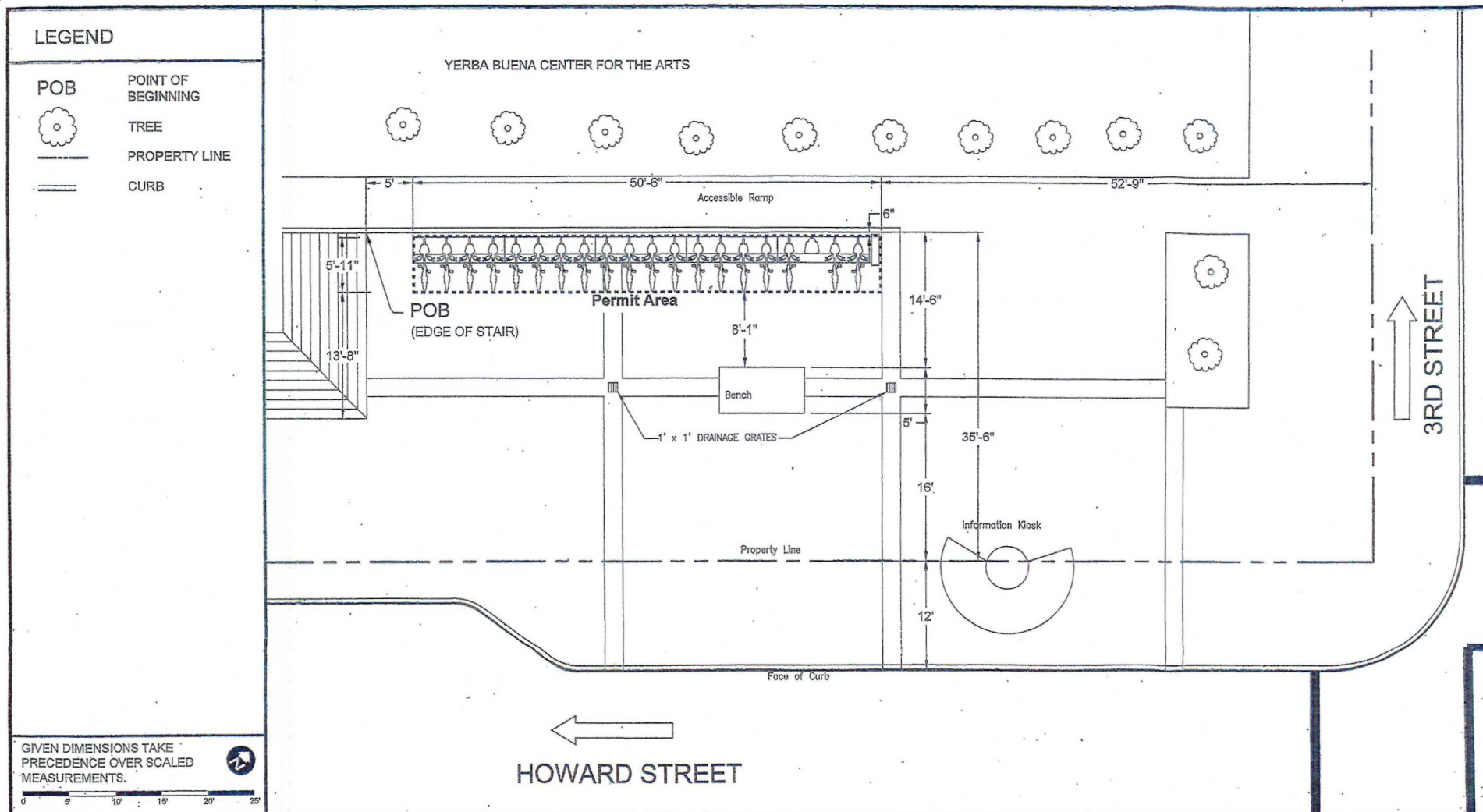
YERBA BUENA GARDENS





Attachment C

YBG Bike Share Station Permit Area and Station Configuration



GENERAL INFO							
STATION TYPE:		OFF STREET		DATE:	04.19.2013	DESIGNED BY:	BB
PLATES:	5	MAP FRAME:	1	REVISED:	07.10.2013	DRAWN BY:	BB
DOCKS:	19	CITY:	SF	NOTES:		REVIEWED BY:	AW/LW
KIOSK(S):	1	OWNER:	YBCFA	FILE:	0128_v004		

APPROVALS	
SIGNED:	DATE:

**HOWARD STREET
AT 3RD STREET**

BAY AREA BIKE SHARE

0128