



# EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

## AGENDA

Special Meeting of the Board of Directors

July 13, 2022 @ 9:15 AM

[Zoom](#)

Meeting ID: 854 3638 6941

### **Chair**

*Bobby Lee, At-Large*

*Residential Member*

### **Vice Chair**

*Andrew Allen*

*At-Large Business*

*Member*

### **Secretary**

*Betsy Cooley, At-Large*

*Residential Member*

### **Treasurer**

*Geoffrey Sears,*

*Wareham Development*

### **Directors**

*Peter Schreiber,*

*Pixar*

*Colin Osborne*

*At-Large Business*

*Member*

*Kassandra Kappelos*

*Public Market*

1. Call to Order
2. Public Comment
3. Approval of the Minutes of the June 16, 2022, Board of Directors Meeting (Attachment)
4. Business Items
  - A. Review and Consider Approval of Resolution 22-07 Declaring Board Meetings will be held via Teleconference (*Attachment*)
  - B. Review and Consider Approval of Transportation agreement with Lennar for Operations and Oversight of the West Oakland Shuttle (*Attachment*)
  - C. Review and Consider Approval of Amendments to the following Agreements for Operations & Oversight of the West Oakland Shuttle (*Attachments*)
    - i. MV Transportation – Amendment 5
    - ii. Gray Bowen Scott – Amendment 1
5. Confirm date of Next Meeting – August 18<sup>th</sup>, 2022
6. Adjournment

EMERYVILLE TRANSPORATATION MANAGEMENT ASSOCIATION

**ACTION SUMMARY MINUTES**

Board of Directors Meeting

June 16<sup>th</sup>, 2022

**LOCATION: VIDEO CONFERENCE**

*Directors Present:* Bobby Lee, Chair  
Andrew Allen, Vice Chair  
Betsy Cooley, Secretary  
Geoffrey Sears, Treasurer  
Peter Schreiber, Director  
Colin Osborne, Director

*Others Present:* Roni Hatstrup, Executive Director  
Karen Boggs, Operations Director  
Debi Lawrence, Project Analyst  
Christine Daniel, City of Emeryville  
Brad Farmer, City of Emeryville  
Kim Burrowes, City of Emeryville  
Pedro Jimenez, City of Emeryville  
Mohamed Alaoui, City of Emeryville

1. Call to Order  
*Bobby Lee called the Board of Director's meeting to order at 9:19 AM.*
2. Public Comment  
*There were no comments from the public.*
3. Approval of the Minutes of the May 19<sup>th</sup>, 2022 Board of Directors Meeting  
*Betsy Cooley motioned for approval of the meeting minutes of the May 19<sup>th</sup>, 2022 Board of Directors Meeting. Geoffrey Sears seconded the motion.*  
*This item was approved by a unanimous vote.*  
  
*Yes: 6*  
*No: 0*  
*Abstain: 0*
4. Executive Directors Report
  - A. Bus Yard Repair  
*Roni confirmed that the TMA has all amendments for the repair work of the Bus Yard executed. The project kick-off is Monday, and the completion of work is scheduled for December 2022.*
  - B. EGR Ridership & Performance

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

**ACTION SUMMARY MINUTES**

Board of Directors Meeting

June 16<sup>th</sup>, 2022

*Karen provided an overview of the Ridership information, stating that we saw about 30% of pre-COVID for weekdays, with 59% of pre-COVID on the weekends, and an overall of 31%. Karen stated that we have about 90% on-time performance overall for May.*

*No formal action was required.*

5. Business Items

- A. Review and Consider Approval of Resolution 22-06 Declaring Board Meetings Will be Held Via Teleconference

*Geoffrey Sears motioned for approval of Resolution 22-06. Betsy Cooley seconded the motion.*

*This item was approved by a unanimous vote.*

*Yes: 6*

*No: 0*

*Abstain: 0*

- B. Review and Consider Approval of Preliminary Budget & PBID Levy Recommendation to City Council

*Roni presented the preliminary budget for the Emery Go-Round, providing three options: 0% increase; 3% increase; 5% increase. Roni stated her recommendation for a 3% increase.*

*Geoffrey Sears motioned for approval of the preliminary budget recommendation to City Council for a 3% increase in the PBID Levy. Peter Schreiber seconded the motion.*

*This item was approved by a majority vote.*

*Yes: 5*

*No: 0*

*Abstain: 1 – Andrew Allen*

- C. Review and Consider Approval of Amendment 1 to Professional Services Agreement with City of Emeryville for a 1-year Extension for 8toGo Paratransit Services

*Roni presented the proposed Amendment to the PSA with the City to extend the 8toGo Paratransit Services. The proposed Amendment provides 3 scenarios of operation hours. Roni advised that the City has decided to go with a 7-hour operating hour structure.*

*Geoffrey Sears motioned to approve Amendment 1 to Professional Services Agreement with the City of Emeryville for a 1-year extension for 8toGo Paratransit Services, with the 7-hour operating hour structure, a not-to-exceed amount of \$142,000 contract amount, and a term extension of 1 year through June 30, 2023. Betsy Cooley seconded the motion.*

*This item was approved by a majority vote.*

*Yes: 5*

*No: 0*

*Abstain: 1 – Andrew Allen*

- D. Review and Consider Approval of Transportation Agreement with Lennar for Operations and Oversight of the West Oakland Shuttle

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

**ACTION SUMMARY MINUTES**

Board of Directors Meeting

June 16<sup>th</sup>, 2022

*Geoffrey Sears requested a few additional changes to the agreement and recommended the item be brought to a future meeting for consideration once Lennar comments and final changes were mutually agreed. The Board deferred action on this item to a Special Meeting, which was scheduled for July 13, 2022.*

- E. Review and Consider Approval of Amendments to the Following Agreements for Operations & Oversight of the West Oakland Shuttle

i. MV Transportation

ii. Gray Bowen Scott

*The Board deferred action on this item to a Special Meeting, which was scheduled for July 13, 2022.*

- F. Review and Consider Approval of Amendment 6 to Professional Services Agreement with John S. Tounger, CPA

*Roni advised that the TMA is out for bid on Accounting Services, expecting those to come in July. Roni added that the current Amendment for John Tounger expires on June 30, 2022. While the bid process is going on, it is necessary to extend the Professional Services Agreement with John Tounger to carry us through that time.*

*Geoffrey Sears motioned to approve Amendment 6 to Professional Services Agreement with John Tounger for an extension through September 30, 2022, and an increase of \$7,480. Peter Schreiber seconded the motion.*

*This item was approved by a majority vote.*

*Yes: 5*

*No: 0*

*Abstain: 1 – Andrew Allen*

- G. Review and Discuss Term Sheet with East Bay Community Energy for Development of a Fleet Charging & Acquisition Program

*Roni provided an overview of a Fleet Charging Program from East Bay Community Energy. The Board decided to bring this and future discussions to an EV sub-committee, consisting of Bobby Lee, Geoffrey Sears and Betsy Cooley.*

*No formal action was required.*

- H. Review Letter of Support for Shellmound Loop Project

*Roni provided a Letter of Support that the City of Emeryville is requesting the TMA and Board of Directors support. The Board agreed to have the TMA issue the letter of support, provided Director Cassandra Kappelos had no objections.*

*No formal action was required.*

6. Confirm Date of Next Meeting –

*The meeting date was confirmed for a Special Meeting of the Board on July 13<sup>th</sup>, 2022 at 9:15am.*

7. Adjournment

*The meeting adjourned at approx. 10:45 AM.*

**RESOLUTION NO. 2022-07**

**BOARD OF DIRECTORS**

**EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION**

**\* \* \***

**DECLARING THAT BOARD MEETINGS WILL BE HELD VIA TELECONFERENCE  
PURSUANT TO BROWN ACT EMERGENCY PROVISIONS**

**WHEREAS**, on March 4, 2020, pursuant to Government Code section 8550, et seq., Governor Newsom proclaimed a state of emergency related to the COVID-19 novel coronavirus; and

**WHEREAS**, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions in the California Open Meeting law, Government Code section 54950, et seq. (the “Brown Act”), related to teleconferencing by local agency legislative bodies, provided certain requirements were met and followed; and

**WHEREAS**, on June 11, 2021, the Governor issued Executive Order N-08-21, which extended provisions of Executive Order N-29-20 that waive otherwise-applicable Brown Act requirements related to remote/teleconference meetings by local agency legislative bodies through September 30, 2021; and

**WHEREAS**, on September 16, 2021, the Governor signed Assembly Bill 361 into law as urgency legislation that went into effect on October 1, 2021, amending Government Code Section 54953 of the Brown Act to allow legislative bodies to continue to meet remotely during a proclaimed state of emergency where state or local officials have recommended measures to promote social distancing; and

**WHEREAS**, the Governor's proclaimed State of Emergency remains in effect, and State and local officials, including the California Department of Public Health and the Department of Industrial Relations, have imposed or recommended measures to promote social distancing.

**NOW, THEREFORE, BE IT RESOLVED** that, in order to ensure the health and safety of the public, meetings of the Board of Directors of the Emeryville Transportation Management Association will be held via teleconference in accordance with Assembly Bill 361 and provisions of Government Code Section 54953(e); and

**BE IT FURTHER RESOLVED** that that this Resolution will be in effect for the maximum period of time permitted under AB 361 (30 days), and the Board will consider the findings in this Resolution each month and may, by motion, reaffirm these findings.

Regularly passed and adopted this 13<sup>th</sup> day of July, 2022.

AYES:

NOES:

ABSENT:

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Chair, Emeryville Transportation Management Association

## **TRANSPORTATION AGREEMENT**

Emeryville Transportation Management Association, a California non-profit public benefit corporation (“TMA”) hereby enters into a formal Transportation Agreement (“Agreement”) with LMV II EMERYVILLE HOLDINGS, LP, a Delaware limited partnership, (“LENNAR”), to operate a shuttle service from a location adjacent to 4515 Hubbard St, in Emeryville, California, to the West Oakland BART station, in West Oakland, California (collectively, the “Services”). LENNAR and TMA are each hereinafter referred to as a “Party” and collectively as the “Parties.”

### **Recitals:**

WHEREAS, TMA is a California non-profit public benefit corporation that was formed for the purpose of mitigating traffic congestion and developing Transportation System and Demand Management Strategies by coordinating the business community’s efforts and working cooperatively with local government to address common transportation concerns, improve accessibility and mobility, and provide transportation services; and

WHEREAS, TMA represents that it has successfully provided shuttle services from Emeryville to the MacArthur BART station;

WHEREAS, LENNAR desires to provide shuttle service from its development, located at 4510 Hubbard St, Emeryville, CA, to the West Oakland BART Station; and

WHEREAS, TMA is willing to provide that service as a pilot program, subject to the terms and conditions of this Agreement.

### **1. Term/Termination:**

The term of this Agreement shall commence on \_\_\_\_\_, 2022 and expire on December 31, 2022.

Either Party may terminate this Agreement without cause by giving not less than 60 days' prior written notice to the other Party. LENNAR shall also have the right to terminate this Agreement upon advance written notice given to TMA if, at any time during the Term (i) in the reasonable opinion of LENNAR, the property of LENNAR's members or the safety of its passengers or the general public has or may be threatened, (ii) if any administrative or judicial body has suspended or revoked any license required for TMA or its contractor(s) to provide the Services under this Agreement; or (iii) if TMA materially breaches any other term of this Agreement (each, a "Breach") and the Breach is not capable of being cured or TMA does not cure the Breach within ten (10) days of receipt of notice from LENNAR. Any Breach set forth in (i) or (ii) is not capable of being cured.

## **2. Services:**

Starting on the date that is sixty (60) days from LENNAR's written notice to TMA instructing it to begin providing Services, TMA, through its own forces or by means of third-party contractor(s) ("Contractor(s)"), will provide the Services by a fixed-route shuttle from LENNAR's residential development located at 4510 Hubbard St, Emeryville, CA ("LENNAR Property") to the West Oakland BART Station via Mandela Parkway ("West Oakland BART"), with one stop on Hollis Street at the East Bay Bridge Shopping Center. The Services will be provided by one (1) shuttle vehicle making continuous loops between the LENNAR Property and West Oakland BART, between the hours of 6:30AM to 7:30PM (13 daily service hours), with intervals of 30 mins or less, on weekdays, with exception of the following holidays:

- New Year's Day
- Presidents Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Post-Thanksgiving Friday
- Christmas Day



The shuttle vehicle will have capacity for a minimum of 20 passengers, be ADA compliant, and will include a bike rack.

Service hours may be adjusted upon mutual agreement by both parties.

TMA will manage, staff and operate the Services throughout the Term. TMA will be exclusively responsible for providing trained, English-speaking drivers to perform the Services.

In the event the designated driver is absent, TMA shall assign a substitute driver. In the event a substitute driver is not available, TMA shall immediately notify LENNAR of the anticipated missed service, so that LENNAR can notify riders. If TMA is unable to assign a substitute driver three (3) or more times in a calendar year, it shall be a Breach that is not capable of being cured.

### **3. Fees and Expenses:**

During the Term, TMA will provide the Services at cost plus a 20% mark-up for indirect expenses as outlined in the cost estimate, which is attached as Exhibit A. Direct costs shall include service planning, coordination and contract development activities which occurred prior to commencement of agreement, service implementation activities, shuttle operations including vehicle and fuel costs, operations management and oversight, and communications costs including driver radios and General Transit Feed Specifications software. The intent of this Agreement is that TMA shall not be responsible for any direct costs associated with the Services following payment by LENNAR.

An advance deposit of \$40,000 for Services shall be paid within ten (10) days of full execution of this Agreement. The advanced deposit shall be refunded to LENNAR within sixty (60) days upon termination of this Agreement.

Costs for Services shall be invoiced monthly and emailed to LENNAR at the email address set forth in Section 12. All payments due to TMA hereunder are to be paid in

U.S. dollars. LENNAR shall remit payment within thirty days of receipt of the invoice for Services. If payment is delivered by mail, personal service, or overnight courier, payment shall be delivered to the address for TMA set forth in Section 12.

Should payment not be received within thirty days of receipt of invoice, TMA shall provide LENNAR at least forty-eight (48) hours' notice, to be delivered by overnight courier, of its intent to suspend Services if payment is not received within two (2) days of LENNAR's receipt of such notice. If TMA provides such notice more than twice during a calendar year, TMA may terminate this agreement upon ten (10) days advance written notice.

#### 4. Insurance

A. If TMA provides the Services by means of Contractor(s), TMA shall ensure that Contractor(s) shall procure and maintain the following types of insurance no later than thirty (30) days prior to Contractor(s) providing Services to LENNAR:

- (1) Workers' Compensation and Employer's Liability Insurance. Contractor(s) shall procure and maintain Workers' Compensation Insurance in accordance with the laws of the State of California. Contractor(s) shall also procure and maintain Employer's Liability Insurance coverage for a minimum liability of \$1 million covering its employees engaged in the Services. TMA shall insure the procurement and maintenance of such insurance by all Contractor(s) engaged in provision of the Services.
- (2) Liability Insurance. TMA shall require their Contractor(s) to procure and maintain the following kinds of liability insurance, which shall include as additional insureds LENNAR, its members, officers, directors, employees and agents while acting in such capacity, and their successors or assigns, as they now or as they may hereafter be constituted, singly, jointly or severally:
  - (a) Commercial General Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$10 million each occurrence or claim and a general aggregate limit of at least \$10 million. This insurance coverage shall include, but not be

limited to, premises and operations; contractual liability; products and completed operations; broad form property damage.

- (b) Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least \$10 million each occurrence or claim. This insurance shall provide contractual liability covering all motor vehicles including owned, non-owned and hired vehicles and mobile equipment to the extent it may be excluded from general liability insurance.

B. In the event TMA operates the Services directly (without utilizing any Contractor(s)) it shall provide insurance equivalent to that stated in Section 4(A) above. During any period in which TMA utilizes any Contractor(s) to operate the Services, TMA shall maintain the following types of insurance:

- (1) Workers' Compensation and Employer's Liability Insurance. If TMA has any employees, TMA shall procure and maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California. Employer's Liability Insurance shall have coverage for a minimum liability of \$1 Million Dollars covering TMA's employees engaged in the work. TMA shall insure the procurement and maintenance of such insurance by all subcontractors engaged in provision of the Services.
- (2) Liability Insurance. TMA shall procure and maintain the following kinds of liability insurance, which shall include as additional insureds LENNAR, its members, officers, directors, employees and agents while acting in such capacity, and their successors or assigns, as they now or as they may hereafter be constituted, singly, jointly or severally:
  - (a) Commercial General Liability insurance providing bodily injury and property damage coverage (with a combined single limit) of at least \$1 million each occurrence or claim and a general aggregate limit of at least \$2 million. This insurance coverage shall include, but not be limited to, premises and operations; contractual liability; products and completed operations; broad form property damage.

(b) If TMA owns or operates any vehicles, it shall maintain Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least \$1 million each occurrence or claim. This insurance shall provide contractual liability covering all motor vehicles including owned, non-owned and hired vehicles and mobile equipment to the extent it may be excluded from general liability insurance.

C. At least thirty (30) days prior to commencing the Services, TMA shall file a Certificate(s) of Insurance with LENNAR evidencing TMA's and Contractor(s)' coverages and endorsement(s) required pursuant to Section 4(A) and 4(B) above and, upon request, a certified duplicate original of any of those policies. Said Certificate(s) shall stipulate:

- (1) The insurance company(ies) issuing such policy(ies) shall give written notice to LENNAR of any material alteration, or reduction in aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation or modification.
- (2) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which TMA (or Contractor(s)) is liable up to and including the total limit of liability, without right of contribution from any other insurance which is in effect for the benefit of LENNAR.
- (3) The policy shall also stipulate: Inclusion of LENNAR shall not in any way affect the rights of such additional insureds with respects to any claim, demand, suit or judgment made, brought or recovered against TMA (or Contractor(s)), and shall protect them in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

D. The insurance policy(ies) shall be written by an insurance company or companies with a General Policyholders' Rating of A-/VII, as set forth in the most current issue of Best's Insurance Guide.

**5. Indemnification/Limitation on Liability:**

A. TMA will indemnify and hold LENNAR, its officers, directors, employees and agents while acting in such capacity, and their successors or assigns, harmless from any loss, expense (including counsel fees), cost liability, damage, or claim (collectively "Loss") resulting from third party claims, advertising injury or personal injury, including death, or for damage to property arising from TMA's gross negligence in performing the Services or its obligations pursuant to this Agreement, except to the extent such Loss is due to LENNAR's gross negligence (a "Claim").

B. TMA shall indemnify and hold LENNAR, its officers, directors, employees and agents while acting in such capacity, and their successors or assigns, harmless with respect to any Claim related or arising out of any assertion that they should be deemed the "employer" or "joint employer" of any individual performing Services under this Agreement. In any and all claims for any Claim against LENNAR by any employee of TMA or its contractor, or by anyone directly or indirectly employed by TMA, or anyone for whose acts TMA may be liable, TMA's indemnity obligations of this Section 5(B) shall not be limited in any way by any limitation on the amount or type of damages under workers' compensation, disability benefits, or any other employee benefits.

C. TMA agrees to provide indemnification as set forth of this Section 5 for a Claim; provided that (1) LENNAR promptly notifies TMA in writing of such Claim, (2) TMA has sole control of the defense of and all settlement negotiations relating to such Claim, and (3) LENNAR cooperates fully in the defense of the Claim.

D. LENNAR will indemnify and hold TMA, its officers, directors, employees and agents while acting in such capacity, and their successors or assigns, harmless from any loss, expense (including counsel fees), cost liability, damage, or claim resulting from third

party claims, advertising injury or personal injury, including death, or for damage to property arising from LENNAR's gross negligence in performing the Services, except to the extent such Loss is due to TMA's gross negligence.

**6. Maintenance:**

TMA will provide maintenance, cleaning and fuel to any vehicle(s) necessary for the Services.

**7. Vehicle:**

TMA or its contractors will be responsible for providing any vehicle necessary for the Services.

**8. Permits and Licensing:**

TMA or its contractor shall at all times maintain an appropriate business license, all operating permits and insurance necessary or appropriate for its operating of the shuttle service in accordance with this Agreement. Without limiting the foregoing, TMA vehicles shall at all times maintain valid operating permits from the California Public Utilities Commission.

**9. Drivers:**

All drivers providing the Services shall at all times hold Class B Commercial Drivers Licenses with a passenger endorsement and shall otherwise meet the minimum operating standards promulgated by the California Public Utilities Commission for commercial drivers carrying passengers. Additionally, LENNAR shall have the right to request the replacement of any driver, with reason, upon written notice to TMA, whereupon TMA will no longer permit such driver to service LENNAR.

**10. Additional Services:**

LENNAR will provide the website, branding and bus stop signage to be posted at the designated stop locations.

**11. Force Majeure:**

TMA will be excused from performance during the time and to the extent that it is prevented from obtaining or performing the Services by natural disaster, acts of God, acts of war, fire, flood, riot, terrorism, civil disturbance, loss of transportation facilities, oil or fuel shortage or embargo, commandeering of materials, equipment, products, plants or facilities by the federal or state government, health and safety orders issued by governmental agencies with jurisdiction, labor dispute, strike or lockout. Satisfactory evidence must be presented to LENNAR demonstrating that the non-performance was not due to the fault or gross negligence of TMA.

**12. Notices:**

LENNAR: LMV II EMERYVILLE HOLDINGS, LP  
492 9<sup>th</sup> Street, Suite 300  
Oakland, CA 94607  
Attention: Nathan Tuttle  
Invoices to: Nathan.Tuttle@LiveLMC.com

TMA: Emeryville TMA  
c/o Gray-Bowen-Scott  
1211 Newell Ave., Suite 200  
Walnut Creek, CA 94596  
Attn: Executive Director

All notices will be deemed received on receipt if personally delivered, the next day if sent by overnight courier or three (3) days following the date of mailing, if mailed. Either Party may change its address for the purposes of this Agreement by giving thirty (30) days' advance written notice of such change to the other Party.

**13. Independent Contractor:**

The relationship between TMA and LENNAR is, and shall at all times remain, solely that of customer (LENNAR) and independent contractor (TMA) and not one of employer/employee or principal and agent or representative. Neither Party shall be authorized to enter into any contracts or agreement nor otherwise bind or represent the other. The personnel performing Services under this Agreement shall at all times be

under the exclusive direction and control of TMA and shall not be employees of LENNAR. TMA shall be solely responsible for paying all wages, salaries and other amounts due its employees, and paying and withholding all federal, state and local taxes on labor, materials and equipment supplied under or used in connection with the Services provided by it under this Agreement.

**14. Time of the Essence:**

Time shall be of the essence in this Agreement.

**15. Entire Agreement:**

This Agreement contains the entire agreement between the parties relating thereto and all prior offers, negotiation and agreements are superseded hereby, provided that this Agreement may be altered or amended in the future by written agreement of the parties. The terms of this Agreement shall be binding upon and inure to the benefit of each Party and their respective successors and assigns, provided however, that this Agreement is personal to TMA and may not be assigned by it to any other person or entity without LENNAR's prior written consent.

**16. Governing Law; Venue; Attorneys' Fees:**

This Agreement shall be governed by the laws of the State of California, without giving effect to the conflict of laws provisions thereof. Any dispute under this Agreement shall be decided in the Superior Court in the County of Alameda or the United States District Court, Northern District of California.

**17. Headings:**

The descriptive headings in this Agreement are for convenience only and are not intended to be part of, or affect the interpretation of, this Agreement.

**18. Compliance with Laws:**



TMA shall at all times operate its business and provide the Services in compliance with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, permits, licenses, approvals and governmental requirements now or hereafter in effect. IN WITNESS WHEREOF, authorized officers of the parties have executed this Agreement as of the date set forth below.

**LMV II EMERYVILLE HOLDINGS, LP,**

a Delaware limited partnership;

By: Lennar Multifamily BTC Venture II GP Subsidiary, LLC,  
a Delaware limited liability company,  
its General Partner;

By: Lennar Multifamily BTC Venture II Manager, LLC,  
a Delaware limited liability company,  
its Manager;

By: \_\_\_\_\_, Vice President

Date: \_\_\_\_\_

**EMERYVILLE TRANSPORTATION**

**MANAGEMENT ASSOCIATION, a**

California non-profit public benefit  
corporation

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

Name: Bobby Lee

Title: Chair

Date: \_\_\_\_\_

**TRANSPORTATION AGREEMENT**

**EXHIBIT A**

<b>Lennar - West Oakland Shuttle Estimated Costs</b>	
<b>Direct Costs</b>	<b>Jul-Dec 2022</b>
Shuttle Operations	\$ 130,000
Fuel	\$ 20,000
Communications	\$ 1,000
Operations Oversight	\$ 40,000
<b>Subtotal Direct Costs</b>	<b>\$ 191,000</b>
Indirect Costs (20%)	\$ 38,200
<b>Total</b>	<b>\$ 229,200</b>

1. Direct cost will be billed to partner at cost.
2. Indirect costs (rent, utilities, insurance, site security, accounting svcs, other general overhead) will be billed at 20% of direct costs.

**AMENDMENT TO SHUTTLE OPERATIONS AND MAINTENANCE AGREEMENT BETWEEN  
EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION AND  
MV TRANSPORTATION, INC.**

**THIS AMENDMENT NO. 5** (“Amendment”) is to the Shuttle Operations and Maintenance Agreement dated February 12<sup>th</sup>, 2018 between the Emeryville Transportation Management Association, a California non-profit corporation, (“ETMA”), and MV Transportation, Inc. (“Contractor”)

RECITALS

WHEREAS, ETMA retained Contractor for shuttle operation and vehicle maintenance services through December 31<sup>st</sup>, 2020; and

WHEREAS, ETMA approved Amendment 1 to extend the term of the agreement one (1) month, to January 31<sup>st</sup>, 2021, while services and pricing for services through December 31<sup>st</sup>, 2022 were negotiated by both parties; and

WHEREAS, ETMA authorized a short term extension to the Agreement to June 30<sup>th</sup>, 2021, while Contractors proposed pricing was further evaluated, and modified the compensation limits per Contractors proposed pricing pages for calendar year 2021 services; and

WHEREAS, ETMA approved Amendment 3 to extend the term of the Agreement to December 31<sup>st</sup>, 2022 and to modify the compensation limits; and

WHEREAS, ETMA approved Amendment 4 to modify Section 6.ii of the Agreement to increase the Workers Compensation Insurance minimum liability limit to two million dollars (\$2,000,000).

WHEREAS, ETMA has entered into a Transportation Agreement with Lennar for a pilot program to operate a new shuttle service from Lennar’s new residential development in Emeryville to the West Oakland BART Station through December 31, 2022; and

WHEREAS, ETMA wishes to Amend the agreement to expand the scope of services and establish new pricing for the West Oakland service, which is defined in Exhibit A, attached.

NOW, THEREFORE, BE IT MUTUALLY AGREED that Section 1 of the Agreement be amended to include the new scope of services and Section 4 be amended to include the new pricing, as defined in Exhibit A, attached.

IN WITNESS WHEREOF, the ETMA approved Amendment No. 5 to the Shuttle Operations and Maintenance Agreement on the \_\_\_ day of \_\_\_\_\_ 2022.

EMERYVILLE TRANSPORTATION MANAGEMENT  
ASSOCIATION

MV, TRANSPORTATION, INC.

By: \_\_\_\_\_  
**Executive Director**

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

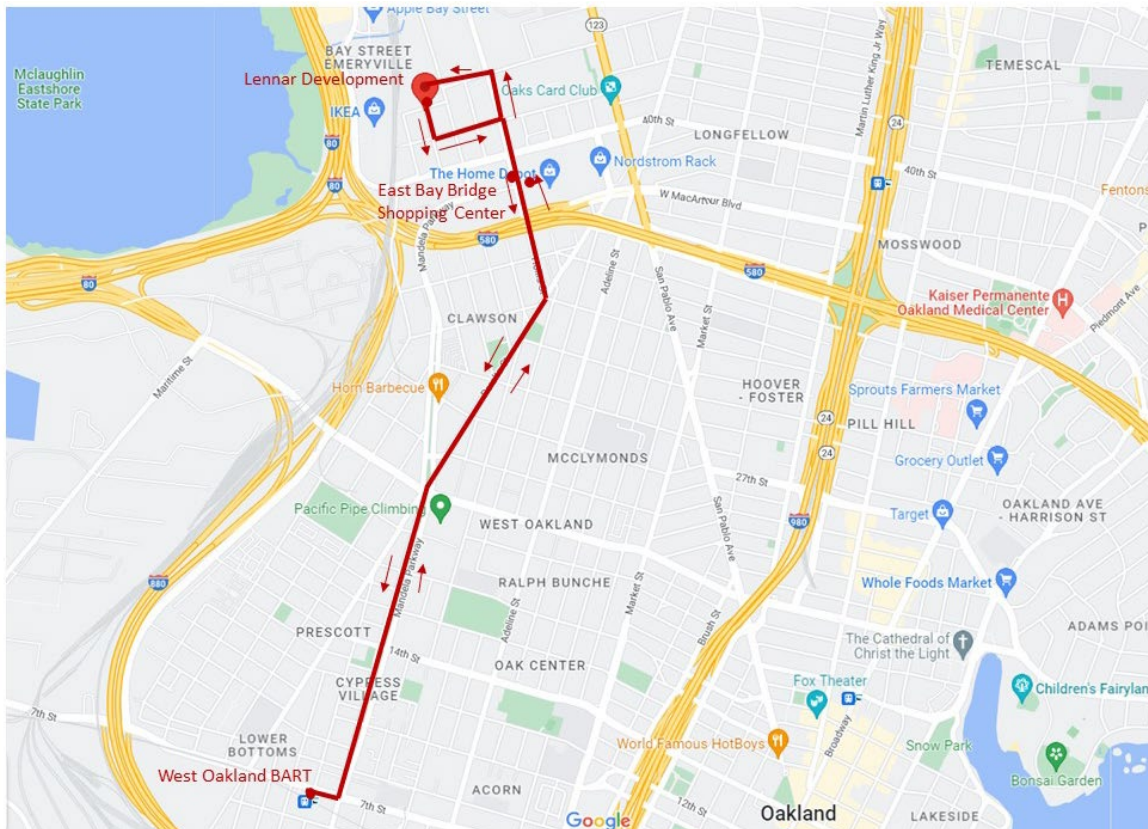
EXHIBIT A  
Amendment 5 – MV Transportation, Inc.  
Shuttle Operations & Maintenance Agreement

**Scope of Services**

Contractor shall operate one (1) shuttle on weekdays from 6:30AM to 7:30PM between Lennar’s Residential Development located at 5410 Hubbard Street in Emeryville to West Oakland BART Station, with one stop located at the East Bay Bridge Shopping Center on Hollis Street, as depicted in the route map below. Shuttle shall operate continuous loops at a frequency of 30 minutes or less.

Contractor shall provide the vehicle(s) needed to operate the service. The shuttle vehicle shall have a minimum capacity of 20 passengers, be ADA compliant and include a bike rack.

Proposed Service Route:



*Exact stop locations are to be determined.*

**Compensation**

ETMA shall compensate Contractor for services based on the following rates, to be billed monthly by Contractor on a separate invoice for **Lennar - West Oakland Shuttle**:

- A. Operations
  - a. Fixed Variable Rate (hourly fixed rate including labor and vehicle) - \$77.96
  - b. Fuel – to be billed at cost

**AMENDMENT NO. 1 TO AGREEMENT BETWEEN  
EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION AND GRAY-BOWEN-SCOTT  
FOR EXECUTIVE DIRECTOR SERVICES**

**THIS IS AMENDMENT NO. 1** (“Amendment No. 1”) to agreement dated as of January 1, 2022 between the Emeryville Transportation Management Association, a California non-profit corporation, herein called the “Association,” and William R. Gray and Company, a California corporation doing business as Gray-Bowen-Scott, called the “Consultant.”

RECITALS

WHEREAS, by means of a Professional Services Agreement dated as of January 1, 2022, Association retained Consultant to provide Executive Director services for the Association during calendar year 2022 (the "Agreement"); and

Whereas, Association has entered into a contract with Lennar for the operation and management of a pilot shuttle service from their new residential development to West Oakland BART Station, of which all services associated with the pilot shuttle are fully reimbursed by Lennar; and

Whereas, Section 3B of the Agreement states that “[f]rom time to time the Association enters into contracts with other entities and such services are not part of the core budget and the costs to the Association are fully reimbursed by others. Future contract services may be added as approved by the Association”; and

WHEREAS, Association and Consultant desire to amend the Agreement to add an additional scope of work pursuant to the proposal from Consultant dated June 10, 2022, which is attached to this Amendment No. 1 as Exhibit A, and to increase the compensation limit in Section 3-A of the Agreement, as amended, by \$40,000.

NOW, THEREFORE, BE IT MUTUALLY AGREED that the services described in Exhibit A to this Amendment No. 1 is added to the scope of work of the Agreement and that the not-to-exceed limit stated in Section 3-A of the Agreement, as amended, shall be \$515,000, with such work being billed at the hourly rates set forth in Exhibit A to this Amendment No. 1.

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**AMENDMENT NO. 1 TO AGREEMENT BETWEEN  
EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION AND GRAY-BOWEN-SCOTT  
FOR EXECUTIVE DIRECTOR SERVICES**

IN WITNESS WHEREOF, the Association and Consultant have executed Amendment No. 1 to this Agreement as of June \_\_, 2022.

EMERYVILLE TRANSPORTATION  
MANAGEMENT ASSOCIATION

CONSULTANT

By: \_\_\_\_\_  
**Chair**

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

APPROVED AS TO FORM

By: \_\_\_\_\_  
**Legal Counsel**



June 10<sup>th</sup>, 2022

Bobby Lee, Chair  
Emeryville Transportation Management Association  
(via email: bobby@visiblee.me)

Dear Mr. Lee,

We are pleased to furnish you with our proposed scope of services and cost proposal for shuttle oversight services for Lennar's West Oakland Shuttle pilot program.

#### Service Planning & Contract Development

- Coordination with Lennar to understand their interest and timing of a shuttle service from their new Emery residential development to West Oakland BART Station.
- Development of service plan concept.
- Coordination with ETMA Subcommittee to develop transportation agreement and determine service fees.
- Development of Transportation Agreement & Cost Estimate.
- Coordination with Shuttle Operator on pricing and vehicle availability for pilot program.
- Coordination with Lennar to incorporate changes and comments into transportation agreement.
- Finalize Transportation Agreement for Board consideration.
- Preparation of amendments to service agreements with GBS and MV Transportation for Board consideration.

#### Service Implementation

- Preparation of service schedule and route map.
- Coordination with Operations Team on driver assignments and vehicle readiness.
- Coordination with BART to establish shuttle stop location at West Oakland BART Station.
- Coordination with Lennar to establish rider communication protocols.
- Coordination with Lennar regarding bus stop signage and installation.

#### Service Oversight & Administration

- Oversight of shuttle operations contractor.
- Contract management.
- Communications with Lennar, when needed.
- Contractor invoice reviews and payment processing.
- Preparation of monthly reimbursement requests.
- Revenue & Cost tracking.

Our cost proposal for pilot program oversight through December 31<sup>st</sup>, 2022, is attached as Exhibit A.

We look forward to the opportunity to support the Emeryville TMA with this expansion of shuttle services for the benefit of the Emeryville community. Please do not hesitate to contact me if you have any questions or comments.

Sincerely,



Veronica 'Roni' Hatrup  
Senior Program Manager

Attachments: Cost Proposal



**EXHIBIT A  
GRAY-BOWEN-SCOTT  
COST PROPOSAL FOR  
Lennar Shuttle Pilot Program**

		<b>Lennar Shuttle Program</b>				
		Roni Hatstrup	Karen Boggs	Debi Lawrence	<b>Total Hours GBS</b>	<b>Total Cost Per Task</b>
<b>Task #</b>		Executive Director	Operations Director	Executive Assistant		
		\$275	\$188	\$130		
1	Service Planning	30	20	20	70	\$ 14,610
2	Service Implementation	15	30	10	55	\$ 11,065
3	Service Oversight & Administration	6	40	36	82	\$ 13,850
Expenses						\$ 475
		<b>51</b>	<b>90</b>	<b>66</b>	<b>207</b>	<b>\$ 40,000</b>