



EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

AGENDA

Special Meeting of the Board of Directors

February 24, 2023 @ 2:00 PM

[Zoom](#)

Meeting ID: 898 6484 7134

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. Business Items
 - A. Review and Consider Approval of Professional Services Agreement with Altrans for Agency Management & Administration Services (*Attachment*)
4. Confirm date of Next Meeting – March 16th, 2023
5. Adjournment

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the 1st day of March, 2023 ("Effective Date"), by and between the Emeryville Transportation Management Association, a California non-profit corporation, herein called the "Association," and ALTRANS, a California "S" corporation, herein called the "Consultant."

RECITALS

WHEREAS, Association is planning to retain the assistance of a transportation consulting firm to provide agency management and administration services for the Association's transportation service; and

WHEREAS, Association has reviewed the qualifications of the Consultant and determined that the Consultant possesses the skill, experience and certifications required to provide the services required by the Association; and

WHEREAS, Association issued a Request for Proposals, emailed November 21, 2022; and

WHEREAS, Consultant has provided a proposal for providing such services, dated December 27, 2022; and

WHEREAS, Association desires to retain Consultant to provide professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions identified herein, the parties mutually agree as follow:

1. **Scope of Services:** Subject to such policy direction and approvals as the Association through its Board of Directors or Executive Committee may determine from time to time, Consultant shall perform the services set out in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference.
2. **Time for Performance:** The services of Consultant are to commence on March 1, 2023 and shall continue through June 30, 2024. The parties may extend the term of this agreement by mutual agreement for two additional one-year terms.
3. **Compensation and Method of Payment:**
 - A. **Compensation:** The compensation to be paid to Consultant shall be as set forth in Exhibit B (the "Cost Proposal"), which is attached hereto and incorporated herein. The Cost Proposal allocated 2,600 hours for the ETMA, including 100 hours for overseeing facilities management and security and 100 hours that is estimated for third-party operations, which is billed separately under Section 3.B. If, at some point, it is agreed to outsource these functions, these duties will be modified in a manner agreed upon between the Association and Consultant. Future contract services may be added as approved by the Association and the Consultant. However, in no event shall Consultant's compensation for the contract term exceed Four Hundred and Twenty-Five Thousand Dollars (\$425,000) (the "Annual Cost Cap") as detailed in Exhibit B, not including the cost of any additional services provided to the separate contracts that the Association maintains with third parties, which are described in 3.B below. Compensation for any additional terms shall be negotiated by the parties.

B. From time to time the Association enters into contracts with other entities. Currently three contracts exist: one with the City of Emeryville to provide paratransit service, 8 to Go; another with the WBS 94710 TDM, LLC, otherwise known as the West Berkeley Shuttle, LLC, a California Limited Liability Company, and one with LMV II Emeryville Holdings, LP, "LENNAR" for The Emery Express. These services are described in "E. Third Party Services" on Exhibit A. The cost for providing such services are not part of the Association's core budget and the costs to the Association are fully reimbursed by others. It is agreed that the services provided by the Consultant to carry out the obligations of the Association in these cost-neutral services shall be paid separately to the Consultant and are not subject to the Annual Cost Cap.

C. Method of Payment:

1. Monthly Statements: As a condition precedent to any payment to Consultant under this Agreement, Consultant shall submit monthly to the Association an invoice for \$35,417.00, plus the costs of any reimbursable services. The statement shall detail, for the reimbursable services, a record of what was done and which service contract it was done for.

2. Timing of Payment: Association shall review Consultant's monthly statement and pay Consultant for services rendered hereunder on a monthly basis.

4. Hold Harmless:

Consultant shall indemnify, defend and hold harmless the Association, its officers, employees and agents (collectively the "Indemnified Parties") from and against all claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising from or related to the intentional or willful misconduct, negligent acts, errors or omissions of Consultant, its employees or agents in the performance of this Agreement.

Notwithstanding the foregoing, with regard to claims where the law establishes a standard of care for Consultant's professional services, and to the extent the Consultant breaches or fails to meet such established standard of care, or is alleged to have breached or failed to meet such standard of care, Consultant shall indemnify and hold harmless the Association and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or Consultant's employees, officers, officials, agents or independent contractors. Consultant shall not be obligated under this Agreement to indemnify Association to the extent that the damage is caused by the negligence or willful misconduct of Association, its agents or employees. Irrespective of any language to the contrary in this Agreement or under applicable law, Consultant shall have no duty to provide or fund up-front defense costs of Association against unproven claims or allegations, but shall reimburse those reasonable attorneys' fees, expert fees and all other costs and fees of litigation incurred by Association that are caused by the negligence, recklessness or willful misconduct of Consultant, its employees, agents and sub-consultants.

5. **Relationship between the Parties:** Consultant is, and at all times shall remain, an independent contractor, not an agent or employee of the Association. Consultant shall be solely responsible for all acts of its employees, agents or subconsultants, including any negligent acts or omissions. Consultant shall have no authority to act on behalf of the Association or to bind the Association to any obligation whatsoever, unless the Association provides prior written authorization to Consultant. As an independent contractor, Consultant shall not be entitled to any benefit, right or compensation from the Association other than those provided for in this Agreement. As an independent contractor, Consultant may have tax obligations, including self-employment taxes, which are his sole responsibility. Upon request of Association, Consultant shall cooperate with Association by providing information and documents relating to its independent contractor status.

6. **Key Personnel:** It is understood and agreed by the parties that at all times during the term of the Agreement, to the extent reasonably possible, that Daniel Oliver (as Executive Director), Drew Pannell (as ~~ETMA's~~ Senior Analyst for Shuttle Operations), Janet Shipp (as Administrative Assistant), along with a Shuttle/TDM Specialist to be recruited, shall serve as the key personnel of Consultant to undertake, render and oversee all of the services under the Agreement. It is understood and agreed that Drew Pannell is currently a sub-consultant who has agreed to provide approximately 10 hours per week as support for the ETMA. In the event Consultant must rely on other personnel to fulfill the obligations under this contract, Consultant will utilize all reasonable means to hire or contract with personnel possessing similar qualifications and abilities and will notify and consult with Association regarding the hiring of any personnel who will provide more than an average of five hours per week of support to the ETMA.

7. **Ownership of Work:** All documents furnished to Consultant by Association and all reports and supportive data prepared by Consultant by this Agreement are Association's property and shall be given to Association at the completion of Consultant services. Association acknowledges that documents and supportive data prepared by Consultant have been prepared exclusively for and are fit exclusively for the purposes contemplated under this Agreement. If the Association reuses such documents prepared by Consultant for purposes other than those contemplated under this agreement without the written consent of Consultant, the Association will hold harmless, indemnify and defend the Consultant, its agents, subconsultants and employees from any and all claims arising out of such reuse.

8. **Compliance with Laws:** Consultant shall use due professional care to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents to Association that it has, and will maintain through the term of the Agreement, all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Business License for the City of Emeryville.

9. **Insurance:**

A. **Minimum Scope of Insurance:** Prior to commencing work and during the entire term of the Agreement, Consultant shall procure and maintain the following insurance policies in these minimum amounts:

1. Commercial General Liability Coverage, in the amount of Two Million Dollars (\$2,000,000) 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 shall apply separately to

the work to be performed under this Agreement, or the general aggregate limit shall be at least twice the required occurrence limit.

2. Automobile Liability coverage in the amount of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage.

3. For any employees, Workers' Compensation as required by the State of California, and Employers' Liability Insurance, One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

B. Endorsements: Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:

1. The Association, its members, officers, employees and agents ("Insured Parties") are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant.

2. For any claims related to this Agreement, Consultant's insurance coverage shall be considered primary insurance as respects the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be excess of the Consultant's insurance and shall not contribute with it.

3. This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.

4. The insurer waives all rights of subrogation against Association, its elected and appointed officers, employees and agents.

5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Association, its elected and appointed officers, employees and agents.

6. Each insurance policy required by this Agreement shall provide that coverage shall not be canceled, except after 30 days prior written notice has been given to the Association.

C. Verification of Coverage: Consultant shall provide to the Association all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the Association on or before commencement of performance of this Agreement. The Association reserves the right to require complete, certified copies of all required insurance policies at any time.

C. Acceptability of Insurers: All insurance companies providing coverage to Consultant for purposes of this Agreement shall be authorized by the Insurance Commissioner of the State of California to transact business within the State of California and shall an A.M. Best's rating of no less than "A:VII".

- E. **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retention's must be declared to and approved by the Association. At the Association's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured receptions.

10. **Assignment and Subcontracting:** The parties recognize that a substantial inducement to Association for entering into this Agreement is the professional reputation, experience and competence of Consultant. Therefore, Consultant may not assign any right or obligation pursuant to this Agreement without the prior written permission of Association. Furthermore, Consultant shall not subcontract any portion of the work to be performed under this Agreement without the prior written consent of Association. Any assignment of any right or obligation or subcontracting of any work without Association consent shall be void and of no effect.

11. **Nondiscrimination:** Consultant shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) on the basis of race, color, religious creed, national origin, gender, physical or mental disability, marital status, or sexual orientation.

12. **Termination of Agreement:** Either party may terminate this Agreement without cause upon giving sixty days written notice to the other party. In addition, Association may suspend Consultant's performance of the agreement upon 24 hours' notice, provided that such suspension shall not affect Consultant's compensation. In the event of such a termination, Consultant shall be entitled to any compensation owed for services rendered up to the effective date of termination.

13. **Amendment:** This Agreement constitutes the complete and exclusive statement of the Agreement to Association and Consultant. It may be amended or extended from time-to-time by written agreement of the parties hereto.

14. **Litigation Costs:** In the event either party commences legal action to enforce this Agreement, the prevailing party shall be entitled to reasonable costs and expenses, including attorneys' fees.

15. **Written Notification:** Any notice, demand, request, consent, approval, or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to Association: Michael Conneran
Hanson Bridgett LLP
1676 No. California Blvd., Suite 620
Walnut Creek, CA 94596
And, by email to: mconneran@hansonbridgett.com

And: Bobby Lee
Chair of the Board

By email only to: bobby@visiblee.me



If to Consultant: ALTRANS
302 Toyon Avenue, Suite F – MS 410
San Jose, CA 95127
Attention: Stephen Blaylock, President
And, by email to: sblaylock@altrans.net

16. **Waiver**: Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of the Agreement.

17. **Execution**: This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement it shall not be necessary to produce or account for more than one such counterpart.

18. **Venue**: In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Alameda, California.

IN WITNESS WHEREOF, the Association and Consultant have executed this Agreement as of the date first above written.

**EMERYVILLE TRANSPORTATION
MANAGEMENT ASSOCIATION**

CONSULTANT

By: _____
Chair

By: *President,
Stephen L. Blaylock*
2/13/2023

APPROVED AS TO FORM

By: _____
Legal Counsel

EXHIBIT A

SCOPE OF WORK

DETAILED BREAKDOWN OF SCOPE OF WORK:

A. Association Administration – 25%

Association General Management

1. Ensure compliance with current and monitor emerging local, state, and federal regulations and requirements.
2. Ensure compliance with governing documents, including the TMA Bylaws and Articles of Incorporation; 2015 PBID Management Plan and Engineers Report; Shuttle Funding Agreement with City of Emeryville, City or other governmental grant agreements; and any other documents adopted by the City of Emeryville binding on the TMA.
3. Adhere to Board-established policies and procedures and safeguard the Association's assets and reputation.
4. Negotiate and recommend for approval to the Board all contracts, leases, service agreements, consulting agreements, insurance policies and other documents required for prudent TMA operation and compliance with laws.
5. Maintain contract management tracking workbook and ensure current certificates of insurance are on file.
6. Process annual renewal of City of Emeryville Business License for non-profit businesses.
7. Oversee facilities management and security, with a focus on outsourcing these functions.
8. Prepare for and facilitate the election of one (1) employer member annually and two (2) business members every three years.

Board of Directors Support

1. Prepare, disseminate, and maintain Board communications and actions including: meeting notices and agendas, official summaries/minutes, rosters, calendars, operations and financial reports, per Board policies and procedures and the Brown Act.
2. Ensure access to all TMA records by Board of Directors, Association members, and public (as may be required by the Brown Act).
3. Provide staff support at Board and Committee meetings.
4. Prepare and distribute "Briefing Binder" to the Board which includes authorizing documents, budgets (current and two prior years), year-end statements, audits, Emeryville City Council staff reports, and all previously approved contracts over \$10,000. Provide updated contents to binders annually.
5. Inform the Board and/or appropriate officers and committees of pertinent developments.
6. Anticipate and inform the Board of emerging issues and trends; recommend actions to address the future viability of the Association and its services.



7. Provide board training on best practices and expectations of board members.
8. Engage in recruitment of new Directors.
9. Coordinate with legal counsel on claims or various matters which warrant a legal opinion, when needed. Keep the Board informed of all legal matters.
10. Maintain a filing system for TMA documents/records and consolidate documents needed for the annual audit.
11. Liaise with State of California for all matters pertaining to the Airspace Lease agreement for the fleet parking and operations facility, including updates to certificates of insurance for TMA and Operator and ensuring rent adjustments are implemented according to the lease agreement.

Financial Management

1. Oversee bookkeeping and accounting functions; manage relationship with independent auditor for the annual audit.
2. Prepare annual budget and 5-year forecast for Board approval including assumptions and analysis of trends.
3. Oversee and monitor the annual PBID assessment levy process with City and consultants; liaison with the City regarding PBID fund balance held by City.
4. Prepare, in conjunction with the TMA's accountant, periodic financial reports and statements for the Board, per established policies, procedures and calendars.
5. Approve, or submit for Board of Directors approval, all invoices from vendors and contractors for payment by accountant per established policies.
6. Monitor budget and manage cash flow.
7. Review and reconcile bank statements monthly.
8. Ensure timely filing of annual tax returns by accountant.
9. Distribute annual audit with appropriate recipients.
10. Deposit all funds received per approved investment policy.

B. Operations and Fleet Maintenance, Management and Oversight – 25%

1. Oversee the operations and maintenance contractors to ensure that the work is done to the standards of the TMA as defined in the contracts; monitor contractor costs to ensure that they do not exceed budget.
2. Solicit proposals from alternate service providers to ensure that the services provided are the most effective available.
3. Review of monthly operations invoice to ensure rates are consistent with shuttle operations agreement and to ensure performance assessments are accounted for, including review of daily schedule performance to ensure missed trips and early departures are appropriately accounted for.
4. Monitor contractor performance against service standards and goals adopted by the Board.
5. Maintain the fleet acquisition plan and oversee the condition, cost and availability of the fleet.
6. Make recommendations to the Board of Directors regarding the replacement and composition of vehicle fleet. Prepare cost/benefit analyses to evaluate the best strategy for procuring the vehicles (lease, buy, finance). As needed, solicit proposals for vehicle purchases and/or leases.

7. Track, monitor and follow up as necessary on complaints, accidents and incidents.
8. Risk management: annual review of insurance policies, vendor insurance, and emergency management plans.
9. Analyze and review maintenance procedures, conformity of work and determine maintenance efficiencies, when needed.
10. Prepare monthly ridership and on-time performance reports.
11. Develop and implement service changes, when needed.

Equipment & Systems Management

1. Monitor equipment tracking to ensure serial numbers, vehicle assignments and other pertinent information is tracked and verified regularly.
2. Coordinate with real-time tracking vendor to ensure GPS tracking equipment and system reporting is properly functioning.
3. Coordinate with GTFS software vendor to ensure routes, stops and schedules are accurately reflected on Google Maps.
4. Update GTFS schedules, stop locations and routes, when needed.
5. Participate in troubleshooting technical issues with operations team, when needed.

C. Planning and Projects – 25%

Service Development

1. Analyze route performance, cost of services, on-time performance, and other service performance indicators on an ongoing basis.
2. Develop new service strategies and recommendations to meet emerging community needs.
3. Stay abreast of new technology developments and recommend new technology to improve quality of services and/or information (e.g. automatic passenger counters, real-time arrival predictions, signal priority systems).
4. Evaluate new vehicle models and their technologies that could help improve quality of service.
5. Evaluate partnerships with vendors and suppliers to explore new technology, funding opportunities and other ways to continue/improve delivery of services.
6. Liaise with City and others to address roadway, sidewalk and other infrastructure issues for the delivery of high quality transit service.
7. Maintain and enhance the signage and other on-street amenities to ensure that riders can easily access the shuttle service.

Long Range Planning

1. Develop five-year strategic plan that includes fleet replacement plan (with an eye towards electrification), new service development, plans for facility improvements.
2. Work closely with a committee of the Board of Directors; plan and oversee any required renovations to make the site functional for shuttle service.

D. Marketing and Public Outreach – 25%

Marketing, Community & Public Relations



Marketing and public relations activities should be performed with two broad goals in mind: to increase ridership and customer satisfaction; and to develop support for extending the PBID beyond its current expiration in 2030.

1. Work closely with property owners to ensure that all customers and employees are familiar with the Emery Go-Round service. This may include scheduling and attending outreach events with property owners, employees and customers.
2. Prepare an annual Marketing Plan as required by the TMA's governing documents. This plan should include on-going activities as well as proposals for new programs to increase ridership and general awareness of the service. Once approved by the Board of Directors, implement the plan.
3. Annually, survey customers to determine their level of satisfaction.
4. Update website, written material, brochures, and other public information documents and web information at least annually to ensure that it is user friendly and promotes the mission of the TMA. Recommend to Board annual updates before they are implemented.
5. Maintain, in conjunction with operations staff, ongoing communications via the Emery Go-Round mobile app.
6. Respond to questions, complaints or emergency situations. Keep Board informed of questions, complaints, and emergencies and any emergency actions taken. When necessary, call an Emergency Meeting of the Board to authorize responsive action.
7. Maintain Public Relations on-call readiness for emergency situations
8. Maintain a positive, highly visible public image.
9. Provide public relations liaison to press or public agencies as needed
10. Engage in social media planning and management, including but not limited to Twitter, Yelp, and other relevant platforms

Liaison to Public Agencies and Transit Organizations

1. Represent TMA at regional transit meetings and local government agency meetings (not more than approximately once per month). Provide written summary of all meetings (topics discussed, recommended actions). Recent liaison activities include:
 - Liaise with MacArthur BART access and transit-oriented development activities; City of Oakland and Emeryville regarding routes, safety, and other service-related issues.
 - Participation on MTC technical advisory committees (real-time transit, 511, transit hubs, etc.)
 - Involvement in the development of Emeryville General Plan; Alternative Transportation Study; Parking Studies, etc.
- Participation on City's Transportation Committee
 - Maintain working relationship with political stakeholders and seek out grant funding, political support opportunities that could aid the improvement of Emery Go-Round's service
2. As authorized by Board, attend regional transit-related conferences (not to exceed 3 per year). Provide written report on conference.



E. Third Party Services

8 to Go Paratransit Shuttle Service

1. Operations oversight.
2. Coordination with City of Emeryville on various operational matters.
3. Facilitate renewals and/or amendments to the professional services agreement with City of Emeryville.
4. Preparation of monthly reimbursement request.

West Berkeley Shuttle

1. Operations oversight.
2. Coordination with parties on operational matters and service level adjustments, when needed.
3. Facilitate renewals and modifications to the Transportation Agreement, when needed.
4. Participate in meetings with West Berkeley Shuttle LLC members for service expansion and/or other TDM enhancements, when needed.

The Emery Express

5. Operations oversight.
6. Coordination with parties regarding operational matters and service level adjustments, when needed.
7. Facilitate renewals and modifications to the Transportation Agreement, when needed.

Participate in meetings with parties for service expansion and/or other TDM enhancements, when needed.



EXHIBIT B
COST PROPOSAL

Annual Cost: \$425,000

ALTRANS staff will provide approximately **2,500** hours per year for the standard Emery Go-Round shuttle TMA directorship services and approximately **100** hours per year for the reimbursable services (8 to Go, West Berkeley Shuttle & Bayer Mid-Day and the Emery Express).

ALTRANS proposes to charge an all-inclusive hourly rate of **\$164.00** for all work provided to the ETMA, derived from the average hourly rate for all four personnel. Monthly invoices of **35,417.00** will be submitted to the ETMA BOD during the first week of each month, for a 30 day-net payment process. Invoices will include a snap report of work attempted/accomplished with supporting material as needed/requested.

