



EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

AGENDA

Board of Directors Meeting
September 21, 2023 @ 9:15 AM
1333 Park Avenue, Garden Room
Emeryville, CA 94608
Hybrid Zoom Link: Meeting ID: 82587005528
Passcode: 833517

Chair

*Bobby Lee, At-Large
Residential Member*

Vice Chair

*Andrew Allen
At-Large Business
Member*

Secretary

*Besty Cooley, At-Large
Residential Member*

Treasurer

*Geoffrey Sears
Wareham
Development*

Directors

*Peter Schreiber
Pixar*

Colin Osborne

*At-Large Business
Member*

*Kassandra Kappelos
Public Market*

Izamar Hook

CenterCal/Bay Street

1. Call to Order
2. Public Comment
3. Approval of the Minutes of the August 18, 2023 Board of Directors Meeting (Attachment)
4. Executive Directors Report
 - A. Emery Go-Round Ridership & Performance (Attachment, Page)
5. Business Items
 - A. 40th Street Multimodal Project Presentation and Q&A (Attachment, Page)
 - B. Consider Approval to write a Letter of Support for the 40th Street Multimodal Project (Example Attachment, Page)
 - C. Review and Consider Approval of the Updated Financial Investment Plan (Attachment, Page)
 - D. Review and Consider Approval of Service Agreement with TripShot for Real Time Tracking software and hardware (Attachment, Page)
 - E. Review Draft Budget (Attachment, Page)
 - F. Review and Consider Approval to release and Independent Auditor RFP (Attachment, Page)
 - G. Appoint Independent Auditor RFP Subcommittee
 - H. Review and Discuss Entering into new Agreement with West Berkeley Shuttle LLC. using Lennar Agreement as Template (Attachment, Page)
 - I. Consider Approval to form Strategic Planning Subcommittee
 - J. Appoint Strategic Planning Subcommittee
6. Announcements
7. Confirm date of Next Meeting – October 19, 2023
8. Adjournment

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

ACTION SUMMARY MINUTES

Board of Directors Meeting

August 17, 2023

LOCATION: 1333 PARK AVENUE, GARDEN ROOM

EMERYVILLE, CA 94608

ZOOM

ID: 85383698968

Passcode: 152757

Directors Present: Bobby Lee, Chair
Betsy Cooley, Secretary
Geoff Sears, Treasurer
Peter Schreiber, Director
Colin Osborne, Director

Others Present: Daniel Oliver, Executive Director
Andrew Ridley, ALTRANS
Drew Pannell, ALTRANS
Janet Shipp, ALTRANS (via Zoom)
Pedro Jimenez, City of Emeryville
Paul Buddenhagen, City of Emeryville

1. Call to Order

Bobby Lee called the Board of Director's meeting to order at 9:17am

2. Public Comment

No Comments

3. Approval of the Minutes of the June 28, 2023 Special Board of Directors Meeting

Geoff motioned for approval of the meeting minutes of the June 28, 2023 Board of Directors Meeting. Peter seconded the motion.

This item was approved by a unanimous vote:

Yes: 5

No: 0

Abstain: 0

4. Executive Directors Report

A. Emery Go-Round Ridership & Performance

Bobby Lee requested that we inquire with the City as to whether a Holiday Traffic Study is going to be conducted.

5. Business Items

A. Review of 2nd Quarter Financial Report

Daniel reviewed the 2nd Quarter Financial Report. Geoff requested that there be a Quarterly Executive text summary implemented into the report, as well as an additional column showing half of the full year budget. Daniel will look into improvements that can be made in the Financial Reports.

B. Review and Consider Approval of the 2022 State and Federal Tax Filing

Geoff motioned for approval of the 2022 State and Federal Tax Filing. Colin seconded the motion.

This item was approved by a unanimous vote:

Yes: 5

No: 0

Abstain: 0

C. Audit Review Committee re-engagement or appointment

Daniel will be in touch with the Audit Review Committee. The committee is Colin, Peter and Cassandra (who was volunteered). Bobby Lee is a backup.

D. Review Sub-Committee's recommendation for a CAD/AVL system to replace Syncromatics

On August 8th, 2023, the sub-committee met to discuss the 3 vendors. Izamar and Peter were not able to attend but Bobby and Betsy attended. The recommendation decided was to discontinue using Syncromatics and replace with TripShot.

E. Consider approval to authorize Executive Director to enter into negotiations with selected CAD/AVL vendor to replace Syncromatics

Bobby motioned for approval for Executive Director to enter into negotiations with TripShot. Geoff seconded the motion.

This item was approved by a unanimous vote:

Yes: 5

No: 0

Abstain: 0

6. Confirm date of Next Meeting:

The meeting date was confirmed for September 21, 2023 at 9:15am

7. Comments and Announcements

Daniel notified the Board about an issue that one of the MV drivers had with a passenger, in which HR is looking into more. A written Code of Conduct for both drivers and passengers will be drafted and brought to the Board of Directors for approval at a future date.

8. Adjournment

The meeting adjourned at approx. 9:52am



August 2023 Emery Go-Round Ridership Report

Weekday Ridership

- Total weekday ridership in August was **42,948**, **up** from **37,116** in July. This increase was primarily caused by more weekday service days in the month of August, as evidenced by the average weekday ridership.
- Average weekday ridership in August was **1,867**, **up** from **1,856** in July, a 1% **increase**.
- Weekday ridership recovery in August, compared to the Pre-COVID Baseline, was **36%**, which has been consistent throughout the summer. Weekday ridership recovery has been steadily **increasing** throughout the year, with January at 30%.

Weekend Ridership

- Total weekend ridership in August was **5,855**, **down** from **7,067** in July. This decrease was primarily caused by fewer weekend service days in the month of July, as evidenced by the average weekend ridership.
- Average weekend ridership in August was **732**, **up** from **707** in July, a **4% increase**.
- Weekend ridership recovery in August, compared to the Pre-COVID Baseline, was at **59%**. Weekend ridership recovery has been fluctuating throughout the year, ranging from 54% in February to 77% in April.

Combined Ridership

- Total combined ridership in August was **48,803**, **up** from **44,183** in July. This increase was primarily caused by more weekday service days in the month of August.
- Average combined ridership in August was **1,766**, **up** from **1,714** in July, a **3% increase**.
 - As mentioned at the August 2023 Board Meeting, the Combined Daily Average has been updated to a weighted average in order to reflect accurate ridership.
- Combined ridership recovery in August, compared to the Pre-COVID Baseline, was 43%. Combined ridership recovery throughout the year has maintained an average of 43% throughout the year.

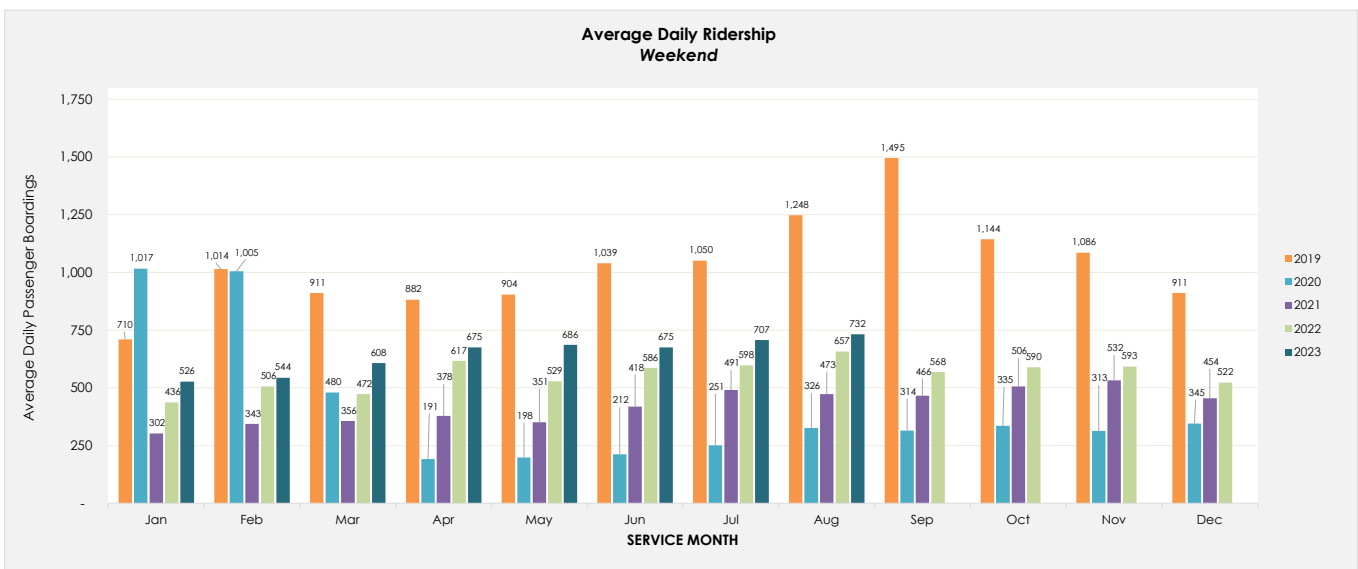
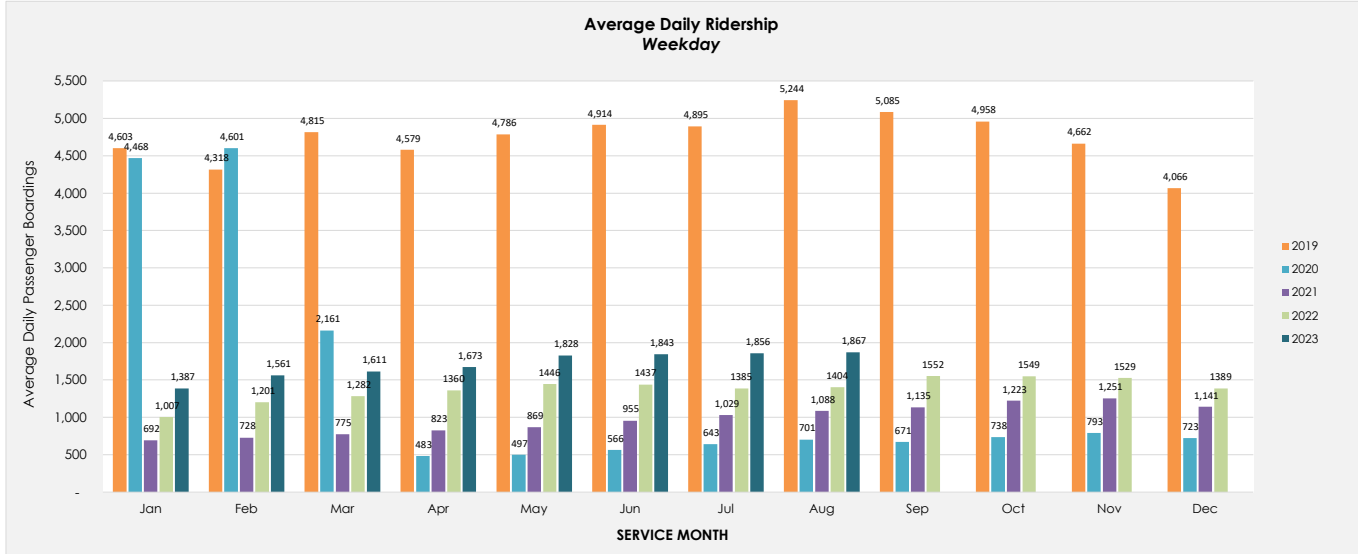
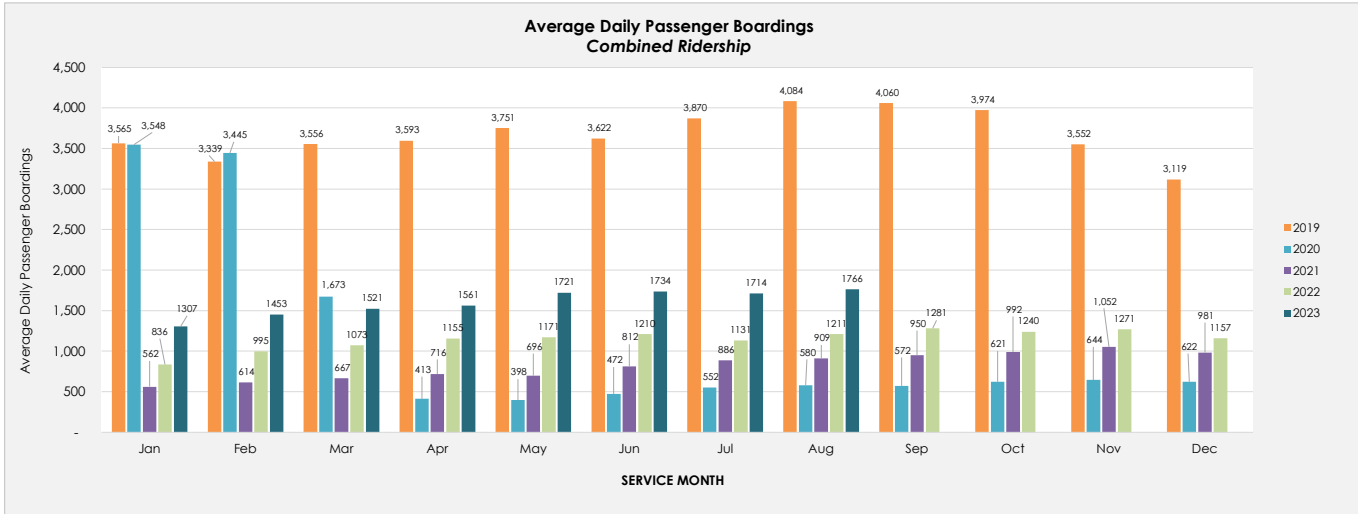
On-Time Performance (OTP)

- Overall on-time performance on Hollis in August was 79.5% on-time, 12.6% late, 7.9% early
- Overall on-time performance on Shellmound in August was 81.5% on-time, 11.3% late, and 7.2% early
- These OTP trends are consistent month-over-month.
- Disclaimer: OTP is not reliably accurate with Syncromatics. Once we transition to a new system, OTP will be more reliable and provide a more accurate picture.

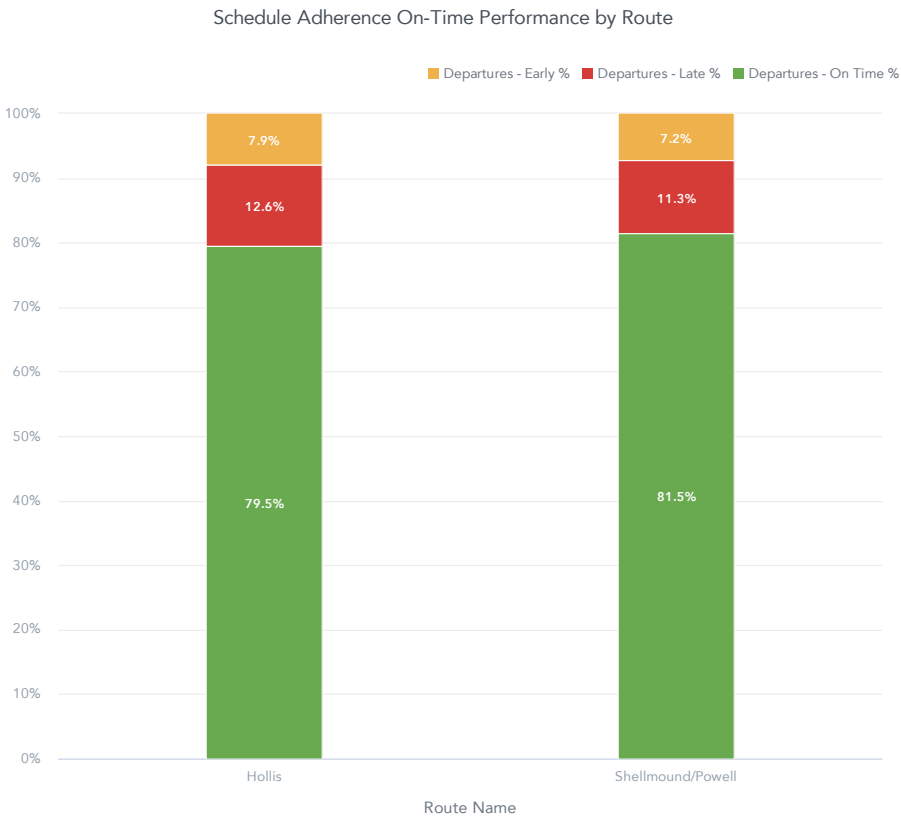


ANNUAL RIDERSHIP SUMMARY (YTD)/COMPARISON

WEEKDAY RIDERSHIP													
2023	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total to Date
Total Monthly Weekday Ridership	30,511	29,651	37,053	33,462	40,205	40,548	37,116	42,948					291,494
# of Operating Days	22	19	23	20	22	22	20	23					171
Average Daily Ridership	1387	1561	1611	1673	1828	1843	1856	1867					1,705
% Increase/Decrease from Prior Month	0%	13%	3%	4%	9%	1%	1%	1%					
% Increase/Decrease from Prior Year	38%	30%	26%	23%	26%	28%	34%	33%					
% of Pre COVID Baseline	30%	36%	33%	37%	38%	38%	38%	36%	0%	0%	0%	0%	
2019	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Total Monthly Ridership	101,269	82,033	101,123	100,741	105,288	98,279	107,689	115,375	101,706	114,041	93,248	85,381	1,206,173
# of Operating Days	22	19	21	22	22	20	22	22	20	23	20	21	254
Average Daily Ridership	4603	4318	4815	4579	4786	4914	4895	5244	5085	4958	4662	4066	4,749
WEEKEND RIDERSHIP													
2023	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total to Date
Total Monthly Weekend Ridership	4209	4351	4860	6074	5490	5397	7067	5855					43303
# of Operating Days	8	8	8	9	8	8	10	8					67
Average Daily Ridership	526	544	608	675	686	675	707	732					646
% Increase/Decrease from Prior Month	1%	3%	12%	11%	2%	-2%	5%	4%					
% Increase/Decrease from Prior Year	21%	7%	29%	9%	30%	15%	18%	11%					
% of Pre COVID Baseline	74%	54%	67%	77%	76%	65%	67%	59%	0%	0%	0%	0%	
2019	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Total Monthly Ridership	5681	8,112	9,110	7,055	7,230	10,393	8,402	11,231	11,963	9,153	9,774	8,197	106,301
# of Operating Days	8	8	10	8	8	10	8	9	8	8	9	9	103
Average Daily Ridership	710	1014	911	882	904	1039	1050	1248	1495	1144	1086	911	1,032
COMBINED RIDERSHIP													
2023	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total to Date
Total Monthly Ridership	34,720	34,002	41,913	39,536	45,695	45,945	44,183	48,803					334,797
# of Operating Days	30	27	31	29	30	30	30	31					238
Average Daily Ridership	1,307	1,453	1,521	1,561	1,721	1,734	1,714	1,766					1,407
% Increase/Decrease from Prior Month	13%	11%	5%	3%	10%	1%	-1%	3%					
% Increase/Decrease from Prior Year	56%	46%	42%	35%	47%	43%	52%	46%					
% of Pre COVID Baseline	37%	44%	43%	43%	46%	48%	44%	43%					
2019	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Total Monthly Ridership	106,950	90,145	110,233	107,796	112,518	108,672	116,091	126,606	113,669	123,194	103,022	93,578	1,312,474
# of Operating Days	30	27	31	30	30	30	30	31	28	31	29	30	357
Average Daily Ridership	3,565	3,339	3,556	3,593	3,751	3,622	3,870	4,084	4,060	3,974	3,552	3,119	3,676



Overall Performance By Route





EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

DATE

Andrew Emanuele

Grantor

US Department of Transportation

ReconnectingCommunities@dot.gov

Re: Letter of Support for the 40th Street Multimodal Project ("Project")

Dear Mr. Emanuele,

We are writing to offer enthusiastic support for the "40th Street Multimodal Project," a visionary endeavor that aligns perfectly with Emeryville's commitment to sustainability, housing affordability, transit equity, and socio-economic justice. Emeryville, though small in size, boasts a vibrant community with a bold vision – to become a regional and state leader in these critical areas.

Emeryville's dedication to encouraging and permitting housing units that cater to all income levels is commendable. Equally impressive is the city's focus on preserving existing housing supply, quality, and affordability, particularly for very low- and low-income households, while diligently working to prevent displacement. Furthermore, the city's commitment to connecting residents with high-quality transit options exemplifies its dedication to the principles of equity and accessibility.

"The 40th Street Multimodal Project" is a shining example of innovation, equity, and sustainability within our County and Regional Transportation Plans. As a main arterial in Emeryville, 40th Street plays a pivotal role in providing last-mile transit connectivity between MacArthur BART and the bustling Emeryville core, where thousands of jobs await. It also offers Bay Trail access, linking families and children to natural resources and recreational opportunities.

This transformative project will convert existing single-occupancy vehicle lanes into transit-only priority lanes, creating a seamless, efficient transit network. The removal of street parking along the corridor will make way for a two-way, separated cycle track, ensuring the safety of cyclists and pedestrians at all intersections. Moreover, the inclusion of transit islands and other bus stop improvements, coupled with new streetscaping opportunities for green infrastructure and public art, will redefine the urban landscape.

The allocation of USDOT funds to support this project will catalyze Emeryville's infill housing efforts, reduce vehicle miles traveled along 40th Street, and expand fair housing opportunities. It is a strategic investment towards a more sustainable, resilient, and inclusive future for our city.

I urge you to consider this application favorably, as it aligns perfectly with Emeryville's values and aspirations. By supporting "The 40th Street Multimodal Project," we take a significant step toward realizing our vision of a thriving, equitable, and sustainable community. Thank you for your consideration and for your dedication to making this transformative project a reality.

Sincerely,

Daniel Oliver

Executive Director



Emeryville TMA Financial Investment Plan

Revised September 2023

Information

ALTRANS has developed and estimated a 32-month cash flow report through December 2025. This report forecasts month-to-month, accrual-based expenses and revenue based on and estimated 10% increase in operating expenses with a 3% PBID increase

Utilizing this cash flow report, which was reviewed and approved by John Tounger, the ETMA's Bookkeeper and Accountant, it was determined that over the next 2 years, the lowest balance the ETMA's savings will reach while maintaining the \$135,000 Contingency fund and 15% Operating Reserve, per ETMA Policy, is approximately \$3,292,215.99.

ALTRANS and John met with a Wealth Management Advisor from Merrill Lynch, the investment management branch of Bank of America, to discuss options and recommendations to invest the ETMA's funds in a manner that balances seeking maximum returns with the desired levels of risk and liquidity.

History

At the June 2023 ETMA Special Board Meeting the board approved an investment plan to open an account with Merrill Lynch and invest \$3,500,000 into US Treasuries, with maturity dates ranging from 3 months to 18 months, as they offer a high return and high level of security. It was also decided to move the remainder of the savings into a high-interest Preferred Deposit account.

On August 31, 2023, Merrill Lynch Representatives informed us that the ETMA's application to open an account was rejected:

"Our review concludes that Emeryville Transportation Management Association ("Emeryville TMA") IS a public fund under Prong 2 of the MLWM definition. While Emeryville TMA is a 501©(4) Nonprofit agency, it is funded by assessments collected through a Property and Business Improvement District ("PBID") – a tool available to residential property and business owners to improve downtown or other commercial areas. In Emeryville, the legislation that allows for the establishment of a PBID is the California Streets and Highway Code Sections 36600 et seq. (the "1994 Act"). The 1994 Act allows for the levy of these special assessments on both properties and or businesses and further dictates the formation of a Management District Plan which must contain certain elements, such as the total annual amount of funds to be expended for the proposed improvements, services, and activities and proposed sources of financing. Although the board of directors of Emeryville TMA is comprised of mostly corporate members, with one public member, the entity was formed in accordance with a CA statute, utilizes revenue collected in accordance with state legislation (the 1994 Act) and must operate and spend these funds in accordance with a District Plan also regulated by statute."

To summarize: Because Merrill Lynch is an investment firm that handles potentially un-guaranteed investments, such as stocks, they will not open an account with the ETMA because we are primarily funded with public funds, even though we were pursuing safer investment options.

Option

With an account through Merrill Lynch and likely other investment firms no longer being viable, I spoke with our Bank of America account representative to discuss our options.

He confirmed that because we already have an account through BofA and they are a “banking institution” as opposed to an investment firm, we are able to open CDs through them. In fact, we already have a CD with the funds withdrawn from the Summit Bank account closure.

While CDs are still subject to the FDIC insurance limit of \$250,000 and therefore not as guaranteed as Treasuries, they do provide us with an opportunity for growth.

Recommendations

Recommendation 1

It is recommended to invest **\$3,500,000** from the ETMA’s Savings account into 2 Featured Certificate of Deposit accounts through Bank of America.

- **\$1,750,000 in a 7-month Featured CD**
 - Current rate: 5.00% Annual Percentage Yield
 - Estimated return upon maturity: \$1,800,428 (+\$50,428)
 - Upon maturity, if the rates are favorable, this could be reinvested in a 13-month CD, which would provide us with bi-annual maturity dates.
- **\$1,750,000 in a 13-month Featured CD**
 - Current Rate: 5.00% Annual Percentage Yield
 - Estimated return upon maturity: \$1,844,808 (+\$94,808)
- **Total Estimated Growth From Initial Investments: \$145,237.00**
- **These would take the place of the previously discussed/approved US Treasuries**

Recommendation 2

It is recommended to transfer **\$2,000,000** from the ETMA’s Savings account into a 12-month Flexible Certificate of Deposit accounts through Bank of America.

- **\$2,000,000 in a 12-month Flexible CD**
 - Current rate: 3.51% Annual Percentage Yield
 - **Estimated return upon maturity: Up to \$2,070,101 (+\$70,101)**
 - While these funds come with a lower APY than the Featured CDs, funds can be withdrawn once per week without penalty.
 - This withdraw flexibility would allow bills to be paid out of these funds while still earning a higher interest rate on the remaining funds.
 - **This would take the place of the previously discussed/approved Preferred Deposit account with ML.**

Bank of America CD Interest Rates as of Thursday, September 14, 2023

Featured CD

Overview

Rates

Fees

Benefits

Get started

Not ready to open online? ▾

Rates


Choose the desired term, then the deposit amount to see rate options.

Select by Term

7 month ▾

Opening deposit amount

\$1,000,000 and over ▾

 For deposits over \$250,000, [visit a financial center](#) to open your account.

Amount	Interest Rate	Annual Percentage Yield (APY) ^[1]
\$1,000,000 and over	4.89%	5.00%

Featured CD

Overview

Rates

Fees

Benefits

Get started

Not ready to open online? ▾

Rates


Choose the desired term, then the deposit amount to see rate options.

Select by Term

13 month ▾

Opening deposit amount

\$1,000,000 and over ▾

 For deposits over \$250,000, [visit a financial center](#) to open your account.

Amount	Interest Rate	Annual Percentage Yield (APY) ^[1]
\$1,000,000 and over	4.89%	5.00%

Flexible CD

Overview

Rates

Fees

Benefits

Get started

Not ready to open online? ▾

Rates

Choose the desired term then the deposit amount to see rate options.

Select by Term

12 month ▾

Opening deposit amount

\$1,000,000 and over ▾

Amount	Interest Rate	Annual Percentage Yield (APY) ^[2]
\$1,000,000 and over	3.45%	3.51%

Grace Period

The grace period begins on the first day after the maturity date. The grace period is one calendar day for terms of seven through 27 days and seven calendar days for terms of 28 days or more. You may make a deposit or withdrawal, or change the length of the term, once during the grace period and, if you take one of these actions, the grace period ends on that day. If the last day of the grace period is a non-business day (a weekend or bank holiday), then the grace period ends on the last business day before that non-business day. We may pay interest during the grace period based on the rate we offer on the first day of the new term for the type of CD, amount, and term of the deposit.

During the grace period, if you change your CD term length, the **next term only** will be measured from the date of that change. Then, for automatically renewable CDs, subsequent maturity dates will be measured from the day your account was originally opened. For example, if you open a 6 month CD on January 8th it will mature on June 8th. If you request to change your CD to a one year term on June 10th (during the grace period), the next maturity date will be June 10th of the following year. However, subsequent maturity dates will revert back to June 8th. Please refer to your "Soon to Mature Notice," which is sent to you in advance of maturity.

Deposits to a CD

You may make an additional deposit to your account during its grace period. Otherwise, for all CDs except Variable Rate IRAs you may not make deposits during the term of the CD.

You may not make a deposit to a time deposit account by wire or automated clearinghouse (ACH) transfer.

Early Withdrawals

You have contracted to keep your funds on deposit for the stated term. You may not withdraw all or part of a time deposit account except as provided in this Agreement.

At our discretion, we may allow you to withdraw all or part of your funds at times other than the grace period. We generally withdraw interest before principal. Each time we permit you to make an early withdrawal of principal, we may charge you an early withdrawal penalty. If your account has not earned enough interest to cover an early withdrawal penalty, we deduct any interest first and take the remainder of the penalty from your principal.

We calculate all early withdrawal penalties on the principal amount withdrawn at the interest rate in effect on the account on the withdrawal date. The early withdrawal penalty is:

- For CDs with terms of less than 90 days, the greater of all interest earned on the amount withdrawn or an amount equal to seven days interest on the amount withdrawn;
- For CDs with terms of 90 days up to 12 months, the penalty is an amount equal to 90 days interest on the amount withdrawn;
- For CDs with terms of 12 months up to 60 months, the penalty is an amount equal to 180 days interest on the amount withdrawn; and
- For CDs with terms of 60 months or longer, the penalty is an amount equal to 365 days interest on the amount withdrawn.

Please note that the term of a CD is the specified period of time you agreed to leave your funds on deposit – not the time remaining until maturity of your CD.

For purposes of calculating an early withdrawal penalty, the amount withdrawn includes any tax withholding, fees and early withdrawal penalties.

We add to the early withdrawal penalty the amount of any cash bonuses we paid you when you opened or reinvested the account.

If we are required to pay an amount from your CD (e.g. levy or garnishment), we may charge you an early withdrawal penalty, calculated on the amount withdrawn from the CD.

An early withdrawal from an IRA may also be subject to additional federal tax (and possibly additional state and local taxes) if you are under age 59 1/2.

Closing or Redeeming a CD

We may close or redeem an automatically renewable account at the end of the term. You may close or redeem your account during its grace period.



2023 TripShot Agreement Summary

Background

At the August 2023 ETMA Board Meeting, the board decided to pursue TripShot for real-time, ridership, and on-time performance tracking.

Over the course of the last month, we have worked with TripShot to refine the details of the scope of work/agreement.

TripShot Scope of Work (SOW #2)

- TripShot will provide their premium system for the current 21 vehicles in the Emery Go-Round fleet
- TripShot will provide 23 data-connected tablets through which their system will operate
- TripShot's system will integrate with the Automatic Passenger Counters (APC) currently installed on the vehicles
 - In order to integrate with TripShot, we will need to purchase wireless routers hubs for the APCs and sim-cards with data plans. The hubs can be purchased directly through Iris and we are looking into how much 21 sim-cards would cost through our current Verizon account.

TripShot Customer Branded App (SOW #1)

- TripShot will build an Emery Go-Round branded app to be released on all mobile platforms
 - In order to reduce the costs associated with this EGR-branded app, TripShot has requested that the ETMA provide a good-faith commitment to mutually beneficial co-marketing opportunities that can be explored and agreed upon after launch, such as:
 - Joint Press Release(s)
 - Case study/studies
 - Webinar with TripShot
 - Etc.

Year to Year Cost Breakdown

Year 1

With Customer Branded App	
TripShot Premium Annual Licensing Fee	\$70,000.00
TripShot Device Access Fee	\$13,168.00
Samsun Tab A7, Qty: 23	\$5,612.00
Tablet Setup	\$1,150.00
Customer Branded App	\$35,000.00
YEAR 1 TOTAL	\$124,930.00

Without Customer Branded App	
TripShot Premium Annual Licensing Fee	\$70,000.00
TripShot Device Access Fee	\$13,168.00
Samsun Tab A7, Qty: 23	\$5,612.00
Tablet Setup	\$1,150.00
YEAR 1 TOTAL	\$89,930.00

Year 2

With Customer Branded App	
TripShot Premium Annual Licensing Fee	\$70,000.00
TripShot Device Access Fee	\$13,168.00
Customer Branded App	\$35,000.00
YEAR 2 TOTAL	\$118,168.00

Without Customer Branded App	
TripShot Premium Annual Licensing Fee	\$70,000.00
TripShot Device Access Fee	\$13,168.00
YEAR 2 TOTAL	\$83,168.00

Year 3

With Customer Branded App	
TripShot Premium Annual Licensing Fee	\$70,000.00
TripShot Device Access Fee	\$13,168.00
Customer Branded App	\$35,000.00
YEAR 3 TOTAL	\$118,168.00

Without Customer Branded App	
TripShot Premium Annual Licensing Fee	\$70,000.00
TripShot Device Access Fee	\$13,168.00
YEAR 3 TOTAL	\$83,168.00



2024 ETMA Draft Budget

2024 Draft Budget

- **Revenue**

- At the June 2023 ETMA Special Board Meeting it was requested that this iteration of the 2024 Budget include the costs and revenue incurred by/derived from the Reimbursable Shuttle Programs as the transactions pass through the ETMA bank accounts.
 - As such, the Revenue from 8 to Go, WBS, and Emery Express represent not only the previously budgeted Indirect Cost Revenue, but the full amount that each stakeholder is estimated to pay, both in direct and indirect costs.
- The City of Emeryville General Benefit Contribution is based on the budgeted expenditures required for Emery Go-Round services and does not include those expenditures derived from Reimbursable Shuttle Programs
- Misc. Revenue includes the proposed investment growth as expressed in the September 2023 Financial Investment Plan.
 - Estimated \$50,428.57 from the 7-Month Featured CD
 - Estimated \$94,808.08 from the 13-Month Featured CD
 - Up to \$70,101.00 from the 12-Month Flexible CD

- **Expenditures**

- Operations/Maintenance: These numbers are currently estimated based on a 10% rate increase from 2023. We have requested but not yet received the quotes from MV for 2024 calendar year. We should receive the numbers soon and will update the budget to reflect for the Final Budget to be approved in October.
- As mentioned above, previous iterations of the budgets did not include the Reimbursable Shuttle Program expenditures.

- **2023 Estimated Carryover: \$1,098,079.00**

- Primary Causes:
 - Bus Lease/Purchases:
 - Budgeted: \$500,000
 - Estimated Year-End Actual: \$144,153
 - Overage: \$355,847
 - Operations Contract:
 - Budgeted: \$2,700,000
 - Estimated Year-End Actual: \$2,437,789
 - Overage: \$262,211
 - Fuel
 - Budgeted: \$360,000
 - Estimated Year-End Actual: \$204,673
 - Overage: \$155,327

3 Year Budget and Actuals Comparison with 2024 Draft Budget

- Primary Differences:
 - Misc. Revenue
 - 2023 Budget: \$3,000
 - 2024 Draft Budget: \$215,338
 - Reason: September 2023 Financial Investment Plan
 - EGR Fuel
 - 2023 Budget: \$360,000
 - 2023 Draft Budget: \$240,000
 - Reason: Reduced to reflect current fuel trends/actuals
 - Professional Services:
 - 2023 Budget: \$575,000
 - 2024 Draft Budget: \$500,000
 - Reason: Reduced Management Fees

Reimbursable Shuttle Programs 2024 Budget

- Reimbursable Program management is built into ALTRANS' flat monthly fees for ETMA management. As such, while the Reimbursable Program stakeholders will be charged for management fees, those fees do not represent additional charges passed through the ETMA.

2024 Draft Budget

REVENUE		
PBID Revenue		Assumptions/Details
PBID Revenue	4,607,835	Calculated based on 3% increase from prior year budget
District Related Costs	(102,833)	1.7% of assessment to County Assessor + \$24,500 to City for legal and administrative fees.
Net PBID	4,505,002	
Non-PBID Revenue		
City of Emeryville - General Benefit Contribution	618,618	12.29% of EGR Operating Budget, per PBID Mgmt Plan
ETMA Direct Billed Revenue	115,360	
8 to Go Revenue	141,216	8 to Go Expenditures + \$800/month for Mgmt
WBS Revenue	334,129	WBS Expenditures + 15% Ind. Cost Markup + \$1245/mo for Mgmt
Emery Express Revenue	321,092	EE Expenditures + 20% Ind. Cost Markup + \$1320/mo for Mgmt
Misc. Revenue (Interest income, investments, etc.)	215,338	\$1.75 million invested in 7-month CD with 4.7 APY \$1.75 million invested in 13-month CD with 4.7% APY
Subtotal Non-PBID Revenues	1,745,753	
TOTAL REVENUE	6,250,754	

EXPENDITURES		
Direct Costs		Assumptions/Details
EGR Operations	2,672,915	Estimated based on a 10% rate increase
EGR Maintenance	220,000	
EGR Fuel	240,000	Reduced to reflect actual fuel trends while maintaing margin for cost fluctuation
EGR Communications	132,789	Radio, Phones, TripShot w/ APC Integration and EGR-Branded App
EGR Misc. Operations Expenses	10,000	
EGR Bus Leases/Purchases	500,000	
Subtotal Direct Costs	3,775,704	
Reimbursable Program Costs		
8 to Go Operations	131,616	Operations, Radio, Cell Phone, Fuel (AC Transit), Mgmt for Jan-Apr
West Berkeley Shuttle Operations	277,556	Operations Radio, RTTS, Mgmt for Jan-Apr
Emery Express Operations	254,376	Operations, Radio, Fuel (MV), Mgmt for Jan-Apr
Subtotal Reimbursable Program Costs	663,549	
Indirect Costs		
Professional Services	500,000	Agency Mgmt/Executive Director, Legal, Accounting, Audit, etc.
Occupancy (Facilities related expenses)	517,000	
TMA Insurance	60,801	
Conferences, Meetings, Office Expenses	10,000	
Membership & Public Outreach	10,000	
Pilot Projects & Research	25,000	
Bus Yard	-	
Subtotal Indirect Costs	1,122,801	
Contingency/Reserve Replenishment	135,000	
TOTAL ETMA BUDGET/EXPENSES	5,697,054	
TOTAL EGR BUDGET/EXPENSES	5,033,506	
Estimated Balance/Overrun	553,700	

Reserve Balance Summary (2023)	2024 Budget
Carryover Reserve Balance (as of Jan 1, 2023)	4,080,668
2023 Estimated Balance	1,098,079
Projected Cash Balance on Dec 31, 2023	5,178,747
2023 Projected Balance	553,700
Total Projected Cash Balance on Dec 31, 2024	5,732,447
15% Operating Reserve (per ETMA Policy)	755,026
Estimated Available Cash Balance on Dec 31, 2023	4,977,421

3 Year Budget and Actuals Comparison with 2024 Draft Budget

REVENUE	2022 Final	2022 Actual	% +/-	2023 Final	2023 To Date	2024 Prelim	2024 Draft
PBID Revenue	<i>Through Q2 2023</i>						
PBID Revenue	4,343,798	4,343,798	100%	4,474,112	4,474,112	4,607,835	4,607,835
District Related Costs	(98,345)	(98,345)	100%	(100,560)	(100,560)	(102,833)	(102,833)
Net PBID	4,245,453	4,245,453	100%	4,373,552	4,373,552	4,505,002	4,505,002
Non-PBID Revenue							
City of Emeryville - General Benefit Contribution	564,726	564,726	100%	634,164	634,164	639,891	618,618
ETMA Direct Billed Revenue	109,578	109,764	100%	112,865	113,373	115,360	115,360
8 to Go Revenue	128,250	112,688	88%	145,900	57,057	109,033	141,216
WBS Revenue	252,498	254,027	101%	322,000	146,092	332,475	334,129
Emery Express Revenue	229,200	195,805	85%	428,400	202,034	348,330	321,092
Misc. Revenue (Interest income, investments, etc.)	3,000	1,630	54%	3,000	894	1,920	215,338
Subtotal Non-PBID Revenues	1,287,252	1,238,639	96%	1,646,329	1,153,614	1,547,010	1,745,753
TOTAL REVENUE	5,532,705	5,484,093	99%	6,019,881	5,527,166	6,052,011	6,250,754
EXPENDITURES	2022 Final	2022 Actual	% +/-	2023 Final	2023 To Date	2024 Prelim	2024 Draft
Direct Costs	<i>Through Q2 2023</i>						
EGR Operations	2,420,000	2,117,761	88%	2,700,000	1,223,807	2,738,806	2,672,915
EGR Maintenance	300,000	191,239	64%	220,000	57,936	242,000	220,000
EGR Fuel	325,000	262,333	81%	360,000	101,145	300,000	240,000
EGR Communications	55,000	47,272	86%	55,000	7,266	98,386	132,789
EGR Misc. Operations Expenses	5,000	8,234	165%	10,000	-	10,000	10,000
EGR Bus Leases/Purchases/Savings	500,000	212,661	43%	500,000	108,551	500,000	500,000
Subtotal Direct Costs	3,605,000	2,839,500	79%	3,845,000	1,498,705	3,889,192	3,775,704
Reimbursable Program Costs							
8 to Go Operations	128,250	112,688	88%	145,900	55,457	109,033	131,616
West Berkeley Shuttle Operations	252,498	254,027	101%	280,000	124,547	289,110	277,556
Emery Express Operations	191,000	163,171	85%	357,000	165,722	290,275	254,376
Subtotal Reimbursable Program Costs	571,748	529,885	93%	782,900	345,726	688,418	663,549
Indirect Costs							
Professional Services	550,000	430,492	78%	575,000	279,671	490,994	500,000
Occupancy (Facilities related expenses)	365,000	496,647	136%	510,000	242,885	554,400	517,000
TMA Insurance	25,000	49,235	197%	50,000	48,573	54,560	60,801
Conferences, Meetings, Office Expenses	10,000	410	4%	10,000	34	10,000	10,000
Membership & Public Outreach	15,000	3,368	22%	10,000	-	10,000	10,000
Pilot Projects & Research	25,000	-	0%	25,000	-	25,000	25,000
Bus Yard	-	88,456		-	5,800	-	-
Subtotal Indirect Costs	990,000	1,068,608		1,180,000	576,963	1,144,954	1,122,801
Contingency/Reserve Replenishment	347,757	-		135,000	-	135,000	135,000
TOTAL ETMA BUDGET/EXPENSES	5,514,505	4,437,993	80%	5,942,900	2,421,394	5,857,564	5,697,054
TOTAL EGR BUDGET/EXPENSES	4,942,757	3,908,108	79%	5,160,000	2,075,668	5,169,146	5,033,506

Quarterly Breakdown of 2024 Draft Budget

REVENUE	2024 Q1	2024 Q2	2024 Q3	2024 Q4	Year-Total
PBID Revenue					
PBID Revenue	2,303,918	-	2,303,918	-	4,607,835
District Related Costs	(51,417)	-	(51,417)	-	(102,833)
Net PBID	2,252,501	-	2,252,501	-	4,505,002
Non-PBID Revenue					
City of Emeryville - General Benefit Contribution	309,309	-	309,309	-	618,618
ETMA Direct Billed Revenue	-	115,360	-	-	115,360
8 to Go Revenue	34,983	35,826	35,826	34,581	141,216
WBS Revenue	83,136	83,928	83,928	83,136	334,129
Emery Express Revenue	79,378	80,571	80,571	80,571	321,092
Misc. Revenue (Interest income, investments, etc.)	-	50,429	-	164,909	215,338
Subtotal Non-PBID Revenues	506,807	366,114	509,635	363,197	1,745,753
TOTAL REVENUE	2,759,307	366,114	2,762,135	363,197	6,250,754

EXPENDITURES					
Direct Costs					
EGR Operations	663,948	673,526	673,526	661,916	2,672,915
EGR Fuel	60,000	60,000	60,000	60,000	240,000
EGR Maintenance	55,000	55,000	55,000	55,000	220,000
EGR Communications	3,627	3,665	3,665	121,833	132,789
EGR Misc. Operations Expenses	2,500	2,500	2,500	2,500	10,000
EGR Bus Leases/Purchases/Savings					500,000
Subtotal Direct Costs	785,075	794,690	794,690	901,248	3,775,704
Reimbursable Program Costs					
8 to Go Operations	32,583	33,426	33,426	32,181	131,616
West Berkeley Shuttle Operations	69,044	69,733	69,733	69,044	277,556
Emery Express Operations	62,848	63,843	63,843	63,843	254,376
Subtotal Reimbursable Program Costs	164,476	167,002	167,002	165,068	663,549
Indirect Costs					
Professional Services	125,000	125,000	125,000	125,000	500,000
Occupancy (Facilities related expenses)	129,250	129,250	129,250	129,250	517,000
TMA Insurance	-	53,429	7,372	-	60,801
Conferences, Meetings, Office Expenses	-	-	-	-	10,000
Membership & Public Outreach	-	-	-	-	10,000
Pilot Projects & Research	-	-	-	-	25,000
Bus Yard	-	-	-	-	-
Subtotal Indirect Costs	254,250	307,679	261,622	254,250	1,122,801
Contingency/Reserve Replenishment					135,000
TOTAL ETMA BUDGET/EXPENSES	1,203,802	1,269,371	1,223,314	1,320,567	5,697,054
TOTAL EGR BUDGET/EXPENSES	1,039,325	1,102,369	1,056,312	1,155,498	5,033,506

Reimbursable Shuttle Programs 2024 Budget

West Berkeley Shuttle		
	2024 Budgeted Revenue	Assumptions/Details
REVENUE	336,439	
EXPENDITURES		
Shuttle Operations	267,164	
Professional Services	15,000	Mgmt Fees set at fixed \$1,245/month
Real-Time Tracking	10,392	WBS is looking to engage TripShot at \$866/month
Subtotal Direct Costs	292,556	\$277,556 in incurred expenses. See note below
Indirect Costs (15%)	43,883	Rent, insurance, facility expenses, accounting services, etc.
TOTAL EXPENDITURES	336,439	

8 to Go		
	2024 Budgeted Revenue	Assumptions/Details
REVENUE	141,216	
EXPENDITURES		
Shuttle Operations	125,357	
Professional Services	10,508	Mgmt Fees set at fixed \$800/month + Est. \$908 for accounting fees
Fuel	4,393	
Communications	959	
TOTAL EXPENDITURES	141,216	\$131,616 in incurred expenses. See note below

Quarterra (Lennar) - The Emery Express		
	2024 Budgeted Revenue	Assumptions/Details
REVENUE	324,260	
EXPENDITURES		
Shuttle Operations	240,681	Based on 7 operating hours per day
Fuel	12,857	
Communications	839	
Professional Services	15,840	Mgmt Fees set at fixed \$1,320/month
Subtotal - Direct Costs	270,216	\$254,376 in incurred expenses. See note below
Indirect Costs (20%)	54,043	Rent, insurance, facility expenses, accounting services, etc.
TOTAL EXPENDITURES	324,260	

Reimbursable Program management is built into ALTRANS' flat monthly fees for ETMA management. As such, while the Reimbursable Program stakeholders will be charged the above management costs, the ETMA will not be billed separately for these charges.



EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

DATE:

NAME:

CONTACT:

Subject: Request for Proposals for Non-Profit Auditor

Dear Sir/Madam,

The Emeryville Transportation Management Association (ETMA), a 501(c)(4) tax-exempt non-profit corporation, is seeking proposals from qualified firms for the preparation of its yearly audited financial statements and related fillings, beginning with the 2023 fiscal year, ending December 31, 2023.

To be considered, a proposal must be received via email in Adobe Acrobat PDF format on or before October 13, 2023 at 4:00PM at the following email address: admin@emerygoround.com. Proposals received after 4:00PM on October 13, 2023 will not be accepted.

I. Background

The Emeryville Transportation Management Association was formed in 1995 for the purpose of mitigating traffic congestion by developing and implementing transportation demand management strategies for the Emeryville community. For over 25 years, the ETMA has provided the Emery Go Round, a shuttle service which provides transit connectivity to the MacArthur BART Station for residents, businesses, and visitors of Emeryville. The service is fare-free and open to the public.

The ETMA is governed by a Board of Directors representative of four of the ETMA's five classes of membership. The ETMA does not have direct employees. All services are provided by consultants/contractors via professional service agreements and a shuttle operations and maintenance agreement. The ETMA acquires all vehicles by way of lease to purchase agreements or standard loans. The ETMA does not own real estate, however, does have a long-term lease with the State of California Transportation Department for the organizations fleet parking and operations facility in West Oakland, CA.

The ETMA is primarily funded by property owners in the citywide transportation business improvement district (PBID) and all previous audits have resulted in clean/fair opinions from the previous auditors.

II. Scope of Work

- a. Audit of the Association's Financial statements, review and issuance of management recommendations.



EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

III. Proposal Requirements

Acceptable proposals must include the following:

1. Cover Letter – The cover letter should include proposers' business name, address, contact person and California CPA and/or business license number and federal identification number. The cover letter should briefly state the proposers understanding of the work to be performed, commitment to the perform the work and statement of certification to validate the proposal for a period of 120 days, signed by an authorized representative of the firm.
2. Firm's Qualifications - Proposal shall include sufficient information to demonstrate your firms' qualifications to provide the scope of work, a list of current 501(c)(3) non-profit clients in the Bay Area similar to ETMA including client contact information, and a statement of commitment to staff continuity for personnel assigned to ETMA.

Proposer may also include peer review reports and/or client satisfaction letters demonstrating firms' performance.

IV. Evaluation Criteria

The ETMA will evaluate proposals based on the following criteria;

- Responsiveness to Request for Proposal specifications
- Qualifications of firm
- Qualifications and experience of staff to be assigned to the organization
- Fee Proposal
- References
- Demonstrated capability to perform the services requested.

During the evaluation process, ETMA reserves the right to request additional information from proposers and the right to reject any or all proposals. Proposals will be evaluated by a panel and the most qualified firm(s) may be requested for an interview.

There is no expressed or implied obligation for ETMA to reimburse responding firms for any expenses incurred throughout this procurement process.



EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

V. Selection Process & Schedule

The ETMA has developed the following process and schedule for this procurement process. The dates listed below are estimated and may be subject to change.

Issue Requests for Proposals:	9/22/2023
Deadline for Questions or Inquiries:	10/6/2023
Deadline for Proposal Submission:	10/13/2023
Consultant Interviews (if needed):	10/20/2023
ETMA Committee Selection of Consultant:	11/3/2023
Development of Professional Services Agreement:	11/4/2023
ETMA Board Consideration of Professional Services Agreement:	11/16/2023
Engagement Begin:	Spring 2024

We thank you for your consideration of this request for proposals. As a courtesy, we would appreciate a response even if you decline to submit a proposal. As noted above, should you have any questions regarding this request, please email admin@emerygoround.com.

Sincerely,

Daniel Oliver
Executive Director

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 9th 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: _____