



# EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

## AGENDA

Board of Directors Meeting  
August 19, 2021 @ 9:15 AM

[Zoom](#)

Meeting ID: 885 6484 1695

### **Chair**

*Geoffrey Sears,  
Wareham Development*

### **Vice Chair**

*Bobby Lee, At-Large  
Residential Member*

### **Secretary**

*Betsy Cooley, At-Large  
Residential Member*

### **Treasurer**

*Andrew Allen  
At-Large Business  
Member*

### **Directors**

*Peter Schreiber,  
Pixar*

*Colin Osborne*

*At-Large Business  
Member*

*Kassandra Kappelos*

*Public Market*

*Zack McGahey*

*Zymergen*

1. Call to Order
2. Public Comment
3. Approval of the Minutes of the June 17<sup>th</sup>, 2021 Board of Directors Meeting (Attachment)
4. Executive Directors Report
  - A. Status Update on Mandela Site
    - i. Progress Report
    - ii. Budget vs. Cost Report
  - B. Ridership Review
5. Business Items
  - A. Review and Consider Approval of Amendment 3 to Professional Services Agreement with Zoon Engineering for continued Construction Management and Project Closeout Activities (Attachment)
  - B. Review and Consider Staff Recommendation for the Relinquishment of Retired Shuttles (Attachment)
  - C. Review and Consider Approval of Professional Services Agreement with City of Emeryville for the continued operation of the 8 to Go Paratransit Shuttle Program (Attachment)
  - D. Discuss continued COVID safety measures and mask requirement
6. Confirm date of Next Meeting – September 16<sup>th</sup>, 2021
7. Adjournment

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

**ACTION SUMMARY MINUTES**

Board of Directors Meeting

June 17, 2021

**LOCATION: VIDEO CONFERENCE**

*Directors Present:* Geoffrey Sears, Chair (Wareham Development)  
Bobby Lee, Vice Chair (Residential Member)  
Betsy Cooley, Secretary (Residential Member)  
Andrew Allen (Residential Member)  
Kassandra Kappelos (Public Market)  
Zack McGahey (Zymergen)

*Others Present:* Roni Hatstrup, Executive Director  
Karen Boggs, Operations Director  
Debi Lawrence, Executive Assistant  
Brad Farmer, Finance Director (City of Emeryville)

1. Call to Order

*Geoffrey Sears called the meeting to order at 9:23 AM.*

2. Public Comment

*There were no comments from the public.*

3. Approval of the Minutes of the May 20<sup>th</sup>, 2021 Board of Directors Meeting

*Andrew Allen motioned for approval of the meeting minutes. Bobby Lee seconded the motion.*

*This item was approved by a unanimous vote.*

*Yes: 6*

*No: 0*

*Abstain: 0*

4. Appointment of Officers

*Andrew Allen motioned for approval of the Appointment of the following Officers: Bobby Lee – Chair; Andrew Allen – Vice Chair; Betsy Cooley – Secretary; Geoffrey Sears – Treasurer. The term for these Officer appointments is through May 2022 and is effective immediately. Zack McGahey seconded the motion.*

*This item was approved by a unanimous vote.*

*Yes: 6*

*No: 0*

*Abstain: 0*

5. Executive Directors Report

A. Status Update on Mandela Site

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

**ACTION SUMMARY MINUTES**

Board of Directors Meeting

June 17, 2021

- i. *Progress report – Roni stated that the site is nearing completion. Roni added that there needs to be a sign-off on the electric utility pedestal and Caltrans has not been willing to do this. Roni stated she is waiting for an update from Ernest but are hopeful that we can get Caltrans to sign off so that the inspection can be completed, and power will be established to the site. Roni added that the plans had the pedestal identified but once it was installed PG&E required it to be turned around to secure access. The goal is to be fully relocated by the end of July.*
- ii. *Budget vs. Cost report – Roni provided an overview of the project budget, noting that the costs were still within budget and that a contingency of over \$400,000 remained.*
- B. *Ridership Review – Karen stated that the ridership levels are slowly rising, about 5-6% over the last few months. Karen added that we are running about 20% of service from pre-Covid levels, whereas this time last year we were at 10%. Karen advised that we are following what AC Transit is doing for social distancing and will decrease to 3 feet at the beginning of June.*
- C. *Roni informed the Directors that she is working on obtaining proposals for options to move towards electrifying the fleet, and what that transition looks like. Roni added that she has heard from Mayor Dianne Martinez on behalf of the Energy Commission to see how they can assist with this and prepare a MOU for the ETMA and the Energy Commission, identifying the energy needs for the site. Roni stated that this phase would be funded by that group. Roni will update the Board as further information comes in.*

6. Business Items

A. 2022 Preliminary Budget & Levy Recommendation

*Roni Board approval to adopt the proposed preliminary budget. Roni provided an overview of the three PBID Levy increase scenarios and recommended a 3% increase in the PBID, given the unknowns with the future operations and fuel costs and the historical trend of cost increases over the years. Geoff Sears and other Directors inquired about why we would not consider a 0% increase in the PBID, given the current state of services during the pandemic and the potential financial hardship businesses may be facing. Roni provided an overview of the 4 cost and revenue forecasts and expressed her concerns with having a shortfall in revenue prior to the end of the current PBID term, should the Board choose not to increase the levy. Roni noted that she understood the concerns raised by the Board, given the state of the economy and would modify the recommendation to the City, as directed by the Board.*

*Geoff Sears motioned not to increase the proposed Levy budget. Zack McGahey seconded the motion.*

*This item was approved by a unanimous vote.*

*Yes: 6*

*No: 0*

*Abstain: 0*

B. Review and Consider Approval of Amendment #3 with MV Transportation, Inc for Shuttle Operations and Maintenance Services

*Roni provided an update on the negotiated price changes with MV Transportation. Roni stated that a big portion of the proposed increases from MV Transportation was due to the*

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

**ACTION SUMMARY MINUTES**

Board of Directors Meeting

June 17, 2021

*wage amounts for senior levels of current drivers. Roni added increase in services adds to the increases as well. Roni reviewed the pricing comps with the Directors.*

*Betsy Cooley motioned for approval of the #3 Amendment with MV Transportation. Geoff Sears seconded the motions.*

*This item was approved by a unanimous vote of the Board.*

*Yes: 6*

*No: 0*

*Abstain: 0*

- C. Authorize Staff to Continue Operating the 8 to Go Paratransit Service with a Notice to Proceed Letter from the City of Emeryville

*Roni presented the Notice to Proceed Letter from the City of Emeryville, for continued service of the 8 to GO Shuttle, while the final agreement is being prepared. Roni noted that the agreement was delayed, due to the delay in approved pricing for the shuttle operator. Roni informed the Board that she will bring the agreement to the Board for approval in August.*

*Geoff Sears motioned for approval of the Notice to Proceed Letter from the City of Emeryville. Zack McGahey seconded the motion.*

*This item was approved by a unanimous vote of the Board.*

*Yes: 6*

*No: 0*

*Abstain: 0*

- D. Review and Consider Approval of Amendment #4 to Transportation Agreement with Berkeley Gateway TMA to Revert to the Initial Agreement Term Through December 31, 2021

*Roni stated that we had shortened the agreement terms with the Berkeley Gateway TMA to June 30, 2021, while we negotiated pricing terms with their operator. Roni added that we modified that agreement to a \$93/hour (for no more than 5 hours of service) because of the decrease in services to cover costs. Roni informed the Board that when the service hours increase to more than 5 hours a day, we have an opportunity to reduce the hourly pricing. Roni advised that she feels that there is a good chance that these service hours will get extended to more than 5 hours come January 2022 and can adjust at that time. Roni is proposing to approve the amendment, which reverts to the original term of the agreement through December 2021, maintaining the \$93/hour pricing.*

*Zack McGahey motioned for approval of the #4 Amendment with Berkeley Gateway TMA. Betsy Cooley seconded the motion.*

*This item was approved by a unanimous vote of the Board.*

*Yes: 5*

*No: 0*

*Abstain: 1 – Geoff Sears abstained*

- E. Review of On-Site Security Proposals and Authorize Staff to Execute an Agreement for Services Through August 2021

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

**ACTION SUMMARY MINUTES**

Board of Directors Meeting

June 17, 2021

*Roni stated that when the buses are at the new facility, the security system will not be up and running initially. Roni added that because of the concerns of potential issues, we have collected various proposals for security patrol services. Debi reviewed the different proposals received for these services.*

*Betsy Cooley motioned for approval of obtaining security patrol services with Guardian Protection Security. Andrew Allen seconded the motion.*

*This item was approved by a unanimous vote of the Board.*

*Yes: 6*

*No: 0*

*Abstain: 0*

7. Confirm date of Next Meeting – August 19<sup>th</sup>, 2021  
*The meeting date was confirmed for August 19<sup>th</sup>, 2021.*
8. Adjournment  
*The meeting adjourned at approx. 10:49 AM.*

**Mandela Site - Project Budget Status**

Date: 8/16/21 (costs to date through June/July 2021)

Project Management Oversight	Project Budget	Total Authorized Budget	Cost to Date	Remaining Balance	% of Work Completed	% of Budget Expended
Gray Bowen Scott - Through PS&E Completion		\$ 133,000.00	\$ 134,196.86	\$ (1,196.86)	100%	101%
Gray Bowen Scott - Owners Rep During Construction		\$ 49,000.00	\$ 48,325.77	\$ 674.23	100%	99%
<b>Total Project Management Oversight</b>	<b>\$ 173,000.00</b>	<b>\$ 182,000.00</b>	<b>\$ 182,522.63</b>	<b>\$ (522.63)</b>		
	<i>Balance</i>	\$ (9,000.00)	\$ (522.63)			

Project Engineering & Permitting	Project Budget	Total Authorized Budget	Cost to Date	Remaining Balance	% of Work Completed	% of Budget Expended
Feasibility Study - Mandela Turn Pocket		\$ 5,000.00	\$ 4,995.77	\$ 4.23	100%	100%
Conceptual Site Plan		\$ 48,771.00	\$ 46,036.35	\$ 2,734.65	100%	94%
Design & Environmental		\$ 270,752.00	\$ 266,868.51	\$ 3,883.49	100%	99%
Design Support During Construction		\$ 29,500.00	\$ 12,582.00	\$ 16,918.00	82%	43%
Permitting & Other Expenses (see breakdown below)		\$ 185,605.20	\$ 106,105.46	\$ 79,499.74	90%	100%
<b>Total Project Engineering</b>	<b>\$ 400,000.00</b>	<b>\$ 539,628.20</b>	<b>\$ 436,588.09</b>	<b>\$ 103,040.11</b>		
	<i>Balance</i>	\$ (139,628.20)	\$ 103,040.11			

Construction Oversight - Zoon Engineering	Project Budget	Total Authorized Budget	Costs to Date	Remaining Balance	% of Work Completed	% of Budget Expended
Construction Oversight & Inspections		\$ 264,380.00	\$ 279,810.00	\$ (15,430.00)	82%	106%
<b>Total Construction Oversight</b>	<b>\$ 190,000.00</b>	<b>\$ 264,380.00</b>	<b>\$ 279,810.00</b>	<b>\$ (15,430.00)</b>		
	<i>Balance</i>	\$ (74,380.00)	\$ (15,430.00)			

<b>Total Management &amp; Engineering Costs</b>	<b>\$ 590,000.00</b>	<b>\$ 986,008.20</b>
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Modular Office	Project Budget	Estimated Budget	Cost to Date
Mobile Office Unit, delivery & ADA Ramp (and taxes)		\$ 190,609.27	\$ 171,197.14
<b>Total</b>	<b>\$ 175,000.00</b>	<b>\$ 190,609.27</b>	<b>\$ 171,197.14</b>
	<i>Balance</i>	\$ (15,609.27)	\$ 19,412.13

Construction Cost	Project Budget	Authorized Bid Amount & CCOs	Pending CCO's	Cost to Date
OC Jones & Sons - Base Bid Amount		\$ 1,934,135.00	\$ -	\$ 1,771,732.99
Change Order #1 - Debris Removal		\$ 21,298.00	\$ -	\$ 21,289.89
Change Order #2 -Horizon Extra Work - footing removal @		\$ 4,285.60	\$ -	\$ 4,285.60
Change Order #3 - Fire Service Plans & Fees		\$ 4,865.30	\$ -	\$ 4,865.30
Change Order #4 - All 10 foot chain link fence (estimate)		\$ (33,725.00)	\$ -	\$ (33,725.00)
Change Order #5 - Aggregates Previous CCO's		\$ 28,248.55	\$ -	\$ 28,248.55
Change Order #6 - Irrigation Temp Controller, mulch.		\$ 8,981.83	\$ -	\$ 8,981.83
Change Order #7 - ADA Domes (estimate)		\$ 10,000.00	\$ -	\$ -
Change Order #8 - Oakland Bike Lane		\$ 7,000.00	\$ -	\$ -
		\$ -	\$ -	\$ -
<i>Retention Held to Date (5%)</i>		\$ -	\$ -	\$ (72,047.35)
<b>TOTAL</b>	<b>\$ 2,051,680.00</b>	<b>\$ 1,985,089.28</b>	<b>\$ -</b>	<b>\$ 1,733,631.81</b>
	<i>Balance</i>	\$ 66,590.72	\$ 66,590.72	\$ 251,457.47

<b>Contingency Balance (see below)</b>	<b>\$ 600,000.00</b>	<b>\$ 427,973.25</b>
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	Project Budget	Authorized Budget	Costs to Date	Remaining Balance
<b>TOTAL PROJECT BUDGET/COST</b>	<b>\$ 3,589,680.00</b>	<b>\$ 3,589,680.00</b>	<b>\$ 2,803,749.67</b>	<b>\$ 785,930.33</b>

Contingency Summary	
Original Project Contingency	\$ 600,000.00
Remaining Budget - Construction oversight	\$ (83,380.00)
Remaining Budget - Construction	\$ 66,590.72
Permitting & Other Expenses	\$ (139,628.20)
Office Trailer	\$ (15,609.27)
Pending Contract Change Orders	\$ -
<b>Contingency Balance</b>	<b>\$ 427,973.25</b>

Permitting Fees & Other Site Expenses	Total Estimated Costs	Actual Costs To Date	Remaining Balance
Video Security System	\$ 70,000.00	\$ -	
Cable/WiFi	\$ 6,500.00	\$ -	
Office Furniture	\$ 2,000.00	\$ -	
Water Meter/EBMUD	\$ 58,448.00	\$ 58,448.00	
PGE Application Fee	\$ 5,515.58	\$ 5,515.58	
Fire Service	\$ 2,500.00	\$ 1,609.74	
Sewer Fee	\$ 1,277.19	\$ 1,277.19	
Other misc expenses (plan printing,etc.)	\$ 1,500.00	\$ 1,390.52	
Permit Fees (Caltrans, Oakland Planning, Building Permit, Encroachment Permit).			
Caltrans Encroachment Permits & Permit Extensions	\$ 1,148.00	\$ 1,148.00	
Oakland Planning Permit	\$ 8,510.52	\$ 8,510.52	\$ -
Oakland px Permit	\$ 28,205.91	\$ 28,205.91	
<b>Subtotal - Other Site Expenses</b>	<b>\$ 185,605.20</b>	<b>\$ 106,105.46</b>	<b>\$ -</b>

# Ridership Report

Based on data collected via automated passenger counters

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**Description:**

This report allows you to view passenger traffic for routes you have passenger counting devices on. This reports includes graphs and pie charts of your data.

**Generated on:**

8/12/2021 12:21:45 PM PST - LOCAL TIME

**Report Type:**

Overall

**Breakdown:**

By Month

**Date Range:**

[Specific Dates]: 6/1/2021 - 8/12/2021

**Routes**

Do Not Use, Hollis, Hollis Effective 10-30-20, Hollis Effective 10-30-20, North Hollis, North Shellmound, Shellmound/Powell, Shellmound/Powell Effective 02-25-21 Effective 02-25-21, Shellmound/Powell Effective 03-10-21, Shellmound/Powell Effective 12-31-20, Shellmound/Powell inbound Test , Shellmound/Powell outbound test, So. Shell/Powell - The Marina, So. Shell/Powell - The Towers, South Hollis, Watergate Express - AM, Watergate Express - AM - 2-13-18, Watergate Express - AM Effective 03-15-17, Watergate Express - PM, Watergate Express - PM - 2-13-18

**Days Covered:**

[7 days a week]

**Vehicles:**

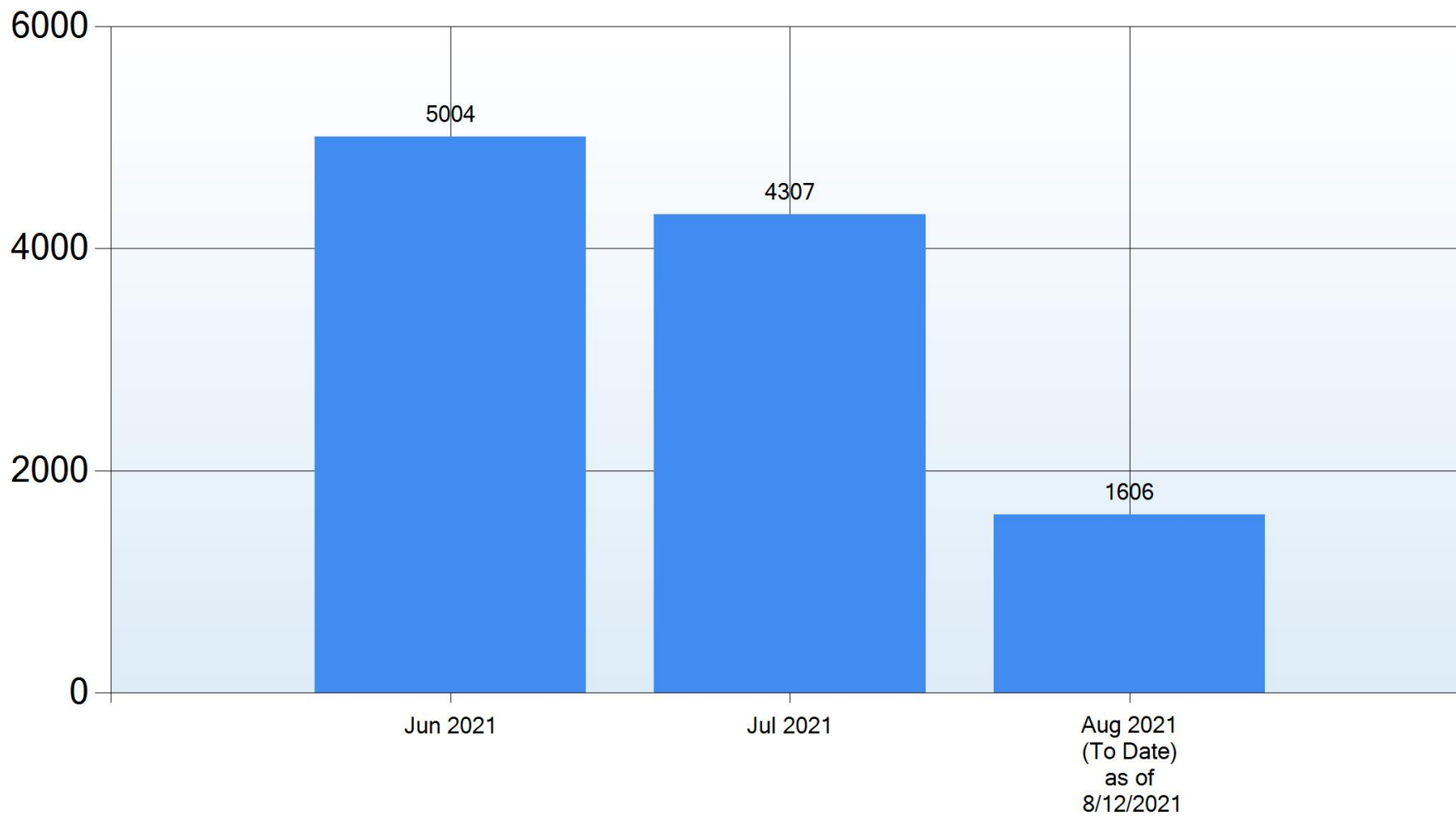
[All]

**Drivers:**

[All]

**Generated By:**

Debi Lawrence





## ROUTE DETAIL: Hollis

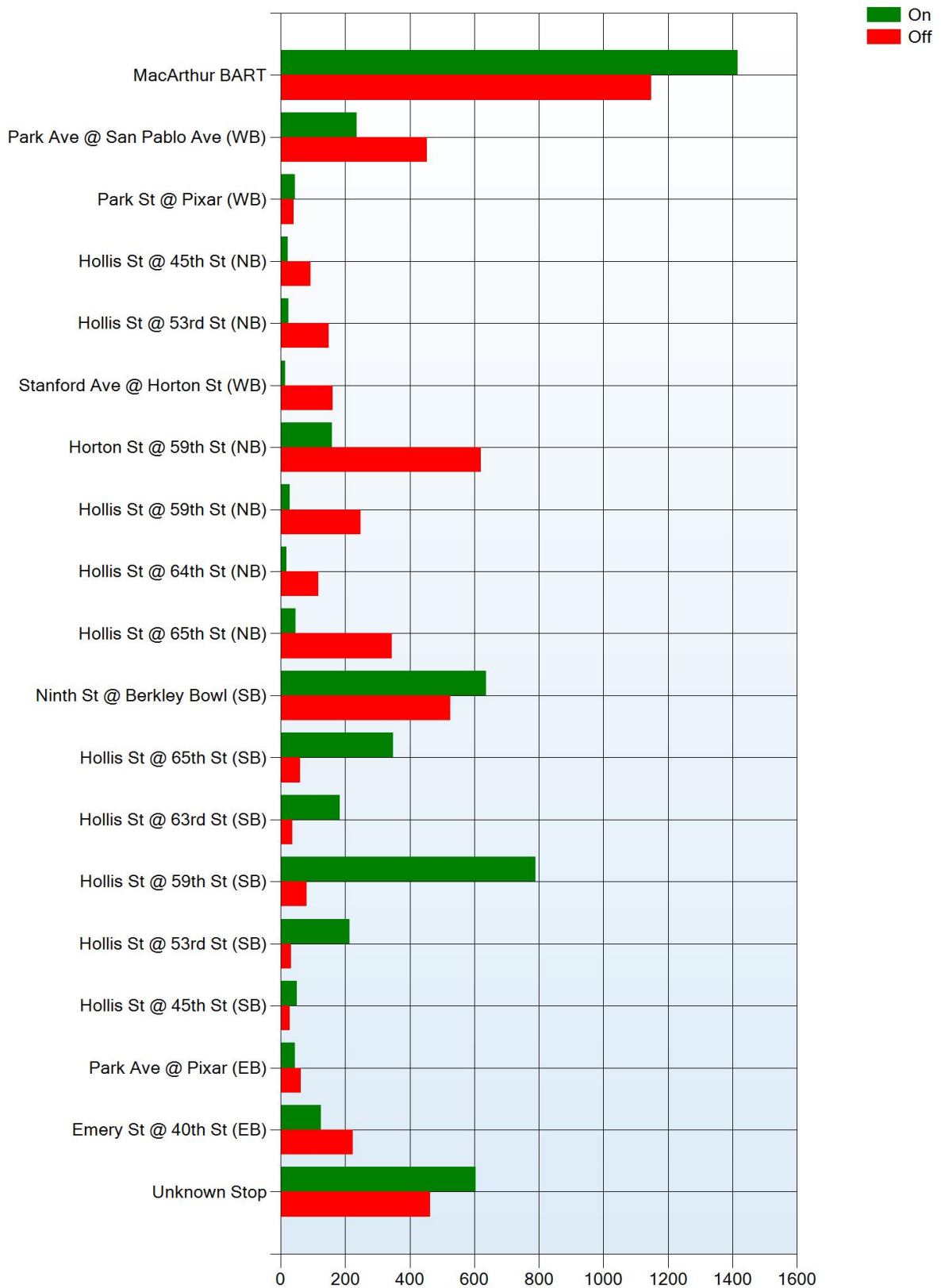
6/1/2021 - 8/12/2021

Stop Detail: Jun 2021 to Aug 2021 (To Date) as of 8/12/2021

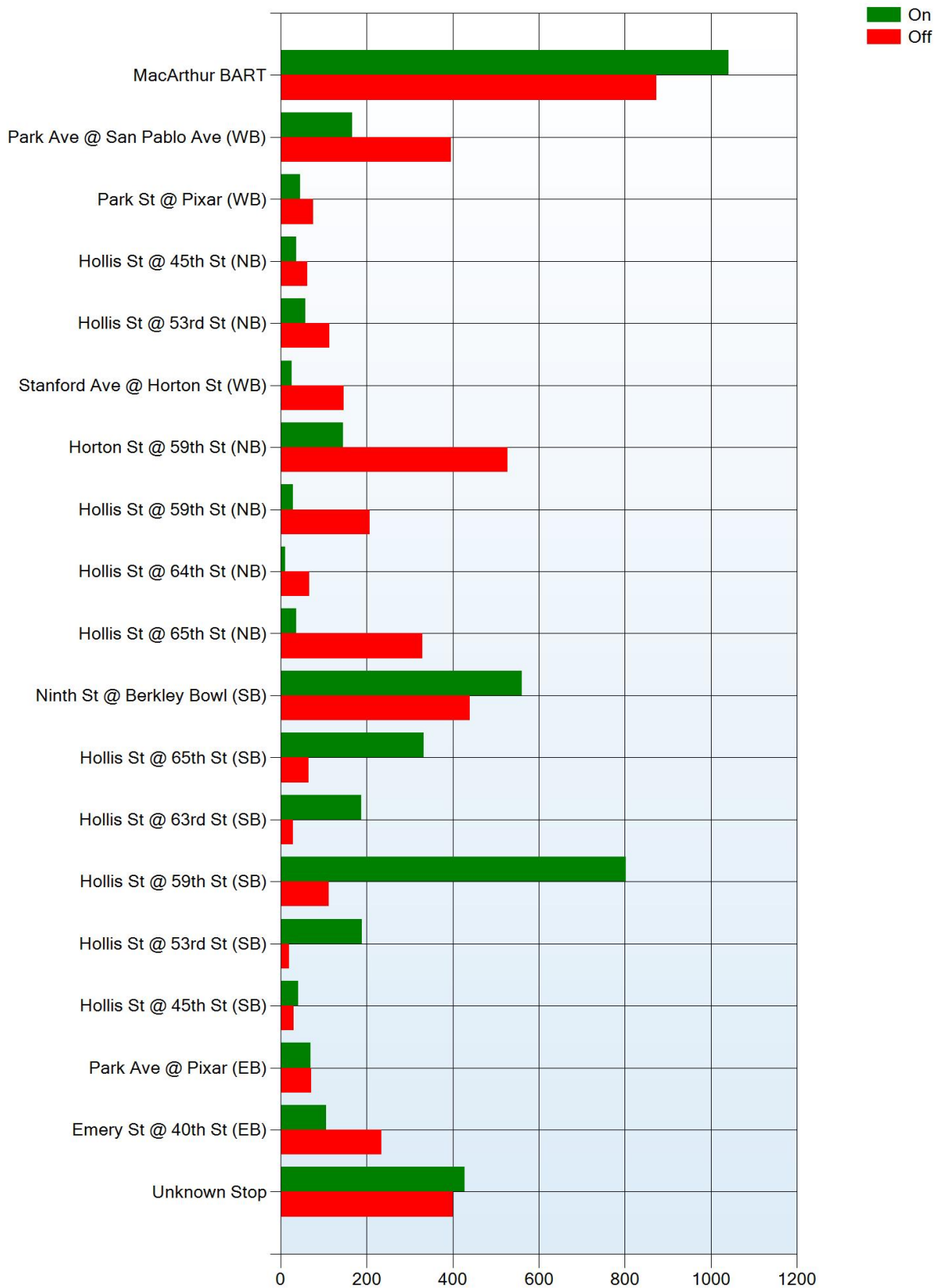
\* Unknown stop means we could not match the data to a stop, but it did occur when the vehicle was on route.

	Jun 2021				Jul 2021				Aug 2021 (To Date) as of 8/12/2021			
	On	On%	Off	Off%	On	On%	Off	Off%	On	On%	Off	Off%
<b>Total</b>	<b>5,004</b>	<b>--</b>	<b>4,885</b>	<b>--</b>	<b>4,307</b>	<b>--</b>	<b>4,199</b>	<b>--</b>	<b>1,606</b>	<b>--</b>	<b>1,559</b>	<b>--</b>
MacArthur BART	1,416	28%	1,148	23%	1,041	24%	874	20%	458	28%	379	24%
Park Ave @ San Pablo Ave (WB)	235	4%	453	9%	166	3%	396	9%	72	4%	146	9%
Park St @ Pixar (WB)	45	0.9%	40	0.8%	45	1%	75	1%	20	1%	16	1%
Hollis St @ 45th St (NB)	22	0.4%	93	1%	36	0.8%	62	1%	4	0.2%	27	1%
Hollis St @ 53rd St (NB)	24	0.5%	150	3%	57	1%	113	2%	19	1%	28	1%
Stanford Ave @ Horton St (WB)	15	0.3%	162	3%	25	0.6%	146	3%	12	0.7%	46	2%
Horton St @ 59th St (NB)	160	3%	621	12%	145	3%	528	12%	63	3%	204	13%
Hollis St @ 59th St (NB)	28	0.6%	247	5%	29	0.7%	207	4%	10	0.6%	66	4%
Hollis St @ 64th St (NB)	18	0.4%	116	2%	11	0.3%	66	1%	3	0.2%	39	2%
Hollis St @ 65th St (NB)	46	0.9%	344	7%	36	0.8%	329	7%	19	1%	126	8%
Ninth St @ Berkley Bowl (SB)	636	12%	525	10%	560	13%	440	10%	214	13%	142	9%
Hollis St @ 65th St (SB)	349	6%	60	1%	333	7%	65	1%	127	7%	41	2%
Hollis St @ 63rd St (SB)	184	3%	36	0.7%	187	4%	29	0.7%	65	4%	8	0.5%
Hollis St @ 59th St (SB)	789	15%	80	1%	802	18%	112	2%	252	15%	46	2%
Hollis St @ 53rd St (SB)	213	4%	32	0.7%	189	4%	20	0.5%	61	3%	21	1%
Hollis St @ 45th St (SB)	50	1.0%	29	0.6%	41	1.0%	30	0.7%	14	0.9%	12	0.8%
Park Ave @ Pixar (EB)	45	0.9%	62	1%	70	1%	71	1%	36	2%	28	1%
Emery St @ 40th St (EB)	125	2%	224	4%	106	2%	235	5%	33	2%	65	4%
Unknown Stop	604	12%	463	9%	428	9%	401	9%	124	7%	119	7%

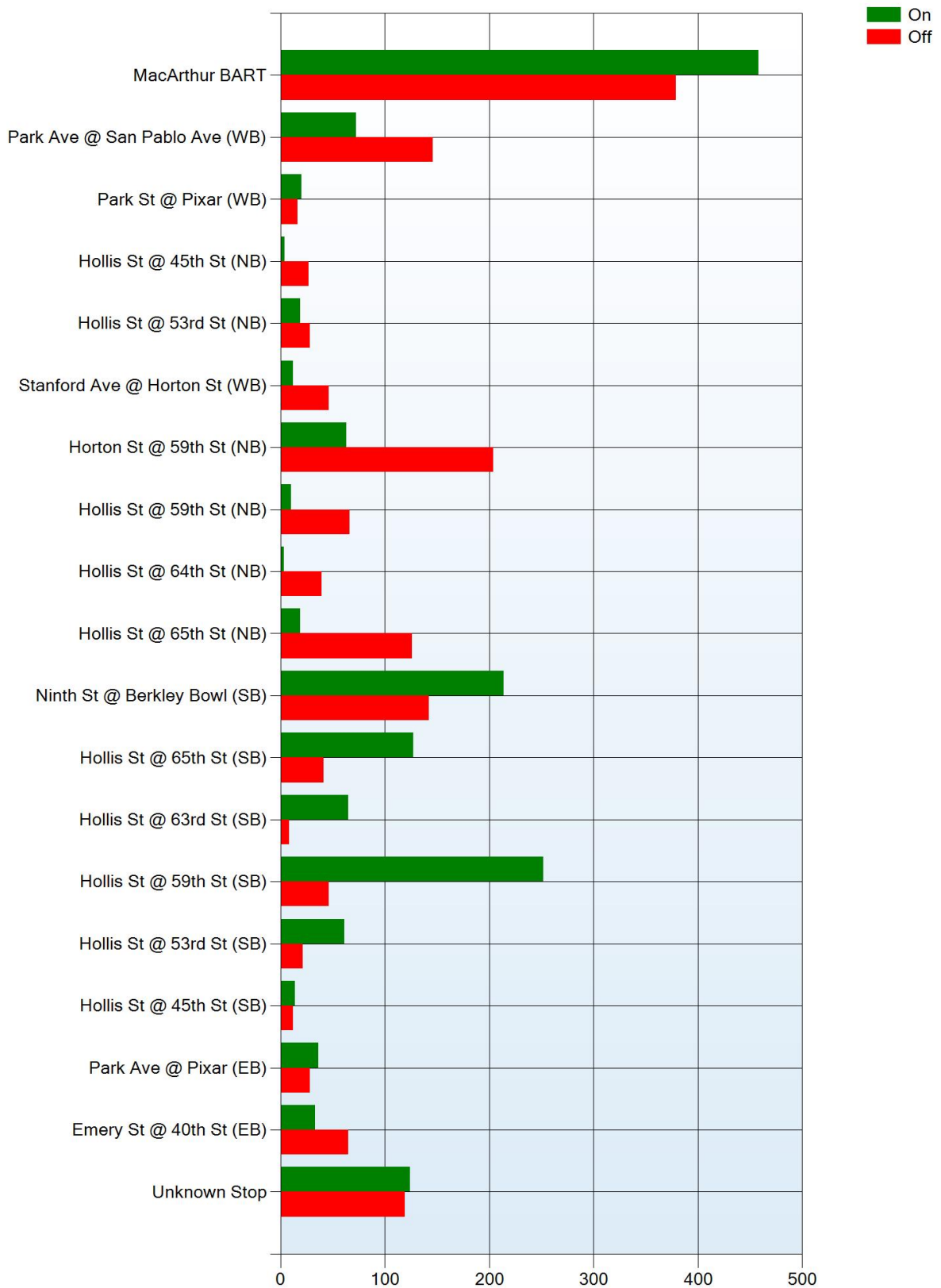
Jun 2021

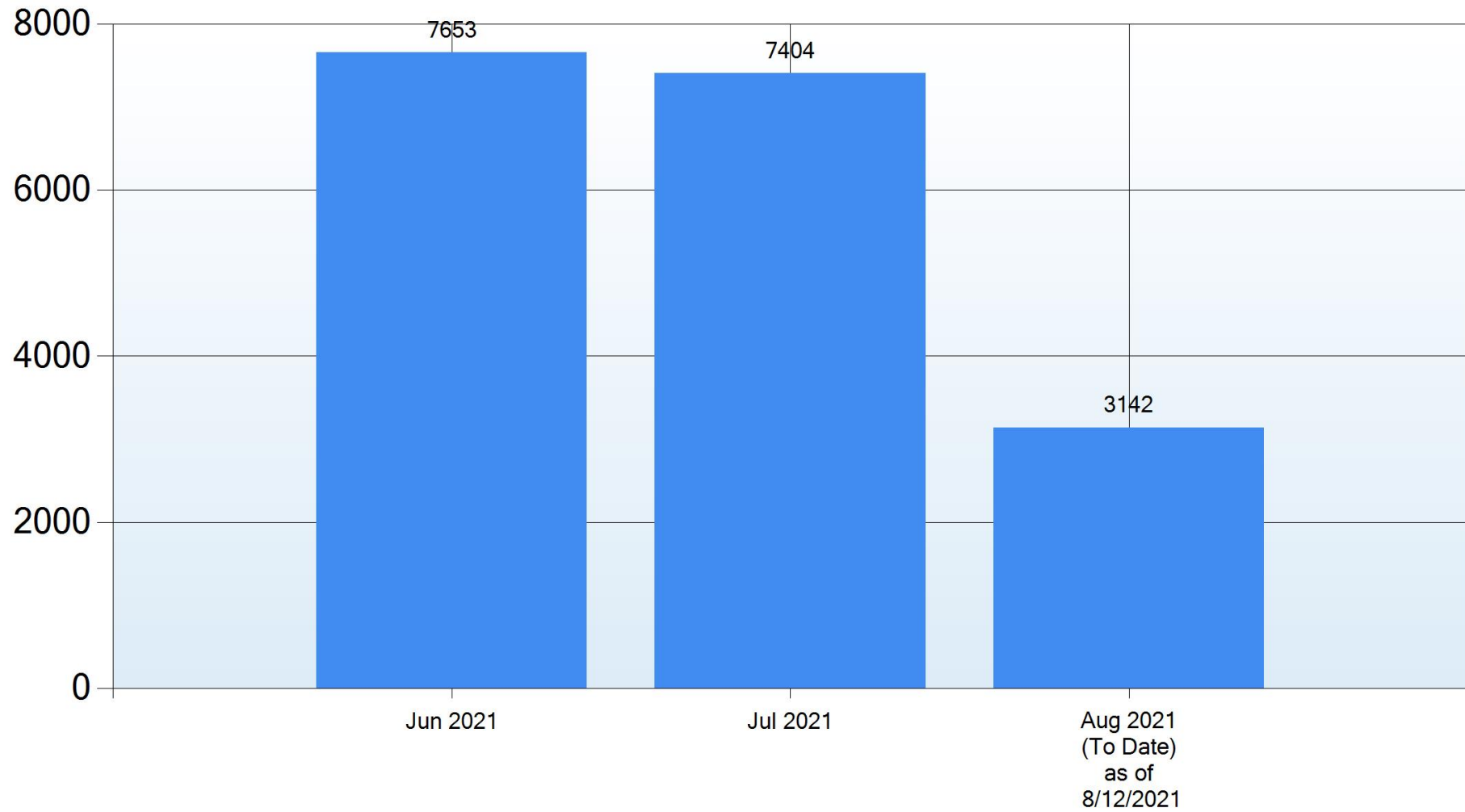


Jul 2021



Aug 2021 (To Date) as of 8/12/2021





# ROUTE DETAIL: Shellmound/Powell

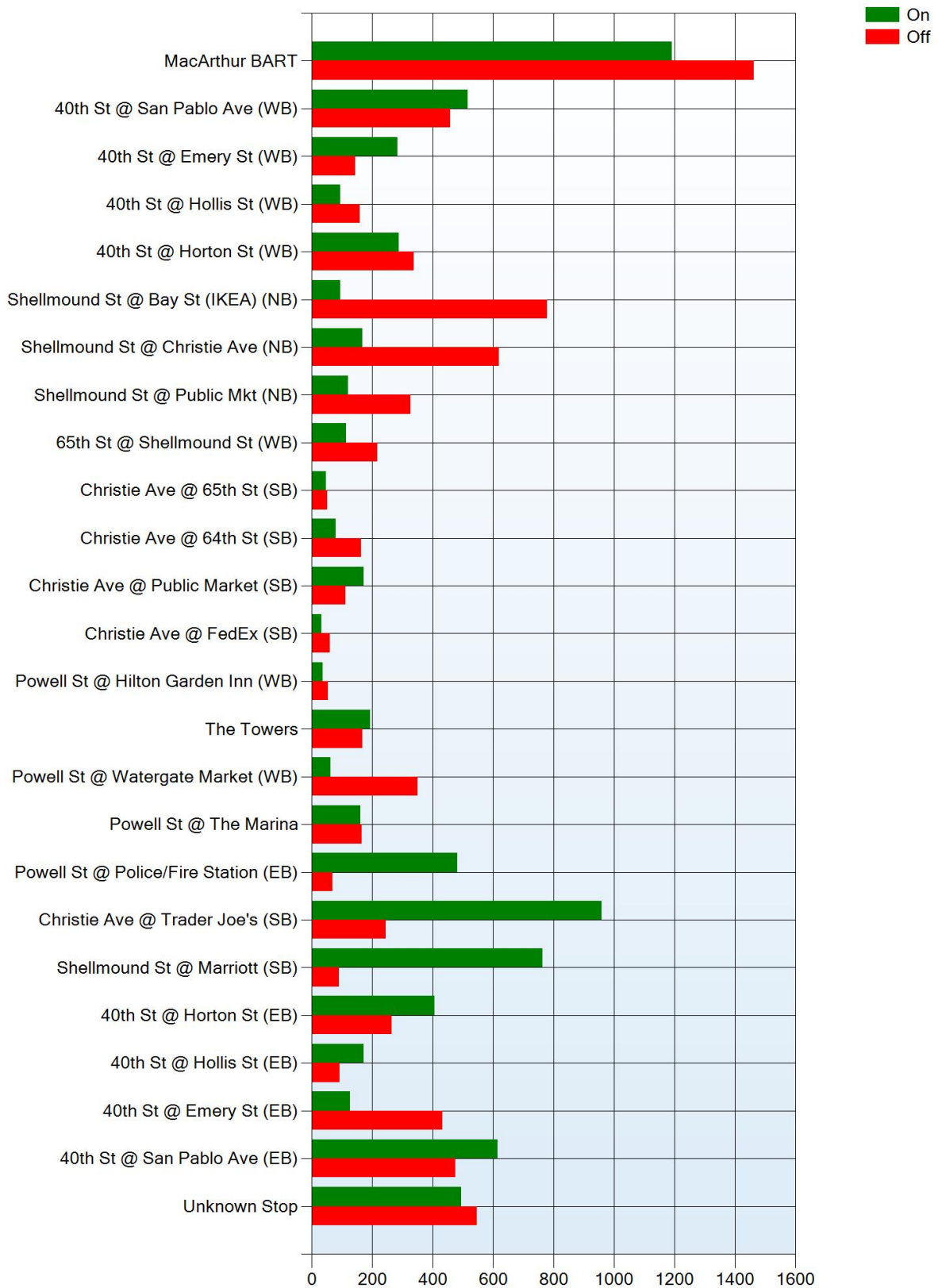
6/1/2021 - 8/12/2021

Stop Detail: Jun 2021 to Aug 2021 (To Date) as of 8/12/2021

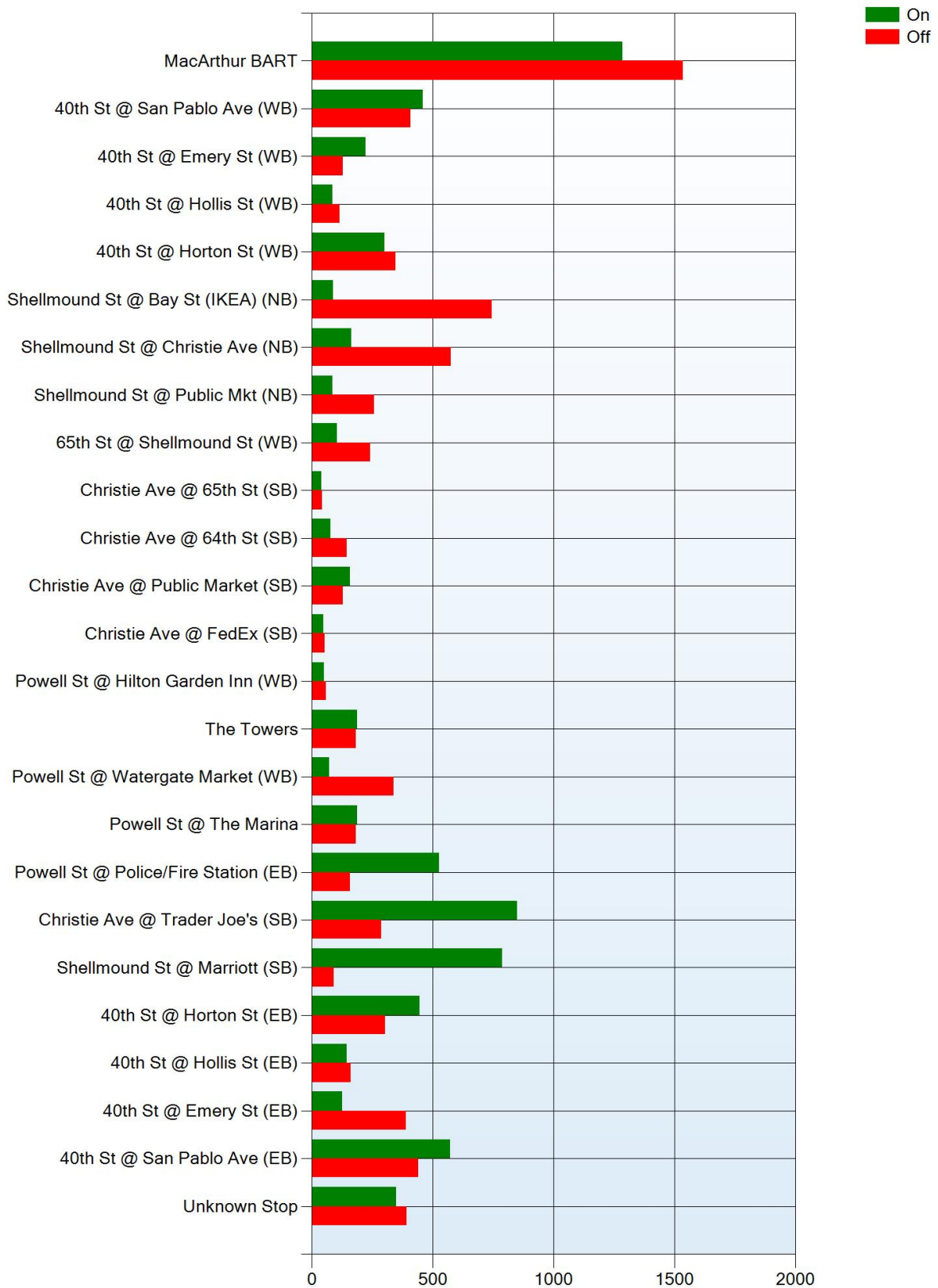
\* Unknown stop means we could not match the data to a stop, but it did occur when the vehicle was on route.

	Jun 2021				Jul 2021				Aug 2021 (To Date) as of 8/12/2021			
	On	On%	Off	Off%	On	On%	Off	Off%	On	On%	Off	Off%
<b>Total</b>	<b>7,653</b>	<b>--</b>	<b>7,824</b>	<b>--</b>	<b>7,404</b>	<b>--</b>	<b>7,698</b>	<b>--</b>	<b>3,142</b>	<b>--</b>	<b>3,113</b>	<b>--</b>
MacArthur BART	1,190	15%	1,462	18%	1,285	17%	1,535	19%	479	15%	504	16%
40th St @ San Pablo Ave (WB)	515	6%	457	5%	459	6%	408	5%	207	6%	194	6%
40th St @ Emery St (WB)	283	3%	143	1%	223	3%	127	1%	102	3%	36	1%
40th St @ Hollis St (WB)	94	1%	159	2%	84	1%	116	1%	29	0.9%	50	1%
40th St @ Horton St (WB)	288	3%	336	4%	301	4%	345	4%	133	4%	140	4%
Shellmound St @ Bay St (IKEA) (NB)	94	1%	778	9%	87	1%	745	9%	51	1%	319	10%
Shellmound St @ Christie Ave (NB)	167	2%	618	7%	163	2%	575	7%	52	1%	262	8%
Shellmound St @ Public Mkt (NB)	120	1%	327	4%	85	1%	257	3%	66	2%	109	3%
65th St @ Shellmound St (WB)	114	1%	217	2%	104	1%	241	3%	78	2%	113	3%
Christie Ave @ 65th St (SB)	46	0.6%	50	0.6%	40	0.5%	42	0.5%	25	0.8%	19	0.6%
Christie Ave @ 64th St (SB)	78	1%	163	2%	76	1%	143	1%	44	1%	61	1%
Christie Ave @ Public Market (SB)	172	2%	112	1%	158	2%	127	1%	60	1%	46	1%
Christie Ave @ FedEx (SB)	31	0.4%	60	0.8%	47	0.6%	54	0.7%	15	0.5%	20	0.6%
Powell St @ Hilton Garden Inn (WB)	35	0.5%	53	0.7%	50	0.7%	59	0.8%	21	0.7%	25	0.8%
The Towers	192	2%	168	2%	186	2%	181	2%	85	2%	81	2%
Powell St @ Watergate Market (WB)	61	0.8%	350	4%	72	1.0%	338	4%	34	1%	119	3%
Powell St @ The Marina	161	2%	165	2%	186	2%	183	2%	79	2%	66	2%
Powell St @ Police/Fire Station (EB)	482	6%	69	0.9%	527	7%	159	2%	186	5%	40	1%
Christie Ave @ Trader Joe's (SB)	958	12%	244	3%	849	11%	288	3%	401	12%	122	3%
Shellmound St @ Marriott (SB)	762	9%	89	1%	786	10%	91	1%	307	9%	44	1%
40th St @ Horton St (EB)	405	5%	263	3%	445	6%	302	3%	207	6%	159	5%
40th St @ Hollis St (EB)	171	2%	91	1%	145	1%	161	2%	51	1%	52	1%
40th St @ Emery St (EB)	126	1%	431	5%	126	1%	389	5%	48	1%	164	5%
40th St @ San Pablo Ave (EB)	615	8%	474	6%	572	7%	440	5%	218	6%	191	6%
Unknown Stop	493	6%	545	6%	348	4%	392	5%	164	5%	177	5%

Jun 2021

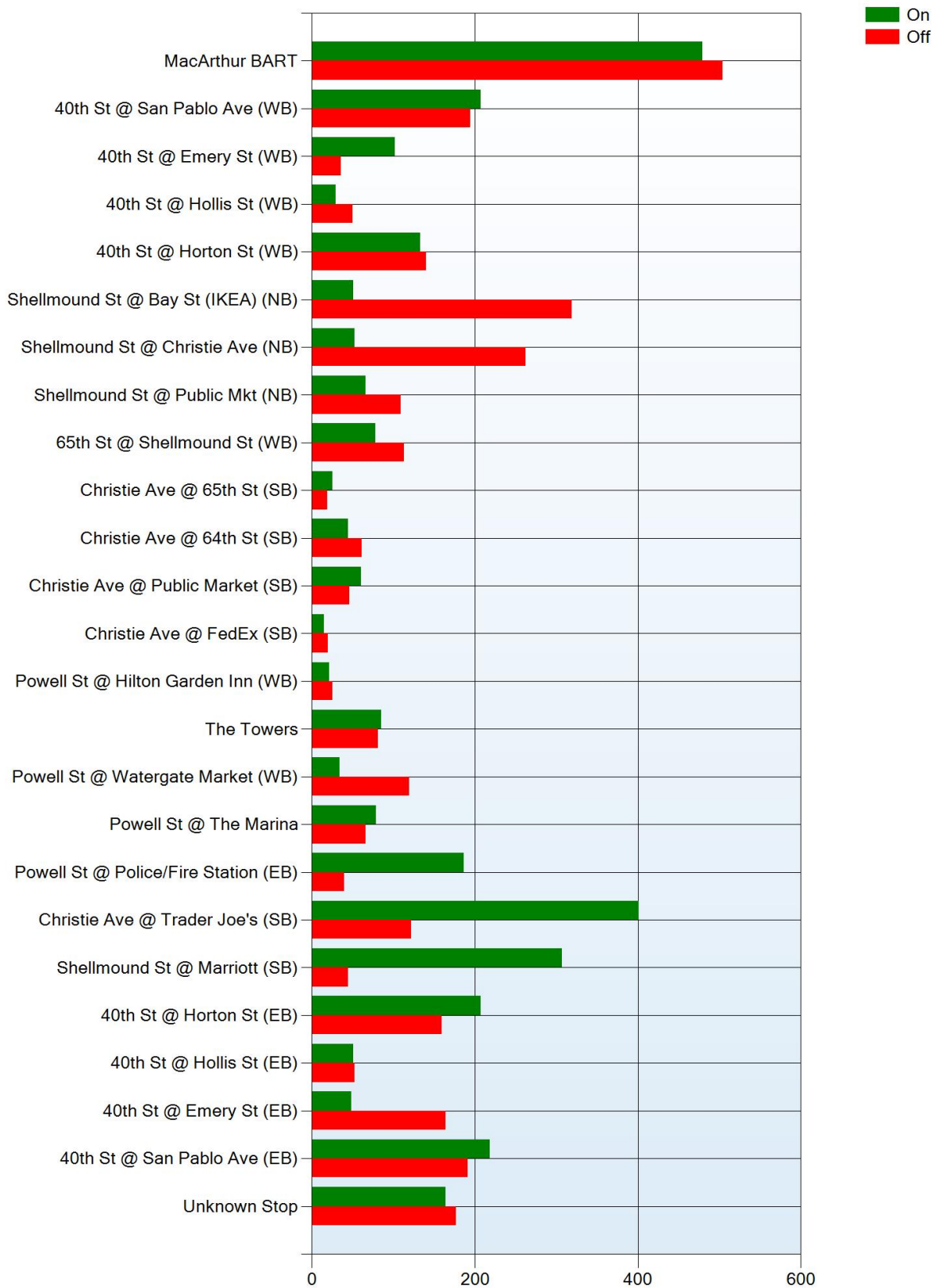


Jul 2021





Aug 2021 (To Date) as of 8/12/2021



**AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN  
EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION AND ZOON ENGINEERING, INC**

**THIS AMENDMENT NO. 3** to agreement dated May 21, 2020 between the Emeryville Transportation Management Association, a California non-profit corporation, herein called the "Association," and Zoon Engineer, Inc, a California Corporation, herein called the "Consultant."

RECITALS

WHEREAS, Association retained Consultant to provide Construction Oversight and Administration Services for the Associations Fleet Parking Facility for a not to exceed amount of \$78,100 for the first phase of work, which included Tasks 1, 2, 3, 6 and 7 described in the Statement of Work dated May 12<sup>th</sup>, 2020; and

WHEREAS, Association approved Amendment 1 to extend the term to December 31,2021 and to increase the compensation limit by \$110,700 for Tasks 4 and 5, described in the Statement of Work dated May 12<sup>th</sup>, 2020; and

WHEREAS, Association authorized Amendment 2 to the agreement to increase the compensation limit defined in Section 3A of the agreement by \$75,580 for additional out of scope work items described in their letters dated February 17<sup>th</sup> and March 11<sup>th</sup>, 2021; and

WHEREAS, Consultant has issued a request for budget augmentation in the amount of \$36,600 to cover additional costs associated with the project, including extensive coordination with PG&E, Caltrans and the City of Oakland and project closeout activities, which are described in Exhibit A attached, and included herein.

NOW, THEREFORE, BE IT MUTUALLY AGREED Section 3A of the agreement be amended to increase the total compensation by \$36,600 for a total not to exceed limit of \$300,980.

IN WITNESS WHEREOF, the Association approved Amendment No. 3 to this Agreement on the \_\_\_\_ of \_\_\_\_\_, 2021.

EMERYVILLE TRANSPORTATION  
MANAGEMENT ASSOCIATION

CONSULTANT

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

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

**From:** [eklock](#)  
**To:** [Roni Hatstrup](#)  
**Cc:** [nhissen@zoon-eng.com](mailto:nhissen@zoon-eng.com)  
**Subject:** Re: Zoon Budget Augmentation  
**Date:** Thursday, July 15, 2021 9:44:34 PM  
**Attachments:** [Zoon Level of Effort Jul 2021.pdf](#)  
[image001.png](#)

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Roni,

Thanks for the opportunity to review. Yes, Jon's time should significantly reduce through the end of this month with almost no on site CM anticipated in August unless something drastic happens here in the end of July or if Zoon needs to assist with the camera installation oversight. We did have a bit less effort in June as Jon took some vacation and the contractor tapered back on their efforts in light of the fence delays. They've also not submitted any extra work tags/CCOs in a while, so that will take some time to address in the July billing as they pile up at the end of this month.

The total amount looks appropriate, but I would just shift around the amounts to coincide with the level of effort by task. Jon and I have about \$11K so far in July (through today) in hours. Assuming that utilizes the remaining balance of \$10,880, a worst case estimate to finalize construction this month in the field would be \$11K. So, for the tasks, I anticipate the following breakdown:

Task 4 Contractor Oversight - \$11,000 (finalize July and maybe a bit in August to complete field activities with OC Jones)

Task 5 CCOs and Payments - \$10,000 (several CCOs to negotiate for finalizing project, July billing, August final billing and/or retention billing, project completion)

Task 6 Outside Coordination - \$9,000 (finalize Oakland and Caltrans permits, final outside agency walk-throughs, maintenance bond, landscape maintenance period begins, as-builts, etc)

Task 7 Regular Comms with TMA - \$6,600 (final project documents organization and hand-off and any miscellaneous construction inspection for internet/cameras)

Total: \$36,600.

The August costs may come in lower, but I am still waiting on responses from Oakland and Caltrans on close-out procedures, so level of effort is tough to ascertain. Also, is BKF on contract to do as-builts for the project? I only ask because Blake had asked me some weeks ago about "coordinating" those, but I'm not clear on their scope.

Thanks again Roni for your continued support.

Sincerely,

Ernest Klock, RCE 62664

3960 adeline street # 3 | emeryville, ca 94608

(415) 533-7582

[eklock@zoon-eng.com](mailto:eklock@zoon-eng.com)

[zoon-eng.com](http://zoon-eng.com)

On Thursday, July 15, 2021, 04:52:12 PM PDT, Roni Hatstrup <[roni@graybowenscott.com](mailto:roni@graybowenscott.com)> wrote:

Hi Ernest,

In preparation for my committee meeting, I've prepared the attached budget augmentation summary, based on the details you have provided. Before I send this to the committee, I wanted to give the chance to take a look and provide comments. It appears your June invoice came in well under your initial estimate of \$27k, so I assumed we will have some savings there, so I went ahead and modified the budget augmentation based on the June costs. Let me know if this is not the case. Please also look at how I applied the cost and budget forecast by task. Let me know if there are any additional changes, from your mid-June request. I suspect Jon's efforts will be far less in August. Is there any chance our August costs will be less than the \$21k?

The important thing for me is that you and your team continue as you have been to provide the management needed to see this project to the end. I suspect there may be some additional coordination relating to the internet service install, but I don't expect your effort on that to be too extensive.

Feel free to call or email me if you have any questions!

Thanks!

**Veronica'Roni' Hatstrup**

**Emeryville Transportation Management Association**

Gray-Bowen-Scott

1211 Newell Ave., Suite 200

Walnut Creek, CA 94596

T: (925)937-0980 ext. 212

C: (925) 899-4246

[www.emerygoround.com](http://www.emerygoround.com)

**Zoon Budget vs. Cost  
Proposed Budget Request**

**Budget Augmentation**

	Original Budget	Current Authorized Budget	Actual Costs (thru Jun)	Contract Balance (as of 6/30/2021)	Budget Augmentation Request #2	Total Proposed Budget	Proposed Remaining Budget
<b>Task 1 - Front-end Administrative Contract Specifications</b>							
Subtotal	\$ 19,800.00	\$ 33,960.00	\$ 33,960.00	-	\$ -	\$ 33,960.00	\$ -
<b>Task 2 - Bid Soliciting &amp; Award</b>							
Subtotal	\$ 14,200.00	\$ 1,800.00	\$ 1,800.00	-	\$ -	\$ 1,800.00	\$ -
<b>Task 3 - Negotiating &amp; Finalizing Contract</b>							
Subtotal	\$ 15,800.00	\$ 12,800.00	\$ 12,800.00	-	\$ -	\$ 12,800.00	\$ -
<b>Task 4 - Contractor Oversight</b>							
Subtotal	\$ 91,700.00	\$ 128,700.00	\$ 120,020.00	\$ 8,680.00	\$ 11,000.00	\$ 139,700.00	\$ 19,680.00
<b>Task 5 - Change Orders, Invoices and Contractor Payments</b>							
Subtotal	\$ 19,000.00	\$ 16,720.00	\$ 16,520.00	\$ 200.00	\$ 10,000.00	\$ 26,720.00	\$ 10,200.00
<b>Task 6 - Coordination with Outside Stakeholders &amp; Agencies</b>							
Subtotal	\$ 14,500.00	\$ 41,000.00	\$ 39,000.00	\$ 2,000.00	\$ 9,000.00	\$ 50,000.00	\$ 11,000.00
<b>Task 7 - Regular Communication w/ TMA</b>							
Subtotal	\$ 13,800.00	\$ 29,400.00	\$ 29,400.00	\$ -	\$ 6,600.00	\$ 36,000.00	\$ 6,600.00
<b>Total</b>	<b>\$ 188,800.00</b>	<b>\$ 264,380.00</b>	<b>\$ 253,500.00</b>	<b>\$ 10,880.00</b>	<b>\$ 36,600.00</b>	<b>\$ 300,980.00</b>	<b>\$ 47,480.00</b>

**Cost Forecast**

	July	Aug	Sept
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ 19,000.00	\$ 680.00	\$ -
	\$ 3,200.00	\$ 4,400.00	\$ 2,600.00
	\$ 2,000.00	\$ 6,000.00	\$ 3,000.00
	\$ 1,200.00	\$ 2,400.00	\$ 3,000.00
<b>Total</b>	<b>\$ 25,400.00</b>	<b>\$ 13,480.00</b>	<b>\$ 8,600.00</b>

Total Proposed Zoon Budget                   \$       300,980.00  
Total Construction Costs:                       \$       1,985,100.00  
Total CM Oversight Budget as % of  
Construction                                       15%

**Zoon Budget vs. Cost  
Proposed Budget Request**

**Budget Augmentation**

	Original Budget	Current Authorized Budget	Actual Costs (thru Jun)	Contract Balance (as of 6/30/2021)	Budget Augmentation Request #2	Total Proposed Budget	Proposed Remaining Budget
<b>Task 1 - Front-end Administrative Contract Specifications</b>							
Subtotal	\$ 19,800.00	\$ 33,960.00	\$ 33,960.00	-	\$ -	\$ 33,960.00	\$ -
<b>Task 2 - Bid Soliciting &amp; Award</b>							
Subtotal	\$ 14,200.00	\$ 1,800.00	\$ 1,800.00	-	\$ -	\$ 1,800.00	\$ -
<b>Task 3 - Negotiating &amp; Finalizing Contract</b>							
Subtotal	\$ 15,800.00	\$ 12,800.00	\$ 12,800.00	-	\$ -	\$ 12,800.00	\$ -
<b>Task 4 - Contractor Oversight</b>							
Subtotal	\$ 91,700.00	\$ 128,700.00	\$ 120,020.00	\$ 8,680.00	\$ 11,000.00	\$ 139,700.00	\$ 19,680.00
<b>Task 5 - Change Orders, Invoices and Contractor Payments</b>							
Subtotal	\$ 19,000.00	\$ 16,720.00	\$ 16,520.00	\$ 200.00	\$ 10,000.00	\$ 26,720.00	\$ 10,200.00
<b>Task 6 - Coordination with Outside Stakeholders &amp; Agencies</b>							
Subtotal	\$ 14,500.00	\$ 41,000.00	\$ 39,000.00	\$ 2,000.00	\$ 9,000.00	\$ 50,000.00	\$ 11,000.00
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<b>Total</b>	<b>\$ 188,800.00</b>	<b>\$ 264,380.00</b>	<b>\$ 253,500.00</b>	<b>\$ 10,880.00</b>	<b>\$ 36,600.00</b>	<b>\$ 300,980.00</b>	<b>\$ 47,480.00</b>

**Cost Forecast**

	July	Aug	Sept
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ 19,000.00	\$ 680.00	\$ -
	\$ 3,200.00	\$ 4,400.00	\$ 2,600.00
	\$ 2,000.00	\$ 6,000.00	\$ 3,000.00
	\$ 1,200.00	\$ 2,400.00	\$ 3,000.00
<b>Total</b>	<b>\$ 25,400.00</b>	<b>\$ 13,480.00</b>	<b>\$ 8,600.00</b>

Total Proposed Zoon Budget           \$       300,980.00  
 Total Construction Costs:               \$       1,985,100.00  
 Total CM Oversight Budget as % of  
 Construction                               15%

F.L.O.W. Creations  
Xavier - Board Member  
5676 Natoma Circle Stockton Ca 95219



## Bus Donation

### Letter of Intent

We would like to first thank Emery Go-Round for considering FLOW Creations non-profit organization in its donation. F.L.O.W. Creations is a fairly new company with goals of community building, business maturing, and youth focus. A goal for our community is to ensure people from all backgrounds are given the opportunity to see areas of California that are a rarity. Businesses will be very supportive of our future endeavors by being participants. Some youth through out the bay area are unable to view places such as Yosemite, Burney Falls, and or Half Moon Bay. Transportation will transform minds from the diamond in the rough into polished jewels.

We have talked amongst our board members to discuss projects that can be accomplished with a donated bus. Our first start up project in thought would be to take children from one Zip Code to another. Giving them a view of California parents haven't not seen nor heard of. A secondary project is Tours of the bay area. From one city to the next they all hold a history and a future; everyone would like to know both. Saturdays and Sundays of course would be used to fill the donated bus with church goers. People have been waiting to visit churches who are open during these trying times.

This is our ideal direction for community building. We at F.L.O.W. Creations have shared just a partial of our values and goals; again saying thanks for the consideration. we hope Emery Go-Round would also become a sponsor in support of our endeavors, also being updated through our journey.

In Love

Xavier Etter

[flowcreation144@gmail.com](mailto:flowcreation144@gmail.com) - 7027886174

**From:** [Balas Napashyam](#)  
**To:** [Karen Boggs](#); [Roni Hatstrup](#)  
**Subject:** Bus Donation  
**Date:** Friday, August 6, 2021 6:14:56 PM  
**Attachments:** [Bus Letter of Intent.docx](#)

Good day, here is our letter of intent and also a receipt for tax purposes. Please provide bus estimated value so this could be used for receipt.

**RECEIPT** No. 168262

DATE 8- FROM Emery Go-Bound \$ \_\_\_\_\_ DOLLARS

FOR RENT  
 FOR Donated Bus

ACCT.	<input type="radio"/> CASH	FROM _____ TO _____
PAID	<input type="radio"/> CHECK	BY <u>FlowCreations</u>
DUE	<input type="radio"/> MONEY ORDER	
	<input type="radio"/> CREDIT CARD	

A-2501  
T-46820



**From:** [Ngoc Chu](#)  
**To:** [Karen Boggs](#)  
**Subject:** Retired buses  
**Date:** Friday, July 30, 2021 2:32:45 PM  
**Attachments:** [image001.png](#)

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Good afternoon Karen,

I asked around about the values of 487 and 114 and here's what one of the vendors replied back with:

487

Vendor said approx. \$2,500 - \$3,000

114

Vendor said \$1,000 but mainly for parts, he was weary of the emission law changes for the older buses and how it would be difficult to keep that bus in road worthy condition while passing emissions.

Thank you.

**Ngoc Chu**

Maintenance Manager  
1944 Williams Street  
San Leandro, CA. 94577  
Office (510) 351-1603 Ext 19  
Cell (510) 340-0761  
Ngoc.chu@mvtransit.com  
[www.mvtransit.com](http://www.mvtransit.com)



MV TRANSPORTATION, INC

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**PROFESSIONAL SERVICES CONTRACT**

**THIS PROFESSIONAL SERVICES CONTRACT** (“Contract”) is effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION** (“Contractor”), individually referred to as a “Party” and collectively as the “Parties”.

**WITNESSETH THAT**

**WHEREAS**, the City desires to engage Contractor for Paratransit Services to the residents of the 94608 zip code through a program known as “8 To GO”; and

**WHEREAS**, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Contract; and

**WHEREAS**, the City has determined that the Contractor is qualified by training and experience to render such services; and

**WHEREAS**, the Contractor desires to provide such services; and,

**WHEREAS**, the public interest will be served by this Contract; and

**NOW, THEREFORE**, the Parties hereto do mutually agree as follows:

**1. SCOPE OF SERVICES AND TERMINATION DATE**

**1.1 Project Description**

A complete project description is set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

**1.2 Services**

The services to be completed under this Contract (“Services”) are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

**FOR CITY USE ONLY**

Contract No.		CIP No.	
Resolution No.		Project No.	

### **1.3 Schedule and Completion Date**

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and terminate on **JUNE 30, 2022**. The Parties may, by mutual, written consent, extend the term of this Contract.

## **2. WORK CHANGES**

### **2.1 City Rights to Change**

The City reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the City. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

### **2.2 Additional Work Changes**

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the City and the Contractor.

### **2.3 City Manager Execution**

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

## **3. COMPENSATION AND METHOD OF PAYMENT**

### **3.1 Compensation for Services Performed**

City agrees to pay the Contractor for the Services performed and costs incurred by Contractor upon certification by the City that the Services were actually performed and costs actually incurred in accordance with the Contract. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the City of invoices setting forth in detail the Services performed and costs incurred. The City shall pay the Contractor within forty-five (45) days after approval of the invoice by City staff.

### **3.2 Total Compensation Amount**

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED TWENTY SIX THOUSAND, FIVE HUNDRED DOLLARS AND NO CENTS (\$126,500)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be as set forth in **Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission,

normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

#### **4. COVENANTS OF CONTRACTOR**

##### **4.1 *Assignment of Contract***

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Contract, without the prior express written consent of the City. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them and the City shall have no obligation to them.

##### **4.2 *Responsibility of Contractor and Indemnification of City***

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Contract.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

### **4.3 Independent Contractor**

The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Services as an independent contractor and not as the agent or employee of the City. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services; hiring of contractors, agents or employees to complete the Services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

### **4.4 Insurance**

Contractor shall not commence Services under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

### **4.5 Records, Reports and Audits**

#### **4.5.1 Records**

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Contract. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

#### **4.5.2 Reports and Information**

Upon request, the Contractor shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Contract in the form requested by the City.

#### 4.5.3 Audits and Inspections

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Contract. The Contractor will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract.

#### **4.6 Conflicts of Interest**

The Contractor covenants and declares that, other than this Contract, it has no holdings or interests within the City of Emeryville, nor business holdings, contracts or agreements with any official, employee or other representative of the City. For the duration of this Contract, in the event the Contractor or its principals, agents or employees acquire such a holding, interest, contract, or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Contractor will immediately notify the City of such holding, interest, contract, or agreement in writing.

#### **4.7 Confidentiality**

The Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

#### **4.8 Discrimination Prohibited**

The Contractor covenants and agrees that in performing the Services required under this Contract, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.

#### **4.9 Licenses, Certifications and Permits**

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Services contracted for under this Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

#### **4.10 Key Personnel**

The Project Manager is necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team without the City's

approval. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Contract and shall be grounds for termination.

#### **4.11 Authority to Contract**

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Contract, if applicable.

#### **4.12 Ownership of Work**

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Services to be performed by the Contractor ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

#### **4.13 City Labor Requirements**

##### **4.13.1 Compliance**

At the Effective Date, compliance with the City's living wage ordinance is  **required** /  **not required** for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing Services to the City, then Contractor shall comply with the requirements of the City's Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws.

##### **4.13.2 Applicability**

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to

[Section 5-31.08 of the Emeryville Municipal Code](#). Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

#### 4.13.3 Non-Compliance

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

#### 4.13.4 Living Wage

Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$16.97 PER HOUR** (which is [subject to increase annually on July 1st](#) to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

#### 4.13.5 Minimum Wage and Paid Sick Leave

In addition to the Living Wage Ordinance, the Contractor may be required to comply with the [City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance](#), as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.

### **4.14 California Labor Requirements**

#### 4.14.1 Prevailing Wage Requirements

Contractor is aware of the requirements of [California Labor Code](#) Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775),



employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

#### 4.14.2 Registration

If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

#### 4.14.3 Labor Compliance Oversight

This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

#### 4.14.4 Workers’ Compensation

Pursuant to the requirements of section 1860 of the [California Labor Code](#), Contractor will be required to secure the payment of workers’ compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:

“I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

#### 4.14.5 Event of Default

Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

### 5. **TERMINATION**

- A. The City shall have the right to terminate this Contract for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Contractor for Services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the City.
- E. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- F. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

### 6. **NO PERSONAL LIABILITY**

No member, official or employee of the City shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract.

### 7. **ENTIRE AGREEMENT**

This Contract constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

**8. SUCCESSORS AND ASSIGNS**

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

**9. APPLICABLE LAW AND ATTORNEY’S FEES; VENUE**

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

**10. SEVERABILITY**

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

**11. BUSINESS TAX CERTIFICATE**

Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

**12. NOTICES**

**12.1 Communications Relating to Daily Activities**

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between **KIM BURROWES** for the City and **VERONICA HATTRUP** for the Contractor:

<b>CITY</b>	<b>CONTRACTOR</b>
KIM BURROWES, SUPERVISOR Phone No: 510-596-4308 E-Mail : kburrowes@emeryville.org	VERONICA HATTRUP, EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION Phone No: 925-937-0980 X212 E-Mail : roni@graybowenscott.com

### 12.2 Official Notices

All other notices, writings or correspondence as required by this Contract shall be directed to the City and the Contractor, respectively, as follows:

CITY	CONTRACTOR
<p>PEDRO JIMENEZ 4727 SAN PABLO AVE. Emeryville, California 94608 Phone No: 510-450-7813 E-Mail : pjimenez@emeryville.org</p> <p><i>with a copy to:</i> KIM BURROWES 4321 SALEM STREET Emeryville, California 94608 Phone No: 510-596-4308 E-Mail : kburrowes@emeryville.org</p>	<p>VERONICA HATTRUP, EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION 1211 Newell Avenue, Suite 200 Walnut Creek, CA 94596 Phone No: 925-937-0980 x212 E-Mail : roni@graybowenscott.com</p>

### 13. COUNTERPARTS

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

### 14. NO THIRD-PARTY BENEFICIARIES

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

### 15. NON-EXCLUSIVITY

City reserves right to employ other contractors in connection with the Services covered under this Contract.

### 16. ASSIGNMENT OR TRANSFER

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

## 17. WAIVER

The City's failure to enforce any provision of this Contract or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

## 18. OTHER REQUIREMENTS, INCLUDING FEDERAL OR STATE REQUIREMENTS, IF APPLICABLE

If any of the boxes are checked below, this Contract is subject to the requirements as set forth in **Exhibit C**:

- Compliance with terms and conditions set forth in **Exhibit C** is required for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("**Other Requirements**") when attached hereto and incorporated by reference. With respect to any conflict between such Other Requirements, and the terms of this Contract and/or provisions of state law, **Exhibit C** shall control.
  
- FEMA financial assistance will be used to fund all or a portion of this contract. If FEMA financial assistance will be used to fund any portion of this Contract, the Contractor shall comply with all federal requirements including, but not limited to, the following: 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference, and Federal Contract Provisions attached hereto as **Exhibit C** and incorporated herein by reference. Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in the contract, including but not limited to, 2 C.F.R. Part 200 and the Federal Contract Provisions. With respect to any conflict between such federal requirements and the terms of this contract and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

*SIGNATURES ON FOLLOWING PAGE*

**19. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT**

**IN WITNESS WHEREOF** the City and the Contractor have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:

\_\_\_\_\_  
City Attorney

Dated:

\_\_\_\_\_, 2021

**CITY OF EMERYVILLE**

\_\_\_\_\_  
Christine S. Daniel, City Manager

Dated:

\_\_\_\_\_, 2021

**EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION**

\_\_\_\_\_  
Bobby Lee, Chair

*(Signature)*

**Exhibit A**  
**EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION**  
**8 To Go Paratransit Shuttle**  
**Scope of Work**

1. Services to be Performed by Contractor:
  - a. Contractor shall operate an Americans with Disabilities Act compliant, on-demand shuttle service (“Service”) for residents of the 94608 zip code who are age 70 or older or age 18 or older and qualified to use East Bay Paratransit.
  - b. Service shall be provided by the operation of a single vehicle, with the capacity to carry no less than three (3) passengers. To comply with social distancing requirements due to Covid-19 Pandemic, Contractor may reduce passenger capacity to one (1) passenger due to COVID restrictions.
  - c. Service shall operate on weekdays from 9:00am to 12:30pm, and 1:30pm to 5:00pm. Service shall not operate on weekends or City holidays.
  - d. Contractor will provide a qualified driver for the service. A single person shall be assigned to be the “primary driver” to operate the shuttle daily. However, in the event the primary driver is unavailable, a substitute driver shall be provided. Contractor shall provide a cellphone to allow the driver to communicate with the dispatcher and/or passengers. All drivers providing the Service shall, at Contractor’s expense, obtain all necessary licenses and permits to provide the Service. All drivers shall maintain all such licenses and permits during the term of this agreement.
  - e. Contractor will provide fuel and maintenance for the vehicle. In the event maintenance required the vehicle to be taken out of service, Contractor will make an attempt to provide an alternate vehicle that meets the minimum requirements of the accessible vehicle described in section 1.d. as needed.
  - f. Contractor shall cooperate with City to fully comply with all terms and conditions of the ACTC Funding Agreement.
  - g. Customer Service: Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of all customer complaints regarding the operations of the Paratransit Shuttle Service. Contractor shall report all complaints to the City within one business day of receipt, including the name and

address of the complainant, date and time of complaint, and nature of complaint. Contractor and City will cooperate to obtain a resolution to reported complaints. A complaint log shall be maintained by Contractor for a period of one (1) year after the date of resolution. Such log shall be kept so that it may conveniently be inspected by representatives of the City upon request. Contractor shall not be held responsible for collecting information that is not provided by complainants.

2. City shall provide:

- a. Shuttle Dispatch Services: City shall schedule the daily passenger manifest. The manifest will contain the following information: Passenger name, phone number, pickup location address, drop-off location address, and time of pickup and drop-off. City shall provide the manifest to the driver for the following day. Same-day rides are to be coordinated by the driver. City shall ensure the daily passenger manifest and same day rides do not interfere with driver's scheduled breaks. City shall also be responsible for validating the eligibility of riders and trip origins and destinations.

3. Compensation:

- a. The "**Total Compensation**" to be paid for all Services by Contractor shall be **ONE HUNDRED TWENTY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$126,500)** and shall be limited to the following items:
  - i. Operation of Paratransit Shuttle: The compensation for operation of Services performed shall be no more than **One Hundred Twenty-Six Thousand Five Hundred Dollars (\$126,500)** for the period of July 1, 2021 through June 30, 2022 ("**Services Compensation FY 21-22**"). This compensation for operation of Services shall include salary and benefits of the driver of the vehicle utilized to provide the Paratransit Shuttle service, driver training expenditures related to office staff, insurance/claims, marketing, fuel, driver cell phone, supplies and equipment and maintenance of the vehicle utilized to provide the Paratransit Shuttle. Contractor shall provide a monthly report of office staff hours and its salary equivalent, as well as the cost of administrative expenses and any supplies and equipment utilized for the Paratransit Shuttle service. All other costs and expenses of the Paratransit Shuttle shall be eligible for reimbursement, subject to the annual limit described above. Contractor shall issue advance notice to the City if the



operational costs are expected to exceed the limits defined above, so the Parties may negotiate a contract amendment.

- ii. On a monthly basis Contractor shall submit an invoice for Services provided to date. Upon verification, City staff will process an **“Interim Payment”** for Services during the invoice period. In no event shall the total for all Interim Payments exceed the Services Compensation amount for FY 21-22. City may withhold any payments to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation of this Agreement. Approval and payment of any Interim Payment does not constitute acceptance of any future invoices.