

**AGREEMENT BETWEEN THE
SAN LEANDRO TRANSPORTATION MANAGEMENT ORGANIZATION
AND THE CITY OF SAN LEANDRO
FOR THE MANAGEMENT AND ADMINISTRATION OF THE
WEST SAN LEANDRO SHUTTLE AND BUSINESS IMPROVEMENT DISTRICT**

This Agreement is made and entered into as of _____, 2014 between the San Leandro Transportation Management Organization (SLTMO), a California non-profit mutual benefit corporation, and the City of San Leandro (“City”).

RECITALS

A. On October 20, 2014, the City Council of the City of San Leandro (the “City”) adopted Resolution No. 2014-115 (the “Resolution”) entitled “RESOLUTION of the City Council of the City of San Leandro Declaring the City Council’s Intention to Establish the West San Leandro Shuttle Business Improvement District (BID) and Setting a Public Hearing Relating Thereto for December 15, 2014.”

B. As specified in Resolution No. 2014-115, a public meeting concerning the formation of the district was held on December 1, 2014 at 7:00 p.m. before the City Council in the City Council Chambers at City Hall, 835 East 14th Street, San Leandro, California.

C. As specified in Resolution No. 2014-115, a public hearing concerning the formation of the district was held on December 15, 2014 at 7:00 p.m. before the City Council in the City Council Chambers at City Hall, 835 East 14th Street, San Leandro, California.

D. On December 15, 2014 the City Council adopted Ordinance No. _____ (the “Ordinance”) entitled “ORDINANCE of the City Council of San Leandro amending Title 2 of the San Leandro Municipal Code to Delete Chapter 15 and to add a new Chapter 15 establishing the West San Leandro Shuttle Business Improvement District in the City of San Leandro.”

E. The SLTMO and the City desire to continue the operation of the shuttle service from the San Leandro BART station to employers in the West San Leandro Industrial Area.

F. The shuttle will further the goals of the City and support sustainable economic development by providing to employees direct, free, high-frequency service from BART to the area’s employers and providing additional transportation options to enable low and moderate income residents to seek employment in the area.

G. The City and SLTMO desire to enter into this Agreement to set forth the roles and responsibilities of the parties with respect to providing BID improvements and BID administration.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS
HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:**

SECTION 1. The Shuttle Program. The Shuttle Program shall consist of a fleet of vans or small buses utilized for the transportation of BART riders from the San Leandro BART Station to employment areas in the West San Leandro industrial area. The map of the Shuttle Program is attached hereto as Exhibit 1 to this Agreement. The service area may be adjusted over time by the SLTMO consistent with the ordinance establishing the BID with the written approval of the City. The Shuttle Program shall provide rides to employees free of charge. The Shuttle Program shall be administered by the SLTMO pursuant to the terms of this Agreement.

SECTION 2. Provision of BID Services. The SLTMO shall provide, manage, and administer all district improvements, activities, and services, including the Shuttle Program pursuant to the SLTMO By-Laws. Said By-Laws shall be submitted to the City. The City shall be notified of any changes in the By-Laws or Articles of Incorporation maintained by the SLTMO within 30 days of their adoption by the SLTMO Board of Directors. The SLTMO shall be fully responsible for developing, implementing, directing and operating the Shuttle Program and related activities. Except as otherwise set forth in this Agreement, neither the City Council, the City of San Leandro, nor its BID Advisory Board will provide or be responsible for the provision, management, or administration of any BID improvements or activities.

SECTION 3. Budgets and Reporting. The SLTMO shall cooperate with the BID Advisory Board to prepare an annual budget for the management of the Shuttle Program and such budget shall include the sources and uses of funds for the Shuttle Program. The annual report shall be prepared in accordance with the requirements of the Parking and Business Improvement District Law of 1989 and must include an annual survey of individuals riding the shuttle. SLTMO's initial budget shall be submitted to the San Leandro City Manager no later than thirty (30) days after execution of this Agreement.

SECTION 4. Staff Support and Subcontracts. The SLTMO is an independent legal entity, and shall provide all necessary staff support for its activities. It may contract with the City of San Leandro or any other entity such that the City of San Leandro or other entity will be an independent contractor to the SLTMO to provide staff support, including but not limited to the following duties and responsibilities:

- A. Arrange, organize, staff and document monthly meetings of the SLTMO Board of Directors. Prepare all meeting agendas and summaries for review and approval by the SLTMO Board. Maintain all business records, ridership reports, contracts, meeting minutes, grant applications and invoices.
- B. In cooperation with the service provider, prepare detailed monthly ridership reports on shuttle operations for review by the SLTMO and the City.
- C. Create and distribute an Annual Report to the City and granting agencies and participate in the preparation of all necessary documents required for the West San Leandro Shuttle Business Improvement District (BID).
- D. Coordinate the financial reporting of the SLTMO. Prepare and submit appropriate financial documentation in a manner consistent with timely payment of invoices and submission of reports.

- E. Retain qualified accountant and coordinate the preparation and submittal of annual tax returns for the SLTMO.
- F. Participate in long-range planning and budgeting for the future viability of the program. Participate in regional shuttle and transportation planning meetings and grant workshops. Assist the SLTMO Executive Director in exploring all funding opportunities, writing applications and aggressively pursuing funding sources.
- G. Issue checks, drafts, or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation for any amount, signed by the City Manager of the City of San Leandro or their designee, following approval by two of the following: Chair, Treasurer or Executive Director or the Executive Director's designee of the Corporation and in such manner as shall from time to time be determined by resolution of the Board in the absence of such determination by the Board.

The SLTMO shall let and administer all subcontracts necessary for providing the BID improvements, services, and activities. The SLTMO is responsible to contract and pay for all support services as may be required to perform this Agreement. The SLTMO shall comply with all applicable Federal, State and City laws and regulations

SECTION 5. Grants. The parties acknowledge that the Shuttle Program is the current recipient of various grants. To the extent necessary, the parties agree that this Agreement may be amended or modified to allow the Shuttle Program to meet any requirements of these grant programs, or any other future grants that may be awarded to the SLTMO. The SLTMO shall comply with any and all requirements imposed by these grant programs, or any other future grant program.

SECTION 6. Funding and Business Participation Program. The parties acknowledge a primary source of funding for the Shuttle Program is participating businesses in the West San Leandro Business Improvement District. The SLTMO must conduct ongoing outreach to ensure that the businesses in the BID area participate in the Shuttle Program, and that the assessments collected by the City, and paid to SLTMO, be used to offset approximately one-half of the annual costs of operation of the Shuttle Program. Said outreach shall as a minimum include a business visitation outreach effort with affected business owners.

The parties further acknowledge that supplemental funding for the Shuttle Program will come from other local, state and federal grants. Upon SLTMO's request, the City will assist the SLTMO in obtaining local, state and federal grants.

SECTION 7. Records, Insurance, and Indemnification. The SLTMO shall maintain all records of the Shuttle program, including all subcontracts, and all other financial records. Such records must be kept accurate and up-to-date and shall be made available to the City for review upon request. The SLTMO shall, at any time deemed necessary by the City, make available for examination all of the Shuttle Program records and shall permit the City to audit, examine, and make excerpts or transcripts from such records. The SLTMO shall maintain the insurance required in Exhibit 2 to this Agreement.

SLTMO shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City, its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal

law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of SLTMO or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of SLTMO shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the active negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of SLTMO or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of SLTMO to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve SLTMO from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, SLTMO acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

SLTMO shall require its consultants and contractors to indemnify the City, and to require its consultants and contractors to name the City as additional insureds on any insurance coverage that SLTMO requires.

SECTION 8. Collection of the Assessment. The City's Finance Director will coordinate the annual levy, placement and collection of all assessments for the BID. The Finance Director shall effect the timely collection of the annual assessment; provide general assistance, clarification, or information to the SLTMO, the assessed parties and the public at large; maintain a continual liaison with the SLTMO, including the coordination of services from various City departments; authorize supplemental assessments, adjusted assessments, exemptions, reductions or refunds to be issued by the City; and, direct the disbursement of assessment funds to be made to the SLTMO.

SECTION 9. Disbursements to the SLTMO. The annual BID assessments will be transmitted from the City to the SLTMO. Based upon the annual levies as described in the Ordinance establishing the BID, the City shall disburse to the SLTMO the actual revenue received, excepting that the City will withhold its actual administrative costs for collecting, accounting for, and disbursing, the assessments. The City agrees to pay the SLTMO the amount due the SLTMO in a timely fashion. The payments shall be made as the City receives payment of the assessments.

SECTION 10. Amendment of the Agreement. This Agreement can be amended only in writing, signed by both parties. The parties will meet as needed to determine whether any amendments are necessary.

SECTION 11. Time of the Essence. Time is of the essence in this Agreement.

SECTION 12. Counterparts. This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

SECTION 13. Waivers. No waiver or any breach of covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.

SECTION 14. Construction. Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of nor should they be used to interpret this

Agreement. The singular form shall include plural, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated in it by this reference.

SECTION 15. Governing Law. This Agreement shall be governed and construed in accordance with California law.

SECTION 16. Term and Termination at-will. This Agreement shall expire fifteen (15) years from the date of execution unless the parties agree in writing to extend the Agreement. The City may terminate this Agreement at any time for any reason, or for no reason at all, upon 30 days written notice to SLTMO.

SECTION 17. No Conflicts. SLTMO shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

SLTMO understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and SLTMO will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and SLTMO will be required to reimburse the City for any sums paid to the SLTMO. SLTMO understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

SECTION 18. Notices. Any written notice to SLTMO shall be sent to:

Gordon A. Galvan, Executive Director
San Leandro Transportation Management Organization
835 East 14th Street
San Leandro, California 94577

Any written notice to City shall be sent to:

Jeff Kay, Business Development Manager
City of San Leandro
835 East 14th Street
San Leandro, California 94577

The parties have executed this Agreement as of the date first written above.

Attest: _____
Marian Handa, City Clerk

Chris Zapata, City Manager

CITY OF SAN LEANDRO, a municipal
corporation

SAN LEANDRO TRANSPORTATION
MANAGEMENT ORGANIZATION, a
California non-profit mutual benefit
corporation

GORDAN GALVAN, Executive Director

Approved as to Form

Richard Pio Roda, City Attorney

Approved as to Budget Authority:

David Baum, Finance Director

EXHIBIT 1

Proposed LINKS Route and BID Area

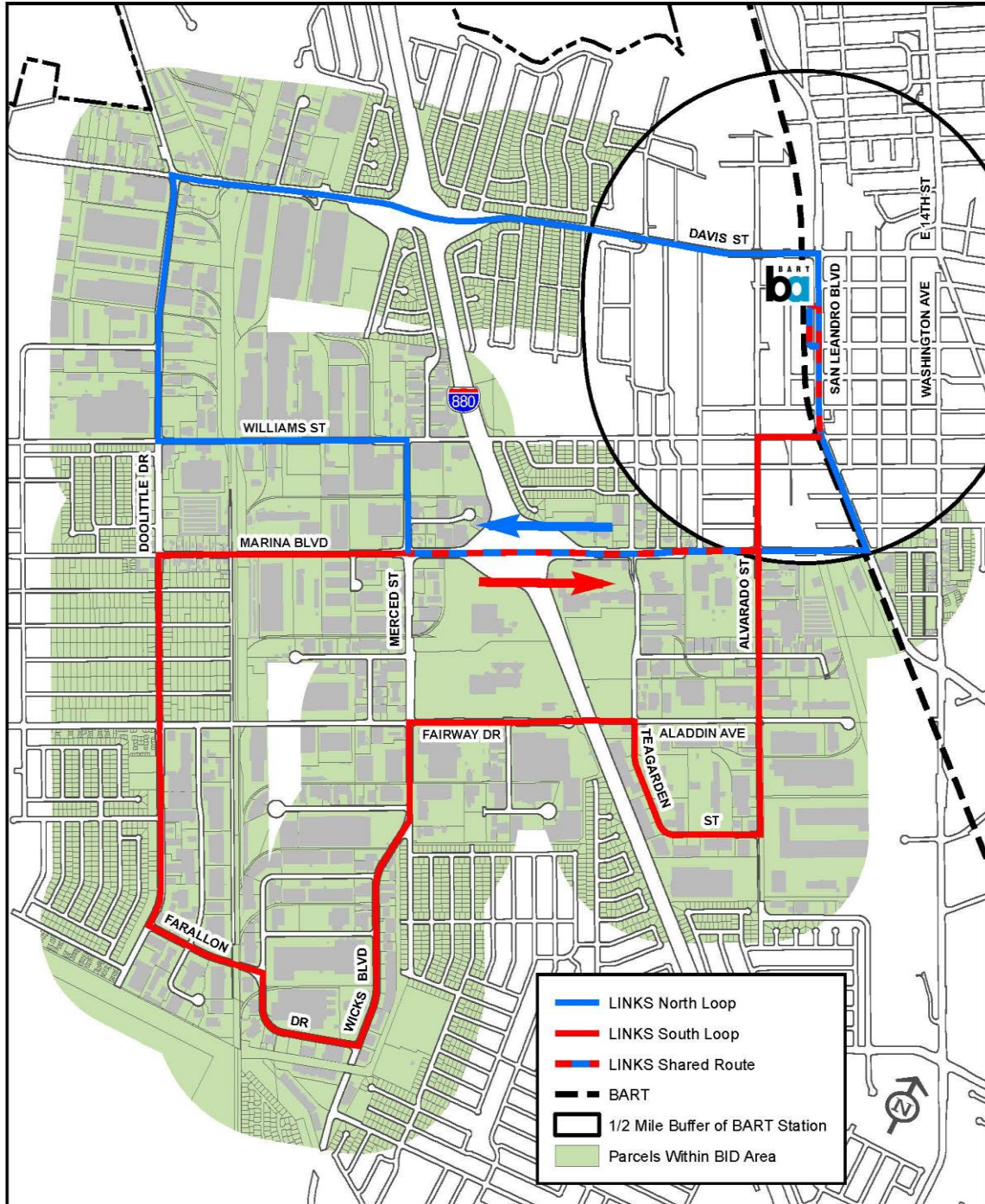


EXHIBIT 2

INSURANCE REQUIREMENTS MEMORANDUM OF UNDERSTANDING CITY OF SAN LEANDRO

Before beginning any work under this Agreement, SLTMO, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the SLTMO and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, SLTMO shall provide proof satisfactory to City and Agency of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City and Agency. SLTMO shall maintain the insurance policies required by this section throughout the term of this Agreement. SLTMO shall not allow any subcontractor to commence work on any subcontract until SLTMO has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City and Agency. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

1.1 Workers' Compensation. SLTMO shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by SLTMO. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, SLTMO may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the SLTMO, if a program of self-insurance is provided, shall waive all rights of subrogation against the City, that Agency, and their respective officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

1.2 Commercial General and Automobile Liability Insurance.

1.2.1 General requirements. SLTMO, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting

therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

1.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or GL 0002 (ed.1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1. No endorsement shall be attached limiting the coverage.

1.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Any failure of SLTMO to comply with reporting provisions of the policy shall not affect coverage provided to City and Agency and their respective officers, employees, agents, and volunteers.

1.3 All Policies Requirements.

1.3.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

1.3.2 Verification of coverage. Prior to beginning any work under this Agreement, SLTMO shall furnish City and Agency with complete certified copies of all policies, including complete certified copies of all endorsements. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

1.3.3 Notice of Reduction in or Cancellation of Coverage. A certified endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City and Agency. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, SLTMO shall provide written notice to City and Agency at SLTMO's earliest possible opportunity and in no case later than ten (10) working days after SLTMO is notified of the change in coverage.

1.3.4 Additional insured; primary insurance. A certified endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) shall be attached to all policies stating that the City, the Agency, and their respective officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of SLTMO, including the insured's general supervision of SLTMO; products and completed operations of SLTMO, as applicable; premises owned, occupied, or used by SLTMO; and automobiles owned, leased, or used by the SLTMO in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City, the Agency, or their officers, employees, agents, or volunteers.

A certified endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the City, the Agency, and their officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City or Agency shall be called upon to contribute to a loss under the coverage.

1.3.5 Deductibles and Self-Insured Retentions. SLTMO shall disclose to and obtain the approval of City and Agency for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City and Agency, SLTMO may increase such deductibles or self-insured retentions with respect to City, the Agency, and their respective officers, employees, agents, and volunteers. The City and Agency may condition approval of an increase in deductible or self-insured retention levels with a requirement that SLTMO procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

1.3.6 Subcontractors. SLTMO shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

1.3.7 Variation. The City and Agency may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's and Agency's interests are otherwise fully protected.