

**FIRST AMENDMENT TO THE 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 FIRST AMENDMENT to the 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 “**Amendment**”), is entered into as of May 15, 2023 (the “**Amendment Date**”), by and among the City of San Leandro (“**City**”) and the San Leandro Transportation Management Organization (“**SLTMO**”), a California non-profit mutual benefit corporation, and amends that certain Agreement for the Management and Administration of the West San Leandro Shuttle and Business Improvement District dated December 15, 2014 (the “**Agreement**”) by and between the City and SLTMO. City and SLTMO are collectively referred to herein as the “**Parties.**” Capitalized terms used without definition herein have the meaning ascribed to such terms

RECITALS

A. In 2014, the City of San Leandro (the “City”) and the San Leandro Transportation Management Organization (“SLTMO”) desired to continue the operation of the shuttle service from the San Leandro BART station to employers in the West San Leandro Industrial Area (“LINKS Shuttle”), which had been in operation since 2001.

B. The LINKS Shuttle furthers the economic development and sustainability goals of the City by providing to employees direct, free, high-frequency service from BART to the area’s employers and providing additional transportation options to reduce air pollution from single occupancy vehicles and enable low and moderate income residents to seek employment in the area.

C. On October 20, 2014, the City Council of the City of San Leandro adopted Resolution No. 2014-115 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”.

D. On December 15, 2014 the City Council adopted Ordinance No. 2014-023 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. On December 15, 2014 the City Council adopted Resolution No. 2014-136 entitled “RESOLUTION to Approve an Agreement with the San Leandro Transportation Management Organization (SLTMO) for the Management and Administration of the West San Leandro Shuttle and Business Improvement District” (the “Management Agreement”).

F. This Management Agreement to set forth the roles and responsibilities of the parties with respect to providing improvements and administration of the West San Leandro Shuttle Business Improvement District, which administers the LINKS Shuttle.

G. As contemplated in the Management Agreement, the SLTMO establishes agreements with independent contractors to staff and administer the duties of the SLTMO.

H. On November 1, 2022, the SLTMO entered into a consulting services agreement with ALTRANS – Transportation Management Association, Inc. (“ALTRANS”) to serve as Executive Director and Administrative Staff for the SLTMO and administer the LINKS Shuttle.

I. As a part of their administration, ALTRANS has performed an evaluation of current governing agreements and practices of the SLTMO and has recommended amendments to various operational and financial practices to ensure an efficient, effective and modern operation of the SLTMO.

J. On April 13, 2023, the Board of Directors of the SLMTO approved an amendment to the By-Laws of the San Leandro Transportation Management Organization, to reflect current and best practices for administration of district finances and financial transactions.

K. Comparable changes are proposed to the Management Agreement between the City and SLTMO to reflect the proposed practice updates, which are supported by the SLTMO Board and City staff.

L. The City and SLTMO desire to enter into this First Amendment 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. Recitals. The above recitals are true and the recitals, and defined terms set forth therein, are incorporated into this First Amendment by this reference.

Section 2. Staff Support and Sub Contracts. Section 4.G of the Agreement is hereby amended as follows (underline and italics is addition, strike-through is delete):

A. Issue checks, drafts, or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation *per its By-Laws* ~~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.~~

Section 3. Ratification. Except as otherwise expressly set forth herein, all other terms and conditions of the Agreement remain unchanged and in full force and effect.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, Buyer, Agency and City have duly executed this Amendment on the dates set forth below.

Attest: _____
Kelly B. Clancy, City Clerk

Frances M. Robustelli, City Manager
CITY OF SAN LEANDRO, a municipal
corporation

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

DANIEL OLIVER, Executive Director

Approved as to Form

Richard Pio Roda, City Attorney

Approved as to Budget Authority:

T. Michael Yuen, Finance Director

EXHIBIT 1

Proposed LINKS Route and BID Area

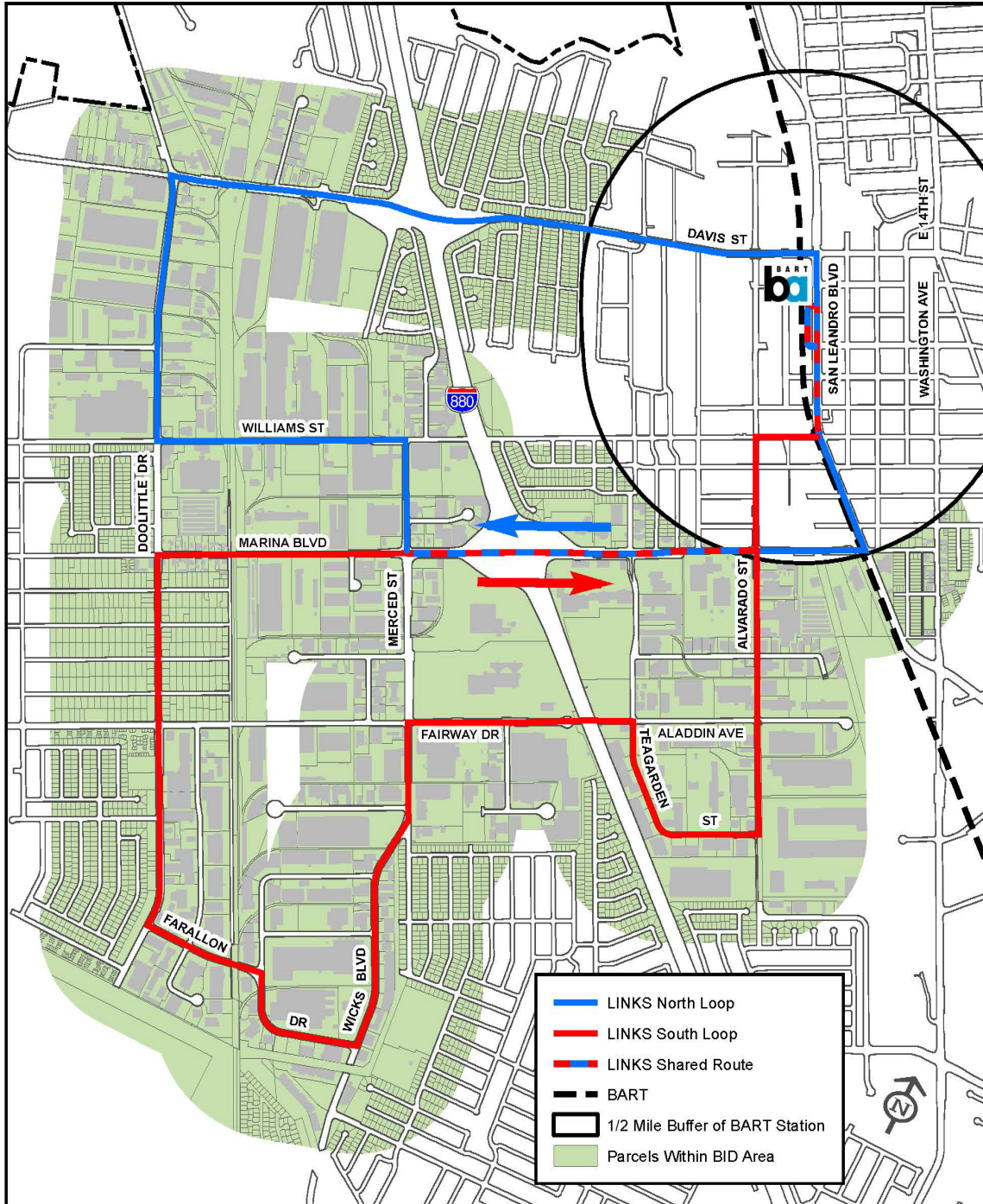


EXHIBIT 2

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.