

STAFF REPORT

SUBJECT: First Amendment to Agreement with City Concerning Historic Depot

FROM: Michael Tree, Executive Director

DATE: January 9, 2017

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**Action Requested**

The recommendation is that the LAVTA Board approves the First Amendment to the November 24, 2015 Lease Agreement between the City of Livermore and LAVTA concerning the Historic Depot.

**Background**

In October of 2015 the LAVTA Board considered the details of Livermore's proposed Historic Depot relocation to LAVTA's downtown Livermore Transit Center and its subsequent renovation. After review the LAVTA Board authorized the Executive Director to sign an Agreement with the City of Livermore to implement the project. In November of 2015, the Agreement for (1) Right of Entry (2) Lease and Sale of Land; and (3) Terms of Depot Building Lease with the City of Livermore was signed (see attachment).

A basic summary of the plan and Agreement is to relocate the Livermore Historic Depot from its current location on L Street to the Downtown Livermore Transit Center that is currently served by both Wheels and Amtrak buses, as well as the ACE train. To accomplish the relocation a LAVTA customer service building with FTA interest will need to be demolished to make way for the placement of the Historic Depot. Once sited, the Historic Depot would then be renovated and space made available through a lease for the LAVTA Customer Service Center. Other areas in the Historic Depot would be made available for public use and lease. In order to comply with the grant to both relocate and renovate the Historic Depot, the land underneath the relocated Historic Depot would be transferred to the City of Livermore.

The City of Livermore has recently bid out the project for relocation and renovation and is in the process of reviewing the bid results in anticipation that Livermore's City Council in January or February will consider the award of a contract for the completion of the project.

**Discussion**

The First Amendment to the November 24, 2015 Lease Agreement between the City of Livermore and LAVTA concerning the Historic Depot covers the following changes:

#### Clarification of FTA Interest in Building to be Demolished

The FTA has established that the remaining federal interest in the building to be demolished as part of the Historic Depot relocation and renovation is \$48,212.00. The First Amendment (attached) establishes that the City will pay LAVTA for the federal interest and LAVTA will apply the funds towards a subsequent FTA grant-funded project to implement electric vehicle technology.

#### Addition of Ticketing Wall

LAVTA desires to upgrade the ticketing wall within the Historic Depot to both enhance the beauty, historic nature and functionality of the Customer Service area. LAVTA anticipates budgeting up to \$75,000 in its FY2018 budget to have the wall planned and constructed as part of the Historic Depot renovation project.

#### Additional Security Cameras

As part of the renovation project LAVTA desires to fund and install two additional security cameras for project. Total estimated cost to LAVTA is \$5,000.

#### Replacement of Failed Asphalt Driveway to Entrance to LAVTA Transit Center

At the entrance to the LAVTA Transit Center an area of asphalt has failed due to the high frequency of bus travel over the pavement. The First Amendment to the Agreement has the City replacing the approximately 3,200 sq ft of failed asphalt with concrete pavement, as per the pavement specifications in other areas of bus travel within the transit center. The City will construct the concrete as part of the City's CIP Street Resurfacing Project, which will be bid using unit prices. LAVTA agrees to reimburse the City an amount not to exceed \$125,000 for the work.

#### **Fiscal Impact**

The financial impact is as follows:

The \$75,000 for the improved ticketing wall will be funded with general funds in the FY2018 LAVTA budget.

The \$5,000 for the additional two security cameras will be funded through an OES security grant.

The \$125,000 for the replacement of failed asphalt driveway will be funded through a PTMISEA Prop B grant.

#### **Recommendation**

The recommendation is that the LAVTA Board approves the First Amendment to the November 24, 2015 Lease Agreement between the City of Livermore and LAVTA concerning the Historic Depot.

Attachments:

1. Historic Depot Agreement
2. First Amendment to Historic Depot Agreement
  - a. Exhibit A
  - b. Exhibit B

*Submitted:* \_\_\_\_\_

Recording Requested by

AND WHEN RECORDED MAIL TO:

City Clerk  
City of Livermore  
1052 South Livermore Avenue  
Livermore, CA 94550

15-398

**AGREEMENT FOR  
(1) RIGHT OF ENTRY;  
(2) LEASE AND SALE OF LAND; AND  
(3) TERMS OF DEPOT BUILDING LEASE**

**ALAMEDA COUNTY APN: 098-026001303**

This Agreement for (1) Right of Entry; (2) Lease and Sale of Land; and (3) Terms of Depot Building Lease ("**Agreement**") is entered into between the City of Livermore, a municipal corporation ("**City**") and the Livermore Amador Valley Transportation Authority, a Joint Powers Authority formed by the County of Alameda, the City of Dublin, the City of Livermore, and the City of Pleasanton ("**LAVTA**"), with reference to the following:

**RECITALS**

A. LAVTA is the owner of the real property located at 2500 Railroad Court in Livermore, California, APN: 098-026001303, described in the legal description attached as Exhibit 1, and depicted on the Assessor's Map attached as Exhibit 2. The same real property is also shown as the parcel outlined at Exhibit "A" (Land Subject to City Lease and Subdivision), attached hereto and incorporated herein by reference ("Property.") LAVTA operates a bus transit facility on the Property. The Property was conveyed by the City to LAVTA in 1994 for the sum of One Dollar.

B. City is the owner of the historic Livermore Railroad Depot building located on 20-22 L Street in the City of Livermore ("**Depot.**")

C. City and LAVTA desire to relocate the Depot to a site on the Property to allow LAVTA to utilize a portion of the Depot as the ticketing office for the LAVTA transit facility located on the Property.

D. The City must obtain a property interest in the Property to utilize federal funding to permanently relocate the Depot to the Property. By entering into this Agreement, therefore, LAVTA confers upon the City a Right of Entry upon the Property and a Lease and Sale of a specific portion of the Property so that the City possesses the legal right to relocate the Depot and undertake all construction work needed to allow LAVTA to continue providing transit operations at the Property with the Depot in place.

E. Because the Depot is a historic structure, its historic nature is best preserved by unifying title to the building with the land upon which it is located. LAVTA, therefore, will subdivide the Property to allow the portion of the Property on which the Depot sits to be sold to the City. The City will bear the cost of obtaining subdivision approval, if necessary;

City of Livermore/LAVTA Right of Entry, Lease and Sale of Land, Depot Lease Terms

F. Once the Depot is located on the Property, LAVTA will lease a portion of the Depot from the City so that LAVTA may use it as its ticketing office;

G. Due to the historic nature of the Depot, at all times, the City will retain exclusive authority and responsibility to maintain the exterior shell and structural components of the Depot; and

H. The City and LAVTA understand that the City has been allocated Federal grant funds to pay for the costs associated with the relocation and rehabilitation of the Depot including site improvements as shown on Exhibit "B" to this Agreement (Reconfiguration Work), and that a Federal (E76) grant commitment sufficient to pay for those costs is an absolute condition precedent to all aspects of this Agreement other than the City's Right of Entry to undertake planning for Reconfiguration Work (defined below).

## I. RIGHT OF ENTRY

1. Reconfiguration Work. To enable the Depot to be moved to the Property and a portion of the Depot building to be used by LAVTA as its ticketing office, the current Property must be reconfigured as shown on Exhibit "B" (Reconfiguration Work), incorporated as part of this Agreement by this reference. This work shall be referred to throughout this Agreement as the "**Reconfiguration Work**," and includes the following:

a. Changes to current structures, utilities, parking, vehicle access routes and LAVTA signage on the Property, associated with the current LAVTA transit center, needed to accommodate the Depot building in a final form equivalent to the 65 percent plan set dated September 16, 2015, entitled, "Livermore Railroad Depot Relocation and Rehabilitation City Project No. 580001." ("**September 2015 Plans**." ) The City designed and prepared the September 2015 Plans in consultation with LAVTA. LAVTA agrees not to request additional changes to the Reconfiguration Work from what is depicted on the September 2015 Plans, which would result in increased costs. The City agrees to include the following LAVTA requested add alternates to the September 2015 Plans: Modifications to the eastern shade structure to enhance its character with the historic Depot, and upgrading of the site lighting to a historical architectural style if these add alternates are within the project budget. LAVTA agrees to provide sufficient funds for the purchase of and the installation of its security cameras;

b. Preparing LAVTA's ticketing office inside the Depot building that will be relocated to the Property. The City, in consultation with LAVTA, has designed plans for the interior layout of space to be utilized as LAVTA's ticketing office within the Depot building as shown on the September 2015 Plans. The restrooms in the Depot building will be constructed of a material that is easily maintained and shall feature a floor drain in each restroom. Obtaining all permits necessary to undertake and complete the Reconfiguration Work which the City shall obtain and for which LAVTA shall cooperate in providing information necessary for the City to obtain any permits; and

c. Providing a temporary structure to house LAVTA staff who provide ticket office services to the public. Such structure shall contain internal restroom facilities for use by LAVTA staff.

2. City Responsibility for Reconfiguration Work. City shall undertake, contract for, and pay for the Reconfiguration Work as provided in this Agreement in an amount not to exceed the costs stated at Paragraph 10 below.

3. Existing Federal Transit Administration Grant. The City shall assist LAVTA with the Federal Transit Administration (FTA) regarding reimbursement for any residual equity that FTA has in the existing improvements at the LAVTA Transit Center that will be affected by the Reconfiguration Work. The parties currently estimate that the residual FTA equity impacted by the Reconfiguration Work is valued at approximately \$27,000.00. The City and LAVTA will work to obtain FTA's agreement to a no-cost resolution of this FTA equity. Under no circumstance shall LAVTA be required to bear any cost required by the FTA due to any Reconfiguration Work. Should the City award the contract to construct the Reconfiguration Work, if the City and LAVTA have not obtained a no-cost FTA equity approval, City shall bear the entire cost of the FTA equity.
4. Right of Entry. LAVTA confers upon the City's the right to enter upon the Property to do the Reconfiguration Work, which right shall be defined as the "**Right of Entry.**" LAVTA agrees the Right of Entry allows the City to immediately enter in, over, under, and upon the Property to undertake the Reconfiguration Work. City shall exercise the Right of Entry in a manner that ensures LAVTA's bus operations continue on schedule. In the event that construction activities unreasonably impact such operations, City and LAVTA shall agree to an approach to modify bus operations to allow the Reconfiguration Work to proceed.
5. Non-Exclusive Right. The City's Right of Entry to use the Property shall not create a right to the exclusive use of the Property.
6. Term of Right of Entry. The City's Right of Entry shall commence on the date both parties have executed this Agreement ("**ROE Effective Date**") and shall terminate upon the date the City and LAVTA agree the Reconfiguration Work is complete, or after three years, whichever comes first.
7. LAVTA Consideration. LAVTA confers this Right of Entry upon the City in exchange for the City's promise to design, construct and pay for the Reconfiguration Work which will enable LAVTA to lease a portion of the Depot and utilize it as LAVTA's on-site ticketing office.
8. City Consideration. The City agrees to undertake and pay for the Reconfiguration Work utilizing federal grant funds because it will enable LAVTA to lease and utilize a portion of the Depot as LAVTA's on-site ticketing office. This confers a benefit to the public and upon the City because it will create a more inviting transit facility which will enhance the use of public transit in and around the City. It will also serve to feature the Depot and enhance the historic status of the Depot by returning the Depot to a transit-related use.
9. Commencement of Reconfiguration Work. Immediately upon the ROE Effective Date, City may commence preparatory construction for the Reconfiguration Work on the Property, and may commence all such construction upon LAVTA's approval of final plans and issuance of the City's Federal (E76) grant funding for the project. LAVTA will work with the City to establish a timeline and plans for the Reconfiguration Work which ensures the City is able to award the project within six months of the Effective Date of this Agreement so that the construction work will be awarded within the deadlines required by the City's E76 federal grant.
10. Not to Exceed Amount. The total cost to the City of all Reconfiguration Work, including inspection, material testing, contract administration, construction management, construction, and a 10% construction contingency and shall not exceed the lesser of \$2,500,000.00 or the amount of the Federal (E76) grant commitment made for the work related to this Agreement, without the prior written consent of the City Council ("**Not to Exceed Amount.**") The City agrees to include a list of additional/alternate work to be included in the Reconfiguration Work if the total project costs

including those alternate bid prices remain within the Not to Exceed budget. At any point, should the cost of the Reconfiguration Work be projected to, or actually be, greater than the Not to Exceed Amount, City and LAVTA will meet and confer to identify ways to alter the Reconfiguration Work to conform to the Not to Exceed Amount. LAVTA has no obligation to fund the Reconfiguration Work.

11. Completion of Reconfiguration Work. After the Reconfiguration Work is complete, all title, ownership and interest in the Reconfiguration Work located on LAVTA property not leased or sold to the City shall remain exclusively with LAVTA. Any Reconfiguration Work undertaken on the leased portion of the Property (defined below as the "Leased Parcel") shall remain exclusively with the City. The Reconfiguration Work shall be complete after LAVTA has confirmed in writing that the City has completed the Reconfiguration Work, which confirmation shall not be unreasonably withheld.

12. LAVTA Obligation to Maintain. After the Reconfiguration Work is complete, LAVTA, and not the City, shall be responsible for maintenance and maintenance costs of the Reconfiguration Work located on LAVTA property not leased or sold to the City. The City shall forever be responsible for maintenance and maintenance costs of Reconfiguration Work on the Leased Parcel of the Property (defined below), excluding the LAVTA ticketing office tenant improvements in the Depot building, subject to maintenance contributions of Depot tenants to be provided for in Depot tenant leases. City shall provide LAVTA with the warranty information for any fixtures installed outside of the Leased Parcel, as defined below.

13. Indemnification for Reconfiguration Work. The City shall indemnify, defend, protect, and save LAVTA its member entities (other than the City), directors, officers, employees and harmless from and against all claims, damages, losses, and expenses, including attorney fees, arising out of the performance of the Reconfiguration Work, caused in whole or in part by any negligent act or omission of the City, its officers, officials, employees and agents, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, and willful misconduct of the City. City shall require its contractor performing the Reconfiguration Work to indemnify LAVTA to the same extent as it does the City and to name LAVTA, its member entities (other than the City), directors, officers, employees and agents as additional insureds on the policies required of the contractor in its contract with the City.

## II. LEASE AND SALE OF LAND

### A. City Lease of Land

14. Lease to City. LAVTA hereby leases to City that 8805 square foot portion of the Property shown at Exhibit "A," labelled as, "Subdivision of Property." ("**Leased Parcel**").

15. Effective Date and Term. The term of the City's Lease of the Leased Parcel begins on the date this Agreement has been executed by both City and LAVTA ("**LP Effective Date**.") and ends upon LAVTA's sale of the Leased Parcel to City pursuant to the terms of this Agreement. In the event sale of the Leased Parcel does not occur within 50 years of the LP Effective Date, the lease of the Leased Parcel shall terminate.

16. Use of the Leased Parcel. Upon the LP Effective Date, the City is entitled to do the following upon the Leased Parcel:

- a. Undertake all Reconfiguration Work without further approval required by LAVTA;
- b. All work necessary to relocate the Depot building to the Leased Parcel;
- c. Relocate the Depot building to the Leased Parcel and perform renovation or rehabilitation work upon the Depot building;
- d. Maintain the Leased Parcel during the term of the lease; and
- e. Lease spaces within the relocated Depot building to LAVTA for operation of a bus ticketing office according to the terms of this Agreement and to other entities for other operations chosen solely by the City.

17. Rent. City shall pay LAVTA \$1 per year as rent for the Leased Parcel due within 30 days of the LP Effective Date and within 30-days of each annual anniversary thereafter.

18. Condition of Property. LAVTA obtained the Property from the City and has utilized the Property solely as a bus transit facility. LAVTA shall not be responsible for any condition on the Property that predated LAVTA's acquisition of the Property.

19. Lease Termination without Sale. If the lease of the Leased Parcel terminates at any time before transfer of title to the Leased Property to the City, the City shall remove the Depot building and all fixtures from the Leased Property with the cost to be borne by the City.

20. Access to Leased Parcel. Because the Leased Parcel is wholly located within the Property without direct access to roadways, LAVTA agrees that the City and all tenants of the Depot building shall have the right of pedestrian and vehicular access to the Leased Parcel, for uses related to their tenancy, across existing routes of such access as those may exist on the Property from time to time and that LAVTA will ensure that such access exists at all times.

21. Parking. Eighteen parking spaces exist at the Property. Six parking spaces at the Property shall be available for the non-LAVTA Depot building tenants or the guests of such tenants with no charge imposed by LAVTA; LAVTA is entitled to administer the remaining spaces at its sole discretion. LAVTA may reconfigure or relocate the parking spaces within the Property, provided that six spaces are continuously available for the non-LAVTA Depot building tenants.

22. Signs. The City shall be entitled to install signage on the Leased Parcel and on the Depot in conformance with existing City sign standards applicable to the Property.

23. Taxes. During the term of the Lease of the Leased Parcel, City shall pay or cause to be paid, prior to delinquency, any and all taxes owed on the Leased Premises and for City operations on the Leased Premises.

24. Utilities, Trash and Refuse. City shall pay, or cause to be paid, all charges, fees, deposits, and other amounts for gas, electricity, water, sewer, waste disposal services, garbage disposal, telephone, cable television, and all other public utilities ("**Utility Charges**") stemming solely from City operations on the Leased Parcel. Tenants of the Depot building, including LAVTA, shall be responsible for Utility Charges with respect to their own operations on the Lease Parcel. Any costs for shared Utility Charges, if applicable, will be paid on a pro rata basis among the City and all occupants of the Leased Parcel.

25. Hold Harmless. City agrees to, and shall defend, indemnify and hold LAVTA, its officials,



directors, employees, volunteers, and agents harmless from and against any or all loss, liability, expense, claim, cost, suits, and damages of every kind, nature and description, including reasonable attorney and expert fees, for or on account of damage to property or injury to persons arising from anything done or performed, or omitted to be done or performed, on the Leased Parcel by City, or any activity carried on by City, its officers, directors, employees, agents, sublessees, service providers, patrons, or volunteers on the Leased Parcel. This Hold Harmless section does not apply to harm arising out of LAVTA's operations in the Depot building.

26. Insurance. City shall procure and maintain, upon relocation of the Depot to the Leased Parcel, and for the duration of the Lease insurance against claims for injuries to persons or damage to property which may arise from, or in connection with the City's operation, use of the Leased Premises or this Lease.

#### **B. Terms of Sale of the Leased Parcel to City**

27. Subdivision of the Property. LAVTA authorizes and directs its Executive Director to immediately, and no later than five calendar days after the Effective Date of this Agreement, apply to the City to subdivide the Property as shown on Exhibit "A" or take such other action as may be required so that the Leased Parcel becomes a separate legal parcel from the original Property. The City shall prepare, process, and pay for the process required for the subdivision of the Property.

28. Transfer of the Leased Parcel to City. Within 40 days of the date the City subdivides the Leased Parcel from the Property, LAVTA agrees it will execute documents transferring to the City ownership of the Leased Parcel and conveying access easements in exchange for the sum of \$1. The City's lease of the Leased Premises shall be extinguished upon the City's assumption of title to the Leased Parcel. Before the City acquires the Leased Parcel, it shall comply with the provisions of Chapter 2.72.010 of its Municipal Code which implements the requirements of California Government Code, section 65402, by requiring the acquisition to be reported upon by the City's planning commission as to conformity with the City's general plan.

29. Easements. Because the Leased Parcel is wholly located within the Property without direct access to roadways, the transfer of the Leased Parcel to the City shall include a recorded easement for vehicular and pedestrian ingress/egress over and above the remaining LAVTA Property in favor of the City. The transfer of title shall include recorded grants of (a) a parking easement in favor of the City on the remaining LAVTA Property designated as a right to six of the 18 parking spaces for fee-free use by non-LAVTA Depot tenants and their visitors; and (b) if needed, an easement in favor of LAVTA granting LAVTA air rights to allow LAVTA's existing shade structure located on the LAVTA Property to extend over and above a portion of the Leased Parcel.

30. LAVTA Lease of Depot Space. If LAVTA has leased space within the Depot building prior to the date the City assumes ownership of the Leased Parcel, such lease shall remain in force and be unaffected by the change in ownership of the Leased Parcel.

### **III. TERMS OF DEPOT BUILDING LEASE**

31. LAVTA Lease of the Depot Building. Upon City's relocation of the Depot to the Leased Parcel, City and LAVTA will enter into a lease agreement (the "**Lease Agreement**") whereby LAVTA will lease the portion of the Depot building shown at Exhibit "C" (LAVTA Lease of Depot Building Space) for use as its ticketing office.

32. Terms of LAVTA's Depot Lease. The Lease Agreement between the City and LAVTA for LAVTA's use of a portion of the Depot building will provide for the following, among others requirements, in a form to be agreed by the parties:

a. LAVTA will be entitled to use a portion of the Depot building as a ticketing office for its own operations and for no other purpose.

b. Because the Depot has historic significance, LAVTA will not make any modifications to the Depot without the prior written approval of the City Manager.

c. LAVTA shall pay the City \$1 per year in rent for use of the Depot.

d. The term of the Lease Agreement shall be 50 years or until LAVTA's leased portion of the Depot building shall be utilized for any non-transit-related purpose, whichever comes first.

e. Within its leased space in the Depot, LAVTA shall operate a single bathroom available to any member of the public when the ticketing office is open and shall ensure it is clean, maintained, and functioning. LAVTA will also ensure this bathroom is available to the City for City-affiliated events at the Depot at times when the LAVTA ticketing office is closed.

f. LAVTA shall authorize the City, or City-designee, to operate a museum in the waiting room/lobby areas of LAVTA's ticketing office so long as the museum operations do not interfere with LAVTA's operations. LAVTA will provide janitorial services in the museum/waiting room area, but will not be responsible for the maintenance or replacement of damaged or lost museum items except for damage caused by an intentional act, as opposed to a negligent act, by a LAVTA employee or worker.

g. LAVTA shall provide 24-hour access from the waiting room/lobby area of the Depot building to the City and City tenants of the Depot building to provide access to the second floor.

h. LAVTA will agree to allow the City to enter all parts of the Depot at all reasonable times for the purpose of inspecting and maintenance to determine whether the historic integrity of the building is not at risk.

i. Other than LAVTA leased space within the building, the City will bear the cost and responsibility to maintain the Depot building. The common costs to maintain the Depot building and Leased Parcel shall be shared by all occupants of the Depot building, however, LAVTA's monthly share of such maintenance costs shall be capped at the average monthly maintenance expense LAVTA has expended on its current ticket office structure over the two years preceding the effective date of this Agreement, which amount shall increase annually based on the Consumer Price Index, All Urban Consumers/All Items for the San Francisco/Oakland/San Jose area. The City shall ensure that the landscaping and hardscaping of the Leased Parcel/City-owned portion of the Property is maintained to the same standard that the City maintains similar types of public landscaping and hardscape..

j. The Lease Agreement will include the following Hold Harmless language:

"LAVTA agrees to, and shall defend, indemnify and hold the City, its officials, directors, employees, volunteers, and agents harmless from and against any or

all loss, liability, expense, claim, cost, suits, and damages of every kind, nature and description, including reasonable attorney and expert fees, for or on account of damage to property or injury to persons arising from anything done or performed, or omitted to be done or performed, on the Leased Premises by LAVTA, or any activity carried on by LAVTA, LAVTA's officers, directors, employees, agents, subleassees, service providers, patrons or volunteers. Approval of the insurance required by this Lease does not relieve the LAVTA from liability under this hold harmless clause."

k. The Lease Agreement will include the following insurance requirement language:

"LAVTA shall procure and maintain, upon securing the building permit for any tenant improvements, and for the duration of the Lease insurance against claims for injuries to persons or damage to property which may arise from, or in connection with LAVTA's operation, use of the Leased Premises or this Lease, which shall be acceptable to the City's Risk Manager. The cost of such insurance shall be borne by LAVTA."

l. City shall purchase and maintain fire insurance for the replacement value of the Depot building.

m. Upon the termination of the Lease Agreement for any reason, title to any permanent, physically attached improvements and fixed installed equipment shall be transferred to the City.

n. LAVTA shall not vacate or abandon the Leased Premises at any time during the term of this Lease, for a period of more than four (4) days, and any violation of this condition shall be considered a default of the Lease Agreement providing the City the right to immediately terminate the Lease and take possession of the Leased Premises. Violation of this provision shall also entitle the City to immediately access the Leased Premises to ensure its security, whether or not the City terminates the Lease Agreement.

o. The Lease Agreement, or any part thereof, shall not be assigned or transferred by LAVTA, by process or operation of law or in any other manner, without the prior written approval of the City Council of the City of Livermore, which approval shall not be unreasonably withheld. No assignee for the benefit of LAVTA's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Lease by virtue of this requirement. Any assignment, encumbrance, or sublease without City's consent shall be voidable and, at City's election, shall constitute a default.

p. LAVTA shall not have the right to sublease any portion of the Leased Premises without the City's written consent, which shall not be unreasonably withheld; provided however, that the term of any sublease shall not extend beyond the term of this Lease; any and all subleases shall be expressly made subject to all of the terms, covenants, and conditions of this Lease, including, without limitation, requirements that the Leased Premises be used as a transit-related operation.

q. When entering into a lease of Depot space not leased to LAVTA, the City shall only rent to a tenant whose proposed use complies with the City's applicable land use regulations for the Property on the Effective Date of this Agreement and not to any Adult Business regulated by Chapter 5.08 of the City of Livermore Municipal Code on the Effective Date of this Agreement.

The City shall consult with LAVTA before entering into a lease of Depot space. The City shall endeavor to lease Depot space to tenants whose use is compatible with, and not detrimental to, the operations of LAVTA. Likewise, should LAVTA ever seek to sublease any portion of the Leased Premises, it will require that any proposed tenant's operations be compatible with the then-current occupants of the Depot and not be detrimental to the Depot building.

#### IV. GENERAL PROVISIONS

The following provisions stated at paragraphs 33 and following shall apply to all components of this Agreement.

33. Effective Date. The Effective Date of this entire Agreement is the date it has been executed by both parties.

34. Agreement Term. The term of the common provisions associated with the City's Right of Entry, City's lease of the Leased Parcel, LAVTA's agreement to sell the Leased Parcel, or LAVTA's lease of the Depot shall be the latest date any of those agreements is set to terminate.

35. LAVTA Approvals. Any written approval required of LAVTA by this Agreement may be provided by its Executive Director.

36. City Approvals. Unless otherwise stated, any written approval required by the City by this Agreement may be provided by its City Manager.

37. CEQA. Both the City and LAVTA have considered the requirements of the California Environmental Quality Act before entering into this Agreement. The projects authorized by this Agreement are categorically exempt from the requirements of CEQA (a) as the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time the Agreement has been approved by each agency (14 CFR § 15301); and (b) consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced (14 CFR § 15301).

38. Amendment. The provisions of this Agreement may be modified at any time by written agreement of the parties.

39. Succession. Subject to the provisions in this Agreement shall inure to the benefit of, and be binding upon, the heir's executors, administrators, successors and assigns of the respective parties.

40. Exhibits. All exhibits referred to in and attached to this Agreement are incorporated in the Agreement by reference.

41. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the parties had all signed the same document.

42. Notices. Any notice under this Agreement shall be in writing. A written notice or other document shall be deemed to have been duly given on the date of personal service or on the fifth (5th) business day after mailing, if the document is mailed by registered or certified mail

addressed to the parties at the addresses set forth below, or at the most recent address specified by the addressee:

City: City Manager  
City of Livermore  
1052 South Livermore Avenue  
Livermore, CA 94550  
Copy to: Eric Uranga, Community and Economic Development Deputy Director  
  
Lessee: General Manager  
Livermore Amador Valley Transit Authority  
1362 Rutan Court, Suite 100  
Livermore, CA 94551

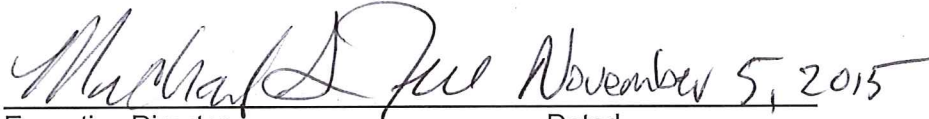
43. Entire Agreement. This document constitutes the entire agreement between the parties.
44. Termination. This Agreement may only be terminated by mutual consent, or for cause.
45. Governing Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.

Exhibits:

Exhibit A: Land Subject to City Lease and Subdivision  
Exhibit B: Reconfiguration Work  
Exhibit C: LAVTA Lease of Depot Building Space

**SIGNATURES OF THE PARTIES TO BE CERTIFIED OR NOTARIZED**

**Livermore Amador Valley Transit Authority**

  
Executive Director Dated November 5, 2015

**City of Livermore**

  
City Manager Dated November 24, 2015

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

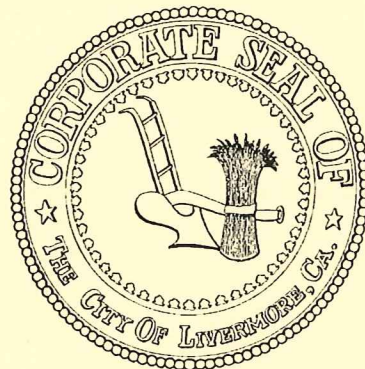
STATE OF CALIFORNIA } SS.  
COUNTY OF ALAMEDA }

On November 24, 2015 before me, SUSAN NEER, CITY CLERK,

personally appeared Maac Roberts, City Manager,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.



Signature Susan Neer



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Alameda)

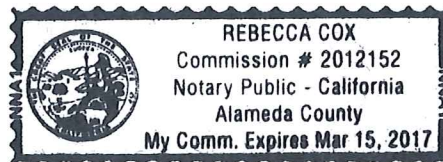
On November 5, 2015 before me, Rebecca Cox, Notary Public  
(insert name and title of the officer)

personally appeared Michael S. Tree,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in  
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

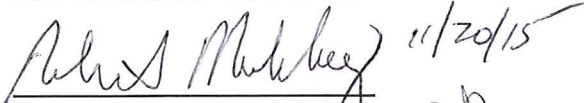
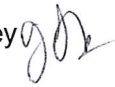
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Rebecca Cox (Seal)



APPROVED AS TO FORM:

 11/20/15  
Assistant Livermore City Attorney 

  
Counsel for LAVTA



Exhibit 1  
Page 1 of 2

95112581

Order No. 606822

LEGAL DESCRIPTION

The land referred to in this Report is situated in the State of California, City of Livermore, County of Alameda, and is described as follows:

PARCEL 1:

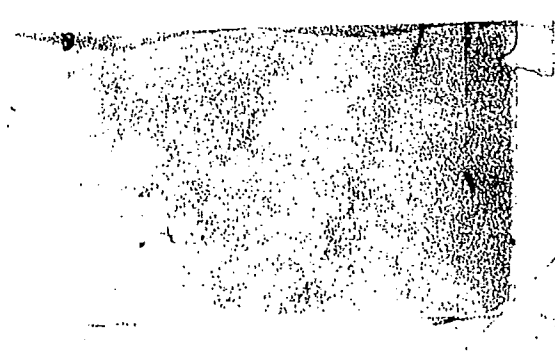
Beginning at a point distant 175 feet Northwesterly at right angles with the Northwesterly line of 1st or Front Street, formerly called County Road leading from Laddsville to Livermore, from a point distant thereon 146.6 feet Northeasterly from the intersection thereof with the North line of Central Pacific Railway formerly the Western Pacific Railroad right of way, as said right of way and County Road are shown on a map attached to Partition Deed between Sarah Ladd, et al, recorded October 28, 1882 in Book 244 of Deeds, page 124, said point of beginning being the most Northerly corner of tract conveyed to Owen Rogers, recorded June 30, 1922 in Book 304 OR, page 422; thence Southwesterly along the Northwestern boundary line of said land conveyed to Owen Rogers and parallel with said Northwestern line of 1st or Front Street, 80 feet, more or less to the Southwestern boundary line of tract conveyed to J.S. Alemany, recorded January 19, 1881 in Book 217 of Deeds, page 385; thence North 46° 02' West along last said boundary line and along the Southwesterly boundary line of tract conveyed to J.S. Alemany, recorded March 31, 1883 in Book 249 of Deeds, page 398, 290.3 feet, more or less, to the most Western corner of last said tract; thence along the Northwestern line of last said tract, North 43° 58' East 109.59 feet, more or less, to the West corner of strip of land condemned by Decree for the use of Western Pacific Railway Company for a right of way for railroad in Book 1432 of Deeds, page 201; thence along said land so condemned, North 72° 6' East 101.91 feet to the Northeasterly boundary line of tract conveyed to J.S. Alemany, recorded December 31, 1883 in Book 258 of Deeds, page 421; thence leaving said right of way South 46° 20' East 221.19 feet, more or less, to the Eastern corner of land so conveyed to J.S. Alemany; thence South 43° 58' West 1. . . feet, more or less, to the point of intersection with the direct production Northwesterly of the Northeast boundary line of land conveyed to Owen Rogers aforesaid; thence Southeasterly in a direct line 25 feet, more or less, to the beginning.

Being portion of Plot "D" and a parcel adjoining said Plot on the Southeast. Map of the Estate of Sarah Ladd, as partitioned by J. H. Taylor, et al, in Book 244 of Deeds, page 124.

PARCEL 2:

Commencing on the Northeastern line of North I Street, distant 300 feet Northwesterly from the Northwestern line of Railroad Avenue; thence North 69° 36' 06" East 277.62 feet to the beginning of the parcel to be

EXHIBIT "A"-Page 1



# Exhibit 1

Page 2 of 2

95112581

Order No. 606822

## LEGAL DESCRIPTION (CONTINUED)

described; thence continuing along said last mentioned course 111 feet; thence South 43° 58' West 109.59 feet, more or less; thence North 33° 16' 49" West 50.4 feet, more or less, to the actual point of beginning.

Being a portion of Block D, according to the "Map of the Estate of A.S. Ladd", recorded October 31, 1882, in Book 244 of Deeds, at page 124, in the office of the County Recorder of Alameda County. (Being also a portion of Section 9, Township 3 South, Range 2 East, Mount Diablo Base and Meridian).

Said property is also shown on reference maps in the office of the Assessor of Alameda County in Map Book 98, page or block 260, Parcel 12.

### PARCEL 3:

Portion of Section 9, Township 3 South, Range 2 East, Mount Diablo Base and Meridian, described as follows:

Beginning on the Southeastern line of Plot D, as per map of the Estate of A.S. Ladd; at most Eastern corner of the land conveyed to J.S. Alemany by Deed recorded January 28, 1884, Book 258 of Deeds, page 421; thence along the Southeastern line of Plot D and along the Southeastern line of Plot C, per map, North 43° 38' East 240 feet, more or less, to the Northeastern line of the parcel secondly described in the deed to Peter Moy, recorded December 28, 1883, Book 263 of Deeds, page 37; along last named line North 25° 42' West 96.75 feet to the Southeasterly line of right of way of Western Pacific Railway Company, 80 feet wide; thence along last named line, Southwesterly on a curve to the left with a radius of 2825 feet, distant of 75.30 feet; continuing along the last named line tangent with the last named course, South 69° 35' West 221.53 feet to the Northeastern line of land conveyed to Alemany; along last named line South 46° 02' East 221.34 feet to the point of beginning.

Excepting from Parcels 1, 2 and 3 that portion thereof as conveyed to Southern Pacific Transportation Company by Deed recorded February 16, 1979, Series No. 79-30431, Alameda County Records.

Assessors Parcel No. 098-0260-013-03

EXHIBIT "A"-Page 2

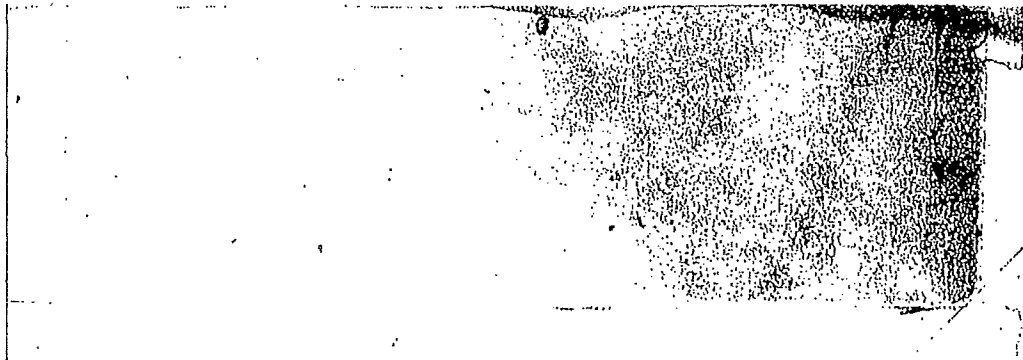


Exhibit 2

ASSESSOR'S MAP 98

Code Area Nos. 16-001  
16-023

260

Scale: 1" = 100'

(A) MAP OF THE ESTATE OF A. S. LADD, ( Bk. 244d. Pg. 124 )

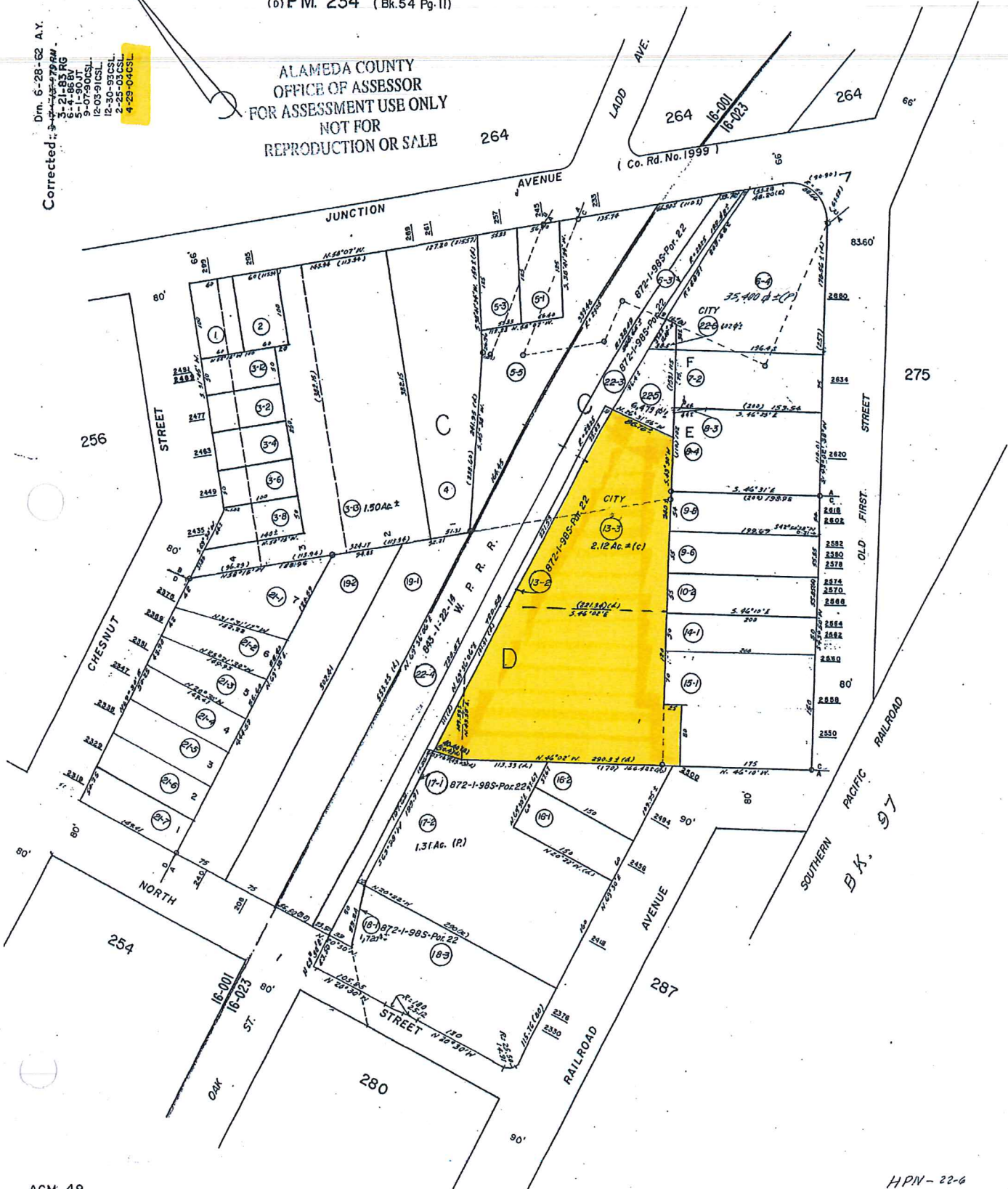
(B) Subdivision Map of Plot C- Ladd Estate ( Bk. 4 Pg. 26 )

(c) Portion of Sec. 9, T3S, R2E.

(D) P.M. 234 ( Bk. 54 Pg. 11 )

ALAMEDA COUNTY  
OFFICE OF ASSESSOR  
FOR ASSESSMENT USE ONLY  
NOT FOR  
REPRODUCTION OR SALE

Corrected: 6-28-62 A.Y.  
1-21-67 P.M.  
5-1-69 J.T.  
6-4-66 B.V.  
12-03-61 C.S.L.  
12-30-61 C.S.L.  
2-25-63 C.S.L.  
4-23-64 C.S.L.





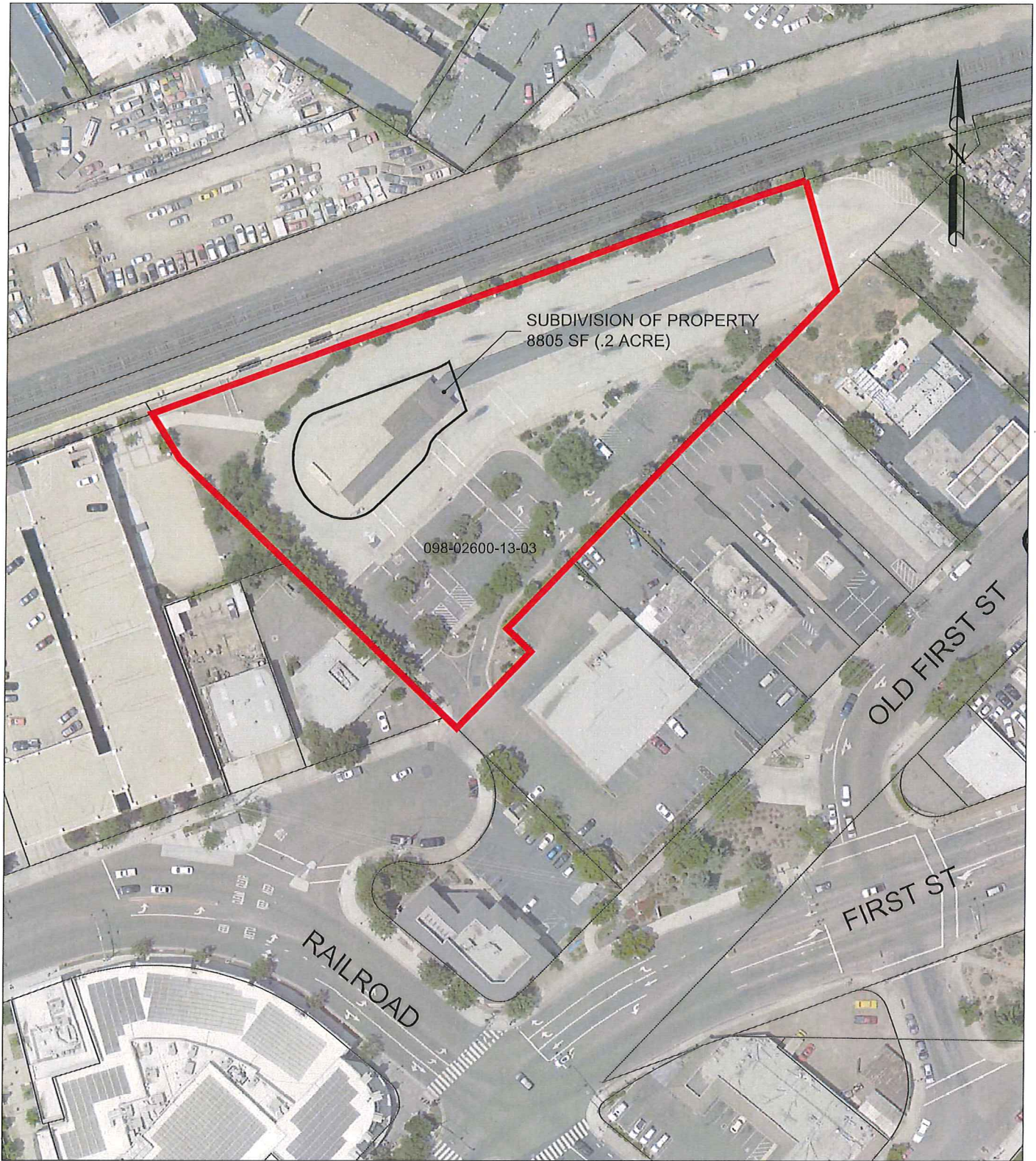
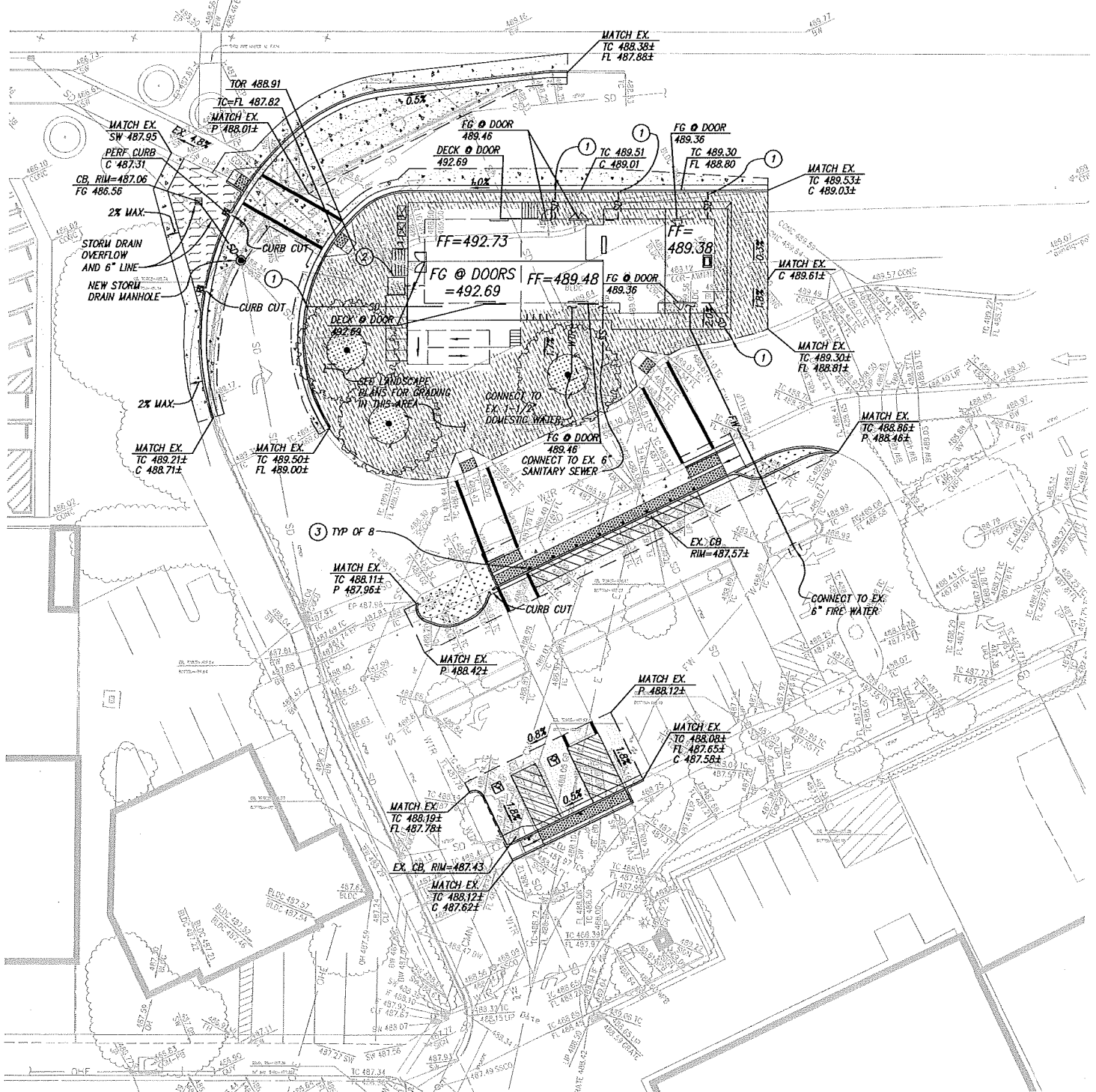


EXHIBIT A

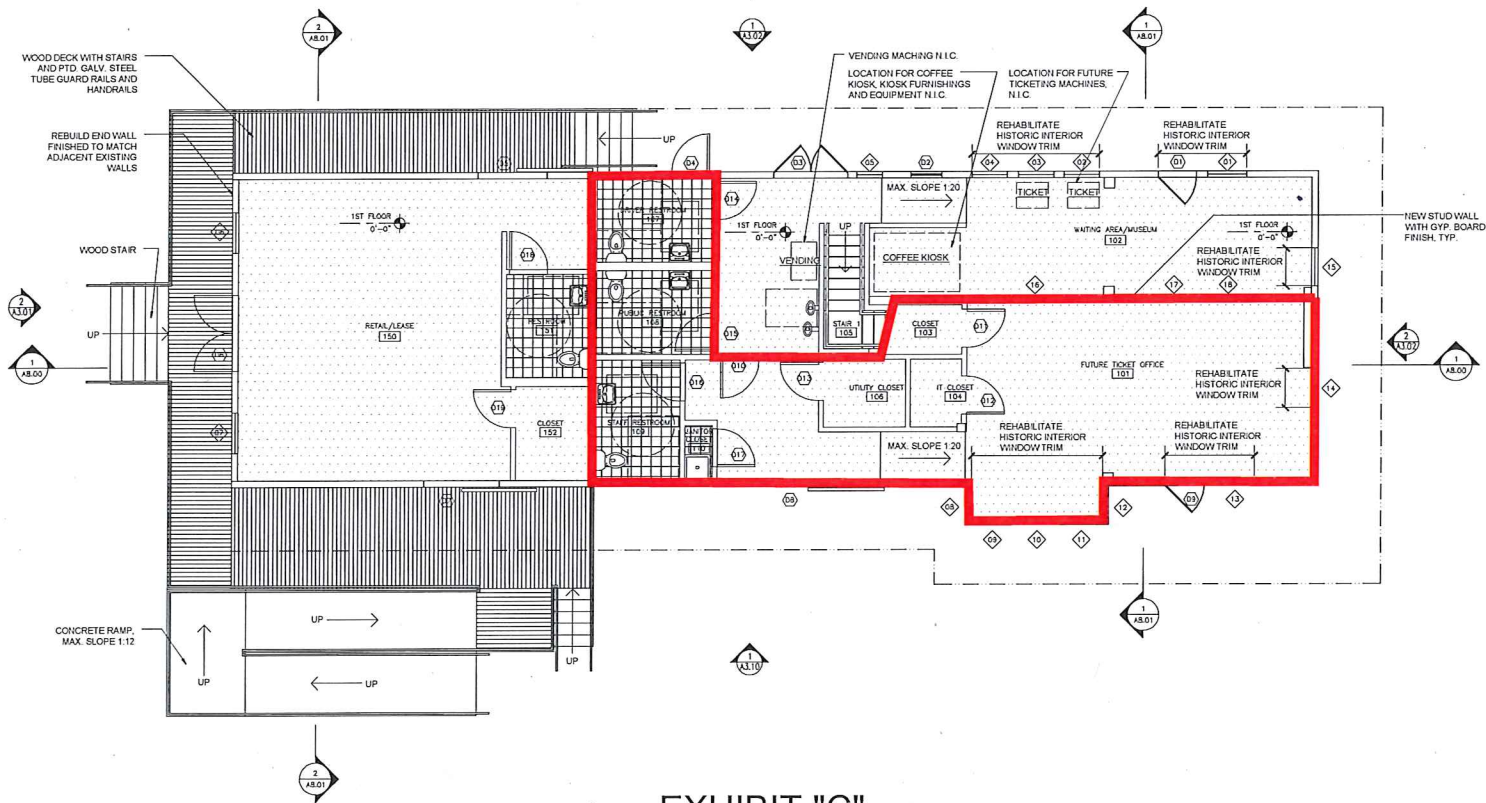
LAND SUBJECT TO CITY LEASE AND SUBDIVISION



**EXHIBIT "B"**  
**RECONFIGURATION WORK**



CITY OF  
**LIVERMORE**  
 CALIFORNIA  
 COMMUNITY DEVELOPMENT DEPARTMENT - ENGINEERING DIVISION  
 City Project No. 580001



**EXHIBIT "C"**  
**LAVTA LEASE OF DEPOT**  
**BUILDING SPACE**



LOG #CC0015-398

**City Clerk's Office**  
1052 South Livermore Avenue  
Livermore, CA 94550-4899  
Phone: 925.960.4200 Fax: 925.960.4205

RECEIVED  
JUN 09 2016  
Livermore Amador Valley  
Transit Authority

**DOCUMENT TRANSMITTAL FORM**

Date: June 7, 2016

To: Michael Tree, Director  
LAVTA  
1362 Rutan Court, Suite 100  
Livermore, CA 94551

cc: R. Ehlert  
C. Mahler

**PLEASE READ THE FOLLOWING:**

Duplicate original of recorded document and resolution are enclosed for your records

<b>Date of Document:</b>	November 24, 2015
<b>Type of Document:</b>	Agreement for Right of Entry; Lease and Sale of Land; and Terms of Depot Building Lease (APN: 098-026001303)
<b>Parties:</b>	City of Livermore and Livermore Amador Valley Transportation Authority (LAVTA)

Susan Neer, City Clerk  
By: Jean Bell  
925.960.4200

Recording Requested by

AND WHEN RECORDED MAIL TO:

City Clerk  
City of Livermore  
1052 South Livermore Avenue  
Livermore, CA 94550

**FIRST AMENDMENT TO THE NOVEMBER 24, 2015 LEASE AGREEMENT  
BETWEEN CITY OF LIVERMORE AND LAVTA CONCERNING HISTORIC DEPOT**

**ALAMEDA COUNTY APN: 098-026001303**

This First Amendment to the November 24, 2015 Agreement for (1) Right of Entry; (2) Lease and Sale of Land; and (3) Terms of Depot Building Lease, **Alameda County California Recorder Number 2016117939** (“**Agreement**”), is entered into between the City of Livermore, a municipal corporation (“**City**”) and the Livermore Amador Valley Transportation Authority, a Joint Powers Authority formed by the County of Alameda, the City of Dublin, the City of Livermore, and the City of Pleasanton (“**LAVTA**”), with reference to the following:

**RECITALS**

A. On November 24, 2015, the City and LAVTA entered into an agreement concerning the real property located at 2500 Railroad Court in Livermore, California, APN: 098-026001303, described in the legal description attached to the Agreement as Exhibit 1, and depicted on the Assessor’s Map attached to the Agreement as Exhibit 2. The Agreement provides terms pursuant to which the City may enter onto the Property to prepare the Property to receive the historic Livermore Railroad Depot building currently located on 20-22 L Street in the City of Livermore (“**Depot.**”) The Agreement also provides the terms pursuant to which the City will undertake Reconfiguration Work to the Depot and Property so that LAVTA may lease the Depot and use it as a ticketing office, as well as terms pursuant to which LAVTA will sell the City the land located underneath the re-located Depot.

B. The Agreement addressed the remaining equity interest of the Federal Transit Administration (FTA) in existing LAVTA improvements located at the Property, which will be lost as part of the Reconfiguration Work. At the time the Agreement was executed, the value of the FTA equity interest was not known. That value has now been established and this First Amendment is being entered into to revise the Agreement now that the value is certain.

C. After the Agreement was executed, LAVTA determined that it desired changes to the Reconfiguration Work to create a ticketing wall in the Depot. This First Amendment provides the terms pursuant to which LAVTA will contribute an amount not to exceed \$75,000 to the City to pay for the costs of designing and constructing the ticketing wall.

D. After the Agreement was executed, LAVTA identified the need for security cameras to be incorporated into the project to renovate and utilize the Depot as a ticketing office and this First Amendment is being entered into to provide terms for the additional security cameras.



E. Also, after the Agreement was executed, LAVTA identified the need for repair of the entry driveway of its transit facility. The City will replace approximately 3,200 Square Feet of driveway and LAVTA will repay the City an amount not to exceed \$125,000 for the cost of the replacement.

F. In all other respects, the Agreement remains in full force and effect.

## **AGREEMENT**

**1. Existing FTA Grant Obligations.** Paragraph 3 of the Agreement, "Existing Federal Transit Administration Grant," is deleted and replaced with the following paragraph:

3. Existing Federal Transit Administration Grant. The Reconfiguration Work at the Property will impact existing improvements at the LAVTA Transit Center in which the Federal Transit Administration (FTA) retains a residual equity interest in the amount of \$48,212.00, as a result of a prior grant the FTA issued to LAVTA. ("Residual Equity Interest.") To move forward with the Renovation Work, these existing improvements will need to be removed and the Residual Equity Interest will need to be reimbursed to the FTA. The City agrees to provide \$48,212.00 to LAVTA for the Residual Equity Interest. LAVTA will then apply these funds towards a subsequent FTA grant-funded project to implement electric vehicle technology, which LAVTA represents is acceptable to the FTA as a means of satisfying the Residual Equity Interest.

**2. Additional Interior Ticketing Wall.** The following amendments to the Agreement are made address LAVTA's desire for construction of an interior ticketing wall in the Depot:

(a) Paragraph 1 of the Agreement, "Reconfiguration Work," is amended to add subparagraph d, which states as follows:

d. City will design and construct an interior ticketing wall located in the Depot, adding millwork and beadboard, for LAVTA's use as shown attached as Exhibit 1-A ("Ticket Wall Work.") LAVTA will reimburse the City \$75,000 for the professional design and construction work needed to add this item to the Reconfiguration Work, which LAVTA shall pay to the City by the end of July 2017.

(b) Paragraph 10 of the Agreement, "Not to Exceed Amount," is deleted and replaced with the following:

10. Not to Exceed Amount. The total cost to the City of all Reconfiguration Work, including inspection, material testing, contract administration, construction management, construction, and a 10% construction contingency and shall not, without the prior written consent of the City Council, exceed (a) the lesser of \$2,500,000.00 or the amount of the Federal (E76) grant commitment made for the work related to this Agreement; plus (b), an additional \$75,000.00 which LAVTA will pay to the City for the Ticket Wall Work ("**Not to Exceed Amount.**") The \$75,000.00

LAVTA pays for the Ticket Wall Work will be in addition to whatever amount the City receives from the Federal (E76) grant commitment.

The City agrees to include a list of additional/alternate work to be included in the Reconfiguration Work if the total project costs including those alternate bid prices remain within the Not to Exceed budget. At any point, should the cost of the Reconfiguration Work be projected to, or actually be, greater than the Not to Exceed Amount, City and LAVTA will meet and confer to identify ways to alter the Reconfiguration Work to conform to the Not to Exceed Amount. LAVTA has no obligation to fund the Reconfiguration Work.

**3. Security Cameras.** Subparagraph (a) of Paragraph 1 of the Agreement, "Reconfiguration Work," is deleted and replaced with the following language:

(a) Changes to current structures, utilities, parking, vehicle access routes and LAVTA signage on the Property, associated with the current LAVTA transit center, needed to accommodate the Depot building in a final form equivalent to the 65 percent plan set dated September 16, 2015, entitled, "Livermore Railroad Depot Relocation and Rehabilitation City Project No. 580001." ("**September 2015 Plans.**") The City designed and prepared the September 2015 Plans in consultation with LAVTA. LAVTA agrees not to request additional changes to the Reconfiguration Work from what is depicted on the September 2015 Plans, which would result in increased costs. The City agrees to include the following LAVTA requested add alternates to the September 2015 Plans: Modifications to the eastern shade structure to enhance its character with the historic Depot, and upgrading of the site lighting to a historical architectural style if these add alternates are within the project budget. To provide needed security surveillance in and around the rehabilitated Depot building, LAVTA agrees to provide two (2) new security cameras and nine (9) existing salvaged security cameras and the City agrees to provide two (2) new security cameras

**4. Replacement of failed asphalt driveway at entrance of LAVTA at Railroad Avenue in Livermore.** The City agrees to replace approximately 3,200 square feet of failed asphalt pavement, as shown at Exhibit 1-B attached hereto and incorporated herein by this reference, with concrete pavement at the entry to LAVTA at Railroad Avenue, as part of the City's CIP No. 201601 Street Resurfacing Project, which will be bid using unit prices. LAVTA agrees to reimburse the City an amount not to exceed \$125,000 for such costs, which include design, construction and construction inspection. If the cost of the pavement replacement project exceeds \$125,000, the City will reduce the repair area to accommodate LAVTA's not to exceed amount.

**5. Effect of Amendment.** Except as stated in this First Amendment, the remaining terms of the Agreement remain unchanged and effective.

Exhibits:

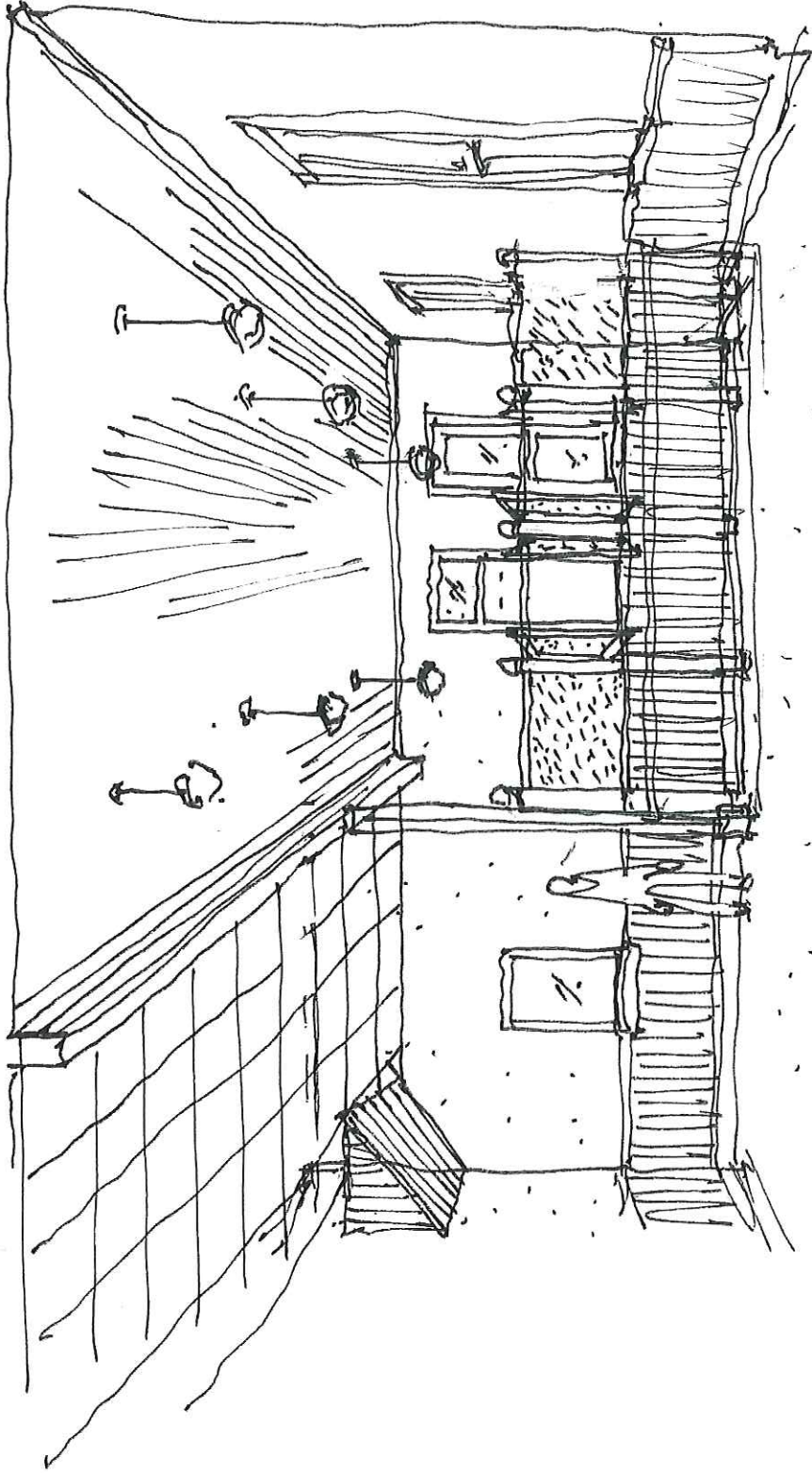
Exhibit 1-A: Interior Ticketing Wall Work Depiction

Exhibit 1-B: Area of Pavement Replacement at LAVTA Entry

**Signatures on the following page**



EXHIBIT I-A



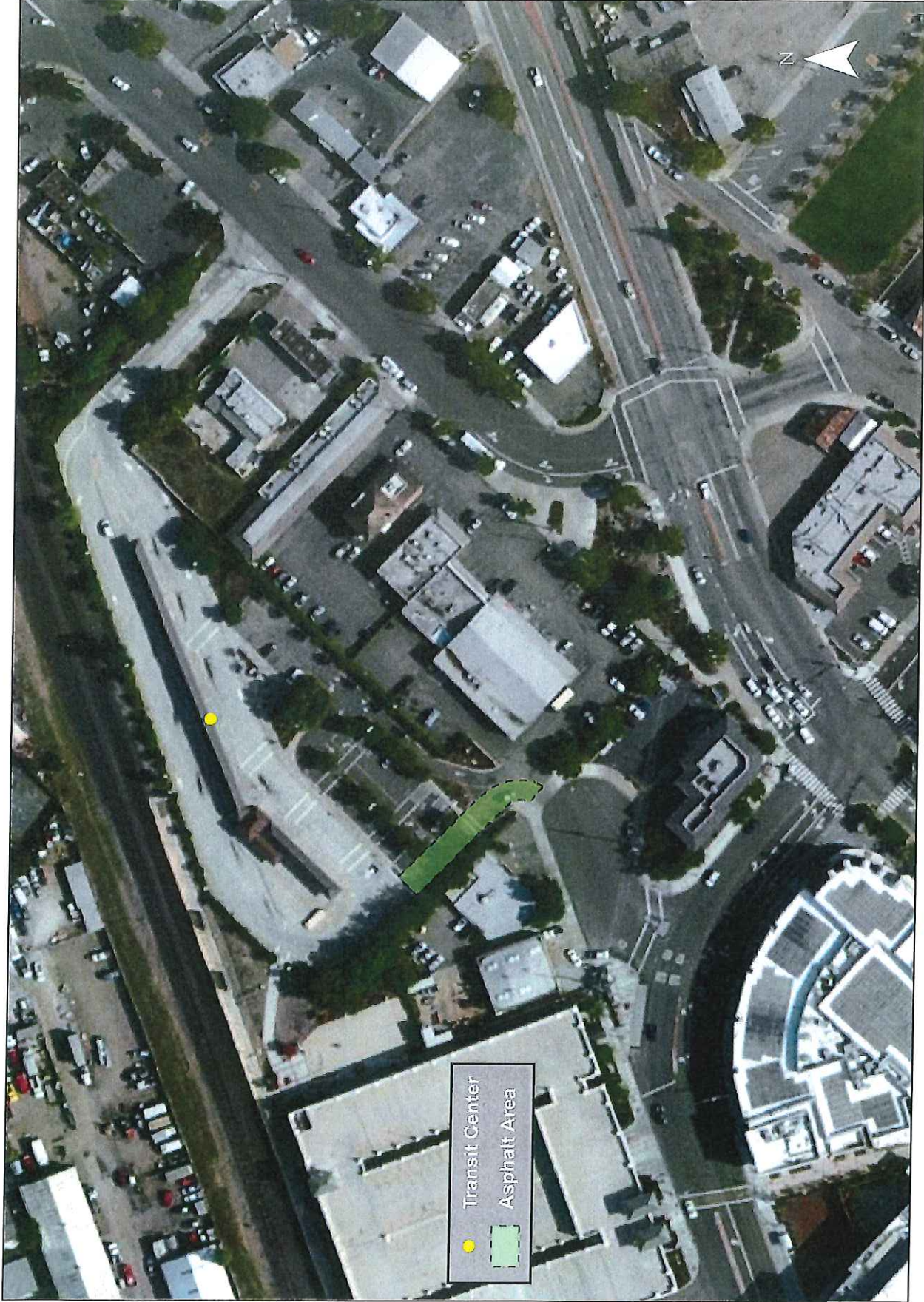
VIEW FROM  
OFFICE TO  
WAITING.

LIVERMORE DEPOT  
ALTERNATE INTERIOR VIEW  
PAGE 4 TURNBULL 6/14/16



# EXHIBIT 1-B

## Livermore Transit Center



Asphalt Area Square Footage  
3159,35 Sq. Ft.

DEC. 7. 2016