

**S T A F F   R E P O R T**

SUBJECT: Fourth Amendment to Employment Agreement with Executive Director  
FROM: Michael Conneran, Legal Counsel  
DATE: November 30, 2017

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**Action Requested**

Approve Fourth Amendment to Employment Agreement

**Background/Discussion**

The Board is being asked to approve the attached Fourth Amendment to the Employment Agreement with Executive Director Michael Tree. The Board approved the general terms of the Amendment at its meeting on November 6, 2017, however a few questions have arisen regarding the specifics of the amendment. First, although the Board approved a revision to Executive Director's salary effective upon the anniversary date of the prior amendment (December 1, 2017), the Board should clarify that the stipend for the Executive Director's work to administer the Tri-Valley and San Joaquin Valley Regional Rail Authority ("TRA") would be effective as of November 1st. That timing coincides with the schedule contemplated in the funding agreement with MTC to support this effort. Also, it is appropriate to clarify that the stipend will not be used to calculate the Authority's contribution to his deferred compensation program, as that additional amount would cause the contribution to exceed the IRS limits on such payments. Finally, since the Executive Director will incur expenses in supporting the TRA that exceed those contemplated in his allowance under the Employment Agreement, the Amendment clarifies that he may separately obtain reimbursement for the expenses incurred on behalf of the TRA.

**Fiscal Impact**

Funds for the Executive Director's salary and benefits are included in the annual budget. Expenses incurred on behalf of the TRA will be reimbursed to the Authority.

**Recommendation**

Approve Fourth Amendment to Employment Agreement

Attachments

1. Fourth Amendment to the Employment Agreement

*Approved:* \_\_\_\_\_

## FOURTH AMENDMENT TO EMPLOYMENT AGREEMENT

THIS FOURTH AMENDMENT TO EMPLOYMENT AGREEMENT is entered into as of December 1, 2017, by and between LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY, a joint powers authority (hereinafter referred to as "LAVTA" or "Employer") and Michael Tree (hereinafter "Employee").

### RECITALS

- A. Employee and LAVTA entered into an Employment Agreement dated October 6, 2014, (the "Employment Agreement").
- B. Employee and LAVTA entered into the First Amendment to the Employment Agreement as of February 2, 2015.
- C. Employee and LAVTA entered into the Second Amendment to the Employment Agreement as of January 1, 2016.
- D. Employee and LAVTA entered into the Third Amendment to the Employment Agreement as of December 1, 2016.
- E. The parties desire to amend the Employment Agreement to modify the term, compensation, and severance provisions.

NOW, THEREFORE, the parties agree to amend the Employment Agreement as follows:

1. Term. Section 1, "Term," of the Employment Agreement is amended by revising the first sentence to read "LAVTA agrees to employ Employee, and Employee accepts employment, as the Executive Director of LAVTA for a period of thirty-six months commencing on December 1, 2017." The remainder of Section 1 remains unchanged.

2. Salary. Section 3, "Compensation," Subsection (a), "Salary," of the Employment Agreement is amended by revising the first sentence to read "As compensation and in consideration for the services rendered by Employee under this Agreement, LAVTA shall pay Employee a gross salary at the rate of Sixteen Thousand Five Hundred and Ten Dollars (\$16,510) per month, effective December 1, 2017, and increasing on December 1 of each succeeding each year by the change in the Consumer Price Index, (All Urban Consumers—All Items) for the San Francisco-Oakland-San Jose area, based on the most recent index available prior to December 1 of that year."

2. Stipend Pay and Expenses. Section 3, "Compensation," of the Employment Agreement is amending by adding the following the following as a new subsection f: " Employee is required to serve, on LAVTA's as Executive Director of the Tri-Valley and San Joaquin Valley Regional Rail Authority. As compensation for services to be rendered by Employee to the Authority in this capacity, Employee shall receive a stipend of Fifty Five Thousand Dollars (\$55,000) per annum, to be paid monthly, commencing on November 1, 2017

for services to be rendered as Executive Director of this agency for so long as he shall serve in that capacity. Such payments shall not count towards the calculation of contributions to LAVTA's Section 457(b) deferred compensation program. Any expenses incurred on behalf of the TRA shall be separately reimbursed to the Executive Director, notwithstanding any other provisions of this Agreement."

3. Entire Agreement. This Fourth Amendment to Employment Agreement, the Third, Second and First Amendments, and the Employment Agreement (collectively, the "Agreement") are intended by the parties to be one integrated agreement. The Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all other agreements or understandings, whether express or implied, oral or written, between the parties. The Agreement cannot be modified, altered, amended or changed by any oral statement or conduct but only by a written agreement signed by the Chair of the Board of Directors and Employee. Except as expressly modified by this Amendment, all terms and conditions contained in the Employment Agreement and the First, Second and Third Amendments to the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment to Employment Agreement on the date first written above.

LIVERMORE AMADOR VALLEY  
TRANSIT AUTHORITY

MICHAEL TREE

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

\_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

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

Legal Counsel