

STAFF REPORT

SUBJECT: Livermore Historic Railroad Depot Lease Agreement

FROM: Jennifer Yeamans, Senior Grants & Management Specialist

DATE: September 10, 2018

Action Requested

Approve Resolution 27-2018, authorizing the Executive Director to execute an agreement with the City of Livermore to lease a portion of the City's historic Railroad Depot for long-term use as LAVTA's ticketing office.

Background

In November 2015, LAVTA and the City of Livermore entered into an agreement to sell a subdivided portion of LAVTA-owned property at the Livermore Transit Center to the City to prepare such property to receive the historic Livermore Railroad Depot building previously located at 20–22 L Street in Livermore. This agreement also established terms of the Depot building lease once the relocation and renovation of the historic Depot was complete. The City has since used \$2.5 million in federal grant funds to relocate the historic Depot and has performed certain Reconfiguration Work in order to return the building to its original use as a ticketing office with the intent of leasing the Reconfigured space back to LAVTA for such use according to the agreement.

In January 2017, LAVTA's agreement with the City was amended to provide for additional terms, including additional funding provided by LAVTA for the design and construction of a ticketing wall inside the Depot not contemplated with the original Agreement was executed.

Construction at the Depot site was substantially completed in August 2018, and the building has been certified for occupancy. Other minor site improvements including concrete and asphalt resurfacing work is still under way and expected to be completed soon in advance of a future Grand Opening event to be scheduled by the City.

Discussion

The terms of LAVTA's and the City's November 2015 agreement concerning the historic Depot provided for several key terms that are currently reflected in the City's proposed fifty-year lease agreement, which is shown in Attachment 2:

- Due to the historic nature of the Depot, the City has exclusive authority to maintain or authorize alterations to the exterior and structural components of the building.
- LAVTA is required to maintain and clean the Leased Premises, including the ticket office, the staff restroom, the public restroom, and the driver's restroom. LAVTA is

- required to clean the museum/waiting area of the Leased Premises, but City will be responsible for maintenance of this area and replacement of any lost or stolen items.
- LAVTA is required to pay for utilities (water and electric), including irrigation of landscaping improvements, which includes three new oak trees.
 - City is required to provide for maintenance of all other aspects of the subdivided parcel, including all exterior landscaping and interior areas of the building not included as LAVTA's Leased Premises (these include features such as the community room and the upstairs office, currently unfinished).
 - Should the City lease other parts of the building to other tenants in the future, LAVTA will share certain common costs with any future tenants (these are costs not otherwise assigned exclusively to LAVTA or the City, e.g. joint maintenance of the security system and sharing of utilities).

Under the previously agreed terms, LAVTA is to be responsible for costs associated with cleaning and maintaining the new ticket office and restrooms only up to the amount LAVTA spent on the previous LAVTA-owned facility that was demolished to make way for the Historic Depot relocation. These annual operating costs, exclusive of utilities and security, totaled approximately \$18,000 in the two years prior to the demolition of the previous ticketing office.

The City of Livermore is scheduled to approve the terms of the Lease Agreement at the September 24 City Council meeting. Therefore, staff is requesting the Board of Directors approve the terms of the Lease Agreement in substantial conformance with the agreement shown in Attachment 2, which will provide for addressing any minor typos or spelling errors that the parties may discover prior to executing the Lease Agreement.

Fiscal Impact

The City's proposed lease terms provide for an annual payment of \$1 per year for the fifty-year term of the lease. If LAVTA's annual operating expenses at the Depot exceed the previous building's operating expenses of \$18,000 per year, the City will in consultation with LAVTA, identify capital projects to harden the facility further to reduce annual maintenance costs. If capital improvements cannot be identified and implemented, the lease agreement stipulates the City will pay any reasonable difference in operating costs.

Recommendation

Staff recommends the Board of Directors approve Resolution 27-2018, authorizing the Executive Director to execute an agreement with the City of Livermore to lease a portion of the City's historic Railroad Depot for long-term use as LAVTA's ticketing office.

Attachments:

1. Resolution 27-2018
2. Lease Agreement with the City of Livermore, with Exhibits A–D

Approved: _____

RESOLUTION NO. 27-2018

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY
EXECUTING A FIFTY-YEAR LEASE AGREEMENT WITH THE CITY OF
LIVERMORE FOR USE OF PART OF THE CITY'S HISTORIC RAILROAD
DEPOT BUILDING AS A TICKET OFFICE**

WHEREAS, the Livermore Amador Valley Transit Authority uses the Livermore Transit Center as a customer service center and ticketing office; and

WHEREAS, the Livermore Amador Valley Transit Authority previously executed an Agreement with the City of Livermore concerning the Right of Entry, Lease of Sale and Land, and Terms of Depot Building Lease concerning the City's Historic Railroad Depot; and

WHEREAS, under the Agreement LAVTA granted the City a right of entry onto the LAVTA Transit Center to undertake work necessary to accept the Depot building; and

WHEREAS, under the Agreement the City leased from LAVTA a parcel of land at the Livermore Transit Center on which to locate the Depot building, after which LAVTA applied to the City to subdivide this leased parcel of land and sold it to the City for one dollar (\$1); and

WHEREAS, under the Agreement LAVTA and the City established terms for a future lease agreement for a portion of the Historic Depot building for use as LAVTA's ticketing offices, including a fifty-year lease term with rent payable to the City by LAVTA at a rate of \$1 per year; and

WHEREAS, reconfiguration work on the Depot building and subdivided parcel is substantially complete and the ticket office certified for occupancy;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Livermore/Amador Valley Transit Authority that the Executive Director may enter into a fifty-year lease agreement with the City of Livermore for use of part of the City's Historic Railroad Depot as a ticketing office.

PASSED AND ADOPTED this 10th day of September 2018

Scott Haggerty, Chair

ATTEST:

Michael Tree, Executive Director

APPROVED AS TO FORM:

Michael Conneran, Legal Counsel

Recording requested by and
when recorded return to:

City Clerk
City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550

LEASE

THIS LEASE AGREEMENT is made and entered into as of the ____ day of _____, 2018, by and between the City of Livermore, a municipal corporation ("City"), and the Livermore Amador Valley Transit 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" or "Lessee"). City and LAVTA may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITAL

1. 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 098-0260-013-03 ("Agreement"). The Agreement provided the terms under which the City could enter onto the property to prepare it to receive the historic Livermore Railroad Depot which was located on 20-22 L Street in Livermore. The Agreement also provided the terms pursuant to which the City could undertake reconfiguration work to the Depot so that LAVTA may lease a portion of the Depot and use it as a ticketing office, as well as the terms pursuant to which LAVTA would sell the City the land located underneath the re-located Depot.

2. On January 10, 2017 the City and LAVTA entered into an Amendment to the November 24, 2015 Lease Agreement between the City of Livermore and LAVTA Concerning Historic Depot ("First Amendment"). The First Amendment addressed the City's payment of the Residual Equity Interest to LAVTA as a result of the prior Federal Transit Administration Grant, LAVTA's construction of an interior ticketing wall in the Depot, the need for additional security cameras, and the replacement of a failed asphalt driveway at the entrance to the property.

3. On June 5, 2018, LAVTA subdivided the property located at 2500 Railroad Court in Livermore, California to create a 9,156 square foot parcel located underneath the relocated Depot and sold the 9,156 square foot parcel to the City for \$1.

4. The City and LAVTA desire to enter into a lease agreement (the "Lease Agreement") whereby LAVTA ("Lessee") will lease a portion of the Depot for use as its ticketing office, which includes the use of staff, driver, and public restrooms.

5. Lessee's rights under this Lease are strictly limited to the defined Leased Premises, except as expressly permitted under Section 6.2.

NOW, THEREFORE, IT IS AGREED THAT THE FOREGOING RECITALS ARE TRUE AND ACCURATE, AND IT IS FURTHER AGREED AS FOLLOWS:

1. **LEASE.** The City hereby leases to Lessee, and Lessee leases from City, the Leased Premises as described herein upon the covenants, terms, and conditions hereinafter set forth.

2. **DEPOT PROPERTY.** Lessee owns the real property located at 2500 Railroad Court in Livermore, California, County of Alameda, State of California except for a 9,156 square foot subdivided portion of property which is owned by the City, as more particularly identified and described in Exhibit A. The City's 9,156 square foot portion of property includes the relocated Depot (the "Depot Building"), pavers and landscaping, three oak trees, shrubbery, and an outdoor seating area hereinafter "Depot Property," as more particularly described in the Diagram of Depot Property attached as Exhibit B. City shall access the Depot Property by a public access easement over the asphalt parking lot owned by Lessee.

3. **LEASED PREMISES.** The Leased Premises is comprised of approximately 1300 square feet, located within the Depot Building, in the City of Livermore, County of Alameda, State of California, hereinafter "Leased Premises" as more particularly described in the Diagram of Leased Premises attached as Exhibit C. The Leased Premises includes a ticketing office, a staff restroom, a public restroom, a driver restroom, a waiting room/lobby and a museum.

4. **TERM AND EFFECTIVE DATE.**

4.1. **Effective Date.** The "Effective Date" of this Lease Agreement shall be the date City issues the certificate of occupancy for the Leased Premises.

4.2. **Term.** City leases to Lessee the Leased Premises commencing on the Effective Date, for a term of fifty (50) years unless terminated earlier pursuant to Section 24.

5. **RENTAL RATE.** Lessee shall pay rent to the City in the amount of \$1 annually for the initial term of the Lease Agreement. Lessee shall pay to the City \$1 annually for each year of any renewal of this Lease Agreement.

6. **USE.**

6.1. **Depot Building.** The Depot Building may be used by the Parties for the operation of a transit facility/center, community historical railroad museum, and other transit related or compatible uses, pursuant to the terms of this Lease Agreement.

6.2. **Leased Premises.** The Leased Premises shall only be used as a ticketing office for Lessee's own operations, a waiting room/ lobby, and a museum, and for no

other purpose. As part of the Leased Premises, Lessee shall have access to the staff restroom, driver restroom, and public restroom.

6.3. Seating Area. Lessee shall be entitled to use the paver area on the Depot Property described in Exhibit B for seating for passengers or members of the public. Lessee shall be solely responsible for the maintenance, repair and/or replacement of any tables, chairs or other furniture it has provided for seating for passengers or members of the public.

6.4. Museum. City may operate a museum in the waiting room/lobby areas of Lessee's ticketing office by installing display cases or displaying other objects, so long as the museum operations do not interfere with Lessee's operations.

6.5. Nuisances Prohibited. The Parties shall not commit any waste on or of the Leased Premises or the Depot Property, and the Parties shall not do or permit any act in or about the Leased Premises or the Depot Property which shall constitute a nuisance or which may endanger any part of the Leased Premises or the Depot Property.

6.6. Compliance with Laws. No use of the Leased Premises or the Depot Property shall be made or permitted which is in any manner contrary to the statutes, ordinances, regulations, and other requirements of law in effect during the term that regulates the use of the Leased Premises.

6.7. Alterations or Improvements. The Depot Building is a historic structure and Lessee agrees to preserve its historic nature. Lessee shall not, without the City's prior written consent pursuant to Section 16 below, make any alterations, improvements, or additions to the Leased Premises or any portion thereof.

6.8. Permits and Approvals. Lessee acknowledges that execution of the Lease Agreement by City does not constitute City approval for the purpose of the issuance of permits, does not limit in any manner the discretion of City in such approval process, and does not relieve Lessee from the obligation to apply for and obtain from City for the intended use all applicable permits and approvals. Lessee shall pay when due all customary and reasonable fees and charges in connection with the processing of all applicable permits and approvals. City agrees to process and review any documents, applications, and authorizations that may be necessary or appropriate as owner of the Leased Premises; provided, however, that any such entitlements and permits shall be obtained at the sole cost and expense of Lessee.

7. HOURS OF OPERATION.

7.1. Hours of Operation. The Leased Premises shall be open to the public at least during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Lessee may open, operate, or maintain the Leased Premises outside these hours, including during the weekend hours, however Lessee shall ensure that the Leased Premises and the Depot Property are locked and secured at all times the Leased Premises is not staffed by Lessee. Lessee's failure to lock and secure the Leased Premises may constitute grounds

for termination of the Lease Agreement.

7.2 City Access. Lessee shall permit 24-hour access to the City and City tenants to the Depot Building, except that the City and other City tenants shall not have access to the Leased Premises, except for the public restroom and waiting room/lobby and museum.

8. MAINTENANCE.

8.1. Leased Premises. Lessee shall be solely responsible to maintain the Leased Premises, including but not limited to, the staff restroom, public restroom, and driver restroom in good and sanitary order, condition and repair. In the event that Lessee fails to maintain the Leased Premises in good and sanitary order, condition and repair, as determined by City, City may elect, but is not required, to have the Leased Premises cleaned or repaired by an outside source and Lessee shall be responsible for all costs.

8.2. Lobby Areas and Museum. Lessee shall provide janitorial services in the passenger lobby/waiting area and the public museum, but shall not be responsible for the maintenance or the replacement of damaged or lost historic relics or museum items except for damage caused by an intentional act or willful misconduct by Lessee's employees or workers. However, Lessee shall notify Livermore Police Department as soon as possible of any damage, tampering or vandalism to any of the historic relics or museum items.

8.3. Restrooms. Lessee shall be responsible to maintain and operate the staff restroom, the public restroom, and the driver restroom in accordance with section 8.1. Lessee shall make the public restroom available to the City for City affiliated events at the Depot Building.

8.4. Security Camera System. Lessee shall be solely responsible for the operation, maintenance, and repair of the security camera system on the Depot Property.

8.5. Oak Trees. Lessee shall provide City use of LAVTA's existing irrigation system to supply water to the three Oak trees and shrubbery located on the Depot Property. LAVTA shall notify the City as soon as possible of any irrigation system malfunction or any time that water will not be provided to the Depot Property. City shall be responsible for all other maintenance, trimming and/or removal/replacement of the three Oak trees and shrubbery on the Depot Property

8.6. Interior of Depot Building. The common costs to maintain the interior of the Depot Building shall be shared by all occupants of the Depot Building, however, Lessee's share of such maintenance costs shall be capped at \$18,000 per year, which amount shall increase annually based on the Consumer Price Index, All Urban Consumers/All Items for the San Francisco/Oakland/San Jose area. If Lessee's maintenance expenses for the Leased Premises exceed \$18,000 per year, increased annually by the Consumer Price Index, All Urban Consumers/All Items for the San Francisco/Oakland/San Jose area, the Parties will identify capital improvement projects to reduce annual maintenance

costs. If capital improvement projects cannot be identified and implemented, City will pay any reasonable difference in maintenance costs. The \$18,000 per year cap on Lessee's maintenance costs shall not include costs for alarm security and utilities which are addressed separately in Sections 9.1 and 12.

8.7. Remainder of Depot Property. Other than the areas and items listed in Sections 8.1 through 8.6 above, the City will bear the cost and responsibility to maintain the remainder of the Depot Property, including but not limited to the exterior building, windows, pavers, landscaping and hardscaping, all mechanical and electrical systems, and fire system, except for the security camera system.. The City shall maintain the landscaping and hardscaping for the Depot Property in accordance with the same standards that the City maintains similar types of public landscaping and hardscape.

8.8. Inspection by City. Lessee shall allow City to enter all parts of the Depot Building during the hours of operations from 5:30 a.m.- 7:00 p.m. on the weekdays, or other reasonable times as agreed to by the parties, for the purpose of inspecting and maintenance to determine that Lessee is complying with the terms of this Lease Agreement and that the historic integrity of the building is not at risk.

8.9. Failure to Maintain. Lessee's failure to maintain or make said repairs to any of the areas or items listed in Sections 8.1 through 8.6 above, upon being notified by City's agent and not cured in a timely fashion, shall constitute a default by Lessee as outlined under the provisions set forth in Section 24 of this Lease Agreement.

9. BUILDING SECURITY.

9.1. Alarm System. City shall purchase and install an alarm system for the Depot Building. After the alarm system is installed, Lessee shall be solely responsible for the operation and maintenance of the alarm system. City shall not be responsible for any misuse or malfunction of the alarm system or tracking of Lessee's employee access. In the event that City leases space in the Depot Building to tenants other than Lessee, the costs for operation and maintenance of the alarm system shall be pro-rated between the tenants, including Lessee, based on the square footage leased by each tenant.

9.2. Building Keys. Lessee agrees to keep a list of names of all employees issued keys to the Depot Property ("Designated Employees"), and to provide this information to the City by completion of a building key agreement form for each employee issued building keys. Lessee shall recover all building keys from any Designated Employee who ceases to work for Lessee, and return them to City. A \$100 deposit shall be paid by Lessee for each set of building keys issued. The deposit is refundable with the return of the keys to the City. City shall provide a combination lock for the driver restroom.

9.3. Locked Facility/After-Hours. The Property shall be locked and secured by Lessee from 7:00 p.m. to 5:30 a.m. Monday through Friday, and shall remain locked on weekends and all City holidays when it is not in use, and at any time the Leased Premises is not staffed by Lessee.

10. HAZARDOUS MATERIALS. Lessee shall not cause or permit any Hazardous Materials to be permanently stored, used or disposed of, in the Leased Premises or the Depot Property by Lessee, Lessee's agents, employees, contractors or invitees, without having obtained City's prior written consent. For purposes of this Lease Agreement, the following terms shall have the meanings set forth below:

"Hazardous Materials" shall mean any toxic or hazardous wastes, pollutants, materials or substances, including, without limitation, asbestos, PCB's, petroleum products, radioactive substances or their by-products, other substances defined or listed as "hazardous substances", "hazardous materials", "hazardous wastes" or "toxic substances" in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C §§ 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Toxic Substance Control Act of 1976, 15 U.S.C. §§ 2601 et seq.; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the California Hazardous Substance Account Act, California Health & Safety Code ("HSC") §§ 25330.2 et seq., the Hazardous Waste Disposal Land Use Act, HSC §§ 25100 et seq.; in or pursuant to or identified as causing cancer or reproductive toxicity in the California Safe Drinking Water & Toxic Enforcement Act of 1986, HSC §§ 25249.5 et seq.; and HSC §§ 25117, 25316; all as such laws may be amended; any hazardous or toxic substance, material, chemical, waste, or pollutant now or hereafter regulated under any other applicable Federal, State, or local environmental laws, without limitation; and any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Hazardous Discharge" and "Contamination" shall mean the happening of any event involving an emission, spill, release, or discharge ("Release") into or upon (a) the air, (b) soils or any improvements located thereon, (c) surface or ground water, (d) the sewer, septic system, or waste treatment, storage, or disposal system servicing the Premises, of any Hazardous Material, or (e) any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Environmental Laws" shall mean all applicable Federal, State, and local laws, ordinances, regulations, orders, procedures, policies, and directives of every kind and nature whatsoever pertaining to Hazardous Materials in, at, on, under, or from the Leased Premises or the Depot Property or any portion thereof.

Lessee shall be solely and fully responsible and liable in the event Lessee causes or permits Hazardous Materials to be released at the Leased Premises or the Depot Property, or to enter the City's sewerage or storm drainage system, soil, air, groundwater or any improvements. Lessee shall take all necessary precautions to prevent any Hazardous Materials from entering into the City's sewerage or storm drainage system, soil, air, groundwater or any improvements, or from otherwise being released on the Leased Premises or the Depot Property.

Lessee shall indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expenses

(including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of the presence or cleanup of Hazardous Materials on the Leased Premises or the Depot Property or the subsurface solely caused by Lessee's use of the Leased Premises or the Depot Property during the term of this Lease Agreement. After notice from City, and at the discretion of City, Lessee shall cease its activities on the Leased Premises or the Depot Property until such release or danger of release of Hazardous Materials is cured, without abatement of any fees or charges due under this Lease Agreement, until such release or the danger of release of Hazardous Materials is cured and any remediation of such release is completed in a manner satisfactory to the City Engineer.

11. TITLE TO IMPROVEMENTS. Lessee agrees that all permanent, physically attached improvements and fixed installed equipment made upon the Leased Premises or the Depot Property by either party shall upon the expiration or termination of this Lease be and become the City's property, and shall remain upon and be surrendered with the Leased Premises as part thereof upon termination of this Lease Agreement. Any changes or improvements made to the Leased Premises by Lessee without prior written approval from City if such approval is required hereunder shall be restored to their original condition prior to surrendering the Leased Premises.

12. UTILITIES. Lessee shall pay or cause to be paid, and hold City free and harmless from, all charges for the installation, connection, maintenance, furnishing, repair and replacement of all necessary utilities, utility facilities and services, including but not limited to gas, water, electricity, telephone service, cable television, sewage, and other public utilities to the Leased Premises during the term of this Lease Agreement.

12.1. Lease of Depot Building space to other tenants. At the time this Agreement is entered into, Lessee is the sole tenant in the Depot Building. In the event that City leases space in the Depot Building to tenants other than Lessee, the utility costs shall be pro-rated between the tenants, including Lessee, based on square footage leased by each tenant.

13. TRASH AND REFUSE. Lessee shall arrange for the quick and efficient collection and disposal of any trash animal waste, clippings and refuse from the Leased Premises at Lessee's expense in accordance with all applicable laws and ordinances. Lessee shall not allow equipment, scrap or other debris to collect in any way on or about the Depot Property. Upon failure of Lessee to comply with the provisions of this section, the City may enter upon the Depot Property, and undertake any necessary cleanup and maintenance activities. If Lessee fails to pay reasonable charges incurred in connection therewith, City may elect to declare the Lease Agreement in default.

14. LESSEE'S EQUIPMENT. City shall not be responsible for any equipment or furnishings used or provided by Lessee which are not attached to the Leased Premises, or any damage to said equipment or furnishings. All equipment and furnishings not attached to the Leased Premises shall remain the property and sole responsibility of Lessee. In the event this Lease Agreement is terminated for any reason, Lessee shall remove all equipment and furnishings not attached to the Leased Premises.

15. RULES AND REGULATIONS. In its use and operation of the Leased Premises, Lessee shall comply with all applicable statutes, ordinances, or regulations now or hereafter adopted by any federal, state, or county governmental entity, and with all ordinances, regulations, policies, and guidelines now or hereafter adopted by the City of Livermore or any of its boards or commissions, and applicable to Lessee's use of the Leased Premises.

If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Leased Premises or any portion of the Leased Premises, Lessee shall procure and maintain such license, permit, or other authorization throughout the term of this Lease Agreement.

16. ALTERATIONS AND ADDITIONS. Lessee shall not make any alterations to or erect any structures or improvements on the Leased Premises that would not comply with the provisions of this Lease Agreement without the prior written approval of the City Manager. Any alterations or additions approved by City shall be constructed at the sole expense of Lessee and shall include the required City Building Permit(s) and related inspection fees.

17. INSURANCE.

17.1. Lessee Insurance. Lessee shall procure and maintain, for the duration of the Lease Agreement, insurance against claims for injuries to persons or damage to property which may arise from, or in connection with Lessee's operation, use of the Leased Premises or this Lease Agreement, which shall be acceptable to the City's Risk Manager. Upon reasonable written notice, Lessee shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by the City's Risk Manager. The cost of such insurance shall be borne by Lessee. A true and correct copy of the insurance requirements are set forth and attached hereto as Exhibit D.

17.2. City Insurance. City shall purchase and maintain fire insurance for the replacement value of the Depot Building.

18. HOLD HARMLESS.

18.1. Hold Harmless/Indemnity. Lessee 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 Lessee, or any activity carried on by Lessee, Lessee's officers, directors, employees, agents, subleasees, service providers, patrons or volunteers. Approval of the insurance required by this Lease Agreement does not relieve Lessee from liability under this hold harmless clause.

19. TAXES. During the term of this Lease, Lessee shall pay or cause to be paid, prior

to delinquency, any and all taxes, including possessory interest taxes and any assessments, licenses, and fees levied or assessed on the Leased Premises, on all possessory interests hereunder or in the Leased Premises, and on any improvements, fixtures, and equipment now or hereafter existing on the Leased Premises and on any personal property situated on or about the Leased Premises, or in, on, or about any buildings improvements on the Leased Premises. Notwithstanding the above, in the event a tax assessment is made on the Leased Premises as a result of the use thereof by a tenant of City other than Lessee, that tenant shall be responsible for such tax obligations.

20. CONDEMNATION. If all or part of the Leased Premises is taken by condemnation such that the Leased Premises is no longer usable for the purposes contemplated by this Lease Agreement, this Lease Agreement shall terminate. Lessee shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of Lessee's interest in this Lease Agreement.

21. ASSIGNMENT AND SUBLEASING.

21.1. Assignment. Lessee shall not assign or transfer, 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 Lessee'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.

21.2. Subleasing. Lessee 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 Agreement; any and all subleases shall be expressly made subject to all of the terms, covenants, and conditions of this Lease Agreement, including, without limitation, requirements that the Leased Premises be used as a transit-related operation.

21.3. City Lease of Other Depot Building Space. When entering into a lease of Depot Building space not leased to Lessee, 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. City shall consult with Lessee before entering into a lease of Depot Building space. City shall endeavor to lease Depot Building space to tenants whose use is compatible with, and not detrimental to, the operations of Lessee. Likewise, should Lessee 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 Building and not be detrimental to the Depot Building.

22. SURRENDER OF POSSESSION. At the expiration of the leasehold term, Lessee agrees to yield and deliver to City the possession of the Leased Premises and physical improvements either existing or erected by Lessee pursuant to the terms hereof in good

condition, normal wear and tear excepted.

Lessee shall not vacate or abandon the Leased Premises at any time during the term of this Lease Agreement, 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 Agreement 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.

23. TRANSFER OF DEPOT PROPERTY. In the event that City sells or transfers the Depot Property to another entity, individual or business, any such sale or transfer shall be subject to the terms of this Lease Agreement.

24. TERMINATION.

24.1. Termination by City. In the event Lessee engages in, or permits any other person to engage in, any illegal activities in, on, or about the Leased Premises or the Depot Property whether with or without a criminal conviction, City shall have the right to immediately terminate this Lease Agreement and demand Lessee surrender the Leased Premises.

Except for immediate termination as provided for in this Lease Agreement as set forth in Section 24.1, should Lessee at any time during the term of this Lease Agreement be in default in the performance of any of the terms, conditions, rules, covenants, or requirements herein contained or otherwise agreed to by the parties, including the rules and regulations established by City regarding the use of, or access to the Leased Premises or the Depot Property, and should such default continue for thirty (30) days after written notice thereof from City to Lessee specifying the particulars of such default, then in any such event it shall be at the option of the City, the City's right to declare this Lease Agreement terminated and re-enter the Leased Premises and take possession thereof and Lessee shall have no further claim thereon or hereunder.

City's remedies under this section shall be in addition, and supplemental, to any and all other rights or remedies which City may have pursuant to this Lease Agreement or under the law.

24.2. Termination by Lessee. If at any time after the date of execution of this Lease Agreement, Lessee desires to vacate the Leased Premises, Lessee shall give (60) sixty days' written notice to City, thereby terminating this Lease and relinquishing full title, control, and possession of the Leased Premises. Lessee shall surrender any and all improvements made to the Leased Premises and any fixed installed equipment and shall not be entitled for reimbursement by City for such improvements or equipment.

25. HOLDING OVER. Any holding over without the city's prior written consent shall be prohibited.

26. REVIEW OF LEASE. Each Party to this Lease Agreement declares that prior to the execution of this Lease Agreement, each party had the opportunity to seek the independent advice of counsel and that they apprised themselves of sufficient relevant information in order that they might intelligently exercise their own judgment in deciding whether to execute this Lease Agreement. Each party agrees that they have completely read and understood the Lease Agreement, know the contents thereof, and have signed the Lease Agreement of their own free will and free of any duress. No single party has drafted this Lease Agreement and it shall not be interpreted against any party as the drafting party.

27. TIME OF ESSENCE. Time is of the essence for each provision of this Lease Agreement.

28. WAIVER. A term or condition of this Lease Agreement may be waived any time by the party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition. Lessee shall not be excused from complying with any of the terms and conditions of this Lease Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

29. ATTORNEYS FEES AND COSTS. In the event either Party shall bring any action against the other arising out of the performance of this Lease Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees, witnesses', and other fees and expenses. Recoverable costs shall not be limited by application of the California Civil Code and shall include costs such as consulting experts and other expenses not specifically allowed by operation of California statute.

30. MODIFICATIONS. Lessee agrees that the terms of this Lease Agreement constitute the entire Lease Agreement between Lessee and City regarding the Leased Premises. However, this Lease Agreement may be modified by written agreement of the Parties.

31. PERFORMANCE EXCUSED. The Parties shall be excused from performance, as hereunder agreed to, if such performance is rendered impossible, impractical, or unreasonably difficult by, but not limited to, any strike, lockout, labor disturbance of any kind, civil commotion, war, acts of terrorism, shortage of any supply or labor, shortage of water, weather, act of government authority, enactment or change in laws or regulations, breakdown of facilities or any cause outside the parties' control.

32. INVALID PROVISIONS, SEVERABILITY. If any term of this Lease Agreement is held invalid by a court of competent jurisdiction, the invalidity of such term shall not invalidate any other term of this Lease Agreement; provided, however, that the invalidity of any such term does not materially prejudice either City or Lessee in their respective rights and obligations contained in the valid terms of this Lease Agreement.

33. BINDING ON SUCCESSORS. The terms contained in this Lease Agreement

shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of the Parties.

34. GOVERNING LAW. This Lease Agreement, and all matters relating to this Lease Agreement, shall be governed by the laws of the State of California, or other applicable and superseding federal law, in force at the time any need for interpretation of this Lease Agreement or any decision or holding concerning this Lease Agreement arises.

35. NOTICE. Notice shall be effective from the date of mailing. Any and all notices to be given under this Lease Agreement, or otherwise, shall be sent via certified mail with postage prepaid to:

Lessor

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

Copy to Eric Uranga, Assistant
Community Development
Director and Rosy Ehlert,
Engineering Consultant

Lessee

Executive Director
Livermore Amador Valley Transit Authority
1363 Rutan Court, Suite 100
Livermore, CA 94551

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties to this Lease Agreement have caused it to be executed by their officers thereunto duly authorized so to do this ____ day of _____, 2018.

SIGNATURES MUST BE NOTARIZED FOR RECORDING

LIVERMORE AMADOR VALLEY TRANSIT
AUTHORITY OR "LESSEE"

Dated: _____

By: Executive Director

CITY OF LIVERMORE,
a municipal corporation of the State of
California

Dated: _____

Marc Roberts, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

Attachments

- Exhibit A – Plat Map of Depot Property
- Exhibit B – Diagram of Depot Property
- Exhibit C – Diagram of Leased Premises
- Exhibit D – Insurance Requirements

— SOUTHERN PACIFIC TRANSPORTATION COMPANY
79-030431 O.R.

SPRR.

SOUTHERN PACIFIC TRANSPORTATION COMPANY
79-030431 O.R.

R=2815.000

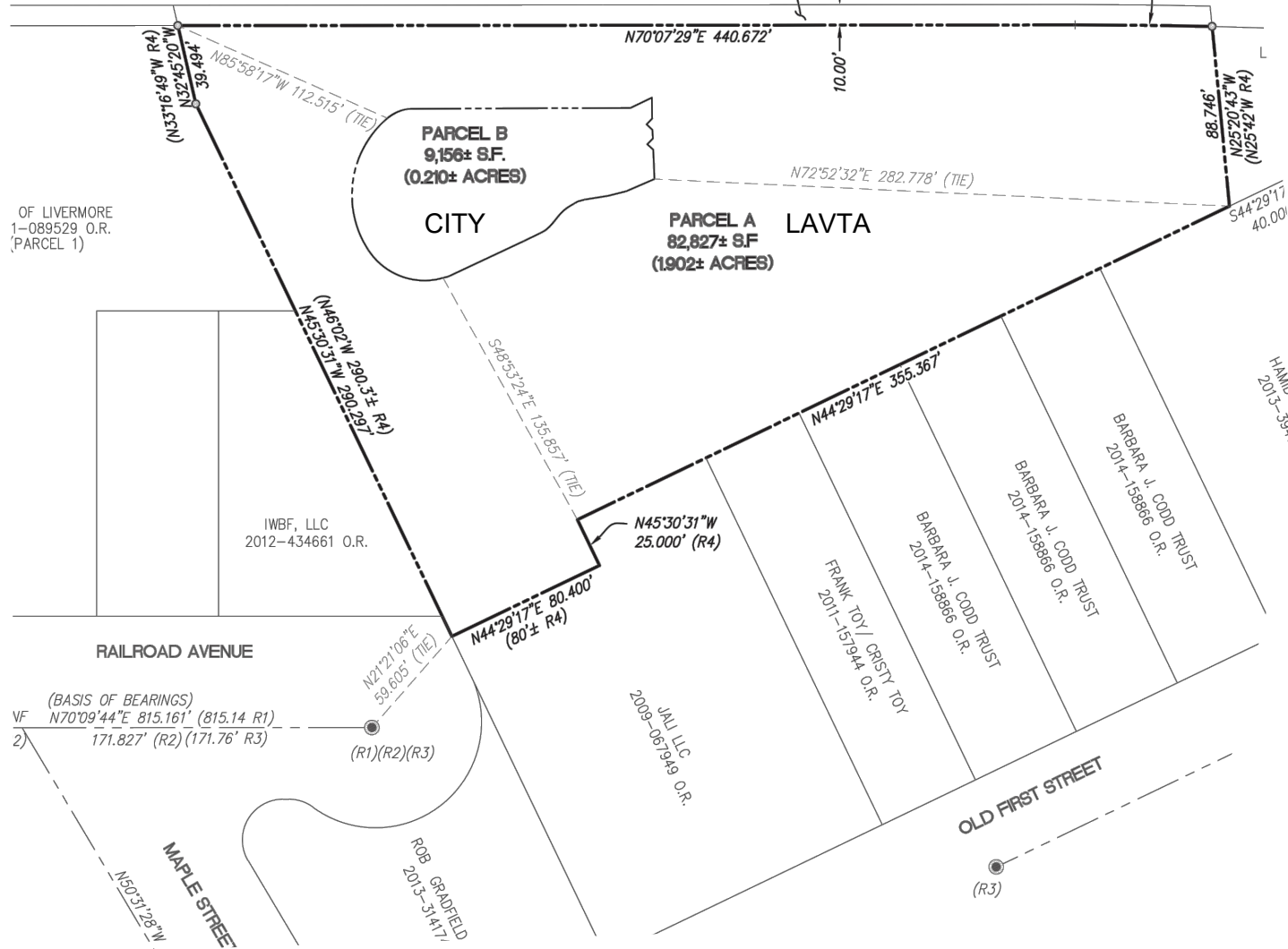


EXHIBIT A
PLAT MAP OF DEPOT PROPERTY

City of Livermore
Date: August 15, 2018

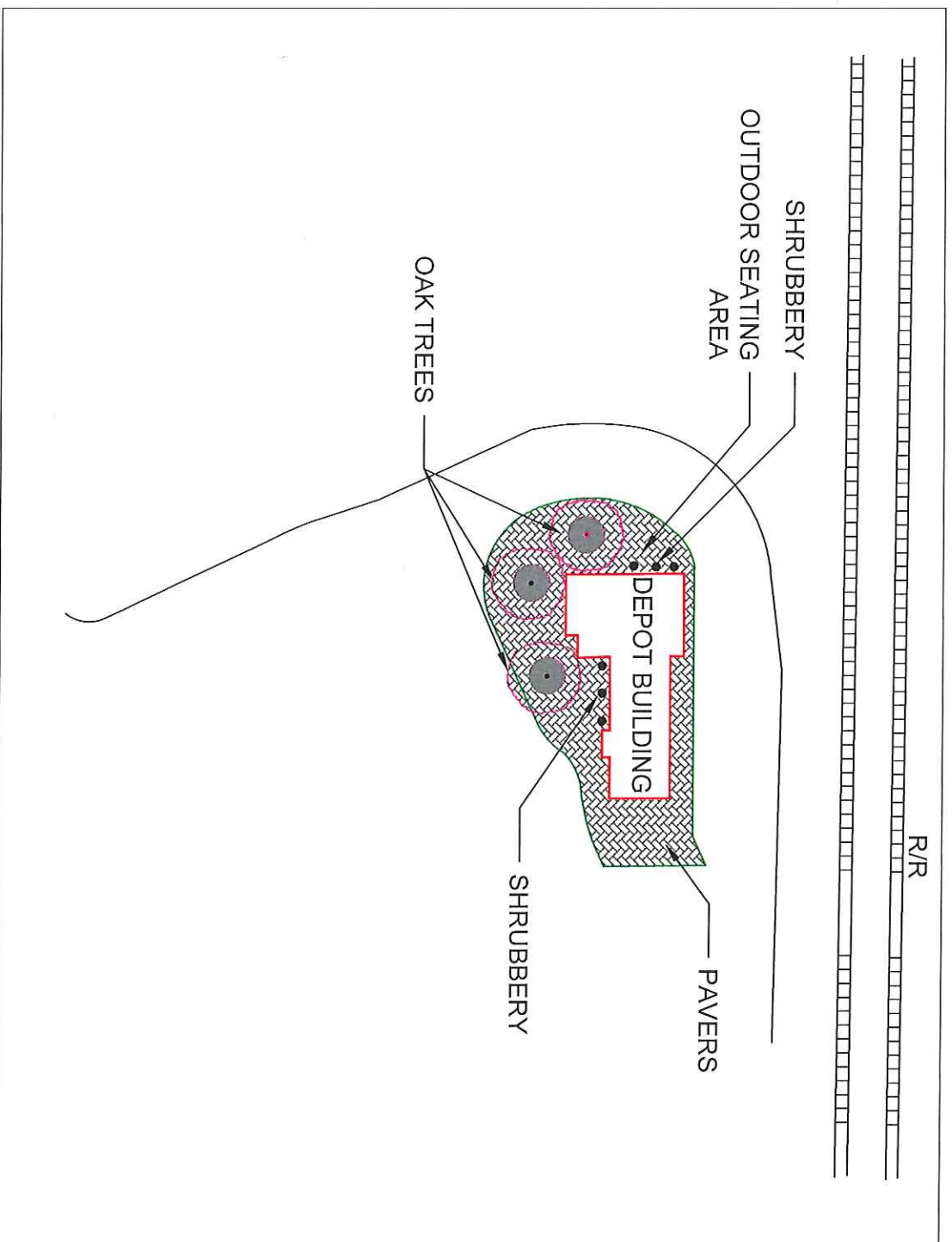


EXHIBIT B
DIAGRAM OF DEPOT PROPERTY

EXHIBIT C
DIAGRAM OF LEASED PREMISES

City of Livermore
Date: August 15, 2018

EXHIBIT D

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Licensee/Lessee shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
\$1,000,000 per occurrence/**\$2,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
\$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
Statutory limits as required by the State of California including **\$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Licensee/Lessee is a sole proprietor, then Licensee/Lessee must sign "Contractor Release of Liability."
4. Property Insurance:
Total value of all tenant improvements, betterments, and contents.
The City of Livermore shall be named as loss payee as its interest may appear. The insurer shall waive all rights against City.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Licensee/Lessee;

or automobiles owned, leased, hired or borrowed by the Licensee/Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or designated volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Licensee's/Lessee's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or designated volunteers.
4. The Licensee's/Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Licensee/Lessee shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before License/Lease commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.