

STAFF REPORT

SUBJECT: Amended and Restated Employment Agreement with Executive Director

FROM: Michael Conneran, Legal Counsel

DATE: December 6, 2021

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**Action Requested**

Approve Amended and Restated Employment Agreement with Executive Director.

**Background/Discussion**

The Board is being asked to approve the attached Amended and Restated Employment Agreement with Executive Director Michael Tree. To avoid any confusion as a result of the multiple amendments to the original employment agreement, we have prepared the attached "Amended and Restated Employment Agreement" (Agreement) which captures all revisions to the prior agreement. The Board conceptually approved the terms reflected in the Agreement at its meeting on November 1, 2021, including an increase in salary to \$18,675 per month, however a few questions were raised regarding one aspect of his compensation—the deferred compensation term. We have confirmed that his existing deferred compensation plan calls for a 11.5 percent contribution. The Board approved an increase of 2.5 percent, bringing the amount to 14 percent, which is reflected in the agreement attached as Exhibit A to the resolution. In addition, we have confirmed that this level of deferred compensation is permitted under applicable IRS regulations, which provide for increased contribution levels based on the age of the employee. The Agreement provides for a three-year term, commencing on December 1, 2021.

**Fiscal Impact**

Funds for the Executive Director's salary and benefits are included in the annual budget.

**Recommendation**

Legal Counsel recommends the Board of Directors approve Amended and Restated Employment Agreement with Executive Director.

Attachments:

1. Amended and Restated Executive Director Employment Agreement
2. Resolution 38-2021

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

**AMENDED AND RESTATED EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT**

THIS AMENDED AND RESTATED EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT is entered into as of \_\_\_\_\_, 2021, by and between the LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY, a joint powers authority (hereinafter referred to as "LAVTA" or "Employer"), and MICHAEL TREE (hereinafter "Employee"). This Amended and Restated Executive Director Employment Agreement supersedes all prior employment agreements between the parties.

**RECITALS**

1. LAVTA is a joint powers authority formed pursuant to the laws of the State of California for the purpose of providing public transportation in the Livermore-Dublin-Pleasanton area.

2. LAVTA has employed MICHAEL TREE as Executive Director of LAVTA since November 10, 2014, and the employment relationship was formalized pursuant to an Executive Director Employment Agreement dated October 6, 2014 (the "Employment Agreement").

3. The Employment Agreement was amended on seven occasions since October 2014.

4. LAVTA and Employee have decided to amend and restate the Employment Agreement to include all modifications (the "Amended and Restated Employment Agreement").

5. LAVTA desires to employ Employee to provide services as the Executive Director of LAVTA pursuant to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Employment Agreement is amended and restated in its entirety as follows:

1. **Term.** LAVTA agrees to employ Employee, and Employee accepts employment as Executive Director of LAVTA for a period of thirty-six (36) months commencing on November 10, 2021. Notwithstanding the foregoing, Employee serves at the pleasure of the Board of Directors of LAVTA. Employee's employment and this Amended and Restated Employment Agreement may be terminated by either party at any time, for any reason, with or without cause, in accordance with Paragraphs 6 and 7.

2. **Duties of Employee.**

a. **Duties.** Employee shall act on a full-time basis as the Executive Director of LAVTA and in such other official capacities as from time to time may be designated by the Board of Directors of LAVTA. Employee's specific responsibilities shall include, but shall not be limited to, the job description attached hereto as Exhibit A. Employee shall also perform such other duties and services as may be assigned from time to time by the Board of Directors of LAVTA.

b. **Employer's Authority.** Employee agrees to observe and comply with the bylaws, rules, procedures, policies, resolutions and any other directions as may be established by LAVTA either orally or in writing respecting performance of Employee's duties.

c. **Devotion of Entire Time to LAVTA's Business.** During the term of this Amended and Restated Employment Agreement, Employee agrees to devote substantially his entire time, effort and attention to the business of LAVTA as may be necessary to faithfully and fully perform the duties of Executive Director. The expenditure of reasonable

amounts of time for personal business, charitable and professional activities shall not be deemed a breach of this Amended and Restated Employment Agreement provided such activities do not interfere with the services required to be rendered to Employer hereunder.

d. Loyalty. Employee agrees that to the best of his ability and experience, he will at all times loyally and conscientiously perform all of the duties and obligations in the best interest of the authority required of him, either expressly or implicitly, by the terms of this Amended and Restated Employment Agreement.

3. **Compensation.**

a. Salary. As compensation and in consideration for the services rendered by Employee under this Amended and Restated Employment Agreement, LAVTA shall pay Employee a gross salary at the rate of Eighteen Thousand and Six Hundred and Seventy-Five Dollars (\$18,675) per month, starting on December 1, 2021 and increasing on December 1 of each succeeding 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. Such salary shall be paid in accordance with LAVTA's customary payroll practices. Prior to November 15th of each year of this Amended and Restated Employment Agreement, the LAVTA Board of Directors shall review the performance and salary of Employee. In addition, after the first six months of Employee's tenure, the Board of Directors shall provide an informal assessment of Employee's performance. The Board of Directors, in its sole discretion, may authorize a modification in the salary paid to Employee at the time of any such performance and salary review(s).

b. Deferred Compensation & Retirement Benefits. LAVTA shall pay the employer contribution as required by the Public Employee Retirement System ("PERS") in accordance with LAVTA's established policies and PERS laws. In addition, LAVTA will contribute an amount equivalent to 14 percent of Employee's gross salary to LAVTA's deferred compensation plan established pursuant to Internal Revenue Code Section 457(b) and administered by Voya, or such other qualified entity as LAVTA may select. LAVTA's retirement and Section 457 deferred compensation plan, and any contributions by LAVTA thereto, may be modified from time to time in the sole discretion of LAVTA.

c. Employment Taxes. All salary paid by LAVTA to Employee shall be subject to income tax withholding and other employment taxes as required by law.

d. Car Allowance. The parties recognize that a significant component of the performance of Employee's job duties involves travel, excluding regular commute travel, to events and meetings away from LAVTA premises. Accordingly, LAVTA shall pay Employee a car allowance of Five Hundred Dollars and No Cents (\$500.00) per month to cover all automobile costs, including insurance, repairs and fuel.

e. Moving Allowance. In light of the need for Employee to relocate his place of residence, LAVTA shall provide Employee with a moving allowance in the amount of \$10,000.

f. Executive Director of Valley Link. Employee is required to serve as Executive Director of the Tri-Valley and San Joaquin Valley Regional Rail Authority ("Valley Link"). As compensation for services to be rendered by Employee to Valley Link in this capacity, Employee shall receive a stipend of One Hundred and Twenty Five Thousand Dollars (\$125,000) per annum or the stipend amount approved by Valley Link's Board of

Directors, whichever is greater, to be paid monthly, commencing on December 1, 2018 for services to be rendered as Executive Director of Valley Link 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 Valley Link shall be separately reimbursed to the Executive Director, notwithstanding any other provisions of this Amended and Restated Employment Agreement.

4. **Paid Time Off.**

a. **General Leave.** Employee shall be entitled to accrue and to use paid general leave in accordance with LAVTA's established policies, which Employee shall accrue at a rate of 216 hours per year during the term of this Amended and Restated Employment Agreement. Under LAVTA's adopted policies, general leave is given in lieu of vacation, illness and bereavement leave and may be used for any leave purpose. Such policies may be modified from time to time in the sole discretion of LAVTA.

b. **Administrative Leave.** In recognition that Employee may be required to work hours beyond regular work hours to fulfill management responsibilities, Employee shall be entitled to accrue and use administrative leave in accordance with LAVTA's established policies. Employee shall accrue administrative leave at a rate of 56 hours per year during the term of this Amended and Restated Employment Agreement. Such leave shall be credited during the first pay period of July in each year. Employee shall be paid for any unused administrative leave in the final pay period of June of each year.

c. Holidays. Employee shall receive twelve paid holidays per calendar year, which shall correspond to the holidays established by LAVTA's adopted policies, which may be modified from time to time in the sole discretion of LAVTA.

5. Health and Welfare Benefits. Employee and his dependents shall be entitled to participate in all employee benefit plans applicable to management personnel including, but not limited to, health, dental, life and vision insurance benefits, subject to the terms and conditions of any such employee benefit plan and any applicable LAVTA policies. LAVTA shall pay One Hundred Percent (100%) of the Employee and dependent premium costs for dental, life and vision coverage. LAVTA shall pay for Employee and dependent medical insurance premium up to the amount of the most expensive health maintenance organization with whom LAVTA contracts. LAVTA shall provide disability insurance for Employee. LAVTA shall also provide life insurance in a policy amount equal to 150 percent of Employee's gross salary. LAVTA reserves the right to modify its employee benefit plans and policies, including the scope of and/or provider of benefits, in its sole discretion.

6. Termination of Employment. LAVTA and Employee agree that Employee serves at the pleasure of the LAVTA Board of Directors. The employment relationship and all obligations under this Amended and Restated Employment Agreement may be terminated at will by either Employee or LAVTA at any time, with or without cause. Employee agrees to provide thirty (30) days advance written notice of his decision to terminate the employment relationship and this Amended and Restated Employment Agreement. In such event, Employee agrees to continue to perform his job duties up to and including the date of termination if requested to do so by LAVTA.

7. **Severance Pay.** In the event LAVTA terminates the employment relationship and this Amended and Restated Employment Agreement for reasons other than misconduct, disloyalty, malfeasance or neglect of job duties, Employee shall receive severance pay in the amount of six (6) months' salary.

8. **Provisions Required by California Government Code 53243 et seq.**

a. In accordance with Government Code Sections 53243, 53243.1 and 53243.2:

(1) In the event Employee is placed on paid leave pending an investigation, Employee shall reimburse such pay to LAVTA if he is subsequently convicted of a crime involving an abuse of his or her office or position.

(2) In the event LAVTA pays for legal criminal defense, he shall fully reimburse such funds to LAVTA if he is subsequently convicted of a crime involving an abuse of his or her office or position.

(3) If this contract is terminated, any cash settlement related to the termination that Employee may receive from LAVTA must be fully reimbursed to LAVTA if he is subsequently convicted of a crime involving an abuse of his or her office or position. The intent of this Section is to satisfy the requirements in Government Code Sections 53243, 53243.1, and 53243.2 and this Amended and Restated Employment Agreement shall be interpreted consistent with these statutes. For purposes of this section, "abuse of office or position" shall be as defined in Government Code Section 53243.4.

9. **General Provisions.**

a. **Notices.** Any notices to be given hereunder by either party to the other must be in writing and may be effected by personal delivery or by registered or certified



mail, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the following addresses:

**LIVERMORE AMADOR VALLEY  
TRANSIT AUTHORITY**

**Livermore Amador Valley Transit Authority  
1362 Rutan Court, Suite 100  
Livermore, CA 94551**

**EMPLOYEE**

**Michael Tree  
563 Selby Lane, Unit 2  
Livermore, CA 94551**

Each party may change its address by written notice in accordance with this Paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two (2) days after deposit, by certified mail, return receipt requested with postage prepaid, with the United States Postal Service.

b. Entire Agreement. This Amended and Restated Employment Agreement supersedes and replaces any and all other agreements or understandings, whether express, implied, oral or written, between the parties hereto with respect to the employment of Employee by LAVTA and contains all the covenants and agreements between the parties with respect to such employment. Each party to this Amended and Restated Employment Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Amended and Restated Employment Agreement shall be valid or binding. This Amended and Restated Employment 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 LAVTA Board of Directors and Employee.

c. Partial Invalidity. If any provision of this Amended and Restated Employment Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

d. Dispute Resolution. Any and all disputes arising out of Employee's employment with LAVTA, including disputes concerning the terms and application of this Amended and Restated Employment Agreement, shall be resolved through binding arbitration as follows:

(i) Except for matters within the exclusive jurisdiction of the Workers' Compensation Appeals Board under Labor Code Section 3600, et seq., the parties agree that binding arbitration shall be the sole method of resolving any and all disputes between the parties, including, without limitation, disputes concerning the compensation or termination of Employee or the termination of this Amended and Restated Employment Agreement. The parties knowingly and voluntarily agree to waive all rights to resolve such disputes in state or federal court or before administrative tribunals.

(ii) Either party may request that a dispute be submitted to an arbitrator. A party must provide a written request to submit a matter to arbitration to the other party within thirty (30) days of the facts or circumstances giving rise to the dispute.

(iii) The parties shall attempt to agree on an arbitrator. If the parties cannot agree upon an arbitrator, the parties shall request a list of five (5) arbitrators with prior experience in labor and employment matters from the American Arbitration Association. Each party shall alternatively strike a name from the list until only one name remains. Employee shall strike a name from the list first.

(iv) The arbitration hearing shall take place in the San Francisco Bay Area. The arbitrator's decision shall be in writing and shall set forth the findings of fact, reasoning and conclusion of the issues submitted. The arbitrator shall not have the authority or jurisdiction to issue a decision which violates or contradicts the terms of this Amended and Restated Employment Agreement. The arbitrator shall have no authority to award punitive damages or damages for mental or emotional distress. The decision of the arbitrator shall be submitted to the parties within thirty (30) days of the hearing and shall be final and binding upon the parties.

(v) Each party shall be responsible for one-half of the costs for the services of the arbitrator including, but not limited to, per diem expenses and travel expenses. All other costs shall be borne by the party incurring the costs.

e. Waiver. A waiver of any of the terms or conditions of this Amended and Restated Employment Agreement shall not be construed as a general waiver by LAVTA, and LAVTA shall be free to reinstate any such term or condition, with or without notice to Employee.

f. Assignment. Neither this Amended and Restated Employment Agreement nor any of the rights hereunder shall be assignable by Employee or by LAVTA.

g. Governing Law. This Amended and Restated Employment Agreement shall be governed by and construed in accordance with the laws of the State of California.

h. Binding Effect. This Amended and Restated Employment Agreement shall be binding upon, and the benefits therefrom shall inure to, the successors, heirs, assigns, donees, and devisees of the parties hereto.

i. Effective Date. This Amended and Restated Employment Agreement may be executed by the parties in counterpart and shall become effective on the last date of execution.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amended and Restated Employment Agreement on the date first written above.

**LIVERMORE AMADOR VALLEY TRANSIT  
AUTHORITY**

**MICHAEL TREE**

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

\_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

Attorney

## **EXHIBIT A**

### **JOB DESCRIPTION--EXECUTIVE DIRECTOR**

Under the general direction of the governing Board of Directors, the Executive Director is responsible for the overall management of the transit authority; responsibilities include: managing the agency's financial affairs; hiring and directing the agency's staff; and planning, organizing and delivering the agency's transit services.

Typical Duties:

1. Obtains funds for transit services and agency operations through grants and other financial sources.
2. Prepares the agency's annual budget for approval of the governing board; ensures agency funds received and expended are accounted for properly.
3. Provides the governing board the data necessary to adopt transit policies; advises board on transit matters and evaluates transit service needs and services.
4. Prepares both short and long range transit plans.
5. Negotiates and administers contracts for transit services; monitors services provided to ensure compliance with contract terms.
6. Translates governing board policies into operating directives, procedures and rules.
7. Hires and supervises agency staff.
8. Procures necessary agency office and operating facilities, equipment and supplies to include vehicles; prepares necessary specifications; administers bidding procedures.
9. Coordinates agency's services with other transit agencies; represents agency before public bodies, with other agencies both public and private, and with the general public.
10. Prepares either personally or through others studies reports, etc., necessary in the conduct of agency affairs.

**RESOLUTION NO. 38-2021**

**LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY**

**AUTHORIZING THE BOARD CHAIR TO EXECUTE  
AN AMENDED AND RESTATED EMPLOYMENT AGREEMENT WITH  
EXECUTIVE DIRECTOR MICHAEL TREE**

**WHEREAS**, in November, 2014, the Board retained Michael Tree to serve as its Executive Director; and

**WHEREAS**, the Board entered into an Employment Agreement with Mr. Tree, which has since been amended seven times; and

**WHEREAS**, the Board would like to restate and amend the agreement, in the general form attached as Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED** that the Chair of the Board of Directors is authorized to execute, on behalf of LAVTA, the Amended and Restated Employment Agreement with Michael Tree to serve as Executive Director of the Livermore Amador Valley Transit Authority, effective December 1, 2021, in a form approved by Legal Counsel, and to take such other actions as may be necessary to effectuate this resolution.

**PASSED AND ADOPTED** by the governing body of the Livermore Amador Valley Transit Authority (LAVTA) this 6th day of December, 2021.

BY \_\_\_\_\_  
Karla Brown, Chair

ATTEST \_\_\_\_\_  
Michael N. Conneran, Legal Counsel