

LIVERMORE ARE RECREATION AND PARK DISTRICT

DRAFT MINUTES

FACILITIES COMMITTEE

Tuesday, October 16, 2018
5:30 PM

Robert Livermore Community Center
4444 East Avenue, Livermore, CA 94550-5053

West Wing Conference Room

Committee Members Present: Chair Faltings, Director Pierpont

Staff Present: Bruce Aizawa, Tom Doyle, Patricia Lord,
Jeffrey Schneider, Linda VanBuskirk

Public Present: Anne Giancola, Bothwell Arts Center

Chair Faltings called the meeting to order at 5:33 p.m.

1. Public Comment

No public comment.

2. Approval of the Minutes of the Facilities Committee Meeting of September 17, 2018

The minutes were approved by unanimous vote.

3. Bothwell Arts Center

a) Completion of Mural Project – Update

AGM Patricia Lord introduced Anne Giancola, Manager of the Bothwell Arts Center, who reported that the mural has been completed and approved by the Livermore Arts Commission. She reported that Girl Scout, Sierra Randal, did a great job leading the project by gathering donations and overseeing volunteers.

b) Bothwell Arts Center Public Art Proposal

Ms. Giancola addressed the Facilities Committee about three bronze sculptures which were donated to the Livermore Valley Performing Arts Center (LVPAC) by a local pediatrician. Worried that they may not be safe

enough by just being corded down, LVPAC requested that LARPD pour a cement pad so the sculptures could be bolted down.

Discussion ensued regarding the Lease Agreement between LARPD and LVPAC (see attached), and the following was pointed out:

- On Page 4, Section 4.4(b) Alterations by Lessee: “Such improvements/modifications shall be solely at the expense and risk of Lessee.” and
- On Pages 7-8, Section 7.1 Right to Make Alterations: “. . . The Alterations shall be made at Lessee’s sole expense, except as the Parties may otherwise agree, and subject to all permitting requirements of the City of Livermore and/or any other permitting authority having jurisdiction over the Premises.” Section 7.2 Title to Alterations: “. . . Upon the expiration or earlier termination of this Lease, Lessee shall have the right to remove all Lessee Specific elements and all other. . . personal property installed in, on or about the Premises (whether bolted to the floor or otherwise), and Lessee shall be required to remove such items at the option of Lessor. Lessee shall promptly repair any damage caused by such removal. . . Lessee shall promptly repair any damage caused by its removal.”

The Committee suggested that LVPAC pay for the cost of materials. LARPD is willing to donate the cost of labor involved in pouring the cement pad to secure the sculptures. The Committee recommended that the procedure stated in the District’s Public Art Policy (FAC-02-1758) be followed by having the proposal reviewed first by the City of Livermore’s Public Art Committee. AGM Lord stated this will be added to the agenda with the Public Art Committee for its review. Once a recommendation is received, the District’s Board of Directors will make final approval, modification, or denial of the proposal.

4. Additional Funding for Synthetic Turf Installation at Robertson Park Park

Park Supervisor Tom Doyle presented the staff report outlining the need to increase the approved budget by \$74,440 for installation of synthetic turf materials in areas A, B, C and D at Robertson Park Fields. Sports groups have been asking for something to be done about this area for years. The Committee reviewed figures based on the lowest quote received from Bastion Construction Services and asked questions regarding grading, sand infill material, and the estimating process, including cost of the performance bond.

This matter will be presented to the Finance Committee at its October 18, 2018 meeting. The Facilities Committee discussed criteria for approvals and whether or not an item below \$100,000 needs to go before the full board. The Facilities

Committee recommended approval as requested in the staff report, without the need to go before the full board, with the caveat that the Finance Committee's input and direction is needed as well.

5. Capital Improvement Projects – Update

The Committee received a verbal update on various CIP projects, as shown on the attached Priority A Projects list, from Parks and Facilities Manager Bruce Aizawa.

6. Matters Initiated

- a) **Garaventa Wetlands:** Director Pierpont discussed the Garaventa Wetlands matter and asked where the District stands on this and how the proposed development will affect the District's wetlands and assets. The Committee discussed the need for the Board to clearly express its stance on the controversial matter. It was suggested that the District talk with counsel, Rod Attebery. AGM Lord stated that District staff meets with City staff on a monthly basis and suggested this matter be brought up during that meeting to ensure the District is kept in the loop.

Chair Faltings adjourned the meeting at 7:13 p.m.

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered as of February 1, 2017 (the “Lease”) by and between the **LIVERMORE AREA RECREATION AND PARK DISTRICT**, an independent Special District (the “Lessor”), and the **LIVERMORE VALLEY PERFORMING ARTS CENTER**, a California non-profit public benefit corporation with tax exempt status under Section 501(c)(3) of the Internal Revenue Code (the “Lessee”) each a “Party” and collectively, the “Parties.” The first lease agreement between the Parties was signed December 26, 2006 for five (5) years, and a five-year (5-year) extension was approved through August 31, 2016

1. PREMISES.

1.1 Premises. The property leased hereunder shall consist of the land and building commonly known as the Bothwell Center, located at 2466 8th Street, Livermore, California, 94550, the building consisting of approximately 10,390 square feet, excluding the adjacent outdoor park area and recreational facilities (the “Premises”). Any statement of square footage set forth in this Lease is an approximation that Lessor and Lessee agree is reasonable and the rental rate is not subject to revision whether or not the actual square footage is more or less.

1.2 Lessee Inspection. Lessee has had the opportunity to thoroughly inspect the Premises as well as ample opportunity to research applicable laws, ordinances and regulations, to determine the suitability of the Premises for Lessee’s proposed uses). Lessee accepts Premises in its “AS IS” condition and without warranty as to the suitability of the Premises for Lessee’s intended uses.

2. TERM.

2.1 Term. The term of this Lease shall be for a period of five (5) years, commencing on February 1, 2017 (the “Commencement Date”) and ending five (5) years thereafter (the “Term”), unless extended or sooner terminated as hereinafter provided. For purposes of this Lease, a “Lease Year” shall begin on February 1st and end on January 31st of the successive year.

2.2 Option to Extend Term. Lessee shall have the option (the “Option”) to extend the Term for one additional period of FIVE (5) YEARS (the “Extension Term”). Monthly rent for each lease year during the Extension Term shall be as follows: Year 6 monthly rent = Year 5 monthly rent level as adjusted by the Consumer Price Index (CPI), Year 7 monthly rent = Year 6 monthly rent level as adjusted by CPI, Year 8 monthly rent = Year 7 monthly rent level as adjusted by CPI, Year 9 monthly rent = Year 8 monthly rent level as adjusted by, Year 10 monthly rent = Year 9 monthly rent level as adjusted by CPI. CPI to be calculated in accordance with the provisions of Section 3, below. Lessee may exercise the Option only by written notice delivered to Lessor not less than 180 days prior to the expiration of the fifth Lease Year (the “Option Notice”); provided that, if Lessee is in default on the date the Extension Term is to

commence, the Extension Term shall not commence and this Lease shall expire by its terms. If Lessee properly exercises the Option, the “Term” as used in this Lease, shall be deemed to include the Extension Term.

2.3 Holding Over. If Lessee holds possession of the Premises or any portion thereof, after the Term of this Lease expires or terminates, without Lessor’s written consent, then Lessor, in its sole discretion, may elect (by written notice to Lessee) to have Lessee become a Lessee of the Premises on a month to month tenancy, at the rent in effect on the last day of the Term, and otherwise upon the terms herein specified for the period immediately prior to such holding over. In the event Lessee holds over without permission, Lessor may elect to pursue any and all legal remedies available to Lessor under applicable law with respect to such un-consented holding over by Lessee. Acceptance of rent by Lessor following expiration or termination of this Lease shall not constitute a renewal of this Lease.

2.4 Right to Terminate. Either Party shall have the right to terminate this Lease at any time upon three (3) months written notice to the other Party.

3. RENT.

3.1 Minimum Monthly Rent. Lessee agrees to pay to Lessor rent in the amount of One Thousand Two Hundred Fifty Dollars (\$1,250.00) per month for the first twelve (12) months of the Lease; this sum is hereinafter called the “**Minimum Monthly Rent**.”

If the rental period commences on any day other than the first day of a month, the first month’s rent shall be prorated based on a thirty (30) day month. In the event that the Lessee shall fail to pay the rent payable under this Lease within ten (10) days after the same has become due, both Lessee and Lessor agree that Lessor will incur additional expenses in the form of extra collections efforts, handling costs and potential impairment of credit on loan(s) for which this Lease may be security. Both Parties agree that in such event Lessor, in addition to its other remedies, shall be entitled to recover a late payment charge against Lessee equal to five percent (5%) of the amount not paid within the ten (10) day period. Any past due amounts under this Lease shall bear interest at the rate of three percent (3%) per month.

If any of Lessee’s checks are returned to Lessor due to insufficient funds or any other reason, Lessor shall have the right to require Lessee to pay monies due in the form of a cashier’s check or money order. Lessee shall also pay any bank charges or fees incurred by Lessor due to Lessee’s insufficient funds.

3.2 Adjusted Minimum Monthly Rent. One year after the Commencement Date (the “**Adjustment Date**”), the Minimum Monthly Rent shall be adjusted by the Consumer Price Index (“CPI”) for All Items and All Urban Consumers, San Francisco-Oakland-San Jose, published by the United States Department of Labor, Bureau of Labor Statistics (the “**Index**”), for the month immediately preceding the Adjustment Date as compared with the Index for the month immediately preceding the Commencement Date. Lessor shall calculate the amount of the increase in the Minimum Monthly Rent after the United States Department of Labor publishes the statistics on which the amount of the increase will be based. Each year thereafter,

the Minimum Monthly Rent shall be compounded and calculated in the same manner annually. For example, assuming a 3% CPI increase for each of the first two Lease Years, the adjusted Minimum Monthly Rent for the third Lease Year would be calculated as follows:

$$\begin{aligned} \$1,250 \times 1.03 &= \$1,287.50 \text{ (Year 2 Minimum Monthly Rent)} \\ \$1,287.50 \times 1.03 &= \$1,326.13 \text{ (Year 3 Minimum Monthly Rent)} \end{aligned}$$

Lessor shall give Lessee written notice of the amount of the Minimum Monthly Rent increase. Lessee shall have the right to review and approve the annual Consumer Price Index (CPI) calculation. Lessor's failure to make the required calculations promptly shall not be considered a waiver of Lessor's rights to adjust the Minimum Monthly Rent due, nor shall it affect Lessee's obligations to pay the increased Minimum Monthly Rent. If the Index is changed so that the base year differs from that in effect on the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Lease Term, the government index or computation with which it is replaced shall be used to obtain substantially the same result as if the Index had not been discontinued or revised. The Minimum Monthly Rent or adjusted Minimum Monthly Rent shall not be decreased by reason of any decrease in the CPI.

4. USE OF PREMISES

4.1 Permitted Use. Lessee is authorized to use the Premises as an arts and cultural center and to generally promote participation and appreciation for arts and culture in the community and for no other purpose without the prior written consent of Lessor. Specifically, permitted uses include, but are not limited to, the following: artist studios and places for artists to work; theatrical performance and rehearsal space; dance performance and rehearsal space; music and singing practice and performance space; poetry readings and other spoken word performances and engagements; art, dance and theatrical practice, performance workshop and classes; theatrical, dance, singing and arts and crafts classes; and conferences, rental for public or private social functions, meetings, speaker series and similar presentations. The Premises may be so used seven (7) days a week from 7:00 a.m. to 10:00 p.m.. Janitorial and administrative activities shall not be limited to such hours but may be conducted on the Premises at any reasonable time.

4.2 Once Per Year Thanksgiving Activity. Lessee shall permit Lessor to use the Premises for the "Once Per Year Thanksgiving Activity". The **"Once Per Year Thanksgiving Activity"** shall mean and refer to the annual charitable community Thanksgiving Dinner provided by community organizations for disadvantaged families and seniors. Lessor and its authorized representatives shall have the right to commence set-up for the annual Thanksgiving Dinner on the Wednesday prior to Thanksgiving Day, commencing at 8:00 a.m., and shall have the right of continuous occupancy of the area needed for meal preparation, service and clean-up through 5:00 p.m. of the Saturday following Thanksgiving Day each and every year during the Term and any Extension Term of this Lease for as long as this program continues. Lessor and its authorized representatives acknowledge that those spaces contained in the building that have been subdivided into artist studios will not be available for any use associated with the Once Per

Year Thanksgiving Activity. Lessee shall not be entitled to payment of Rent in any amount from any party for the use of the Premises to conduct the Once Per Year Thanksgiving Activity.

4.3 Security System. Lessee shall have the right to install, maintain and remove security equipment, and to employ and modify security measures and practices from time to time as it may deem necessary or advisable with respect to the Premises, at no cost or expense to Lessor; provided that, any security system installed by Lessee shall not include any feature that produces sounds or alarms audible outside the Premises. Lessee shall promptly upon installation and/or modification of such system provide Lessor with any keys or codes necessary to operate the security equipment. Lessee shall provide security personnel at the Premises on weekends, if, in its sole discretion, it chooses to open the Premises to users of nearby parks and recreational facilities.

4.4 Compliance with Laws.

(a) General. Lessee shall, at all times during the Lease and at Lessee's sole cost and expense (except if and to the extent that Lessor is obligated to do so) promptly comply with all laws, ordinances, rules, regulations and requirements which may in any way be applicable to Lessee's operations conducted within or Alterations (as defined in Section 7.1 below) constructed on the Premises. Lessor makes no representation or warranty with respect to the compliance of the Premises with the Americans with Disabilities Act and state law with respect to matters of accessibility of the Premises (collectively "**Accessibility Laws**").

(b) Alterations by Lessee. Lessor and Lessee acknowledge that Lessee intends, during the Term of the Lease to make certain alterations to the Premises (Section 7). It is clearly understood that it is solely at the Lessee's risk that any such proposed and/or completed alterations may necessarily require substantial modification of the Premises to achieve compliance with any and all laws, ordinances, rules, regulations and requirements, including, but not limited to, ADA requirements. Such improvements/modifications shall be solely at the expense and risk of Lessee.

5. MAINTENANCE AND REPAIRS

5.1 Lessor's Maintenance and Repair Obligations.

(a) Extent of Lessor's Obligations. Lessor shall at all times repair and maintain or cause to be repaired or maintained, at Lessor's sole cost and expense, the Premises to the extent such repair or maintenance (i) involves structural elements of the Premises, (ii) is required due to the conduct or use of the Premises by Lessor and/or its employees, suppliers, shippers, customers, sublessees, licensees, agents, contractors and invitees (collectively, "**Lessor's Invitees**"), (iii) involves hazardous substances within the building or within the soil upon which the building is located (except any hazardous substances placed on or about the Premises by Lessee or its employees, suppliers, shippers, customers, sublessees, licensees, agents, contractors and invitees (the "**Lessee's Invitees**"), or (iv) involves the building systems, including electrical (except interior electrical outlets, switches, bulbs and fixture glass), plumbing (except exposed fixtures), HVAC and related mechanical systems. Lessor shall further

maintain and repair landscaping, loading areas, exterior lighting (other than any specialized security lighting installed by Lessee), and any other areas comprising a portion of the Bothwell Center but lying outside of the Premises. Notwithstanding the foregoing to the extent such repair or maintenance is required due to the negligence or willful misconduct of Lessee or Lessee's Invitees, Lessee shall pay for such repair or maintenance; provided, however, that Lessee shall have no obligation to pay for repairs otherwise paid by Lessee's insurance or due to damage or destruction set forth in Sections 9 and 11, respectively. Notwithstanding anything to the contrary in this Lease, Lessee, not Lessor, shall repair and maintain all Alterations, as defined in Section 7.1 below, made by Lessee.

(b) Noninterference. To the extent that Lessor's maintenance and repair obligations are performed by Lessor or its contractors or vendors on-site, Lessor shall work with Lessee to ensure that such activities do not have an adverse impact on Lessee's business operations. Lessor's contractors and vendors requiring access to the Premises shall coordinate such access with Lessee's security personnel and shall comply with Lessee's security program for the Premises. Provided, however, in no event shall Lessor be liable for lost rental, lost profits, consequential damages or other loss or alleged loss suffered by Lessee or Lessee's representatives or sublessees.

(c) Lessee's Remedy. If Lessor fails to make or perform any repairs or maintenance that are the obligation of Lessor hereunder and such failure continues for ten (10) or more business days after Lessee gives Lessor written notice of such failure (or, if such repairs or maintenance cannot reasonably be performed within such 10-day period, then if Lessor fails to commence performance within such 10-day period and thereafter to pursue such performance diligently to completion), then Lessee shall have the right, but shall not be required, to make the repairs or perform the maintenance necessary to restore the Premises to good and sanitary order, condition and repair. Within ten (10) business days after written demand from Lessee, the cost of such repairs shall be due and payable by Lessor to Lessee; provided, however, that at Lessee's option, Lessee may deduct such costs from subsequent rent payments.

5.2 Lessee's Maintenance and Repair Obligations.

(a) Good Order, Condition and Repair. Except as otherwise provided herein, Lessee shall, at its sole cost and expense, keep and maintain in good and sanitary order, condition and repair, ordinary wear and tear excepted, the interior non-structural portions of the Premises, and every part thereof, including, but not limited to, the ceiling, all doors, door checks, windows, plate glass, door fronts, exposed plumbing fixtures, interior electrical outlets and switches, light fixtures, lighting, wall surfaces, floor surfaces and ceiling surfaces of the Premises, as required. By way of explication, **Exhibit A**, attached hereto and incorporated herein by reference, provides a non-exhaustive representative list of Lessor's and Lessee's respective maintenance and repair obligations. In general, the Parties intend that Lessor, subject to subparagraph 5.2(b), shall be responsible for the structural soundness and electrical, heating and plumbing systems of the Premises, and Lessee shall be responsible for routine maintenance and non-structural repairs of the Premises. Items chargeable to the "cap" provided for in subparagraph 5.2(b) do not include routine maintenance items such as janitorial service, window

cleaning, lightbulb replacement and repair of broken windows, but do include repair items such as replacement of a broken toilet, broken water faucet or broken door frame.

(b) Repair Cap. Notwithstanding the foregoing, Lessee's liability for payment of expenses incurred as a result of its repair obligations shall not exceed \$6,000 per Lease Year; any costs and expenses for repairs exceeding \$6,000 in a single Lease Year shall be borne by Lessor. Lessee shall not artificially manage the timing of repairs in such a way as to cause the \$6,000 cap to be reached earlier than would otherwise be the case, and Lessor shall not artificially manage the timing of repairs in such a way as to cause the \$6,000 cap not to be reached or to be reached later than would otherwise be the case; rather, repairs will be undertaken when and as needed, regardless of the total expenditures in a given Lease Year.

(c) Single Repair Cost Exceeding \$100,000. In any Lease Year where, as the result of any single repair item, the cost to Lessor to remedy said repair item is reasonably estimated, by a reputable and licensed contractor who regularly provides repair of such an item, to exceed One Hundred Thousand Dollars (\$100,000.00), Lessor shall have the right to terminate the Lease without any liability therefor to Lessee or any party claiming under Lessee; provided, however, that Lessor shall, prior to terminating the Lease, give Lessee, at Lessee's sole cost and expense, the option of undertaking such repair, in which case the Lease shall not terminate. Lessor shall give Lessee thirty (30) days' prior written notice of its intention to decline to repair such item and terminate the Lease pursuant to this Section 5.2(c). The Lease shall terminate if Lessee either (i) declines to undertake the repair of such item, or (ii) fails to notify Lessor within thirty (30) days of receipt of the written notice from Lessor of its intention to terminate this Lease, or its intention to undertake the repair of such item. In any instance where Lessee elects, pursuant to the terms of this subparagraph, to pay the cost of repair, it shall be responsible for paying the entire amount of the repair cost and not just the amount in excess of One Hundred Thousand Dollars (\$100,000.00).

(d) Assistance Provided by Lessor. In performing its repair and maintenance obligations, Lessee may request and shall be granted assistance by Lessor's maintenance personnel, subject to their availability. Lessee shall reimburse Lessor for Lessor's cost of providing such maintenance and repair assistance, and the reimbursement shall be counted toward Lessee's \$6,000 per annum cap on repair expenses.

(e) Lessor's Remedy. If Lessee fails to make or perform any repairs or maintenance that are the obligation of Lessee hereunder and such failure continues for ten (10) or more business days after Lessor gives Lessee written notice of such failure (or, if such repairs or maintenance cannot reasonably be performed within such a 10-day period, then if Lessee fails to commence performance within such 10-day period and thereafter to pursue such performance diligently to completion), then Lessor shall have the right but shall not be required, to enter the Premises (pursuant to the provisions of Section 17.1) and make the repairs or perform the maintenance necessary to restore the Premises to good and sanitary order, condition and repair. Within ten (10) business days after written demand from Lessor, the cost of such maintenance or repairs shall be due and payable by Lessee to Lessor. The cost of any repairs undertaken by Lessor pursuant to this Section 5.2(e) shall not be counted toward Lessee's \$6,000 per annum cap on repair expenses.

(f) Condition Upon Surrender. At the expiration or sooner termination of this Lease, Lessee shall surrender the Premises, broom clean, in good and sanitary order, condition and repair, ordinary wear and tear and casualty damage (the latter of which shall be governed by the provisions of Section 11 hereof) excepted, first, however, removing all goods and effects of Lessee and all trade fixtures and items elected to be removed by Lessee pursuant to this Lease, and repairing any damage caused by such removal. Lessee expressly waives any and all interest in any personal property and trade fixtures not removed from the Premises by Lessee upon the surrender of the Premises to Lessor, agrees that any such personal property and trade fixtures may, at Lessor's election be deemed to have been abandoned by Lessee, and authorizes Lessor (at its election and without prejudice to any other remedies under this Lease or under applicable law) to remove and retain, store, or dispose of such personal property at Lessee's sole cost and expense.

6. UTILITIES.

6.1 Payment. Commencing with the Commencement Date and thereafter throughout the Term of this Lease, Lessor shall pay, before delinquency, all charges for water service to the Premises; provided however, that Lessor shall notify Lessee of any unusual increase in water consumption so that Lessee and Lessor can determine whether there is a water leak affecting the Premises. Lessee shall pay, before delinquency, all charges for sewage, garbage, gas, heat, light, electricity, power, telephone, cable (TV, Internet or other service), security system, pest control, janitorial and other services or utilities supplied to or consumed in or with respect to the Premises.

6.2 Interruption. Lessor shall not be liable for any losses or damages that result from outages, interruptions, or fluctuations in utilities provided to Lessee, unless such loss or damage was the direct result of the willful conduct or negligence of Lessor. Lessee hereby releases Lessor from any and all such claims arising from or relating to such outages, interruptions, or fluctuations. Lessee hereby waives any and all claims for offset, rent reduction, or diminished value of the Premises due to such outages, interruptions or fluctuations.

6.3 Back-up Systems. Lessor and Lessee acknowledge that there are no back-up utility systems provided to the Premises.

7. ALTERATIONS; SIGNS

7.1 Right to Make Alterations. During the Term of this Lease, Lessee shall have the right to make major or minor improvements, additions or alterations (the "**Alterations**") to the Premises from time to time but only with the prior written consent of Lessor, which consent shall not be unreasonably withheld. All such requests shall be approved or denied in writing within forty-five (45) days after Lessor receives Lessee's written request for approval. Any such request shall include sufficient project design information and plans to allow Lessor to make an informed decision on the request. If Lessor fails to respond in the time allotted, the proposed Alterations shall be deemed to be approved by Lessor. Any denial of Lessee's request for approval of proposed Alterations shall state with specificity the reasons therefor. Minor improvements

include, but are not limited to, exterior decoration, such as an exterior mural or decorative lettering. Major improvements include, but are not limited to, creating a black box theater, overhauling the electrical system and installing air conditioning in the Premises auditorium. The Alterations shall be made at Lessee's sole expense, except as the Parties may otherwise agree, and subject to all permitting requirements of the City of Livermore and/or any other permitting authority having jurisdiction over the Premises.

7.2 Title to Alterations. At the time Lessor approves Lessee's Alterations, Lessor and Lessee shall mutually agree on the classification of each portion of any Alterations under Section 7.1 as "Base Building" or "Lessee Specific" elements, the intention of the Parties being that those portions of the Alterations that constitute normal and customary elements of an office or warehouse building shall be classified as "Base Building" elements and any improvements required by Lessee's specific use of the Premises shall be classified as "Lessee Specific" elements. The agreed classification of each portion of the Alterations shall be set forth in writing and signed by Lessor and Lessee.

All Base Building elements shall become part of the Premises and the property of Lessor upon expiration or termination of this Lease. Upon the expiration or earlier termination of this Lease, Lessee shall have the right to remove all Lessee Specific elements and all other furniture, equipment and trade fixtures, and personal property installed in, on or about the Premises (whether bolted to the floor or otherwise), and Lessee shall be required to remove such items at the option of Lessor. Lessee shall promptly repair any damage caused by such removal. Any such items remaining with the consent of both Lessor and Lessee shall become part of the Premises and the property of Lessor upon expiration or termination of this Lease; provided, however, that if Lessee elects to remove any such property, Lessee shall promptly repair any damage caused by its removal.

7.3 No liens. Lessee shall at all times keep the Premises free from all liens and claims of any contractors, subcontractors, materialmen, suppliers or any other parties employed either directly or indirectly by Lessee in connection with construction or maintenance work on the Premises, except to the extent of Lessor's fulfillment of its obligations under this Lease. Lessee may contest any claim of lien, but only if, prior to such contest, Lessee either (i) posts security in the amount of the claim, plus estimated costs (including attorneys' fees) and interest, or (ii) records a bond of a responsible corporate surety in such amount as may be required to release the lien from the Premises. Lessee shall indemnify, defend and hold Lessor harmless against any and all liability, loss, damage, cost and other expenses, including, without limitation, reasonable attorneys' fees, arising out of claims of any lien for work performed or materials or supplies furnished at the request of Lessee or persons claiming under Lessee.

7.4 Signs. Lessee shall have the right to display its name, logo and/or insignia on the Premises, in front of the entrance to the Premises, and on any monument signs associated with the Premises, subject to all restrictions and requirements of applicable ordinances and laws, including, but not limited to, the installation of room capacity limit signs for each room in the Premises, and of any covenants, conditions and restrictions or other written agreements now or hereafter applicable to the Premises, and subject to Lessor's prior written approval, which shall not be unreasonably withheld. Any exterior signage shall also incorporate "Bothwell" and

Lessor's name ("The Livermore Area Recreation and Park District") and acknowledge Lessor's ownership of the Premises. Lessee shall immediately repair any damage caused by installation and removal of signs under this Section 7.4.

8. TAXES.

8.1 Real Property Taxes. Lessor shall be responsible for, and shall pay prior to delinquency, all real property taxes and assessments, if any, assessed against the Premises or any portion thereof; provided, however, that Lessee hereby agrees to pay any or all taxes, assessments or other charges which may be levied with respect to Lessee's Alterations.

8.2 Personal Property Taxes. Lessee shall be responsible for, and shall pay prior to delinquency, all taxes and assessments levied against Lessee's possessory interest, personal property or trade fixtures and other property placed by Lessee on or about the Premises. Lessee may contest any taxes or assessments levied against any trade fixtures or personal property for which Lessee is responsible under this Section 8.2, and Lessor shall reasonably cooperate with Lessee in any action taken by Lessee to contest such taxes and assessments, including, without limitation, by providing Lessee with copies of any and all documentation reasonably requested to support such contest.

8.3 Lessor's Disclosure. Lessor, in accordance with California Revenue and Taxation Code Section 107.6, discloses the following information to Lessee: Lessee is advised and understands that the execution of this Lease may create a "possessory interest" subject to property taxation. Lessee is hereby advised and accepts and agrees that to the extent such action may result in the imposition of a property tax or assessment, Lessee shall be solely liable for the payment of any such tax or assessment.

9. INSURANCE.

9.1 Lessee's Insurance. Lessee shall procure and maintain in full force and effect at all times during the Term of this Lease, at Lessee's sole cost and expense, commercial general liability insurance to protect Lessee against liability to the public, or to any invitee of Lessee, resulting from any accident occurring in, upon or about the Premises, in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury and property damage. Such insurance shall name Lessor as an additional insured thereunder. If Lessee shall assign or sublet all or a portion of the Premises as set forth in Section 16 below, any insurance required to be obtained by assignee or sublessee shall name Lessee and Lessor as additional insureds thereunder. The amount of such insurance shall not be construed to limit any liability or obligation of Lessee under this Lease. Lessee shall procure and maintain in full force and effect at all times during the Term of this Lease, at Lessee's sole cost and expense, an "All Risk" property insurance policy in the full replacement cost of Lessee's Alterations, fixtures, and personal property insuring against all perils included within the classification of "special form" coverage and contractual liability.

If Lessee fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish Lessor with required proof that the insurance has been procured and is in force

and paid for, Lessor shall have the right, at Lessor's election and on five (5) days' notice to Lessee to procure and maintain such insurance. The premiums paid by Lessor shall be treated as added rent due from Lessee, with interest accruing at the rate of three percent (3%) per month, to be paid on demand by Lessor. Lessor shall give Lessee prompt notice of the payment of premiums, stating the amounts paid and the names of the insurer or insurers.

9.2 Lessor's Insurance. Lessor shall procure and maintain in full force and effect at all times during the Term of this Lease, at Lessor's sole cost and expense, commercial general liability insurance to protect Lessor against liability arising out of or related to the use of or resulting from any accident occurring in, upon or about the Premises, in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury and property damage and an "All Risk" property insurance policy in the amount of the full replacement cost of the Premises, against all perils included within the classification of "special form" coverage and contractual liability. The amount of such insurance shall not be construed to limit any liability or obligation of Lessor under this Lease.

9.3 Quality of Lessee's Policies and Certificates. All insurance required by express provisions hereof to be carried by Lessee shall be issued only by responsible insurance companies licensed to do business in California and reasonably acceptable to Lessor and the policies shall be in form reasonably acceptable to Lessor. All such policies shall be primary and noncontributing with any insurance that may be carried by Lessor, whose insurance shall be considered excess insurance only, and they shall carry an endorsement providing that they cannot be canceled or materially changed except after thirty (30) days' prior written notice by the insurer to Lessor. Lessee shall furnish Lessor with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. Prior to commencement of this Lease, Lessee shall furnish Lessor with binders representing all insurance required by this Lease.

10. INDEMNIFICATION.

10.1 Lessee's Indemnification. Except as otherwise expressly provided for in this Lease, Lessee shall indemnify, defend and hold Lessor and Lessor's elected officials, officers, employees, agents and the estates thereof harmless from any and all third party liability for injury to or death of any person, or loss of or damage to the property of any third party, and all actions, claims, demands, costs (including, without limitation, reasonable attorneys' fees and expert fees, at trial and on appeal), damages or expenses of any kind arising therefrom which may be brought or made against Lessor or Lessor's Invitees, to the extent such liabilities or other matters arise in, on or about the Premises by reason of any negligence or willful misconduct or negligent or willful omission by Lessee or Lessee's Invitees, or a material breach by Lessee of this Lease. The forgoing indemnity shall survive the termination of the Lease.

10.2 Lessor's Indemnification. Except as otherwise expressly provided for in this Lease, Lessor shall indemnify, defend and hold Lessee and Lessee's directors, officers, employees, agents and the estates thereof harmless from any and all third party liability for injury to or death of any person, or loss of or damage to the property of any third party, and all actions, claims, demands, costs (including, without limitation, reasonable attorneys' fees and expert fees, at trial and on appeal), damages or expenses of any kind arising therefrom which may be brought

or made against Lessee or Lessee's Invitees, to the extent such liabilities or other matters arise in, on or about the Premises by reason of any gross negligence or willful misconduct or grossly negligent or willful omission by Lessor or Lessor's Invitees, or a material breach by Lessor of this Lease. The forgoing indemnity shall survive the termination of the Lease.

11. DESTRUCTION OF PREMISES.

11.1 Total Destruction. In the event that the Premises are destroyed to the extent of twenty-five percent (25%) or more of the replacement cost thereof, either Party may elect to terminate this Lease. A total destruction of the Premises shall terminate this Lease.

11.2 Partial Destruction. Subject to Section 11.3, in the event the Premises are destroyed to the extent of less than twenty-five percent (25%) of the replacement cost thereof, during the Term, Lessee shall notify Lessor thereof in writing. Lessor shall forthwith repair the same, provided that, such repairs can reasonably be made under the laws and regulations of the state, county and municipal authorities and within one hundred eighty (180) days (working regular hours and days). Such partial destruction shall not annul or void this Lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, such proportionate reduction to be based upon the extent to which the making of such repairs interferes with the use and occupancy of the Premises and the ability of Lessee to conduct Lessee's business. In the event the repairs cannot be so made within the time period specified above or under the applicable laws and regulations, and Lessor does not within twenty (20) days of receipt of notice of partial destruction so elect to make the repairs, this Lease may be terminated at the option of either Party. With respect to any partial destruction that Lessor is obligated to repair or may elect to repair under the terms of this section, the provisions of Section 1932, subdivision 2, and of Section 1933, subdivision 4, of the Civil Code of the State of California, are hereby waived by Lessee.

11.3 Partial Destruction During Last Six Months of Lease Term. In the event any partial destruction that would otherwise require Lessor to repair the same shall occur within the last six (6) months of the Term or any extension or renewal thereof, Lessor may, within twenty (20) days of receiving notice of the partial destruction, notify Lessee that repairs will not be made during the Term, and Lessee may thereupon elect either to (a) terminate this Lease, (b) make such repairs at Lessee's own expense, or (c) if not previously exercised, exercise the Option set forth in Section 2.2, in which event, if Lessor is otherwise obligated to repair under this Section 11, then Lessor shall make such repairs.

12. PUBLIC USE. If the whole or any substantial part of the Premises shall be acquired, taken or condemned by any competent authority for any public or quasi-public use or purpose, then this Lease, the Term hereof and any renewal, and all rights and liabilities of the Parties, each to the other, thereafter accruing, shall cease and expire and become null and void from and after the date when such possession shall be required or title be vested, without apportionment to Lessee of the award or other compensation, if any by reason of such requisition, taking or condemnation.

13. INSOLVENCY AND RECEIVERSHIP. Either (i) the appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or (ii) a general assignment by Lessee under any insolvency or bankruptcy act (if such appointment or assignment is of a duration greater than sixty (60) days) shall at the option of Lessor constitute a breach of this Lease by Lessee.

14. DEFAULTS; REMEDIES

14.1 Defaults. The occurrence of any one or more of these shall constitute a default and breach of this Lease by Lessee:

(a) Failure to Make Payment. Failure of Lessee to make payment of rent or other payments as required to be made by Lessee hereunder as and when due, when such failure continues for a period of ten (10) days after written notice thereof from Lessor to Lessee.

(b) Failure to Perform Other Lease Obligations. Failure of Lessee to observe or perform any of the covenants, conditions or provisions of this Lease (other than payment of rent or other payments required hereunder) to be observed or performed by Lessee, when the failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced the cure within the thirty (30)-day period and thereafter diligently prosecutes the cure to completion.

14.2 Remedies. If any default by Lessee shall continue uncured, Lessor shall have the following remedies in addition to all rights and remedies provided by law or equity to which Lessor may resort cumulatively or in the alternative:

(a) Cure Lessee's Default. Lessor may, at its election, make any payment required of Lessee under this Lease or perform or comply with any reasonable cost of any such performance or compliance, plus interest on such sum at the rate of three percent (3%) per month from the date of payment. Performance or compliance shall be deemed to be additional rent payable by Lessee on Lessor's demand. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default or render Lessor liable for any loss or damage resulting from the same.

(b) Terminate the Lease. Lessor may at its election terminate this Lease by giving Lessee notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all improvements in broom clean condition, and Lessor may reenter and take possession of the Premises and all remaining improvements and eject persons in possession. In addition to all other rights and remedies it may have, Lessor shall have all the rights and remedies of a Lessor under Section 1951.2 of the California Civil Code. Termination under this section shall not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee.

(c) Re-enter and Re-let Without Termination. Lessor may at its election re-enter the Premises and, without terminating this Lease, at any time and from time to time re-let the Premises and improvements or any parts of them for the account and in the name of the Lessee or otherwise. Lessor may at Lessor's election, but subject to any right granted to an assignee or sublessee to cure Lessee's default, eject persons. Any re-letting may be for the remainder of the term or for a longer or shorter period. Lessor may execute any leases made under this provision either in Lessor's name or in Lessee's name and shall be entitled to all rents from the use, operation or occupancy of the Premises or improvements or both. Lessee shall nevertheless pay to Lessor on the due date specified in this Lease the equivalent of all sums required of Lessee, under this Lease, plus Lessor's expenses, less the proceeds of any re-letting or attornment. In addition to all other rights and remedies it may have, Lessor shall have all of the rights and remedies of a Lessor under Section 1951.4 of the California Civil Code. Lessor may do all things reasonably necessary for such re-letting, including repairing the Premises as may reasonably be required for its continued operation, and Lessee shall reimburse Lessor on demand for all costs incurred by Lessor in connection therewith. No act by or on behalf of Lessor under this provision shall constitute a termination of this Lease unless Lessor gives Lessee notice of termination.

(d) Receivership. Lessor shall have the right to cause a receiver to be appointed in any action against Lessee to take possession of the Premises and/or collect the rents or profits derived therefrom. The appointment of such receiver shall not constitute an election on the part of Lessor to terminate this Lease unless a written notice of such intention is given to Lessee. In the event that a receiver is appointed, Lessee shall not be responsible for any contamination that may occur because of the receiver's use or occupancy of the Premises.

(e) Abandoned Personal Property and Fixtures. In the case of personal property and trade fixtures abandoned by Lessee for more than thirty (30) days on the Property, Lessor may at its election use such property, without compensation and without liability for use or damage or remove them and store them for the account and at the cost of Lessee. Such storage may be in a public or private warehouse or elsewhere. If Lessee shall not pay the cost of the moving and storage of such property, after the same has been stored for a period of thirty (30) days or more, Lessor may sell any or all thereof at a public or private sale in such manner and at such times and places as Lessor in its sole discretion may deem proper, without notice to or demand upon Lessee. Lessee waives all claims for damages that may be caused by Lessor's removing or storing or selling the property as herein provided, and Lessee shall indemnify and hold Lessor free and harmless from and against any and all losses, costs and damages, including, without limitation, all costs of court and attorneys' fees of Lessor occasioned thereby. Lessee hereby appoints Lessor as Lessee's attorney-in-fact with the power of substitution and all other rights and powers necessary in order to effectuate the provisions of this section. The election of any other remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

15. SALE, ENCUMBRANCE AND TRANSFER OF SECURITY.

15.1 Right of First Refusal to Purchase. If, during the term hereof, Lessor receives a bona fide offer from any third party to purchase the Premises, that Lessor wants to accept, then

Lessor shall, before accepting such offer, give Lessee a true and correct copy of said offer, and Lessor shall first offer to sell the Premises to Lessee on the same terms and conditions. On receipt of any such notice and offer from Lessor, Lessee shall have twenty (20) days after receipt of the notice within which to accept the offer. If Lessee fails to accept any such offer within said twenty (20)-day period, Lessor may sell the Premises on the same terms as those offered to Lessee, without further notice to Lessee. If Lessor, after having made the offer to Lessee as required by this section, fails to sell the Premises on the same terms as those offered to Lessee, Lessor shall give Lessee notice in the same manner set forth above of any further or different offers made or received by Lessor for the purchase of the Premises, that Lessor desires to accept, including offers made or received for purchase at a reduced price, and shall first offer to sell the same to Lessee on the same terms and conditions before accepting any such further or different offer. Lessee shall have the right of first refusal with respect to each offer to purchase made or received by Lessor or by any successor Lessor, and the then-Lessor, at the time of the making or receipt of such offer to sell or purchase, shall in each instance notify Lessee of such offer in the manner set forth above, and Lessee shall have the right to purchase the Premises under the terms and conditions of such offer as set forth above.

15.2 Lessor's Liability Upon Sale or Conveyance. In the event of any sale or conveyance by Lessor of the Premises, other than as set forth in Section 15.1, the same shall be made subject to this Lease and shall operate to release Lessor from any further or future liability (but not as to any liability occurring prior to such sale or conveyance) under any of the terms, covenants and conditions contained in this Lease in favor of Lessee, whether expressed or implied, and in such event Lessee shall look solely to the responsibility of the successor in interest of the Lessor in and to the Lease.

15.3 Tenant Estoppel. Lessee shall, at any time and from time to time upon not less than ten (10) days' prior written request by Lessor, execute, acknowledge, and deliver to Lessor or a purchaser or encumbrancer a statement in writing certifying that this Lease is unmodified, is in full force and effect and rent has not been pre-paid beyond the current month (or if there have been modifications or pre-payments, stating the modifications or pre-payments) and failure so to deliver such statement shall constitute acknowledgement pursuant to this section and may be relied upon by any prospective purchaser or encumbrancer (including assignees) of the Premises.

15.4 Subordination. This Lease shall be subordinate to any mortgages or deeds of trust in the nature of mortgages that may now or hereafter be placed on the Premises, to any and all advances made under them, to the interest on all obligations secured by them, and to all renewals, extensions and replacements of them; provided, however, that the mortgagee or beneficiary in such mortgages or deeds of trust shall recognize the Lease of Lessee in the event of foreclosure if Lessee is not then in default under the terms of the Lease, and Lessee will attorn to the purchaser of the Premises upon foreclosure.

16. SUBLEASE AND ASSIGNMENT. With respect to Lessee's subletting of all or a portion of the Premises to any person or entity who will utilize the Premises for the purposes enumerated in Section 4.1 and for a period of limited duration, the Lessor's prior consent shall not be required. Each and every sublessee identified in the previous sentence shall be in good professional standing. In no event shall any subletting result in overcrowding of the Premises or

an increase in the expenses of Lessor. Under all other circumstances, Lessee shall not assign this Lease, or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and employees of Lessee excepted) to occupy or use the Premises or any portion thereof, without the prior written consent of Lessor, which shall not be unreasonably conditioned or withheld. A consent to one assignment, subletting occupancy or use by any other person/entity shall not be deemed to be a consent to any subsequent assignment, subletting, occupancy or use by another person/entity. Any such assignment or subletting without such consent shall be void and shall, at the option of Lessor, terminate this Lease.

17. RIGHT OF ENTRY AND QUIET ENJOYMENT.

17.1 Right of Entry. Lessor and its authorized representatives shall have the right to enter the Premises, subject to Lessee's reasonable and customary security and operating procedures, at any time during the Term of this Lease during normal business hours and upon not less than one (1) business day's prior notice, except in the case of emergency (in which event no notice shall be required and entry may be made at any time), for the purpose of inspecting and determining the condition of the Premises or for any other proper purpose including, without limitation, to make repairs, replacements or improvements which Lessor is required or permitted to make hereunder, to show the Premises to prospective purchasers, to show the Premises to prospective Lessees (but only during the final year of the Term and final year of the Extension Term, if any, of this Lease). Lessor shall use reasonable best efforts to minimize the inconvenience to Lessee's normal operations caused thereby. In the event that Lessee's use of the Premises is materially impaired by Lessor's entry, Lessee's obligations for payment of rent and other charges under this Lease shall be abated in proportion to the degree of impairment of Lessee's use of the Premises, and such abatement shall continue until Lessee's use of the Premises is no longer materially impaired by Lessor's entry.

17.2 Quiet Enjoyment. Lessor covenants that Lessee, upon paying the rent and performing its obligations hereunder and subject to all the terms and conditions of this Lease, shall peacefully and quietly have, hold and enjoy the Premises throughout the duration of this Lease, or until this Lease is terminated as provided herein.

18. MISCELLANEOUS.

18.1 Staffing. Except as provided for elsewhere herein, Lessee shall provide all appropriate staffing for the Premises and functions carried out therein.

18.2 Parking. The Parties hereby acknowledge and accept that there is no on-site parking for the Premises. Only street parking is available to the Parties' staff and visitors to the Premises.

18.3 Consumption of Alcohol on the Premises. Alcohol is permitted to be consumed on the Premises with proper licenses and sufficient insurance coverage.

18.4 Fire Safety.

(a) Fire Safe Storage. At all times during the Term of this Lease, Lessee and Lessee's Invitees shall store any paints or other volatile or flammable materials located on the Premises in OSHA-approved nonflammable storage cabinets, to be installed and maintained on the Premises by and at the sole expense of Lessee.

(b) Fire Extinguishers. At all times during the Term of this Lease, and in addition to Lessor's maintenance obligations set forth in Section 5.1 above, Lessor shall be responsible for providing and maintaining in good working order at least four (4) fire extinguishers on the Premises. Lessee shall reimburse Lessor for all costs associated with the maintenance of fire extinguishers on the Premises.

(c) Toxic, Flammable and Hazardous Materials. During the Term of this Lease, Lessee shall ensure that any and all toxic, flammable or hazardous materials are used and stored in compliance with any and all applicable laws, ordinances or regulations applicable to such substances whether imposed by Federal, State, County and/or Municipal authorities.

18.6 Notice. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States mail, postage prepaid, certified mail, return receipt request, or (d) facsimile, addressed as follows:

To Lessor:	LARPD Attn: General Manager 4444 East Avenue Livermore, CA 94550
With a copy to:	Rod A. Attebery, Attorney at Law Neumiller & Beardslee P.O. Box 20 Stockton, CA 95201-3020
To Lessee:	Livermore Valley Performing Arts Center Attn: Executive Director 2400 First Street Livermore, CA 94550
With a copy to:	Edward J. Willig, Director Carr McClellan P.C. Professional Law Corporation 216 Park Road Burlingame, CA 94010

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable Party sent in accordance herewith. Any such notice or communication

shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile, upon mechanical confirmation of transmission during normal business hours, at the commencement of the next business day commencing after the time of such transmission.

18.7 Successors and Assigns. Subject to the provisions of Section 16, this Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

18.8 No Waiver. The failure of either Party to seek redress for violation, or to insist upon the strict performance, of any covenant or condition of this Lease shall not be deemed a waiver of such violation or prevent a subsequent act which would originally have constituted a violation from having all the force and effect of an original violation.

18.9 Severability. If any provision of this Lease or the application thereof is held to be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each of the provisions of this Lease shall be valid and enforceable, unless enforcement of this Lease as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would materially frustrate the purposes of this Lease.

18.10 Dispute Resolution and Related Fees. All disputes and controversies relating to the interpretation, construction, performance or breach of this Agreement that cannot be resolved by the parties shall be submitted to mediation before a mediator who will be selected (a) by mutual agreement of the parties, or (b) if the parties are unable to reach such mutual agreement, in accordance with the procedures of JAMS. Mediation shall proceed and continue until such time as the dispute or controversy between the parties is either resolved or the mediator or the parties agree that mediation should not continue. If the parties are unable to resolve their disputes and controversies through mediation, any party shall have the right to proceed to litigation. All fees, costs and expenses of the mediator and mediation facilities shall be borne equally by the parties, and all fees, costs and expenses of each party other than those for the mediator and/or mediation facilities shall be borne and paid for by the party who incurs them. The mediation shall take place in Alameda County, California. In the event the dispute cannot be resolved by mediation and the parties proceed to litigation as provided herein, the prevailing party shall be reimbursed for all reasonable costs, including, but not limited to, reasonable experts', accountants' and attorneys' fees, incurred in connection with such proceedings (including, but not limited to, any appellate and collection proceedings relating thereto) or in connection with the enforcement of any judgement or award rendered in such proceedings. "Prevailing party" within the meaning of this Section shall include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

18.11 Interpretation. The provisions of this Lease shall be construed as a whole, according to their common meaning, and not strictly for or against Lessor or Lessee. The

captions preceding the text of each section and section hereof are included only for convenience of reference and shall be disregarded in the construction or interpretation of this Lease.

18.12 Entire Agreement. This written Lease, together with any Exhibits hereto, contains all the representations and the entire understanding between the Parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements (oral or written) are replaced in total by this Lease and the exhibits hereto. This Lease may be modified only by an agreement in writing signed by each of the Parties.

18.13 Governing Law. This Lease and all exhibits hereto shall be construed and interpreted in accordance with and be governed by all the provisions of the laws of the State of California.

18.14 No Partnership. The relationship between Lessor and Lessee is solely that of a lessor and lessee. Nothing contained in this Lease shall be construed as creating any type or manner of partnership, joint venture or joint enterprise with or between Lessor and Lessee.

18.15 Time. Time is of the essence of this Lease and of every term and condition hereof.

18.16 Brokers. Each Party represents and warrants that no broker(s) participated in the consummation of this Lease and shall indemnify, defend and hold the other Party harmless against any liability, cost or expense, including, without limitation, reasonable attorneys' fees, arising out of any claims for brokerage commissions or other similar compensation in connection with any conversations, prior negotiations or other dealings by the indemnifying Party with any other broker.

18.17 Corporate Authority. The person signing this Lease on behalf of each respective Party warrants that he or she is fully authorized to do so and, by so doing, to bind the respective Party on behalf of which such person has signed.

18.18 Execution and Delivery. This Lease may be executed in one or more counterparts and by separate Parties on separate counterparts, but each such counterpart shall constitute an original and all such counterparts together shall constitute one and the same instrument.

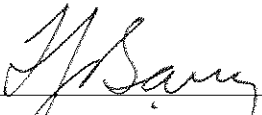
18.19 Survival. Without limiting survival provisions that would otherwise be implied or construed under applicable law, the provisions of Sections 2.3, 7.2, 7.3, 7.4, 10 and 18.10 hereof shall survive the termination of this Lease with respect to matters occurring prior to the expiration of this Lease.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first set forth above.

"Lessor":

**LIVERMORE AREA RECREATION
AND PARK DISTRICT,**
An independent special district

By: 
Name: Timothy G. Barry
Its: General Manager

"Lessee":

**LIVERMORE VALLEY PERFORMING
ARTS CENTER,**
a 501(c)(3) not-for-profit corporation

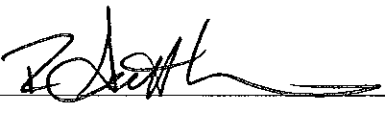
By: 
Name: Scott Kewson
Its: Executive Director

EXHIBIT A
SCHEDULE OF MAINTENANCE AND REPAIR OBLIGATIONS

Maintenance or Repair Task	“Lessor” (LARPD)	“Lessee” (LVPAC)
1. Landscaping	X	
2. Repainting exterior of Premises	X	
3. Roof repair and replacement	X	
4. Maintain the “tot lot”	X	
5. Clean up external graffiti and external damage caused by vandalism*	X	
6. HVAC (including changing filters periodically)	X	
7. Janitorial service (e.g., clean floors and restrooms, trash disposal, including front trash cans located outside immediately adjacent to the building and front walkway)		X
8. Clean up internal graffiti and internal damages caused by vandalism		X
9. Window washing (interior and exterior)		X
10. Clearing and keeping unobstructed Front Walkway		X
11. Light bulb and ballasts replacement		X
12. Repairs necessitated by Lessor’s use of the Premises*	X	
13. Repair or replacement of kitchen stove		X
14. Repair and replacement of garbage disposal, refrigerator and freezer		X
15. Fire extinguisher maintenance (cost to Lessee)	X	
16. Electrical lines and fuse box(es)	X	
17. Electrical plugs, switches, light fixtures and fixture glass		X
18. Interior plumbing fixtures		X
19. Other minor repairs, incl. broken windows, touch-up painting and lock repairs		X
20. Other major repairs, incl. leaking roof and windows, mildew, mold or structural defects	X	

*The cost of repairs made by Lessor under items 5 and 11 does not count toward calculation of the cap per subparagraph 5.2(b).

ITEM #	PROJECT #	PROJECT DESCRIPTION	PROJECT MANAGER	CURRENT PROJECT STATUS:	NEXT PROCESS REQUIRED:
			PRIORITY A PROJECTS		
1	508	Four Parks Playground Renovations: May Nissen	Bob Tanaka	Issued executed agreement and Notice to Proceed to contractor.	Receive schedule of work from Contractor and begin construction.
2	426	Big Trees			
3	706	Pleasure Island			
4	327	Jane Addams			
5	446	Sycamore Grove Extension – Arroyo Del Valle Trail Bridge Connection	Pat Sotelo/Bruce Aizawa Tri-Valley Conservancy	LARPD Board of Directors approved the naming of the bridge in honor of Supervisor Edward R. Campbell.	Tri-Valley Conservancy will plan to release RFB for Project on January 17, 2019. Construction is tentatively scheduled to begin summer 2019.
6	603	Sycamore Grove – Arroyo Del Valle Trail Renovation	Pat Sotelo	Paving has been completed. Mileage and informational markers have been painted onto the path.	Construction areas will be hydro seeded in late October.
7	209	Ravenswood Upgrade(s)	Fred Haldeman	Assembling bid documents for project.	Notice Inviting Bids going out during Fall 2018.
8	432	ADA Projects	Pat Sotelo	Forest Service has reviewed the specifications and approved the project. The project is under construction by Romtec.	Romtec is working with Liberty Energy to replace the 125 amp service line for a 200 amp service line for the electrical components in the new restroom.
9	905	Bill Payne Park Master Plan	Patricia Lord	RRM is working to complete Master Plan and scheduled to present at the November 14 Board of Directors Meeting.	Environmental review completed by First Carbon Solutions; DRAFT Initial Study/Mitigated Negative Declaration will be circulated for a minimum of 30 days, during which period comments concerning analysis may be made.

10	726	RLCC Security and Alarm System	Fred Haldeman	Staff has accepted the proposal from O'Dell to complete the bid package (plan set, scope and bid documents). Engineers estimate is in.	Waiting for bid package. The schedule for the work has not been determined.
11	729	Asset Management High Priority Projects	Bruce Aizawa	(See Projects Listed Below)	(See Projects Listed Below)
	729a	Rodeo Stadium Infrastructure Improvements	Fred Haldeman	Plans are complete. This project is now funded. O'Dell is working on a bid package. The work is planned to be completed before June of 2019 (Rodeo).	GM has met with key stakeholders with the Rodeo Association and will be scheduling a site visit to Robertson Park in late October/early November.
	729b	May Nissen Pool Renovation	Rebecca Sermenio	County Health Department has approved plans.	Informal project to be completed by Fall 2019.
	729c	Tex Spruiell Park Renovation	Bob Tanaka	Submitted Preliminary Plan with three options including construction cost estimates. Submitted 3D images of before/after views of improved areas.	Submit 3D images of fitness area from three manufacturers. Present Preliminary Plans to Facilities Committee.
	729d	Energy Efficiency Measures	Fred Haldeman	Project received Board approval at the September 20th meeting.	Working with legal to finalize the agreements.
12	455	Shade Structures at Various Parks	Tom Doyle	NSP3 have begun fabrication for the 3 shade structures to be installed at Bothwell Park. Staff is reviewing options for other parks and hopes to have a plan in place for several parks by winter.	Installation at Bothwell Park is currently scheduled for the second week on November, weather permitting.

13	442	RLCC Aquatics Pool Deck Repair	Terracon	Board approved bid award to Western Water Features, Inc. at September 20 th meeting.	Issuing Notice of Award and Agreement to Contractor.
14	719	Sunset Park Playground	Patricia Lord	RRM (Consultants) hosted Community Outreach meeting September 13 th . 44 Surveys were received.	RRM will create a couple of design options based off of received survey/play equipment feedback for review by the Facilities Committee on November 7, 2018
15	723	Patterson Ranch Trail	Pat Sotelo	Staff has mapped the preferred route for the trail. WRA has begun the environmental review beginning with an on-site research visit.	WRA continues with the environmental review of the trail with a completion date of spring 2019.
16	720	Robertson Park Synthetic Turf	Tom Doyle	Hybrid Bermuda grass sod was installed to the outer spectator areas of fields 1 and 2 at Robertson Park.	Staff is working with the vendor for scheduling the synthetic turf installation for the center areas, expected to be completed by winter 2018.
17	538	Bill Clark Park	Bob Tanaka	Consultant submitted proposal for services, including option for replacing aging playground equipment.	Upon approving agreement, begin survey work of project area. Prepare preliminary plans and coordinate as necessary with playground manufacturers.
18	516	Barn Renovations	Fred Haldeman	LARPD ownership of the Barn became effective September 1, 2018. Staff met with Principal of Page & Turnbull for a site visit at the Barn to review scope of design.	LARPD will identify needed improvements for the Barn that are consistent with its historic nature. A consultant will utilize these identified improvements to build a 3 year plan to implement these improvements.
19	806	Altamont Creek Park Playground	LVJUSD	The Livermore Valley Joint Unified School District has put this playground out to bid. The joint playground that we maintain came back higher than the contracting method would allow, so the School District has rebid the project.	Anticipated open date from the School District would be Winter 2019. (Will continue to update with milestones).