

**TO:** James L. App, City Manager

**FROM:** Jim Throop, Administrative Services Director

**SUBJECT:** Approval of Licensing Agreement with the San Luis Obispo Regional Transit Authority, for use of the City-owned Lot at 4<sup>th</sup> and Pine Streets

**DATE:** November 1, 2011

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**NEEDS:** For the City Council to consider a License Agreement with the San Luis Obispo Regional Transit Authority (SLORTA) for use of the City lot at 4<sup>th</sup> & Pine Street.

**FACTS:**

1. SLORTA provides regular transit service between Paso Robles and San Luis Obispo, and Runabout service in the north county. For operational reasons, SLORTA stages transit vehicles in Paso Robles.
2. The City owns a lot at the northwest corner of the intersection of 4<sup>th</sup> and Pine Streets, which is used only infrequently by the City.
3. SLORTA has been using a small portion of the city-owned lot on the northeast corner of the property lot for vehicle parking for a number of years, and expressed interest in using a larger portion of the lot due to increases in the number of buses used and stored in the north county.
4. Public Works and Administrative Services identified a portion of the corner lot that could be used by SLORTA for vehicle storage, while leaving adequate space for other uses of the lot by the City, such as the annual Christmas tree mulching. The City Attorney reviewed and approved a License Agreement with SLORTA.
5. The License Agreement can be terminated by either party with a 30-day written notice.

**ANALYSIS &  
CONCLUSION:**

The License Agreement would give official approval to SLORTA to park transit and employee vehicles at a seldom-used city property, and aid SLORTA's operations in the north county. The agreement outlines all of the responsibilities and liabilities for each party. The City would retain flexibility on changing the use of the lot, should the City deem such action necessary.

**FISCAL  
IMPACT:** None.

- Options:**
- A. That the City Council adopt resolution 11-XXX, approving the License Agreement with SLORTA, or
  - B. Amend, modify, or reject the above option.

**Attachments:**

Attachment 1: License Agreement  
Attachment 2: Resolution

## **Attachment 1**

### **LICENSE AGREEMENT BY AND BETWEEN THE CITY OF EL PASO DE ROBLES AND THE SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY FOR USE OF CITY PROPERTY FOR TRANSIT VEHICLE STORAGE AND EMPLOYEE PARKING**

This LICENSE AGREEMENT ("License Agreement") is entered into this 1st day of November, 2011, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation of the State of California ("City") and the SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY, a Joint Powers Authority in San Luis Obispo County ("RTA").

#### **RECITALS**

A. The City is the record owner of certain property generally located on the northwest corner of 4th Street and Pine Street, in the City of El Paso de Robles, County of San Luis Obispo, more particularly depicted in Exhibit A, attached hereto and incorporated herein by reference ("City Property");

B. The City Property, which the City uses only occasionally, consists of two lots enclosed by fence, commonly known as the "Corner Lot" and the "North Lot," as illustrated in Exhibit A;

C. RTA currently provides fixed route public transit service terminating in the City, and stores its transit vehicles on certain property located in the City;

D. RTA desires to use the City Property for the purpose of storing RTA transit vehicles and for RTA employees to park their personal vehicles; and

E. The City desires to grant to RTA the non-exclusive right to use the City Property to store RTA transit vehicles, and for RTA employee parking.

#### **AGREEMENT**

NOW, THEREFORE, the City and RTA agree as follows:

1. License. Subject to the terms and conditions of this License Agreement, the City hereby grants to RTA a revocable, non-exclusive, non-transferrable license to use, during the term of this License Agreement, certain portions of the City Property for vehicle storage and parking purposes. The grant of this License shall not relieve RTA from the requirement to obtain, at its expense, any permits or other approvals for RTA's use of the City Property.

2. Term. The term of this License Agreement shall be for a period of two (2) years, commencing on the date the City executes this License Agreement, and terminating on that date November 1 (8) years thereafter, unless earlier terminated as provided herein.

3. Use of Corner Lot of City Property. Subject to the provisions of this License Agreement, RTA may use the northern one-third portion of the Corner Lot of the City Property, more particularly depicted in Exhibit A, to (i) store RTA transit fleet buses, including fixed route and paratransit vehicles; and (ii) install, at RTA's sole cost and expense, a portable toilet for the use of RTA drivers. RTA may store a maximum of eight (8) RTA vehicles within this designated portion of the Corner Lot. RTA shall be solely responsible for the installation, maintenance and servicing of the portable toilet. The City shall retain the exclusive use of the southern two-thirds portion of the Corner Lot.

4. Use of North Lot of City Property. Subject to the provisions of this License Agreement, RTA may use the North Lot of the City Property, more particularly depicted in Exhibit A, for parking of RTA employee vehicles. RTA may allow a maximum of eleven (11) RTA employee vehicles to be parked in the North Lot.

5. Restrictions on Use of City Property. RTA shall not use, and RTA shall prohibit its employees from using, the City Property for purposes other than those specified in this License Agreement. RTA shall not permit any nuisance or other violation of law to exist or to be conducted on the City Property. RTA shall not cause trash or other debris to be placed on the City Property. RTA shall have no right or authority to enclose, secure, or otherwise alter the City Property without first obtaining the written consent of the City.

6. Agreement to Protect the City Property. RTA, on behalf of its employees, agrees to take all prudent action to protect the City Property from any damage or injury caused by RTA's activities under this License Agreement. RTA shall immediately notify the City of any damage or injury to the City Property caused by RTA's use of the City Property. In no event shall RTA be responsible for any costs related to damage to the City Property or any appurtenances thereto except those resulting directly from RTA's use of the City Property.

7. Subordinate Rights. This License Agreement is subject and subordinate to the prior and future rights and obligations of the City, its successors and assigns, to use the City Property in the exercise of its powers and in the performance of its duties. Accordingly, there is reserved and retained unto the City, its successors, assigns, grantees, and permittees, the right to construct and reconstruct facilities and appurtenances in, upon, over, under, across, and along the City Property, and in connection therewith, the right to grant and convey to others, rights and interests to the City Property. This License Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims, and other matters of title which may affect the City Property now or hereafter.

8. Warranty. The City makes no warranty or representation whatsoever concerning the City Property, including without limitation, the condition, fitness or utility of the City Property or any improvements thereon, for any purpose. RTA's right to use the City Property is strictly on an "as is" basis. The City hereby disclaims all warranties whatsoever, express or implied, the condition of the soil (or water), geology, and any warranty of merchantability or habitability or fitness for a particular purpose.

9. Hazardous Materials. RTA shall not use, create, generate, store, deposit, dispose of or allow any hazardous substances on, under, about or within the City Property in violation of

any federal, state, or local law, rule, regulation, order, decree, or other requirement.

10. Vacating the City Property. At the termination of this License Agreement, RTA shall quit and surrender possession of the City Property and shall return the City Property to its condition as it existed on the date this License Agreement was executed. RTA agrees to pay any costs incurred by the City if RTA fails to comply with this section, including reasonable attorneys' fees and costs expended on any action by the City to compel RTA to do so.

11. Non-assignment. The permission, rights, and privileges granted by this License Agreement are non-exclusive and non-transferrable. RTA shall not, either voluntarily or by action of law, assign or transfer this License Agreement or any obligation, right, title or interest assumed by RTA herein without the prior written consent of the City. If RTA attempts an assignment or transfer of this License Agreement or any obligation, right, title or interest herein, the City may, at its option, terminate this License Agreement and shall thereupon be relieved from any and all obligations to RTA or its assignee or transferee.

12. Termination. This License Agreement may be terminated by either party for any or no reason with thirty (30) days written notice to the other party.

13. Compliance With Laws. RTA shall, at its sole expense, conduct and cause to be conducted all its activities on the City Property in compliance with all laws, regulations, codes, ordinances, and orders of any governmental or other regulatory entity, and whether or not in the contemplation of the parties.

14. Indemnification. In consideration for the City providing access to the City Property for use by RTA, RTA shall indemnify, defend and hold harmless the City, its officers, employees, agents, successors and assigns (collectively, the "Indemnified Parties") from all liabilities, penalties, costs, damages, expenses, causes of action, claims or judgments (including, without limitation, reasonable attorneys' fees) (collectively, the "Claims") resulting from the injury or the death of any person (including without limitation, any Indemnified Party), which injury, death or physical damage arises out of or is related to RTA's (or RTA's officers, employees, agents, contractors, licensees, or invitees) use of the City Property or RTA's exercise of its rights, privileges, and obligations under this License Agreement, except to the extent that, as to any of the Indemnified Parties, such Claims arise from such Indemnified Party's negligence or willful misconduct.

15. Insurance. RTA shall, at its sole cost and expense, obtain and keep in force during the term of this License Agreement: general liability insurance insuring RTA and naming the City as an additional insured against claims for bodily injury, personal injury and property damage, providing coverage in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence, covering the activities of RTA on the City Property, with the general aggregate coverage limit applying separately to the City for the duration of this License Agreement. If the aggregate limit does not apply separately to the City for the duration of this License Agreement, the minimum general aggregate limit shall be TWO MILLION DOLLARS (\$2,000,000). Notwithstanding the foregoing, the City acknowledges that RTA is a member of the California Transit Insurance Pool ("CalTIP") which is a self-insured program, and that the coverage provided by such program shall be deemed to comply with the requirements of this

section 15. RTA agrees that it shall name City as an Additional Covered Party. If for any reason during the term of this Agreement, RTA is no longer a participant in CalTIP, RTA shall obtain the insurance required by this Section and provide evidence thereof to City.

16. Notices. All notices permitted or required under this License Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**To RTA:**

San Luis Obispo Regional Transit Authority  
179 Cross Street, Suite A  
San Luis Obispo, CA 93401  
Attn: Jason Gillespie

**To the City:**

City of El Paso de Robles  
1000 Spring Street  
Paso Robles, CA 93446  
Attn: Jim Throop

A notice shall be deemed made when personally delivered or forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

17. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this License Agreement and the satisfaction of the conditions of this License Agreement.

18. Relationship. In performing the terms of this License Agreement, RTA and the City each remains an autonomous and separate entity, solely responsible for its own actions and those of its officials, employees, agents, officers, and volunteers. No relationship of employment, agency, partnership or joint venture is to be created by or implied from this License Agreement.

19. Governing Law and Venue. This License Agreement shall be governed by the laws of the State of California. Any action to interpret or enforce this License Agreement shall be brought and maintained exclusively in the courts of and for San Luis Obispo County, California.

20. Construction; Captions. Since the parties or their agents have participated fully in the preparation of this License Agreement, the language of this License Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this License Agreement.

21. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Either parties' consent or approval of any act by the other party requiring its consent or approval shall not be deemed to waive or render unnecessary its consent to or approval of any subsequent act of the other party. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this License Agreement.

22. Rights and Remedies Are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this License Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party. All warranties and promises to indemnify shall survive the termination, abandonment, or completion of this License Agreement.

23. Severability. In the event any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this License Agreement is declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this License Agreement which are hereby declared to be severable and shall be interpreted to carry out the intent of the parties hereunder.

24. Binding Effect. The terms of this License Agreement shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and permitted assignees.

25. Authorized Representatives. The person or persons executing this License Agreement on behalf RTA and the City warrants and represents that he/she has the authority to execute this License Agreement on behalf of that party and that he/she has the authority to bind that party to the performance of its obligations hereunder.

26. Counterparts. This License Agreement may be signed in counterparts, each of which shall constitute an original.

27. Entire Agreement. This License Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations, and other agreements concerning the subject matter contained herein. Any amendments to this License Agreement must be in writing and signed by both parties.

**[Signatures on Following Page]**

CITY OF EL PASO DE ROBLES

SAN LUIS OBISPO REGIONAL  
TRANSIT AUTHORITY

By: \_\_\_\_\_  
Duane Picanco, Mayor

By: \_\_\_\_\_  
Ed King, Director

APPROVED AS TO FORM

APPROVED AS TO FORM

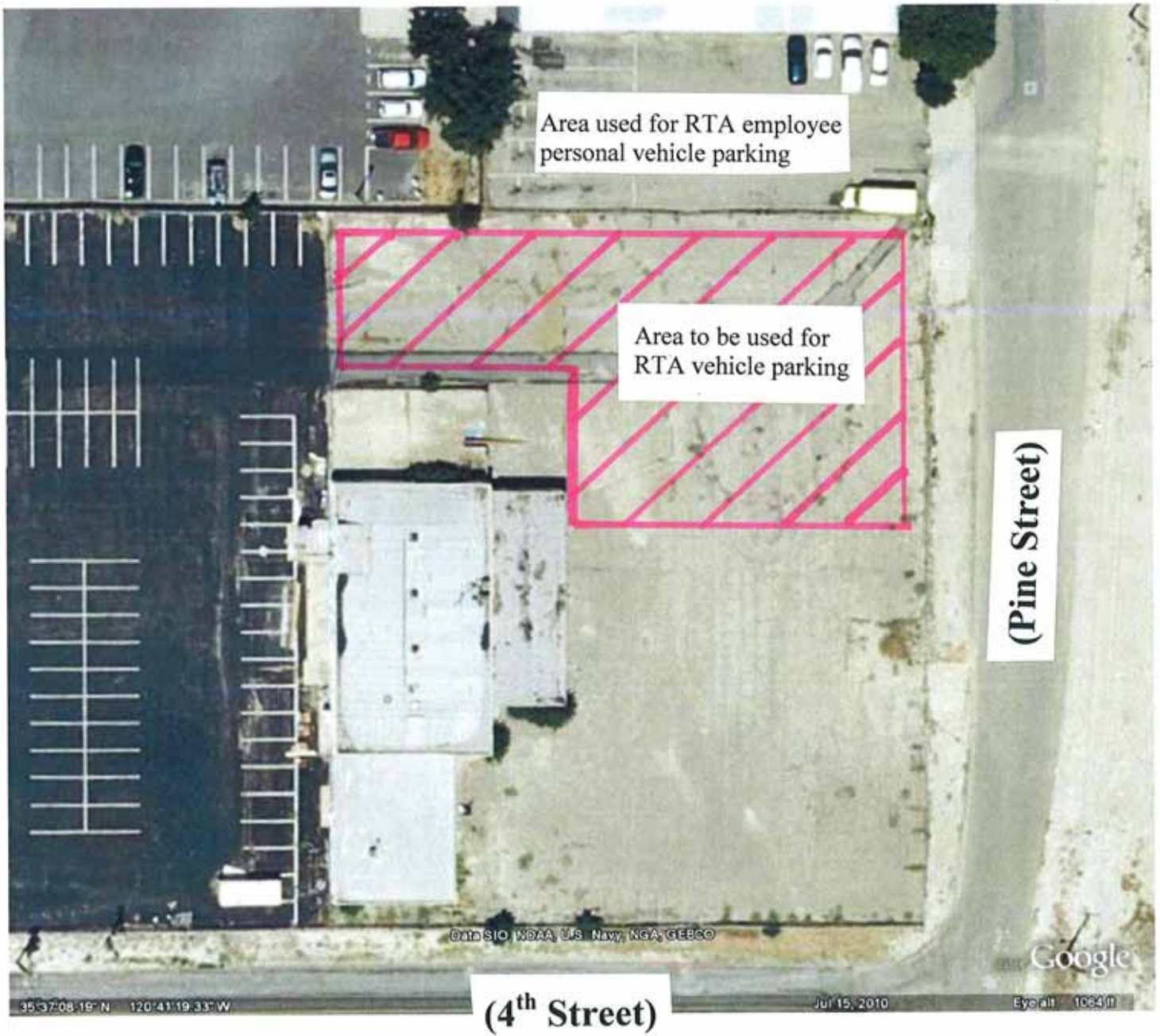
\_\_\_\_\_  
Iris P. Yang, City Attorney

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Counsel for Regional Transit Authority



**EXHIBIT A**  
**CITY PROPERTY**  
**[To be inserted]**

## Exhibit "A"



RESOLUTION NO. 11-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES  
APPROVING THE COOPERATIVE SERVICES AGREEMENT AMONG TRANSIT  
PROVIDERS IN THE NORTH COUNTY.

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WHEREAS, the San Luis Obispo Regional Transit Authority provides transit services in the north County, and bases transit vehicles in Paso Robles; and

WHEREAS, SLORTA has expressed interest in using the City-owned lot, located at the northwest corner of 4<sup>th</sup> and Pine Streets, for transit vehicle storage, and

WHEREAS, City staff and SLORTA staff determined conditions for use of the lot that would serve the needs of both entities, and created a License Agreement for use of a portion of the lot by SLORTA,

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that the License Agreement with SLORTA is approved.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 1st day of November, 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

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Duane Picanco, Mayor

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Caryn Jackson, Deputy City Clerk