

**AGREEMENT BETWEEN  
THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY AND  
MONTEREY-SALINAS TRANSIT DISTRICT FOR  
JOINT PROCUREMENT AND COST SHARING OF PROPERTY DEMOLITION**

**THIS JOINT PROCUREMENT AGREEMENT** (“Agreement”) is made by and between the Transportation Agency for Monterey County (“TAMC”) and Monterey-Salinas Transit District (MST), collectively referred to as “the Parties.”

**WHEREAS**, TAMC and MST have a long-standing relationship and mutual responsibility for transportation planning and delivery of transit services in Monterey County; and

**WHEREAS**, the Parties each own separate adjacent properties located within the former Fort Ord that contain buildings (hereinafter, the “Buildings”) which require demolition in order to redevelop the land; and

**WHEREAS**, prior to its dissolution, the Fort Ord Reuse Authority issued bonds to fund the demolition of properties located within the former Fort Ord, including the Buildings owned by TAMC and MST; and

**WHEREAS**, TAMC and MST entered into separate funding agreements with the Fort Ord Reuse Authority and the City of Marina to receive bond proceeds for building demolition; and

**WHEREAS**, the Fort Ord Reuse Authority’s building demolition bond closed on June 10, 2020; TAMC received \$1,303,498 and MST received \$186,214 of the total bond proceeds, which have been deposited into the respective agency accounts; and

**WHEREAS**, TAMC and MST agree that it is desirable to pursue a joint procurement for demolition design engineering, hazardous materials identification and disposal, and building demolition work for the demolition of the Buildings, hereinafter referred to as “Joint Procurement”; and

**WHEREAS**, the Parties hereto desire to enter into an agreement to call for the mutual development of a single procurement package, scope of work, and contractor contract for the demolition of TAMC and MST Buildings located on the former Fort Ord; and

**WHEREAS**, an agreement for the sharing of future costs, and describing steps to be taken for the solicitation of a contract for demolition work, without a commitment to award such a contract is not a “project” under California Environmental Quality Act (CEQA) guidelines § 15060 and 15378;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants herein contained, the Parties hereto agree to the following:

## **1. TERM OF AGREEMENT**

This Agreement shall be effective on December 2, 2020 and, unless terminated as set forth below, shall end upon the certification of completion of a contract for demolition of the Buildings, as set forth below.

## **2. PROCUREMENT PROCESS**

TAMC shall designate MST, and MST shall accept such designation and responsibilities, as the project manager role in this Agreement, to develop the procurement documents, complete any environmental analysis necessary, and to conduct a competitive solicitation for a demolition contract for the Buildings.

The Parties shall each work cooperatively on developing a Request for Proposals for a building demolition contractor and necessary sub-contractors for the identification, safe removal, and disposal of hazardous materials that may exist in the buildings to be included in any such RFP's Scope of Work.

MST shall produce a Scope of Work for the Joint Procurement that meets all of the appropriate State requirements, bond funding agreement requirements, and needs of the participating agencies and shall conduct a procurement process with TAMC which meets State procurement requirements necessary to secure a building demolition contractor.

The Parties shall mutually review and agree on a responsible contractor as part of the Joint Procurement process. If no responsible contractor is agreed to, or if the anticipated costs of a proposed contract exceed the budgeted amount, as set forth below, either party to this Agreement may terminate the Agreement, as set forth below. If a contractor is selected as part of the Joint Procurement, MST shall be the entity responsible to enter and manage the agreement for building demolition, and require the contractor to complete the scope of work as agreed by the Parties. If a demolition contract is entered into, MST will provide overall project management and will receive project contractor invoices and pay the invoices upon satisfactory completion of invoiced work with the concurrence of TAMC.

### **2.1. MINIMUM TERMS FOR SCOPE OF WORK**

The Scope of Work prepared for the procurement of services by MST pursuant to this Joint Procurement Agreement shall contain at least the following provisions:

- Any responsive, responsible bidder must have experience in successfully demolishing, transporting, and disposing of hazardous materials, including lead paint and asbestos, or have experienced subcontractors

- Any responsive, responsible bidder must have employees or subcontractors assigned who are certified to demolish, transport, and dispose of building materials which are, or may be contaminated with hazardous materials, including lead paint and asbestos

## **2.2. REQUIRED TERMS FOR FUTURE DEMOLITION CONTRACT**

Any demolition contract entered into as a result of the Joint Procurement process described herein shall contain at least the following provisions:

- The budget for the demolition project shall not exceed the amount of ONE MILLION FOUR HUNDRED EIGHTY-NINE THOUSAND, SEVEN HUNDRED TWELVE DOLLARS (\$1,489,712), including all costs and contingencies. There shall not be any deviation from the project budget for the demolition contract without prior written approval by MST and TAMC Boards.
- All costs incurred under any approved demolition contract shall be based on actual costs and are subject to audit. Substantiating documents (e.g., travel receipts, invoices, etc.) shall be retained by MST and MST shall keep an accurate accounting of all costs incurred in the performance of the Project for this Agreement, including providing summary reporting information to TAMC.
- The allowability of costs shall be determined in accordance with the Office of Management and Budget Circular 2 CFR Chapter I and II, Part 200 et al. as of January 1, 2014. All requests for budget amendment approvals shall be in writing and mutually agreed to by MST and TAMC boards.
- The contractor shall use only personnel, including subcontractors, certified in the removal and remediation of hazardous materials, including lead and asbestos.
- Prior to the beginning and throughout the duration of the work, the contractor, and applicable subcontractors, shall carry the type and amounts of insurance, as shown in Exhibit A, and shall name MST, TAMC and their respective Board members, Officers, and employees as additional insured.
- The contractor shall agree to indemnify, defend, and hold harmless MST, TAMC, and their respective Board members, Officers, and employees to the fullest extent of the law.

## **3. COST AND PAYMENTS**

TAMC and MST shall each contribute their own staff, resources and costs relating to the implementation of this Joint Procurement Agreement and the development, solicitation, and procurement of a responsible contractor as set forth in this Agreement. This Paragraph delineates the responsibilities of each Party towards contributing to the costs of demolition of the Buildings only.

The costs for contractor services to be solicited through this Agreement shall not exceed the amount of ONE MILLION FOUR HUNDRED EIGHTY-NINE THOUSAND SEVEN HUNDRED TWELVE DOLLARS (\$1,489,712), except as provided below.

Upon MST's approval and execution of a demolition agreement with a contractor and TAMC's receipt of a fully executed demolition agreement, consistent with the provisions of this Agreement, TAMC shall transfer the TAMC amount received pursuant to the Fort Ord Reuse Authority building demolition bond to MST for use in the payment of invoices under such demolition agreement. TAMC and MST agree to pay demolition costs in amounts not to exceed as follows:

- Costs related to the demolition of TAMC-owned properties: \$1,303,498
- Costs related to the demolition of MST-owned properties: \$186,214

The Parties acknowledge and reaffirm the terms of the Building Removal Funding Agreement limiting the use of the bond proceeds.

If the final invoices paid under an approved demolition contract are less than the aforementioned "not to exceed" costs for each set of properties, MST shall retain any unexpended amounts related to MST-owned properties, and return to TAMC any amounts not used for the demolition of TAMC-owned properties.

MST shall carefully monitor costs and performance of the contractor, take such steps as necessary to ensure that the demolition be completed on time and on budget, and shall alert TAMC on an expedited basis of any questions or concerns in the costs or timely completion of the ultimately approved demolition Project. TAMC shall review invoices and provide concurrence or questions on an expedited basis to ensure prompt payment of invoices or the prompt resolution of disputes.

#### **4. MST Procurement and Project Managers**

MST designates Sandra Amorim as the MST Procurement Manager who shall be responsible for the Joint Procurement covered by this Agreement. MST designates Carl Wulf as the Project Manager who will liaison between the Project consultant, construction contractor, and TAMC. MST shall promptly notify TAMC of any change in this designation.

#### **5. TAMC Representatives**

TAMC designates Michael Zeller as the TAMC Representative responsible for the participation in, and for amendments to this Joint Procurement Agreement. TAMC shall promptly inform MST of any change to its Representative.

#### **6. Scope of Work Revisions**

Any significant changes in the performance of this Joint Procurement Agreement, including any significant changes to the proposed Scope of Work or Required Contract Terms, described herein

shall be in writing and require mutual authorization by the TAMC Executive Director and MST General Manager / Chief Executive Officer.

## **7. Administrative Representative**

MST designates Lisa Rheinheimer as the Administrative Representative who shall be responsible for the contractual and administrative aspects of this Agreement. Questions and correspondence of an administrative nature shall be directed to the Administrative Representative at MST, 19 Upper Ragsdale Drive, Suite 200, Monterey, California 93940 or by phone at (831) 264-5874 or by email at [lrheinheimer@mst.org](mailto:lrheinheimer@mst.org).

## **8. Termination**

Either Party may terminate this Joint Procurement Agreement at any time with or without cause prior to the entry of a demolition contract by MST pursuant to this Agreement, through a written Notice of Termination. Such Notice will provide not less than fifteen (15) calendar days.

In the event that a demolition contract, as described in this Joint Procurement Agreement, is entered into by MST, then this Agreement may be terminated by TAMC only upon notice to MST of a breach in MST's duties to properly manage the demolition contract consistent with the terms of the bond funding and Paragraphs 2 and 3 of this Joint Procurement Agreement.

Nothing in this Section shall limit the Parties ability to mutually terminate this Agreement upon the written mutual consent of the Parties.

## **9. Indemnification**

Each Party shall defend, indemnify, and save harmless the other Party, its officers, agents, and employees against all claims, demands, suits, damages, costs, expenses, losses, including reasonable legal expenses and reasonable attorneys' fees, or liability, in law or in equity, of every kind and nature whatsoever, arising out of or resulting from the negligent acts or omissions of the indemnifying Party (which shall include the indemnifying party's officers, agents, employees or volunteers) in the performance of this Joint Procurement Agreement.

## **10. Disputes**

In the event of a dispute arising out of the performance of this Agreement, the disputing Party shall send a written Notice of Dispute to the other Party. Within five (5) working days of receipt of such notice, the Parties shall respond and agree to a meeting for the purpose of discussing the dispute and the facts giving rise to the dispute. If resolution of the dispute cannot be reached, the affected Party may file appropriate litigation within six months thereafter, or terminate the Agreement pursuant to Section 8.

**11. Notices**

Notices required under this Agreement shall be delivered personally or by electronic means with delivery and read receipts, or by first-class, postage pre-paid mail to Parties contract administrators at the addresses listed below:

<b>FOR MST:</b>	<b>FOR TAMC:</b>
Name and Title	Name and Title
Address	Address
Phone	Phone

Electronic notices shall be copied to the following individuals at TAMC:

Either Party may change its address by giving notice of such change to the other party in the manner provided in this Section 11. All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

**12. Severability**

If any provision of this Joint Procurement Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

**13. General Provisions and Certifications**

MST and TAMC certify that it is in compliance with all applicable federal and state laws and regulations.

**14. Entire Agreement**

This Agreement constitutes the entire agreement and understanding between MST and TAMC with respect to pursuing a joint procurement and cost sharing for building demolition, and

supersedes any prior or contemporaneous agreement or understandings if any. Any changes or modifications shall be accomplished by a written amendment to this Agreement executed by the duly authorized representative of each party.

### **15. Choice of Laws**

This Agreement shall be interpreted and applied according to the laws of California and shall be deemed to have been entered into in California as of the effective date set forth in Paragraph 1 above. Any litigation concerning this Agreement shall take place in Monterey County, or the federal district court with jurisdiction over MST. The Parties Agree not to commence or prosecute any dispute arising out of or in connection with this Agreement other than in the aforementioned courts and irrevocably consents to the exclusive personal jurisdiction and venue of the aforementioned courts.

### **16. Attorney's Fees**

Should either party to this Agreement bring legal action against the other (formal judicial proceeding, mediation or arbitration) the party prevailing in such action shall be entitled to a reasonable attorney's fee which shall be fixed by the judge, mediator or arbitrator hearing the case, and such fee shall be included in the judgment together with all costs.

### **17. Headings**

The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

### **18. Time is of the Essence**

Time is of the essence in each and all of the provisions of this Agreement.

### **19. Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

### **20. Authority**

Any individual executing this Agreement on behalf of the MST or TAMC represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such Party and bind the Party to the terms and conditions of this Agreement.

**SIGNATURES INCLUDED ON NEXT PAGE**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the month, day and year specified below.

\_\_\_\_\_  
Carl G. Sedoryk  
General Manager / Chief Executive Officer  
Monterey-Salinas Transit

Date: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
De Lay & Laredo  
MST Counsel  
David C. Laredo, MST General Counsel

Date: \_\_\_\_\_

\_\_\_\_\_  
Debra L. Hale  
Executive Director  
Transportation Agency for Monterey County

Date: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Katherine Hansen, TAMC Legal Counsel

Date: \_\_\_\_\_



**EXHIBIT A**  
**INSURANCE REQUIREMENTS FOR THE DEMOLITION CONTRACTOR**

Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Three Million Dollars (\$3,000,000) per project or location. If CONTRACTOR is a limited liability company, the commercial general liability coverage shall be amended so that CONTRACTOR and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If CONTRACTOR does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, CONTRACTOR shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 3.2.

Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If CONTRACTOR has no employees while performing services under this Agreement, workers' compensation policy is not required, but CONTRACTOR shall provide an executed declaration that it has no employees.