

**EMPLOYMENT AGREEMENT  
BETWEEN THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY  
AND TODD A. MUCK**

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into in the State of California by and between the TRANSPORTATION AGENCY FOR MONTEREY COUNTY ("TAMC") and TODD A. MUCK ("Todd").

**RECITALS**

- A. TAMC has a need for an Executive Director.
- B. Todd is duly qualified and experienced, and is ready, able, and willing to perform the services of TAMC Executive Director.
- C. TAMC and Todd desire that the latter fill the position of Executive Director as described in **Exhibit "A,"** in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE,** in consideration of the foregoing recitals and other good and valuable consideration, the receipt of which is hereby acknowledged by each party, the parties agree as follows:

**1. CONTRACTUAL SERVICES.**

**1.1 Scope of Services.** Todd agrees to serve as Executive Director as provided in "**Exhibit A,**" which is attached hereto and incorporated herein by reference as though set forth in full and by such reference made a part of this Agreement. Todd agrees to perform such services in conformity with the terms of this Agreement and to expend his best professional efforts in performance of his obligations under this Agreement. Todd shall at all times act in good faith to ensure TAMC will provide a high quality of work. Todd agrees to work constructively with the TAMC Board of Directors ("Board") in carrying out his duties, responsibilities, and obligations under this Agreement.

**1.2 Non-Interference with Administrative Service.** The TAMC Board and its members shall deal with administrative services solely through the Executive Director, and neither the TAMC Board nor any member thereof shall give orders to any subordinate of the Executive Director, either publicly or privately. The TAMC Board agrees none of its members will publicly censure or criticize TAMC staff and will instead relay any criticism of a TAMC staff member privately through the Executive Director. The TAMC Board will not interfere in any way in the Executive Director's authority over employees and how the organization does its work.

**1.3 Hours of Work.** Todd shall perform work during those hours and days which are necessary to perform the full and complete range of services in a timely manner, as required by this Agreement. Todd shall diligently attend to the business of TAMC, including attendance at meetings and proper supervision of those individuals who report directly to Todd. Todd shall also attend periodic meetings of TAMC and other agencies or groups, as announced and/or necessary for the proper rendition of services.

**1.4 TAMC Bylaws, Rules and Regulations.** Todd shall provide the services in strict accordance with all applicable laws, ordinances, and TAMC rules and regulations.

**1.5 Reports.** Todd shall be responsible for making all requested or necessary reports, either by himself or by staff designated by Todd, to the TAMC Board, and/or to other groups and/or agencies, as is customary and proper, or as may be designated from time to time by the TAMC Board.

## **2. AT-WILL STATUS.**

Todd shall be employed as an at-will employee. As Executive Director, Todd is the top managerial employee of TAMC and occupies a sensitive managerial and confidential position. TAMC may have the need to terminate Todd's employment at any time in the exercise of its powers and duties under California law or for other reasons in the best interest of TAMC.

## **3. EXCLUSIVE SERVICES.**

**3.1 Exclusivity.** The professional services provided by Todd hereunder are intended to be exclusive in nature.

**3.2 Conflict of Interest.** Todd affirms that he presently has no interest and shall not acquire any interest which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement. Todd further agrees to submit full disclosure statements, if such be legally required, pursuant to the requirements of the California Fair Political Practices Commission or any other applicable federal, state or TAMC provision of law or regulation.

## **4. COMPENSATION.**

**4.1 Compensation.** As full and total compensation for the performance of those Services set forth herein, including those in "**Exhibit A**," effective September 25, 2021, TAMC shall pay Todd a base salary of \$ 202,092 per year, in equal bi-weekly installments through the regular TAMC payroll procedure, subject to the terms listed below in Section 4.3 and Section 6.2.

**4.2 Business Expenses.** Todd's reasonable business expenses, when incurred within the course and scope of the professional services rendered pursuant to this Agreement, shall be reimbursed in accordance with current applicable TAMC policies.

**4.3 Benefits.** Todd shall receive benefits normally provided to TAMC management staff, including adjustments to salary based on acceptable performance, Cost of Living Allowances (COLAs), PERS contributions, holidays, professional leave, health allowance, miscellaneous annual stipends, tuition reimbursement, vision/dental benefits, Section 125 plan, deferred compensation and PERS retirement.

Except as required by law, all benefits provided pursuant to this Agreement shall cease upon the expiration date of this Agreement or upon termination of Todd, whichever occurs first.

**4.4 Vehicle Allowance.** Todd shall receive \$395/month as a vehicle allowance. Todd is expected to use his personal vehicle for TAMC business according to adopted TAMC policies, except that he may utilize a TAMC vehicle for out-of county travel and on the days that he uses a vanpool or carpool to travel to and from work.

**4.5 Cell Phone Allowance.** Todd shall receive \$120/month as a cell phone/remote data allowance. In exchange, Todd is expected to use his personal cell/data phone, purchased at his expense, for TAMC business, rather than a separate cell/data phone provided by TAMC.

**4.6 Annual Leave.** Todd shall receive 35 days annual leave. All rules and regulations regarding leave wages applicable to TAMC employees shall be applicable to Todd. Annual leave may accrue up to the limit set for management employees in the TAMC Human Resources Rules and Regulations.

## **5. PROFESSIONAL MEMBERSHIPS, MEETINGS, SEMINARS.**

It is understood and agreed that TAMC and Todd mutually benefit from Todd's participation in certain professional activities relating to transportation planning and engineering. Therefore, Todd may maintain his active participation in the American Public Works Association, , American Planning Association, Transportation Research Board, and such other professional organizations as may be properly budgeted by TAMC. As may be approved by the TAMC Board in the budget, Todd may enroll, attend, and participate in conferences, courses, and seminars that benefit TAMC or contribute to the professional development of Todd. Upon such authorization, Todd may incur reasonable costs and expenses in connection with the particular event or activity so authorized, which shall be advanced or reimbursed by TAMC. Todd shall inform the TAMC chairperson or Executive Committee at least 7 days in advance of attendance of any multi-day out-of-town conference, course, seminar or similar activity so that such absence can be anticipated.

## **6. TERM, EVALUATION AND TERMINATION.**

**6.1 Term.** Subject to the provisions contained in Paragraph 2 and other provisions of this Paragraph 6, the term of employment of Todd shall commence on September 25, 2021 and remain in full force and effect for three years, until September 24, 2024. During said period, Todd is to remain in paid status except as provided in Paragraphs 2 and 6.3. If TAMC terminates the employment of Todd under Paragraph 2 of this Agreement, Todd is entitled to severance benefits equal to six months of salary. If this Agreement is terminated as a matter of law by the death of Todd, the heirs of Todd are not entitled to any future compensation or benefits that Todd may have earned had the Agreement not terminated by his death.

**6.1.1 Government Code Section 53260.** It is understood and agreed that Todd's employment with TAMC is governed by California Government Code Section 53260 which states in part: "All contracts of employment between an employee and a local agency employer shall include a provision that provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, with the following exceptions: (1) If the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18."

**6.2 Evaluation.** The TAMC Board shall evaluate Todd by the December TAMC Board Meeting of each year. As part of the annual evaluation process, Todd shall prepare goals and accomplishments for review by the TAMC Board. At the end of the three-year term, this contract may be extended by mutual agreement for subsequent three-year terms. The TAMC Board reserves the right to conduct additional evaluations.

**6.3 Termination With Cause.** TAMC may terminate Todd for cause. For purposes of this paragraph, cause includes, but is not limited to, the following:

- a) Immoral or unprofessional conduct;
- b) Dishonesty;
- c) Unsatisfactory performance;
- d) Persistent violation of or refusal to obey federal or the laws of the State of California or the directions of the TAMC Board of Directors;
- e) Conviction of a felony or of any crime involving moral turpitude;
- f) Alcoholism or other drug abuse which makes Todd unfit to perform the duties of his position;
- g) Conviction of any offense involving a violation of his official duties;
- h) Continued incapacity to perform duties in the course of his employment under this Agreement.

TAMC shall give sixty (60) days written notice of the specific complaints or charges to Todd as provided in Government Code section 54957 of his right to have the complaints or charges heard in an open session rather than a closed session of a meeting of the Board. After written notice to Todd, if he does not request to have the complaints or charges heard in open session, he shall be provided the opportunity to meet with the Board in closed session regarding the specific complaints or charges stated in writing. If after a hearing as provided above, the Board decides to terminate Todd, this contract shall be terminated immediately without rights to any appeal, severance pay, or benefits.

**6.4 Resignation.** Todd is to provide 30 written days' notice of resignation from TAMC. Resignation shall result in Todd's forfeit of any severance pay or benefits except as provided by COBRA and PERS.

## **7. RIGHTS OF TAMC UPON TERMINATION.**

Upon the expiration or termination of the Agreement for any reason, Todd shall immediately vacate and surrender to TAMC all materials located upon such premises belonging to TAMC or all materials belonging to TAMC that are offsite on the effective date of termination.

## **8. ILLEGALITY.**

Notwithstanding anything to the contrary herein contained, in the event performance by either party hereto of any term, covenant, condition or provision of this Agreement should be deemed illegal, or if for any other reason said performance should be in violation of any statute or ordinance, the parties shall use their best efforts to resolve the illegality through the renegotiation of the applicable portions of this Agreement. If the parties are unable to reach agreement on such changes within thirty (30) days after initiating negotiations, TAMC may, at

its option, terminate this Agreement upon thirty (30) days' prior written notice to the other party.

**9. NOTICES.**

Notices under this Agreement shall be sent to the parties by personal delivery, by electronic facsimile, or by certified registered mail, return receipt requested, postage prepaid in the United States Postal Service at the following addresses:

TAMC  
55 B Plaza Circle  
Salinas, CA 93901

TODD A. MUCK  
P.O. Box 151  
Carmel, CA 93921

Notice shall be deemed effective upon delivery or transmission if delivered or sent by facsimile and on the third (3rd) day after mailing. Either party hereto may change its respective address by written notice in accordance with this Agreement. Todd shall give prompt notice of any change of address.

**10. WAIVER.**

No waiver or modification of this Agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly executed by the parties to this Agreement, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding or litigation between the parties hereto arising out of or affecting this Agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid; the parties further agree that the provisions of this section may not be waived except as herein set forth.

**11. AMENDMENT.**

This Agreement may be amended or modified only by an instrument in writing, signed by the parties to this Agreement.

**12. ASSIGNMENT.**

Todd shall have neither the right nor the power to assign this Agreement nor to delegate any of the rights or obligations inuring to or imposed upon his herein except as otherwise provided herein above or unless expressly consented to in advance in writing by TAMC; and any attempted or purported assignment or delegation other than in accordance with this Section shall be null and void and of no effect.

### 13. MATERIALS AND INVENTIONS.

**Royalties and Inventions.** TAMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. Todd shall not publish any such material without the prior written approval of TAMC.

### 14. GENERAL PROVISIONS.

**14.1 Governing Law.** This Agreement shall be construed and enforced, in all respects, according to the laws of the State of California applicable to agreements made and to be performed wholly within this State, and the parties hereby agree that the courts within the County of Monterey shall be the proper venue for any dispute arising under this Agreement.

**14.2 Partial Invalidity.** Except as otherwise provided herein, if any provision of this Agreement is found to be invalid or unenforceable by any court, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions hereof, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement.

**14.3 Cumulation of Remedies.** The various rights, options, elections, powers, and remedies of the respective parties hereto contained in, granted, or reserved by this Agreement, are in addition to any others that said parties may be entitled to by law and/or regulation, and shall be construed as cumulative; and no one of them is exclusive of any of the others, or of any right or priority allowed by law or regulation.

**14.4 Counterparts.** This Agreement, and any modification thereof, may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

**14.5 Integration.** The making, execution and delivery of this Agreement by the parties has not been induced by any representations, statements, warranties or agreements other than those herein expressed. This Agreement, including the recitals and exhibits hereto, embodies the entire understanding between the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof, unless expressly referred to by reference herein. Without limiting the foregoing, this Agreement shall supersede all prior agreements between the parties as of the effective date hereof.

**14.6 Survival.** Except as otherwise expressly provided in this Agreement, all covenants, agreements, representations and warranties, express and implied, shall survive the execution of this Agreement, and shall remain in effect and binding upon the parties until they have fulfilled all of their obligations hereunder and the statute of limitations shall not commence to run until the time such obligations have been fulfilled.

**14.7 Time of Essence.** The parties agree that time is of the essence throughout the term of this Agreement and any extension or renewal thereof, and of every provision hereof in which time is an element. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts and shall not create a precedent for future such extension thereof.

**14.8 Construction of Agreement.** The parties agree that each party and its counsel have fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment hereto or exhibit herein or therein. To that end, it is understood and agreed by the parties hereto that this Agreement has been arrived at through negotiation, and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

**14.9 Authority.** Any individual executing this Agreement on behalf of an entity hereby represents and warrants in his individual capacity that he has full authority to do so on behalf of such entity.

**14.10 Further Assurances.** Each party agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated hereby.

**14.11 No Third Party Rights.** The parties do not intend the benefits of this Agreement to inure to any third person not a signatory hereto.

**14.12 Statutes and Regulations.** Any reference in this Agreement to any statute, regulation, ruling, or administrative order or decree shall include, and be a reference to any successor statute, regulation, ruling, or administrative order or decree.

**14.13 Incorporation of Exhibits and Recitals.** All exhibits and recitals referred to in this Agreement are an integral part of this Agreement and are incorporated in this Agreement by this reference as though at this point set forth in full.



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year written below.

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

\_\_\_\_\_  
**TODD A. MUCK**

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

**TAMC**

By \_\_\_\_\_  
**EDWIN D. SMITH**  
**TAMC Chair**

Approved as to form:

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

\_\_\_\_\_  
**TAMC Counsel**

**ATTACHMENT:** "Exhibit A"

## **EXHIBIT "A"**

### **Job Description for TAMC Executive Director**

The Executive Director has primary responsibility for advising TAMC Board on transportation policies, strategies, and programs; implementing and administering Board policy, mission, and goals; overseeing transportation planning and programs, policy analysis, and fiscal management in support of TAMC's strategies and programs; coordinating with Caltrans on appropriate transportation projects; creating and maintaining partnerships for achieving Board transportation and air quality goals; preparing a variety of narrative and statistical reports for distribution to the Board, member agencies, and the funding agencies; administering trust fund activities including preparing short and long term revenue forecasts, preparing budgets, developing and administering systems for fiscal control, authorizing payments, and assisting in fund audits. In addition, he/she represents TAMC at the federal, state, regional and local levels on issues pertaining to transportation programming and planning; oversees, reviews, and makes recommendations on funding applications for various programs; ensures compliance with appropriate laws, rules, and regulations; reviews TAMC performance; hires, trains, directs, dismisses, and evaluates subordinate staff; retains and oversees the work of outside consultants; and maintains and updates long-range staffing plans, resource needs, and contingencies to support TAMC projects.