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9 Madera County Farm Bureau, Merced County Farm  
10 Bureau, Preserve Our Heritage, Chowchilla Water  
11 District, and Fagundes Parties



8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SACRAMENTO - GORDON D. SCHABER COURTHOUSE

10 COUNTY OF MADERA, et al.,  
11 Petitioners and Plaintiffs,  
12 vs.  
13 CALIFORNIA HIGH-SPEED RAIL  
14 AUTHORITY, et al.,  
15 Respondents and Defendants.

Lead Case No.: 34-2012-80001165-CU-  
WM-GDS

**Cases Consolidated for Case Management,  
Briefing and Trial Purposes Only With:**

Case Nos.: 34-2012-80001166-CU-WM-GDS  
34-2012-80001168-CU-WM-GDS

15 CITY OF CHOWCHILLA, a California  
16 municipal corporation,  
17 Petitioner and Plaintiff,  
18 vs.  
19 CALIFORNIA HIGH-SPEED RAIL  
20 AUTHORITY, et al.,  
21 Respondents and Defendants.

~~[Proposed]~~

**STIPULATED JUDGMENT**

21 TIMELESS INVESTMENT, INC., et al.  
22 Petitioners and Plaintiffs,  
23 vs.  
24 CALIFORNIA HIGH-SPEED RAIL  
25 AUTHORITY, et al.,  
26 Respondents and Defendants.

ASSIGNED FOR ALL PURPOSES TO:  
THE HONORABLE TIMOTHY FRAWLEY  
DEPARTMENT 29

1 **STIPULATED JUDGMENT**

2 The Court, having read and approved the Stipulation for Entry of Judgment Pursuant to  
3 Settlement and Joint Ex Parte Application, signed and presented to this Court by the parties'  
4 attorneys of record, requesting entry of this Stipulated Judgment, which incorporates by  
5 reference and attaches hereto the fully executed written Settlement Agreement entered into by  
6 and between Petitioners and Plaintiffs Madera County Farm Bureau; Merced County Farm  
7 Bureau; Preserve Our Heritage; Chowchilla Water District; Fred Fagundes; Ralph Fagundes;  
8 Lloyd Fagundes; Deborah Fagundes; Vicki Fagundes; Ralph Fagundes and Vicki Fagundes,  
9 Trustees of the Fagundes Family Trust; Fagundes Brothers Dairy; Fagundes, Fagundes,  
10 Fagundes; Fagundes Brothers, LLC; Fagundes Dairy; Fagundes Dairy #2; Valley Calf, LLC;  
11 and Forebay Farms, LLC ("Petitioners"), and Respondent and Defendant California High-  
12 Speed Rail Authority ("Authority"), a true and correct copy of which is attached hereto as  
13 Exhibit 1, and

14 GOOD CAUSE APPEARING THEREFORE,

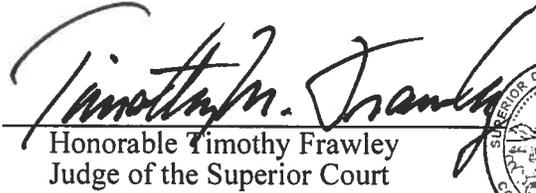
15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 16 1. Judgment is entered in accordance with the terms of the Settlement Agreement, which is  
17 incorporated into this Stipulated Judgment as if fully set forth herein.
- 18 2. This Stipulated Judgment:
- 19 (a) Shall be deemed a judgment after hearing and trial of the action;
- 20 (b) Shall be deemed final; and
- 21 (c) Shall be binding upon and inure to the benefit of the parties hereto and their  
22 respective successors, assigns, heirs and personal representatives.
- 23 3. The parties each have waived the right to appeal the Stipulated Judgment.
- 24 4. The Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief is  
25 dismissed as to Petitioners; provided, however, that the Court retains and reserves  
26 jurisdiction over the parties hereto, and the subject matter of this action, at the parties'  
27 request, in order to enforce this Stipulated Judgment until performance in full of its terms.

1 5. Service of notice of entry of judgment shall be deemed sufficient and valid if made on  
2 counsel for the parties in any manner permitted by the Code of Civil Procedure, including  
3 by mail.

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

5  
6 Dated: April 18, 2013

  
Honorable Timothy Frawley  
Judge of the Superior Court



8  
9 APPROVED AS TO FORM:

10 Dated: April 18, 2013

KAMALA D. HARRIS  
Attorney General of California



Danae J. Aitchison (SBN #176428)

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*Attorneys for Respondent and Defendant  
California High-Speed Rail Authority*

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**EXHIBIT 1**

**Settlement Agreement**

**By and Among**

**Madera County Farm Bureau, Merced County Farm Bureau,  
Preserve Our Heritage, Chowchilla Water District, and Fagundes  
Parties, Petitioners and Plaintiffs**

**and**

**California High-Speed Rail Authority, Respondent and Defendant**

**Dated for Reference: April 17, 2013**

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into and effective as of the Effective Date (each as defined in Section 13(a), below) by and between:

Petitioners and Plaintiffs (“Petitioners”) Madera County Farm Bureau; Merced County Farm Bureau; Preserve Our Heritage; Chowchilla Water District (“CWD”); Fred Fagundes, Ralph Fagundes, Lloyd Fagundes, Deborah Fagundes, Vicki Fagundes, Ralph Fagundes and Vicki Fagundes, Trustees of the Fagundes Family Trust, Fagundes Brothers Dairy, Fagundes, Fagundes, Fagundes, Fagundes Brothers, LLC, Fagundes Dairy, Fagundes Dairy #2, Valley Calf, LLC, and Forebay Farms, LLC (collectively, “Fagundes Parties”), and

Respondent and Defendant California High-Speed Rail Authority (“CHSRA”),

by and through their respective authorized representatives, signing below. Each of the above-listed parties is referred to individually herein as a “Party” and all are collectively referred to herein as the “Parties.”

### RECITALS

A. CHSRA is in the process of developing the approximately 65-mile Merced to Fresno Section (“Section”) of the proposed approximately 800-mile project known as the High-Speed Train project (“HST Project”).

B. On May 3, 2012, the CHSRA certified the Merced to Fresno Section Final Environmental Impact Report/Environmental Impact Statement (April 2012; “FEIR”) by adopting Resolution HSRA 12-19; and approved the Hybrid Alternative for the Section, and adopted CEQA Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program (“MMRP”) by adopting Resolution HSRA 12-20 (the two Resolutions hereinafter collectively the “Approvals”).

C. Petitioners participated in the administrative process leading to the Approvals.

D. On June 1, 2012, Petitioners filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”) challenging the Approvals (Sacramento Superior Court Case No. 34-2012-80001165; “Lawsuit”).

E. Petitioners have asserted, and, in the absence of settlement pursuant to this Agreement, would continue to assert, that in adopting the Approvals, CHSRA violated, *inter alia*, the California Environmental Quality Act (Public Resources Code, §§ 21000 et seq., and CEQA Guidelines, 14 California Code of Regulations, §§ 15000 et seq.), and the Bagley-Keene Open Meeting Act (Government Code, §§ 11120 et seq.) as set forth in the Petition.

F. CHSRA has asserted that the Approvals were adopted in full compliance with all applicable laws and regulations.

G. The Parties now wish to finally resolve the Lawsuit, without further proceedings, through entry of a Stipulated Judgment according to the terms described herein.

## TERMS

NOW, THEREFORE, based on the above Recitals, each of which is true and correct and is incorporated into the terms below, and in consideration of the terms, conditions, and covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, promise, and covenant as follows:

### 1. Mitigation for Impacts to Agricultural Lands within the Section<sup>1</sup>

- a. The Petitioners (excepting CWD; the “Participating Petitioners”<sup>2</sup>) shall be formally identified as participants in the Department of Conservation (“DOC”) California Farmland Conservancy Program as established for agricultural land mitigation for the Section pursuant to Ag-MM#1 of the CHSRA’s MMRP (“DOC Section Program”). CHSRA shall use best efforts to arrange for an amendment to the scope of work for the DOC/CHSRA contract, subject to DOC agreement, to require DOC and CHSRA to meet with designated representatives of the Participating Petitioners, and provide them an opportunity to participate in the DOC Section Program in at least the following ways: (i) participate in the development of the selection criteria for lands over which agricultural conservation easements (“ACEs”) would be acquired by DOC under the DOC Section Program (including the “first opportunity” provision of Section 1.d., below, and the determination of the agricultural value of the impacted and replacement acreage pursuant to Section 1.c., below); (ii) participate in identification of the highest value lands to be targeted for ACEs pursuant to the selection criteria; and (iii) otherwise participate in maximizing the effectiveness of the DOC Section Program to address agricultural impacts from the Section to individual agricultural landowners and the two-county-wide agricultural resources. If an amendment with DOC does not occur despite CHSRA’s best efforts, CHSRA shall take other steps as necessary to provide Participating Petitioners with an equivalent opportunity for participation as described above.

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<sup>1</sup> For purposes of this Agreement, the term “Section” shall be defined as the Merced-Fresno Section of the HST Project, as identified in the FEIR, including the wye box area when and if that portion of the HST Project is approved.

<sup>2</sup> For purposes of Sections 1.a., 1.c., 2.d.(ii), and 3.b of this Agreement, the Fagundes Parties shall be deemed to be a single Party and shall designate one representative to serve on their behalf as the Participating Petitioner for the Fagundes Parties. This designation shall be made by written notice to all other Parties within thirty (30) days of the Effective Date. The Fagundes Parties may change their designated representative at any time by written notice to all Parties.

b. In identifying the Important Farmland<sup>3</sup> that will be considered directly and indirectly permanently converted to non-agricultural use for purposes of calculating the acreage for which the minimum replacement ratio will be applied under mitigation measure Ag-MM#1 (as contained in the CHSRA's MMRP and as the ratio is adjusted pursuant to Section 1.f., below, with respect to acreage in the buffer area described in Section 1.b.(ii)), all of the following acreage shall be considered impacted:

- (i.) Important Farmland within the Section construction footprint, including remnant parcels as identified in the FEIR;
- (ii.) Acreage within a buffer area, 25-feet wide, extending outward from any portion of the Section footprint on Important Farmland, which shall be considered indirectly impacted in a manner that may lead to conversion of Important Farmland;
- (iii.) Any other unusable remainder acreage, non-economic remainder acreage, or unusable remnant acreage (collectively, "Remnant Acreage") of Important Farmland created when a portion of a parcel is acquired for the Section (regardless of whether the acquired portion is along the edge of a parcel or bisects it). CHSRA agrees to include in this calculation of converted agricultural land all remainder acreage when a remainder parcel is 20 acres or less in size;
- (iv.) Any other Important Farmland permanently converted to non-agricultural use in connection with the Section, including but not limited to conversion that may result from: severance of road, water, drainage, or electricity access; conflicts with farmland protection contracts; regulatory noncompliance (e.g., dairies), etc.;
- (v.) The total Important Farmland permanently converted to non-agricultural use and subject to mitigation under Ag-MM#1 shall be reduced by the amount of such acreage of remnant parcels CHSRA successfully transfers to adjoining landowners or others for continued agricultural use pursuant to the Farmland Consolidation Program within three years after acquisition of each remnant parcel.

Beginning six months after CHSRA commences right of way acquisition for the Section, CHSRA shall provide on its website a report identifying the parcels described in Subsections (i) – (v), above, which report shall be updated at least monthly. CHSRA shall consult with Petitioners at least semi-annually, continuing throughout the construction period for the Section until six years after the commencement of ground disturbance for construction of the Section, to identify parcels that should be subject to these mitigation requirements.

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<sup>3</sup> "Important Farmland" for purposes of this Agreement shall mean agricultural lands classified as Prime, Statewide Important, Unique, and Farmlands of Local Importance under the Department of Conservation's Farmland Mapping and Monitoring Program.

It is expressly agreed that the purpose of this Section 1.b. is to clarify the Important Farmland acreage that will be considered directly and indirectly permanently converted to non-agricultural use for purposes of calculating the acreage for which the minimum replacement ratio shall be applied under the Ag-MM#1 mitigation requirements (as contained in the MMRP and as the ratio is adjusted pursuant to Section 1.f., below, with respect to acreage in the buffer area) in order to provide additional mitigation for the Section's impacts on Important Farmlands.

- c. Each acre of land over which an ACE is acquired under the DOC Section Program to satisfy Ag-MM#1 (as contained in the MMRP and as the ratio is adjusted pursuant to Section 1.f., below, with respect to acreage in the buffer area) shall be at least equal in quality (prime, statewide important, unique, farmland of local importance) to the impacted acre, subject to the constraints of availability of ACEs on land from willing sellers. With respect to soil-type criteria that will be applied in meeting this at-least-equal-quality requirement, the determination of quality of the impacted and mitigation acreage shall use updated soil-type information developed with input from the Participating Petitioners.
- d. Landowners (including affiliated companies or individuals in the case of entity ownerships) whose agricultural land in Merced and Madera counties is acquired for the Section shall be offered the first opportunity to apply and be considered for placing ACEs over any acreage they own within the DOC Section Program's geographic boundaries that meets the selection criteria and the at-least-equal-quality requirement, as determined by CHSRA and DOC.
- e. CHSRA shall make its best efforts to complete the agricultural land mitigation commitments in Ag-MM#1 for each acre of Important Farmland acquired for the high-speed train project within two years from the time of acquisition of that acre, but in any event shall complete the mitigation commitment for each acre within three years of acquisition subject to the constraints of availability of ACEs on land from willing sellers.
- f. Notwithstanding the replacement ratio of not less than 1:1 set forth in Ag-MM#1 (as contained in the MMRP), CHSRA shall mitigate for the assumed indirect impacts to agricultural land in the 25' buffer area identified in Section 1.b.(ii), above, and as calculated based on Section 1.b., above, at a ratio of not less than 0.5:1 (one-half acre of Important Farmland preserved for every one acre of Important Farmland within the buffer), with this ratio applied only to the extent that such acreage is not otherwise subject to mitigation under Ag-MM#1 or any provision of Section 1.b. other than 1.b.(ii), it being the intent of this provision that the higher not less than 1:1 ratio shall apply to any acreage for which mitigation would be required in the absence of Section 1.b.(ii); provided, however, that, because the indirect impacts of the Section to Important Farmland will be difficult to ascertain, in no event shall the total acreage assumed to be indirectly impacted in a manner that may lead to conversion of Important Farmland under Section 1.b.(ii), and thereby mitigated pursuant to this Agreement with ACEs at the ratio of not less than 0.5:1, be less than 458 acres, to result in a minimum of 229 acres to be placed under ACEs pursuant to Section 1.b.(ii).

2. Land Acquisition Protections to Owners of Agricultural Land within the Section

- a. CHSRA and Petitioners acknowledge that right of way acquisition for the HST Project is subject to federal and state constitutional, statutory, and regulatory requirements. CHSRA's commitments in this Section 2 of this Agreement shall not be interpreted in a manner that violates these federal and state constitutional, statutory, and regulatory requirements.
- b. In acquiring agricultural land for the Section, the CHSRA agrees to exercise the maximum flexibility allowed by federal and state constitutional, statutory, and regulatory requirements to accommodate the desire of an agricultural landowner as to the acquisition of the remainder acreage within a larger parcel when a portion of the larger parcel is proposed for acquisition by CHSRA. Without limiting the generality of the foregoing, the CHSRA agrees:
- (i.) For any proposed acquisition of a portion of a larger parcel of agricultural land for which the proposed remainder acreage would be 20 acres or less: (1) the CHSRA shall prepare and provide to the landowner an alternative appraisal for the entire parcel (in addition to the appraisal of the proposed acquisition acreage); and (2) not less than 15 days after both of the CHSRA's completed appraisals have been provided to a landowner, and before any formal acquisition proceedings have been commenced, the CHSRA shall, in good faith, offer in writing to acquire either the proposed acreage or the entire parcel (consisting of the proposed acreage and the remaining acreage), at the landowner's election. If the landowner makes an election in writing to the CHSRA within 15 days of receipt of the offer (which time period shall be stated in the offer), the CHSRA shall proceed in good faith to negotiate the acquisition of whichever acreage (portion of parcel or entire larger parcel) is being acquired.
  - (ii.) The CHSRA acknowledges and agrees that it has broad authority pursuant to Code of Civil Procedures section 1240.150 to acquire the whole of a larger parcel with the consent of the owner, where the remainder, or a portion of the remainder, will be left in such size, shape, or condition as to be of little value to its owner or to give rise to a claim for severance or other damages. For any proposed acquisition of a portion of a larger parcel of agricultural land, at the time that the specific intended acquisition acreage has been identified and described in writing to the landowner, and before an appraisal has been prepared by the CHSRA's appraiser, the CHSRA shall provide the landowner with a written explanation of CHSRA's broad authority pursuant to Code of Civil Procedure section 1240.150 and the applicable regulatory requirements to acquire the whole of a larger parcel with the consent of the owner.
  - (iii.) CHSRA and Petitioners agree to negotiate in good faith for all agricultural land acquisitions within the Section to which they are parties.
- c. Among other considerations, the CHSRA appraisers shall take into account the following factors in the valuation of any property interest in agricultural land: (i) in the case of

severance of a larger parcel, the diminution in value of the remainder if the remainder parcel size is smaller than the minimum conforming parcel size under the then-existing zoning classification for the parcel (as the parcel is defined for zoning purposes by the applicable land use regulatory authority); (ii) the effect of the acquisition on the ability of the agricultural operation remaining on the parcel to maintain compliance with all applicable regulatory requirements; (iii) severance or other damages to the parcel; (iv) information provided to the appraiser pursuant to the Severance Valuation Consultation Process pursuant to Section 2.d.(i), below; and (v) that the valuation shall be consistent with Code of Civil Procedure section 1263.330.

d. The CHSRA shall provide any owner of agricultural land that it intends to acquire with the opportunity to participate in either or both of the following processes:

- (i.) Severance Valuation Consultation Process: For acquisition of a portion of a parcel, at the time that the specific intended acquisition acreage has been identified and described in writing to the landowner, and early in the appraisal process before an appraisal has been prepared by the CHSRA's appraiser, the CHSRA shall offer the landowner (and its representatives) the opportunity to meet with representatives of the CHSRA and its appraiser to discuss the impacts to the remainder portion of the parcel for purposes of appraising the same. If the landowner accepts this opportunity within 15 days of receipt (which time period shall be stated in the offer), the CHSRA shall convene this meeting to occur before the appraiser prepares the appraisal and the appraiser shall take into consideration all of the information provided by the landowner with respect to the valuation of severance damages from the CHSRA's proposed acquisition. CHSRA agrees to make its best efforts to apply the intent of this provision to parcel acquisition appraisals already underway or completed as of the Effective Date of this Agreement.
- (ii.) Pre-Litigation Mediation Process: Within 30 days of the Effective Date of the Agreement, the CHSRA shall establish a panel of not less than seven mediators, approved by Participating Petitioners, for use in a pre-litigation mediation process for valuation of agricultural land proposed for acquisition by the CHSRA. All mediators shall be experienced mediators (with not less than 4 years experience in which at least 25% of their professional activities have been devoted to ADR), with expertise in agricultural land and commercial agricultural operations in the Central Valley, and with expertise in the eminent domain process. All costs and fees of the mediator shall be paid by the CHSRA. If a landowner elects to participate in this mediation process, the landowner shall select the mediator from the panel.

### 3. Agricultural Land Mitigation Fund and Attorneys' Fees

#### a. Fees and Costs/Expenses

- (i.) CHSRA agrees to pay Petitioners their attorneys' fees and costs/expenses in the amount of \$972,638.88. In order to provide CHSRA with sufficient

documentation and confirmation for its records that the attorneys' fees and costs/expenses were incurred for the prosecution of the Lawsuit (including Petitioners' participation in the CHSRA's administrative process), and not for any unrelated purposes, Petitioners shall submit to CHSRA, within 30 days of the Effective Date of this Agreement, documentation demonstrating that \$972,638.88 represents the amount of attorneys' fees and costs/expenses (including professional engineering and environmental consultant services) actually incurred by Petitioners for the prosecution of the Lawsuit (including Petitioners' participation in the CHSRA's administrative process). CHSRA acknowledges that the amount of attorneys' fees and costs/expenses set forth in this Section 3.a.(i) is Petitioners' estimate. If Petitioners, in their sole discretion, document less than the amount of attorneys' fees and costs/expenses set forth in this Section 3.a.(i), CHSRA shall only pay the amount Petitioners document. In no event shall CHSRA be obligated to pay attorneys' fees and costs/expenses in excess of \$972,638.88.

- (ii.) "Sufficient documentation and confirmation for its records" shall consist of: (1) a summary spreadsheet or table showing for each month: the hours worked by each attorney or paralegal performing work, the hourly rate for each attorney or paralegal performing work, and the total amount of attorneys' fees; (2) a summary spreadsheet or table identifying by category the amount incurred for costs and expenses; and (3) a declaration from Petitioners' counsel (or professional engineering and environmental consultant service providers, when applicable) signed under penalty of perjury generally describing work performed and indicating that the information provided in items (1) and (2) is true and correct, and was derived from invoices and billing records prepared and maintained by Petitioners' counsel (or professional engineering and environmental consultant service providers, when applicable) in the ordinary course of business for the Lawsuit (including Petitioners' participation in the CHSRA's administrative process).
- (iii.) Petitioners acknowledge that CHSRA cannot begin processing the attorneys' fees and costs/expenses payment until the required documentation is received. CHSRA agrees to process the paperwork needed for payment of attorneys' fees promptly upon receipt of the documentation.
- (iv.) Payment shall be made as soon as reasonably possible in conformance with state procedures and delivered as follows:

Check payable to:

Fitzgerald Abbott & Beardsley LLP Attorney Client Settlement Trust Account

-OR-

Wire transfer funds to:

Mechanics Bank, 1999 Harrison St., Ste. 100, Oakland, CA 94612  
Account Number: 0415-54280  
ABA Routing #: 121102036  
SWIFT CODE: MEBKUS66  
Title of Account: "Fitzgerald Abbott & Beardsley LLP Attorney Client  
Settlement Trust Account"  
Bank Contact: Nancy Fujikawa 510-251-6106

b. Agricultural Land Mitigation Fund

- (i.) CHSRA and Petitioners jointly recognize the value and importance of agricultural land resources in Merced and Madera counties; the unique circumstance for Madera County due to the location of the HST Project "wye"; the urbanization pressure on agricultural lands in Merced and Madera counties over the past decade as documented in the EIR; and concerns articulated by Petitioners and other stakeholders regarding continued conversion of agricultural land in Merced and Madera counties due to the HST Project and continued urbanization.
- (ii.) CHSRA agrees to establish an agricultural land mitigation fund ("ALMF") to be administered at the discretion of the Participating Petitioners for the intended purpose of preserving additional agricultural land in Merced and Madera counties, above and beyond the mitigation for agricultural land conversion adopted by the CHSRA. CHSRA shall fund the ALMF in the amount of Five Million dollars (\$5,000,000.00) less the amount of fees and costs/expenses paid to Petitioners pursuant to Section 3.a., above, by transferring this amount as soon as reasonably possible in conformance with state procedures and delivered as identified above for the attorneys' fees and costs/expenses.
- (iii.) The ALMF may be utilized solely for the following purposes:
  - Acquisition of ACEs over Important Farmlands in Merced and Madera counties that meet the criteria to be developed as described in Section 1.a. and the added criteria that ALMF funds shall only be available to place ACEs on agricultural land held by a landowner that will represent that they are not in the process of converting other Important Farmlands to non-agricultural use. Funding shall be available to cover all actual costs of ACE acquisition, including the cost of appraisals, site assessments, and related transaction costs, and monitoring endowments. ACEs shall be recorded promptly in the County in which the easement is located. ACEs shall be held by a qualified non-profit organization experienced in the holding and oversight of ACEs. Payment for ACEs to the landowner shall not exceed the fair market value of the ACE, as documented in an appraisal prepared by an appraiser licensed by the State of California with experience in the unique conditions in the county in which the ACE will be located.

- Activities to address unique agricultural land impacts in Merced and Madera counties caused by the HST Project.
  - Administrative activities related to reporting requirements identified below.
- (iv.) Participating Petitioners agree to use their reasonable best efforts to expend the funds for agricultural land mitigation purposes described above within five (5) years of receipt of the funds in the ALMF. In the event the funds in the ALMF are not expended within a period of five (5) years of the Effective Date of this Agreement, Participating Petitioners agree to remit the unused funds to CHSRA.
- (v.) Participating Petitioners agree to provide semi-annual reports to CHSRA, in a form to be determined by CHSRA, documenting the type of expenditures of funds in the ALMF during the preceding semi-annual period, and describing the agricultural land mitigation achieved with the funds.
- (vi.) Participating Petitioners agree that the CHSRA shall have the right to review and to copy any records and supporting documentation directly pertaining to the expenditures of the ALMF for the purpose of audit. Participating Petitioners agree to maintain such records for possible audit by the state for a minimum of three (3) years after final expenditure of funds from the ALMF. Participating Petitioners agree to allow the state auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records upon not less than two (2) weeks advance written notice.

#### 4. Wye Consultation Process

In the interest of attempting to address concerns regarding decisions regarding the “wye box” area, as identified in the FEIR, the CHSRA shall:

- a. Convene regular monthly meetings between CHSRA staff and consultants, and affected or potentially affected landowners within the wye box, commencing within 30 days of the Effective Date of the Agreement and continuing until completion of the supplemental EIR/EIS (SEIR/SEIS) for the wye box area. Following completion of the SEIR/SEIS for the wye box area, and prior to commencement of construction in the wye box area, CHSRA shall convene a monthly meeting at any Petitioner’s specific request. Upon commencement of construction in the wye box area, CHSRA agrees to reconvene regular monthly meetings. The purpose of these meetings will be to provide an opportunity for affected landowners to discuss concerns with regard to impacts from the HST Project, and for the CHSRA and participating landowners to identify changes, mitigation measures, or other means of addressing the landowners’ concerns that CHSRA agrees to consider in good faith.
- b. Prior to the CHSRA staff’s recommendation to the CHSRA Board of a preferred alignment for the wye, convene one or more meetings between CHSRA staff and consultants, and representatives of Petitioners, to discuss any Petitioner’s concerns with

the staff's intended recommended alignment, and to identify changes or additional mitigation measures that would reduce these concerns. CHSRA agrees in good faith to attempt to address all such concerns and to recommend all feasible mitigation measures identified through this consultation process, as determined by the CHSRA.

- c. The CHSRA confirms that it has selected and will contract with and use Parsons Transportation Group as the prime regional consultant for design and environmental review in connection with the wye area of the HST Project.

5. Mitigation of Impacts to Chowchilla Water District Facilities

- a. The CHSRA agrees to fully and promptly mitigate direct impacts from the HST Project to CWD operation and maintenance of its water conveyance and delivery facilities. These impacts may include, without limitation, interrupted access for CWD's personnel, vehicles and maintenance equipment where the HST Project crosses a CWD facility. Although the specific impacts and corollary mitigation measures cannot be identified until further design of the HST Project is completed, the CHSRA agrees to implement effective mitigation, such as underpasses, to provide reasonable access for CWD's personnel, vehicles and maintenance equipment to get from one side of the HST Project to the other at all locations where the HST Project crosses CWD facilities and to implement other measures such that CWD's operation and maintenance of its facilities is not significantly impaired or made significantly more expensive due to the land acquisition, construction, or operation of the HST Project, to the full extent that any such mitigation measures exist that are feasible, safe, reasonable, and will not cause unreasonable delay to the HST Project.
- b. The CHSRA also agrees to take protection measures, reasonably approved by CWD, for CWD's canals, such as concrete lining and/or other measures to protect canals and the HST Project in the vicinity of unlined CWD canals, to the full extent that any such protection measures exist that are feasible, safe, reasonable, and will not cause unreasonable delay to the HST Project.
- c. In order to prevent the potential for flooding and damage to the HST Project, the CHSRA also agrees to:
  - (i.) Install debris screens, similar to the debris screens currently utilized by CWD, in the vicinity of where the HST Project directly impacts operations, maintenance, and/or access to CWD water conveyance and delivery facilities to the full extent that any such protection measures exist that are feasible, safe, reasonable, and will not cause unreasonable delay to the HST Project; and
  - (ii.) Automate canal gates and structures in the vicinity of where the HST Project directly impacts operations, maintenance, and/or access to CWD water conveyance and delivery facilities to the full extent that any such protection measures exist that are feasible, safe, reasonable, and will not cause unreasonable delay to the HST Project.

- d. The CHSRA shall reimburse CWD for its actual engineering, design and construction costs associated with modifications to CWD's water conveyance and delivery facilities that are installed to mitigate the impacts from the HST Project.
- e. All actions required of the CHSRA provided in this Section 5 shall be taken by the CHSRA at the CHSRA's sole expense; provided, that with CWD's prior consent, CHSRA may instead fund CWD's implementation of such actions. All additions to or improvements of CWD's facilities shall be in accordance with plans and specifications reasonably approved by CWD consistent with plans and specifications for comparable CWD-installed additions and improvements.

#### 6. Construction Mitigation

At the time of commencement of construction in the Section, the CHSRA shall have fully established and thereafter shall maintain in operation until completion of the construction of the Section:

- a. A toll-free "hotline" with in-coming message recording capacity on which questions or concerns regarding the Section construction activities. CHSRA shall arrange for all in-coming messages to be logged (with summaries of the contents of each message) and for a designated representative of CHSRA to respond to hotline messages within 24 hours (excluding weekends and holidays). CHSRA shall make a reasonable good faith effort to address all concerns and answer all questions, and shall include on the log its responses to all callers. CHSRA shall make a log of the in-coming messages and CHSRA's responsive actions publicly available on its website.
- b. A public website of upcoming road closures and other construction activities (e.g., slow moving and oversized vehicles/equipment, convoys) that could affect agricultural operations on working agricultural lands or transit to or from those lands with the Section area.

#### 7. Application to Merced County

Recognizing that Petitioner Merced County Farm Bureau represents a county-wide constituency of agriculturally-interested parties, the CHSRA agrees to apply the substantive terms of Sections 1 and 2 of this Agreement to Important Farmland in portions of Merced County that are affected by the proposed Sacramento-Merced and San Jose-Merced sections of the HST Project, at such time as CHSRA is planning for and developing those sections, and shall apply the substantive terms of Section 6 of this Agreement during the construction of that proposed section; provided, however, that the minimum acreage requirement for indirect impacts set forth in Section 1.f. (i.e., 229 acres) shall not apply to the CHSRA's application of Section 1 within these other sections.

#### 8. Waiver of Lawsuit Fees, Costs and Expenses

CHSRA waives any claim against all Petitioners for any costs, expenses, or attorneys' fees associated with the Lawsuit, including but not limited to costs related to preparation of the administrative record of proceedings. Except for the payment under Section 3.a., above, Petitioners waive any claim for costs, expenses, or attorneys' fees associated with the Lawsuit.

## 9. Press Release

The Parties shall confer in good faith to develop a short press release announcing the settlement of the Lawsuit, with the mutual intention of releasing it to the public before the close of business on April 18, 2013.

## 10. Dispute Resolution

- a. Notice of Default. Failure or unreasonable delay in the performance of any material provision herein shall constitute a default under this Agreement. In the event of a default, the Party alleging such default shall give the defaulting Party not less thirty (30) days' written notice of default ("Notice of Default"). The Notice of Default shall specify the nature of the alleged default and a reasonable manner and period of time in which said default may be satisfactorily cured. A Notice of Default shall be given in the manner set forth in Section 12, below.
- b. Cure Period. Within thirty (30) days of the date a Notice of Default is given, the defaulting party shall provide evidence establishing it was never, in fact, in default or shall cure the default; provided, however, that if the nature of the alleged default is such that it cannot be reasonably cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. During any period of curing, the Party charged shall not be considered in default for purposes of enforcement of this Agreement. If the default is cured, then no default shall exist or be deemed to have existed and the noticing Party shall take no further action. After proper notice and the expiration of such cure period without cure, enforcement may be undertaken as set forth in this Agreement.
- c. No Limitation on Interim Relief. Nothing in this Section 10 shall preclude the Parties from seeking interim injunctive relief from a court to prevent, minimize, or otherwise address an alleged imminent default, provided that any such interim injunctive relief shall relate solely to the alleged default.

## 11. Enforcement

- a. This Agreement shall be signed by the Parties and attached to a Stipulated Judgment (in a form counsel for the Parties have agreed upon in advance of signing this Agreement), executed by counsel for the Parties and submitted to the Sacramento Superior Court providing that the court shall maintain continuing jurisdiction for enforcement of the terms of this Agreement. Any Party may enforce the Agreement.
- b. In addition to the provisions of Section 11.a., this Agreement may be enforced as a contract with all applicable remedies at law or equity. Any Party may avail themselves of the remedies provided herein or otherwise available at law or equity.

## 12. Notices

All communications, notices, and demands of any kind which any Party may be required or desire to give or serve upon any other Party shall be made in writing and shall be effective

(i) immediately upon delivery in person, provided delivery is made during regular business hours or receipt is acknowledged by a person reasonably believed by the delivering Party to be employed by the recipient, or (ii) on the next Business Day after deposit with a commercial courier or delivery service for overnight next Business Day delivery, provided delivery is made during regular business hours or receipt is acknowledged by a person reasonably believed by the delivering Party to be employed by the recipient, or (iii) on the next Business Day after deposit with the United States Postal Service, for next Business Day delivery; or (iv) three (3) business days after deposit with the United States Postal Service, certified mail, return receipt requested, postage prepaid. All notices must be properly addressed and delivered to every other Party at the addresses set forth below, or at such other addresses as any Party may subsequently designate by written notice given in the manner provided in this Section 12.

*To Madera County Farm Bureau:*

Attn: Executive Director  
Madera County Farm Bureau  
1102 South Pine Street  
Madera, CA 93637

*To California High-Speed Rail Authority:*

Attn: Chief Executive Officer  
California High-Speed Rail Authority  
770 L Street, Suite 800  
Sacramento, CA 95814

*To Merced County Farm Bureau:*

Attn: Executive Director  
Merced County Farm Bureau  
646 S. Hwy. 59  
Merced, CA 95341

AND ALSO TO:

Attn: Chief Counsel  
California High-Speed Rail Authority  
770 L Street, Suite 800  
Sacramento, CA 95814

*To Preserve Our Heritage:*

Attn: Steve Massaro, President  
Preserve Our Heritage  
US Mail:

P.O. Box 501  
Chowchilla, CA 93610

Other:

20754 Road 16  
Chowchilla, CA 93610

*To Chowchilla Water District:*

Attn: General Manager  
Chowchilla Water District  
US Mail:  
P.O. Box 905  
Chowchilla, CA 93610

Other:  
327 South Chowchilla Boulevard  
Chowchilla, CA 93610

*To Fagundes Parties:*

Attn: Brad Samuelson

US Mail:  
P.O. Box 2717  
Merced, CA 95344

Other:  
4141 North Highway 59  
Merced, CA 95348

AND FOR ALL OF THE PETITIONERS  
ALSO TO:

Attn: Barry H. Epstein  
Fitzgerald Abbott & Beardsley, LLP  
1221 Broadway, 21st Floor  
Oakland, CA 94612

13. Miscellaneous

- a. Effective Date. The Effective Date of this Agreement shall be the date the Stipulated Judgment has been signed by a judge of the Sacramento Superior Court and entered by the Clerk of the Court as shown on the filed endorsed stamp on the Stipulated Judgment (the "Effective Date").
- b. Binding Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. Other than the Parties and their successors and assigns, no third party shall be entitled, directly or indirectly, to base any claim upon or have any right arising from or related to this Agreement.
- c. Recitals; Exhibits; Headings. The Recitals hereto form a material part of this Agreement, are true and correct, and are incorporated herein by this reference and made a part hereof. Any exhibits to the Agreement are fully incorporated into and are an integral part of this Agreement. The section and subsection headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

- d. No Admission of Liability. This Agreement shall not constitute, or be construed as, an admission of liability or wrong by any Party. The fact of this Agreement or its terms shall not be interpreted or applied as any indication or evidence of the strength or weakness of any claim or defense. The Parties agree that there has been no determination of the merits of any claims or defenses in the Lawsuit, and this Agreement shall not be used by any Party in any proceeding other than a proceeding to enforce the terms of this Agreement.
- e. Assignment. No Party may assign or delegate its obligations hereunder, without the express written consent of the other Parties, which consent shall not be unreasonably denied, delayed, or conditioned. Any assignment or delegation without the prior written consent required hereunder shall be void and of no effect.
- f. Future Attorneys' Fees and Costs. In the event a Party is successful in any formal proceeding to enforce this Agreement, the Party shall be entitled to an attorneys' fees award under Section 1021.5 in the amount of reasonable fees. The other criteria for an award under Section 1021.5 shall be deemed met without any showing by the successful Party.
- g. Integration; Amendment. This Agreement contains the entire agreement and understanding between the Parties with regard to the matters set forth herein. No term of this Agreement may be modified, changed, amended, added, removed, or waived except in a writing signed by all of the Parties. No purported oral or unwritten amendment, modification, or other purported change to this Agreement shall be valid or enforceable.
- h. Mutual Drafting. The Parties hereto acknowledge that they have in good faith mutually participated in the negotiation of this Agreement and that each has been represented by legal counsel of its own choice throughout the negotiation process. Each Party agrees that: it has reviewed and revised this Agreement, which shall be deemed to have been equally drafted by each of the Parties, and accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement; it knowingly and voluntarily agrees to all of the terms, conditions, and covenants set forth herein and intends to be legally bound by them; the provisions of this Agreement have been fully negotiated by and among the Parties; and the provisions of this Agreement shall be construed in accordance with the fair meaning of the language set forth in this Agreement.
- i. Releases: In consideration of the mutual promises set forth herein, the Parties on behalf of themselves and their heirs, successors, and assigns, hereby release and forever discharge the others, including each and every of their officers, directors, beneficiaries and assigns, from any and all claims, demands, actions and/or causes of action, both in law and in equity, of any kind or nature whatsoever, whether known or unknown, matured or unmatured, suspected or unsuspected, which Petitioners and Respondent ever had, now has, or may have against the other arising out of the Approvals and any claims arising out of or related to the conduct of Petitioners in the filing or prosecution of the Lawsuit or of Respondent in the defense of the Lawsuit (collectively referred to as "Claims").

The Parties intend that this Agreement shall be effective as a full and final accord and satisfaction and general release of any and all Claims that any of the Parties may have against the other, except for claims for breach of this Agreement. The Parties expressly waive and relinquish any and all rights and benefits which they may have or may acquire under Section 1542 of the Civil Code of California, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

- j. Interpretation. Where the context requires herein, the singular shall be construed as the plural, and neuter pronouns shall be construed as masculine and feminine pronouns, and vice versa. References in this Agreement to days shall be to calendar days, unless otherwise specified. If the last day of any period to give or reply to a notice, meet a deadline or undertake any other action occurs on a day that is not a Business Day, then the last day for giving or replying to such notice, meeting such deadline or undertaking any such other action shall be the next succeeding Business Day. “Business Day” means a day of the week (but not a Saturday or a Sunday) on which the state courts are open to the public for carrying on substantially all business functions. The use in this Agreement of the words “including”, “such as” or words of similar import when used with reference to any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions shall prevail. Any reference to this Agreement includes any amendments or modifications made in accordance with this Agreement.
- k. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California (without regard to principles of conflicts of laws), and is entered into and to be performed entirely within California. Venue for any action or suit to enforce the terms of this Agreement shall be in Sacramento County.
- l. Time. Time is of the essence in this Agreement.
- m. Liability Several Only. The liability of each Petitioner hereunder shall be several only.
- n. No Waiver. No consent or waiver, express or implied, by any Party to or of any breach or default of any representation, covenant, or warranty shall be construed as a consent or waiver to or of any other breach or default of the same or any other representation, covenant, or warranty under this Agreement.
- o. Invalidity; Severability. If any term, covenant, or condition of this Agreement or its application to any person or circumstances shall be finally determined by a court to be illegal, invalid, or unenforceable, the remainder of this Agreement or the application of such term or provisions to other persons or circumstances shall not be affected, and each term hereof shall be legal, valid, and enforceable to the fullest extent permitted by law, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision. In the event of partial invalidity, the Parties shall

seek in good faith to agree on replacing any such legally invalid provisions with valid provisions which, in effect, will most nearly and fairly approach the effect of the invalid provision and the intent of the Parties in entering into this Agreement.

- p. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities on whose behalf they are signing.
- q. Counterparts; Delivery. This Agreement may be signed in counterparts, and all counterparts together shall be considered one agreement. This Agreement shall not be effective unless and until it has been executed and delivered by all Parties hereto, and the Stipulated Judgment has been entered as provided herein. Execution and delivery of this Agreement may be effected by telefax, or electronic mail transmittal of a PDF or other image, of signed counterparts. Any signatures delivered by electronic communication shall have the same legal effect as manual signatures.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed this Agreement to become effective as of the Effective Date set forth above.

**Madera County Farm Bureau**

By:   
Tom Coleman, President  
Date: April 17, 2013

**California High-Speed Rail Authority**

By: \_\_\_\_\_  
Jeff Morales, Chief Executive Officer  
Date: April \_\_\_\_, 2013

**Merced County Farm Bureau**

By: \_\_\_\_\_  
Jean Okuye, President  
Date: April \_\_\_\_, 2013

**Preserve Our Heritage**

By: \_\_\_\_\_  
Steve Massaro, President  
Date: April \_\_\_\_, 2013

**Chowchilla Water District**

By: \_\_\_\_\_  
Dan Maddalena, President  
Board of Directors  
Date: April \_\_\_\_, 2013

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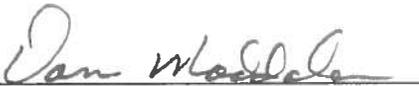
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**Chowchilla Water District**

By:   
Dan Maddalena, President  
Board of Directors  
Date: April 17, 2013

*Signatures continue on next page*

Fagundes Parties

By: *Fred Fagundes*  
Fred Fagundes  
Date: April 17, 2013

By: *Ralph Fagundes*  
Ralph Fagundes  
Date: April 17, 2013

By: *Lloyd Fagundes*  
Lloyd Fagundes  
Date: April 17, 2013

By: *Deborah Fagundes*  
Deborah Fagundes  
Date: April 17, 2013

By: *Vicki A. Fagundes*  
Vicki Fagundes  
Date: April 17, 2013

By: *Ralph Fagundes*  
Ralph Fagundes and Vicki Fagundes,  
Trustees of the Fagundes Family Trust  
Date: April 17, 2013

Approved as to form by Counsel to Petitioners: Approved as to form by Counsel to California High-Speed Rail Authority.

By: \_\_\_\_\_  
Barry H. Epstein  
Fitzgerald Abbott & Beardsley LLP

By: \_\_\_\_\_  
Danas J. Aitchison, Deputy Attorney General

**Fagundes Parties**

By: \_\_\_\_\_  
Fred Fagundes  
Date: April \_\_\_\_, 2013

By: \_\_\_\_\_  
Ralph Fagundes  
Date: April \_\_\_\_, 2013

By: \_\_\_\_\_  
Lloyd Fagundes  
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By: \_\_\_\_\_  
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By: \_\_\_\_\_  
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Date: April \_\_\_\_, 2013

Approved as to form by Counsel to Petitioners:

By:  \_\_\_\_\_  
Barry H. Epstein  
Fitzgerald Abbott & Beardsley LLP

Approved as to form by Counsel to California High-Speed Rail Authority:

By: \_\_\_\_\_  
Danae J. Aitchison, Deputy Attorney  
General

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By: \_\_\_\_\_  
Barry H. Epstein  
Fitzgerald Abbott & Beardsley LLP

By: *Danae J. Aitchison*  
Danae J. Aitchison, Deputy Attorney  
General