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9 Attorneys for Respondent and Defendants
10 California Department of Transportation

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 ALAMEDA CREEK ALLIANCE,
14 a non-profit California Corporation

15 Petitioner and Plaintiff,

16 vs.

17 CALIFORNIA DEPARTMENT OF
18 TRANSPORTATION, and DOES 1 through 20,
19 inclusive,

20 Respondents and Defendants.

Case No. RG11579426

**STIPULATION AND SETTLEMENT
AGREEMENT**

Dept.: 24

Judge: Hon. Frank Roesch

21 This Stipulation and Settlement Agreement (“Stipulation”) is entered into between Petitioner
22 ALAMEDA CREEK ALLIANCE, a non-profit California Corporation (“ACA”) and Respondent
23 CALIFORNIA DEPARTMENT OF TRANSPORTATION (“DEPARTMENT”), by and through
24 their respective counsel. This Stipulation supersedes and voids that certain Stipulation and
25 Settlement Agreement executed by the parties on November 30, 2011 and approved as to form by
26 their attorneys on December 1, 2011. In full and final resolution of this action, DEPARTMENT and
27 ACA (collectively, “the Parties”) stipulate and agree as follows:

28 WHEREAS, on June 7, 2011 ACA filed a Verified Petition for Writ of Mandate and
Complaint for Preliminary and Permanent Injunctive Relief against DEPARTMENT in Alameda
County Superior Court, Case No. RG11579426 (“LITIGATION”) under the California

1 Environmental Quality Act (Public Resources Code sections 21000, *et seq.*) ("CEQA") challenging
2 DEPARTMENT'S failure to adopt an Environmental Impact Report and failure to adopt a
3 Mitigation Monitoring Plan for the Route 84 Safety Improvement Project between the Rosewarnes
4 Underpass and Farwell Underpass (PM 12.1/13.3) and Project Approval of the same; and

5 WHEREAS, on June 23, 2011, ACA's motion for preliminary injunction was granted by this
6 Court; and

7 WHEREAS, the Parties desire to compromise and settle all claims asserted between them and
8 to fully and finally resolve LITIGATION in its entirety as provided for in this Stipulation;

9 NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and for
10 other good and valuable consideration, the adequacy of which are hereby acknowledged, the Parties
11 agree as follows:

12 1. DEPARTMENT will:

13 a. Within (5) calendar days of the EFFECTIVE DATE of this Agreement: i)
14 notify Ghilotti Construction, the contractor for the current construction contract
15 for the PROJECT, that the DEPARTMENT will be terminating the contract as
16 described below in paragraph 3; and, ii) notify the California Department of
17 Fish & Game, U.S. Army Corps of Engineers, California Regional Water
18 Quality Control Board, Federal Highway Administration and U.S. Fish and
19 Wildlife Service (collectively "THE PERTINENT REGULATORY
20 AGENCIES") that the DEPARTMENT will be rescinding its certification of
21 the June 2006 PROJECT Initial Study/Negative Declaration for the Project, and
22 its June 30, 2006 Project Report and project approval for the PROJECT within
23 50 calendar days of the EFFECTIVE DATE or upon completion of
24 CONSTRUCTION CONTRACT CLOSE-OUT ACTIVITIES, whichever
25 comes first.

26 b. Within fifty (50) calendar days of the EFFECTIVE DATE: i) rescind its
27 certification of the June 2006 Initial Study/Negative Declaration for the Route
28 84 Safety Improvement Project between the Rosewarnes Underpass and

1 Farwell Underpass ("PROJECT"); ii) rescind its June 30, 2006 Project Report
2 and project approval for the PROJECT; and iii) provide notice to THE
3 PERTINENT REGULATORY AGENCIES of the same.

4 2. DEPARTMENT will not base any future project approval on the June 30, 2006 Project
5 Report or the June 2006 PROJECT Initial Study/Negative Declaration.

6 3. In connection with rescission of PROJECT Approval and the June 2006 PROJECT
7 Initial Study/Negative Declaration, DEPARTMENT will, within forty-five (45) calendar days
8 of the EFFECTIVE DATE, terminate the current construction contract for the PROJECT
9 (Contract No. 04-174414) as evidenced by (i) issuance of a written notice signed by the
10 Director specifying that the contract is to be terminated and (ii) formal acceptance of the
11 contract. The Parties agree and understand that termination of said contract requires
12 CONSTRUCTION CONTRACT CLOSE-OUT ACTIVITIES at the PROJECT site necessary
13 as a result of the PROJECT being halted in the midst of active construction. Such
14 CONSTRUCTION CONTRACT CLOSE-OUT ACTIVITIES are not in furtherance of the
15 PROJECT, but are necessary to restore the highway as much as possible to its pre-construction
16 condition and to secure the existing highway for traffic safety and operational purposes. The
17 CONSTRUCTION CONTRACT CLOSE-OUT ACTIVITIES will occur solely within the
18 DEPARTMENT'S existing right-of-way. THE CONSTRUCTION CONTRACT CLOSE-
19 OUT ACTIVITIES will consist of the following work items: removal of stockpiled materials
20 from the construction site; restoration and refreshment of striping on the shoulders and
21 travelled way; reinstallation of rumble strips on the travelled way; restoration of pre-existing
22 drainage facilities altered during construction; replacement, repainting and refreshing of K-rail
23 affected by construction activities, including installation of required safety features at the end
24 of said K-rail; and general tidying up and removal of construction area signs. The
25 CONSTRUCTION CONTRACT CLOSE-OUT ACTIVITIES will begin as soon as possible
26 after the EFFECTIVE DATE and will be completed within forty-five (45) days of the
27 EFFECTIVE DATE. The CONSTRUCTION CONTRACT CLOSE-OUT ACTIVITIES are
28 weather dependent and the DEPARTMENT estimates that this work will require

1 approximately ten (10) working days.

2 4. In the event DEPARTMENT elects to proceed with a subsequent project to widen
3 State Route 84 from the Rosewarnes Underpass to the Farwell Underpass in Niles Canyon in
4 Alameda County, DEPARTMENT will initiate and undertake environmental review of said
5 project as required by CEQA (including any CEQA requirements as to public notice, review
6 and comment) and DEPARTMENT will apply for any new permits required by THE
7 PERTINENT REGULATORY AGENCIES for any such project.

8 5. DEPARTMENT will comply with the 401 Certification mitigation requirements
9 triggered by actual construction work that took place on the PROJECT and will continue to
10 work closely with the California Regional Water Quality Control Board to ensure that such
11 measures are appropriately implemented.

12 6. DEPARTMENT will pay ACA \$147,000.00 in attorneys fees and costs
13 ("SETTLEMENT AMOUNT") in full settlement of ACA's potential claim for attorneys fees
14 relating to the LITIGATION, by check made payable to Lippe Gaffney Wagner Attorney
15 Client Trust Account and received at Lippe Gaffney Wagner LLP, 329 Bryant Street, Suite
16 3D, San Francisco, CA 94107 by no later than fifty-five (55) days after the EFFECTIVE
17 DATE.

18 7. Within five (5) days of the EFFECTIVE DATE, ACA will file this Agreement with the
19 Alameda County Superior Court. The parties hereby stipulate to the Court entering an Order
20 (in the form attached hereto) that will incorporate and enter the terms of this Agreement and
21 that will maintain the Court's jurisdiction over the LITIGATION pursuant to C.C.P. §664.6 to
22 enforce the Agreement until Dismissal of this LITIGATION as provided herein. Within five
23 (5) court days of receipt of notice of the DEPARTMENT's completion of each of the
24 obligations in sections 1(a), 1(b), 3 and 6 of this Stipulation, ACA shall file and serve a
25 Dismissal with prejudice of the LITIGATION in its entirety.

26 8. ACA hereby releases and waives any and all claims, defenses, suits or administrative
27 proceedings of any type or nature as to the DEPARTMENT's certification of the June 2006
28 Initial Study/Negative Declaration for the Niles Canyon State Route 84 Safety Improvement

1 Project between the Rosewanes Underpass and Farwell Underpass ("PROJECT") and June
2 2006 Project Report and approval of the Project.

3 9. The Parties represent that they have not abandoned, assigned or transferred to any
4 person or entity the claims or causes of action in the LITIGATION or any part thereof and
5 agree that this Stipulation is full, complete, unconditional and final resolution of the
6 LITIGATION, leaving no remaining claims or assertions between them.

7 10. This Stipulation is solely between and for the benefit of the Parties herein in resolution
8 of the LITIGATION. The parties agree that nothing in this Stipulation is intended, nor shall
9 be construed, to confer any rights, remedies or benefits to any person(s) or entities not a party
10 to this Stipulation.

11 11. The Parties do not waive any of their defenses, rights, immunities or privileges under
12 the law by this Stipulation, except as expressly stated herein.

13 12. The parties intend that this Stipulation is a completely integrated agreement, and that
14 all prior and contemporaneous discussions and negotiations are superseded by, and merged
15 thereof into, the within Stipulation.

16 13. This Stipulation may be executed in counterparts, each of which may be deemed an
17 original, but all of which together shall constitute one and the same instrument. The exchange
18 of copies of this Stipulation and of signature pages by facsimile or e-mail shall constitute
19 effective execution and delivery of this Stipulation and may be used in lieu of the original for
20 all purposes.

21 14. The signatories to this Stipulation represent and warrant that each is authorized to
22 bind their respective party to the terms and conditions of this Stipulation. ACA agrees to
23 indemnify and hold harmless DEPARTMENT from any claim that the signatory for ACA did
24 not or does not have such authority.

25 15. In executing this Stipulation, the Parties acknowledge that they have read and
26 understood the contents of this Stipulation, have conferred with their respective legal counsel,
27 have chosen to sign this Stipulation with a conscious understanding of their options and
28 associated consequences, and have not relied on any statements, comments, warranties, or

1 representations made by any person representing or claiming to represent the other Party.

2 16. Each Party cooperated in the drafting and preparation of this Stipulation with the
3 advice of counsel and the rule that an agreement shall be construed against the drafter shall not
4 apply.

5 17. The Parties acknowledge and agree that the execution of this Stipulation and the
6 respective performance under the provisions herein are the result of compromise, and are entered
7 into in good faith, and shall not be considered as an admission of any facts alleged in the litigation,
8 or of liability, fault or responsibility concerning any of the allegations or disputes related to the
9 claims in the LITIGATION, and no past or present wrongdoing on the party of any of the Parties
10 shall be implied by this Stipulation or its terms.

11 18. All notices under this Agreement shall be in writing and shall be deemed received when
12 (i) three (3) business days after being delivered via facsimile with receipt confirmed on the sender's
13 facsimile machine, provided that a "hard copy" thereof is promptly thereafter sent by United States
14 mail, postage prepaid and properly addressed, or (ii) three (3) business days after being sent by
15 United States mail, postage prepaid and properly addressed for next day delivery, to the Parties at the
16 following addresses (or such addresses as they may from time to time designate by like notice):

17 Alameda Creek Alliance
18 Jeff Miller
19 P.O. Box 2626
20 Niles, CA 94536
(415) 777 9809 facsimile

21 With a Copy to:
22 Brian Gaffney, Esq.
23 Lippe Gaffney Wagner LLP
24 329 Bryant Street, Suite 3D
San Francisco, CA 94107
(415) 777 9809 facsimile

25 California Department of Transportation – Legal Division
26 Derek van Hoften
27 595 Market Street, 17th Floor
San Francisco, California 94105
(415) 904 2333 facsimile

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1 19. ~~In the event a motion or other proceeding is instituted by any Party to enforce this~~
2 Agreement, the prevailing party shall be entitled, pursuant to C.C.P. §1021.5 or any other applicable
3 provision, to file a motion to recover its reasonable attorneys fees and costs incurred in connection
4 with pursuing such action.

5 20. This Agreement may not be amended, modified, changed, abrogated or superseded except
6 by a writing executed by all Parties.


7 21. The EFFECTIVE DATE is the date that this Stipulation is fully executed by ACA and the
8 DEPARTMENT.

9 22. This Agreement and the rights and obligations of the Parties hereunder shall be governed
10 by the laws of the State of California.

CALIFORNIA DEPARTMENT OF TRANSPORTATION - LEGAL DIVISION
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Telephone: (415) 904-5700, Facsimile: (415) 904-2333

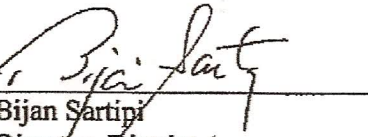
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12
13 Dated: 12/12/11

ALAMEDA CREEK ALLIANCE

14
15 By: 
16 Jeff Miller
17 Director, Alameda Creek Alliance

18 Dated: 12-12-11

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

19
20 By: 
21 Bijan Sartipi
22 Director, District 4
California Department of Transportation

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APPROVED AS TO FORM:

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Dated: _____

LIPPE GAFFNEY WAGNER LLP

By: _____

Brian Gaffney
Counsel for Petitioner
Alameda Creek Alliance

Dated: 12-12-11

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: *Derek van Hoften*

Derek van Hoften
Counsel for Respondent
California Department of Transportation

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EXHIBIT A

1 RONALD W. BEALS, Chief Counsel
2 DAVID GOSSAGE, Deputy Chief Counsel
3 LUCILLE Y. BACA, Assistant Chief Counsel
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALAMEDA CREEK ALLIANCE,
a non-profit California Corporation

Petitioner and Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION, and DOES 1 through 20,
inclusive,

Respondents and Defendants.

Case No. RG11579426
[PROPOSED] ORDER

Based upon the entire record of this action, and for good cause shown, it is hereby ordered that:

1. The terms of the attached Stipulation and Settlement Agreement, filed December __, 2011, are incorporated herein and entered as an Order of the Court.
2. The Court shall retain jurisdiction to enforce compliance with the terms of the Stipulation and Settlement Agreement until Dismissal of this action as provided in the Stipulation and Settlement Agreement.

DATED: _____

HON. FRANK ROESCH
JUDGE OF THE SUPERIOR COURT

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