

## SETTLEMENT AGREEMENT

*California v. U.S. Dep't of Transportation*, No. 3:19-cv-02754-JD (N.D. Cal.)

1. Plaintiffs, State of California and California High-Speed Rail Authority (the Authority), have brought an action against Defendants, U.S. Department of Transportation (DOT); Pete Buttigieg, in his official capacity as Secretary of Transportation; Federal Railroad Administration (FRA); and Amitabha Bose, in his official capacity as Deputy Administrator of the Federal Railroad Administration captioned *California v. U.S. Dep't of Transportation*, No. 3:19-cv-02754-JD (N.D. Cal.) (the "Case"). In the Case, Plaintiffs allege that FRA's May 2019 termination of the Fiscal Year 2010 Cooperative Agreement (the FY10 Agreement) violated the Administrative Procedure Act, 5 U.S.C. § 706, because it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

2. Defendants deny the allegations of Plaintiffs in the Case, and the issue of liability has not been litigated.

3. The Parties believe this Settlement Agreement is fair, reasonable, and adequate to protect the interests of all parties.

### DEFINITIONS

4. "FY10 Agreement" means Cooperative Agreement FR-HSR-0118-12-01-01, which was executed in November 2011 and subsequently amended in January 2017, and which obligated \$928,620,000 in Federal funds to the Authority.

5. "Amended FY10 Agreement" means the Amended FY10 Cooperative Agreement negotiated by the parties and a copy of which is attached as Exhibit A to this Settlement Agreement.

6. “Effective Date” means the date on which this Settlement Agreement has been signed by counsel for all parties.

7. “Days” means calendar days, including weekends and holidays.

#### **RELEASE OF CLAIMS AND DISMISSAL**

8. Plaintiffs (and their heirs, administrators, successors, or assigns) hereby release, waive, acquit, and forever discharge Defendants (along with Defendants’ administrators, successors, officers, employees, and agents) from, and are forever barred and precluded from prosecuting, any and all claims, causes of action, or requests for any monetary or injunctive relief (whether in administrative or in judicial proceedings), whether presently known or unknown, that have been or could have been asserted in the Case by reason of, with respect to, in connection with, or which arise out of, any matters alleged in the Case.

9. Plaintiffs and their counsel release and forever discharge all claims against Defendants for monetary relief they have asserted or could have asserted in this Case for attorney’s fees, costs, and expenses incurred to date and through the date on which Plaintiffs file the Rule 41(a)(1)(A)(ii) stipulation pursuant to Paragraph 11, including but not limited to fees, costs, and expenses associated with this Settlement Agreement, and for any and all attorney’s fees, costs, and expenses that may accrue after the date on which Plaintiffs file the Rule 41(a)(1)(A)(ii) stipulation pursuant to Paragraph 11 in connection with this Settlement Agreement, including but not limited to fees, costs, and expenses for any and all monitoring, implementation, or enforcement of, or motion practice related to, this Settlement Agreement.

10. Defendants and their counsel release and forever discharge all claims against Plaintiffs for monetary relief they have asserted or could have asserted in this Case for attorney's fees, costs, and expenses incurred to date and through the date on which Plaintiffs file the Rule 41(a)(1)(A)(ii) stipulation pursuant to Paragraph 11, including but not limited to fees, costs, and expenses associated with this Settlement Agreement, and for any and all attorney's fees, costs, and expenses that may accrue after the date on which Plaintiffs file the Rule 41(a)(1)(A)(ii) stipulation pursuant to Paragraph 11 in connection with this Settlement Agreement, including but not limited to fees, costs, and expenses for any and all monitoring, implementation, or enforcement of, or motion practice related to, this Settlement Agreement.

11. Within 3 days of the Effective Date, Plaintiffs shall file a joint stipulation of dismissal of this case, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii); a copy of the joint stipulation to be filed is attached as Exhibit B.

#### **AMENDED FY10 AGREEMENT**

12. Within 3 days of the Effective Date, authorized representatives of the FRA and the Authority shall execute the Amended FY10 Agreement, a copy of which is attached as Exhibit A, through Grantsolutions, FRA's grants management system. The Amended FY10 Agreement, including the re-obligation of \$928,620,000.00, shall take effect upon full execution by both FRA and the Authority.

#### **ADDITIONAL PROVISIONS**

13. *Authority.* Each Party to this Settlement Agreement represents to all other Parties that each has full power and authority to enter into this Settlement Agreement, that the execution of this Settlement Agreement will not violate any other agreement

binding the Party, and that this Settlement Agreement is a valid and binding obligation on the Party, enforceable in accordance with its terms. The signatories to this Settlement Agreement expressly warrant that they have been authorized to execute this Settlement Agreement and to bind their respective Parties to its terms and provisions.

14. *Knowing Agreement.* Each Party acknowledges that they are represented by counsel and that they have reviewed, and had the benefit of legal counsel's advice concerning, all the terms and conditions of this Settlement Agreement.

15. *No Admission of Liability.* This Settlement Agreement shall not be construed as an admission by Defendants of the truth of any of the allegations or the validity of any claim asserted in the Case, or of the liability of Defendants, nor as a concession or an admission of any fault or omission of any act or failure to act, or of any statement, written document, or report heretofore issued, filed, or made by Defendants. The Settlement Agreement, any confidential papers related hereto and created for settlement purposes only, and any terms of either, shall not be offered or received as evidence in any civil, criminal, or administrative action or proceeding, nor shall they be the subject of any discovery or construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of Defendants, nor as an admission by any Party to this Settlement Agreement that the consideration to be given hereunder represents the relief which could have been recovered after trial.

16. *Integration.* This Settlement Agreement, and its attachments and addenda, constitute the entire agreement of the Parties, and no prior statement representation, agreement, or understanding, oral or written, not contained herein, shall have any force or effect.

17. *Headings.* The headings in this Settlement Agreement are for the convenience of the Parties only and shall not limit, expand, modify, or aid in the interpretation or construction of this Settlement Agreement.

18. *Severability.* Should any non-material provision of this Settlement Agreement be found by a court to be invalid or unenforceable, then: (A) the validity of other provisions of this Settlement Agreement shall not be affected or impaired; and (B) such provisions shall be enforced to the maximum extent possible.

19. *Jointly Drafted Agreement.* This Settlement Agreement shall be considered a jointly drafted agreement and shall not be construed against any party as the drafter.

#### **COUNTERPARTS**

20. This Settlement Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

#### **EFFECTIVE DATE**

21. This Settlement Agreement shall take effect upon being signed by counsel for all Parties.

#### **SIGNATURES**

22. By their signatures below, the Parties, by and through counsel, indicate their consent to the terms and conditions set forth above.

Dated: June 10, 2021

U.S. DEPARTMENT OF JUSTICE

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