

MAY 01 2008

MAR 03 2008

ATTACHMENT 10



Central Valley Farmland Trust

8788 Elk Grove Blvd, Bldg 1, Ste I  
Elk Grove, CA 95624  
916-687-3178 phone  
916-685-1041 fax  
www.valleyfarmland.org

February 28, 2008

Mr. Donald K. Lupul, Attorney at Law  
City of Manteca  
165 St. Dominic Drive, Ste 202  
Manteca, CA 95337-7801

Board Officers

Tim Byrd, Modesto  
President

Maxwell Norton,  
Merced  
First Vice President

Ken Oneto, Elk Grove  
Second Vice President  
and Secretary

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Modesto  
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Directors

Monica Bianchi  
Don Bo  
Markus Bokisch  
Jani Ferrari  
Janie Gatzman  
Linda Macedo  
Mike Van Horn

Subject: Farmland Mitigation Fees

Dear Don,

This confirms CVFT's receipt from the City of Manteca of \$608,426.44 for farmland mitigation fees collected through December 31, 2007.

Our general administrative costs are very low. We have only two paid staff members, one office covering 4 counties, and over 40 unpaid volunteers. However, we rely upon mitigation fees to cover a portion of our general administrative and overhead costs. Therefore we will initially allocate and use 10% of the fees collected for unrestricted general administrative costs.

The remaining 90% portion of the collected fees will be used for specific conservation easement projects in the areas to be protected pursuant to the applicable settlement agreement. This includes costs for outreach, easement transaction and acquisition costs, and easement monitoring and enforcement.

Furthermore, CVFT invests mitigation proceeds in a single liquid, high quality, and conservative investment account. The investment income, while modest, is also used for the general administration costs of the CVFT and is considered unrestricted.

Please have the enclosed copy of this letter signed by an authorized agent of the City and return the signed letter to my office.

Respectfully submitted,

Bill H Martin  
Executive Director

Agreed: City of Manteca

By: Date: 4/7/08  
Name: Willie W. Weathersford  
Title: Mayor

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is entered into by and between the City of Manteca, a Municipal Corporation and the Central Valley Farmland Trust, Inc., a California Non-Profit Public Benefit Corporation.

**RECITALS**

WHEREAS the Central Valley Farmland Trust, Inc., a California Non-Profit Public Benefit Corporation is organized and existing under the California Non-Profit Corporation law with its principal place of business located at 8788 Elk Grove Boulevard, Building 1, Suite I, Elk Grove, California, 95624 (hereinafter "CVFT") and;

WHEREAS CVFT specific purpose is to acquire or accept property interests, including conservation easements from willing sellers who want to preserve their farmland and related natural resources. CVFT seeks to obtain funding to hold and oversee conservation easements and other interests, to promote educational programs, policies projects and community involvement to protect farmland; and

WHEREAS the City of Manteca is a party to settlement agreement which is attached hereto and marked as Exhibit "A"; and

WHEREAS said agreement generally provides that the City of Manteca shall collect from developers a fee to mitigate for loss of farmland. The sum of \$1,000.00 per development acre is to be paid to a Farmland Trust to carry out mitigation and the City is to receive \$1,000.00 per development acre for similar purposes; and

WHEREAS the City of Manteca believes that CVFT is able to fulfill the intent of the settlement agreement it therefore is understood between the parties as follows:

The City of Manteca shall pay CVFT the sum of \$1,000.00 per development acre for each acre of the Farmland Mitigation fee collected by the city to carry out the purposes set forth in the settlement agreement.

Further the City of Manteca has determined it is not practical and not effective for it to supervise funds allocated to it under the settlement and that a greater mitigation impact can be obtained by having CVFT administer the funds it collects under the settlement agreement. The City

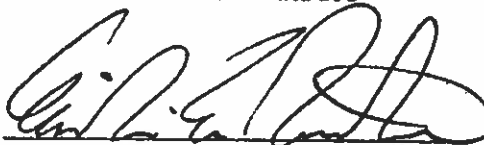
of Manteca will therefore forward to CVFT the funds it has collected and will collect under the settlement to carry out the purposes of the settlement agreement.

The City of Manteca reserves the right to audit the disbursements made under their Memorandum of Understanding upon reasonable notice to CVFT.

CENTRAL VALLEY FARMLAND TRUST

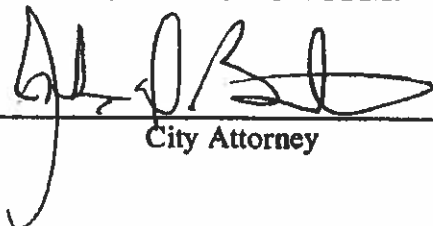
By: 

CITY OF MANTECA

By:   
Mayor

  
City Clerk

APPROVED AS TO FORM:

 12-12-07  
City Attorney

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("*Agreement*") is entered into by and between Sierra Club through its Mother Lode Chapter, Delta Keeper and California Sport fishing Protection Alliance (collectively "*Organizations*") and the City of Manteca ("*Manteca*"), the City of Tracy ("*Tracy*"), the City of Lathrop ("*Lathrop*"), the City of Escalon ("*Escalon*"), South San Joaquin Irrigation District and its Board of Directors. Manteca, Tracy, Lathrop and Escalon are referred to herein collectively as the "*Cities*." South San Joaquin Irrigation District and its Board of Directors are referred to herein collectively as "*SSJID*." SSJID and the Cities are referred to herein collectively as the "*Agencies*." The entities entering into this Agreement are each referred to herein as "*Party*" and collectively "*Parties*."

### RECITALS

- A. On June 30, 2000, Organizations filed a Verified Petition for Writ of Mandate in the San Joaquin County Superior Court, Case No. CV 011090, challenging the approval by SSJID of the South County Water Supply Project ("*Project*") under the California Environmental Quality Act. The petition also challenged SSJID's certification of an environmental impact report for the Project. This litigation is herein referred to as the "*Action*."
- B. On July 26, 2001, the court signed a Decision on Petition for Mandamus denying the Petition for Writ of Mandate. The decision was filed on July 26, 2001.
- C. A Notice of Appeal was received by the Third District Court of Appeal on October 30, 2001. Briefing to the Court of Appeals is complete. Oral argument has not been scheduled.
- D. The Parties desire to compromise the Action completely among themselves and to avoid the expense of litigation.

NOW, THEREFORE, the Parties agree as follows:

### AGREEMENT

1. As used herein, the following terms have the following meanings:
  - A. "*Claim*" means any claim, demand, controversy, action, causes of action, civil proceeding, administrative proceeding, obligation, damages and liabilities of any nature whatsoever.
  - B. "*Effective Date*" means September 22, 2003.
  - C. "*Prime Farmland*," "*Farmland of Statewide Importance*," or "*Unique Farmland*" means any land identified by the California Department of Conservation's Farmland Mapping and Monitoring Program as Prime Farmland, Farmland of Statewide Importance or Unique Farmland.
  - D. "*Infill project*" means any of the following:

- 1). Development of unused or underutilized land within the urban limits of any City, such land being adjacent to existing development on three sides;
- 2). Any development within an "infill zone" in the City of Tracy as defined by that City's Municipal Code; or
- 3). Any development within the original City Limits of the City of Lathrop, as bounded by Roth Road on the north, Interstate 5 on the west, the Union Pacific Railroad (formerly Southern Pacific Railroad) right-of-way from Interstate 5 to Vierra Road/Yosemite Avenue on the south, and the Union Pacific Railroad right-of-way from Yosemite Avenue to Roth Road on the east.

E. "*Agricultural mitigation land*" means an easement or fee interest in property that restricts the primary use of the land to agricultural production in perpetuity. (Long-term leases entered into by a City for spraying effluent do not qualify for an easement under this agreement.)

2. Agencies shall pay collectively \$850,000, as follows: \$500,000 upon execution of this Agreement; \$100,000 in each of 2004 and 2005; and the balance in 2006. The purpose of the contribution is to fund water quality programs that benefit the Stanislaus River ecosystem, the lower San Joaquin River ecosystem or the San Francisco Bay-Delta ecosystem. The funds shall be divided equally between the U.C. Davis Toxic Aquatics Lab for water quality monitoring on the San Joaquin River, its tributaries and the Southern Delta; and The Rose Foundation. The Rose Foundation shall distribute at least 85% of the funds to projects to improve water quality in the San Joaquin River, and its tributaries and the Southern Delta. Agencies shall determine their respective contributions by separate agreement.

3. Within six months of the effective date of this Agreement or such additional time as is reasonably required, the Cities of Manteca, Lathrop and Tracy shall, consistent with the provisions of the Mitigation Fee Act (California Government Code Section 66000, et seq.) adopt a "Farmland Conversion Fee" as follows:

A. For each acre, or portion thereof, of Prime Farmland, Farmland of Statewide Importance, or Unique Farmland (hereinafter "Prime Farmland") to be developed for private urban uses including residential, commercial, or industrial, the Fee shall be \$2,000 per acre, or portion thereof, of Prime Farmland. Nothing in this Agreement shall restrict a City from imposing a fee larger than \$2,000 per acre and using the additional fee proceeds without the restrictions in this Section 3.

B. The Farmland Conversion Fee shall be imposed at the time of building permit issuance unless the imposition of the Fee is legally precluded by the existence of a vested right created by a development agreement, vesting tentative map, or other means.

C. The \$2000-per acre Farmland Conversion Fee shall be paid to a trust or other nonprofit organization in San Joaquin County which has its primary purpose the preservation of farmland or open space, administers contributions from public agencies and private persons for such purposes and prepares audited financial statements for public

review on an annual basis.

i) The parties agree to use an organization currently in the formation process known as the San Joaquin Agricultural Land Trust or its successor entity, provided that the Trust is formed within 1 year from the date of this Agreement, a majority of the members of its Board of Directors are from the agricultural community, the Trust covenants to Cities to administer the funds it receives from the Cities on the terms stated in this Section and provided further that no City has raised reasonable objections to the Trust's structure, capability or dedication to fulfill the purposes stated above within 45 days after the City's receipt of the Trust's incorporation documents, bylaws and documentation establishing its management. The Trust shall further agree that an interest in land acquired with City funds shall not be transferred by the Trust without the City's consent.

ii) If a City does raise such objections within such period of time, or at any time after the Trust's raises reasonable objections to the Trust's management or performance, the Sierra Club shall work with City and the Trust to resolve the differences. If such objections are not resolved within 120 days, the parties agree to return to the trial court in this proceeding for resolution of this matter. The parties agree that the trial court in this matter will retain jurisdiction in this case to resolve disputes over the expenditure of those funds to be administered by the Trust. If the trial court is unwilling or unable to resolve such disputes, the parties designate the presiding judge of San Joaquin County or his designee to appoint a trust or nonprofit organization in San Joaquin County that meets the requirements stated in this Section and which agrees to administer that City's contribution on the terms required in this Section.

iii) \$1,000 of the \$2,000 fee shall be paid to the Trust or other organization as described above and shall be used in good faith by the Trust to purchase agricultural easements in the vicinity of the city which contributed the fee and which furthers the goals of the city collecting the Fee to establish an urban boundary or open space buffer zone between it and other cities in San Joaquin County. The Trust shall work with the parties to identify key target areas for each of the three cities for the purchase of easements.

iv) Fees paid under this Agreement prior to the establishment of the SJ Agricultural Land Trust shall be held in escrow accounts by the individual cities and shall be immediately transferred to the Trust when incorporation status has been achieved, bylaws have been adopted and has agreed to administer the funds as provided in subsection 3(c)(iii) above. If these actions do not occur within one year from the date of this Agreement, the Cities may expend the funds according to the allocations in subsection 3(c)(v) below until such time as the Trust is formed and has agreed to administer the funds as provided in subsection 3(c)(iii) above.

v) Cities shall use the remaining \$1,000 as follows: \$250 per acre for the

purchase of agricultural easements, which may not be used for the disposal of wastewater effluent to be held by the City or by the Ag Trust, and \$750 for the purchase of agricultural easements which may be used for the disposal of wastewater effluent.

vi) The allocation of fees and purchase of specific types of easements shall be reconciled on a two year cycle. The agricultural mitigation land purchased by the Cities shall be held by the Cities or by the San Joaquin Agricultural Land Trust, in the Cities' sole discretion.

vii) If a City disposes of any of the land, it shall first grant a Conservation Easement over the land pursuant to sections 815 through 816 of the Civil Code.

viii) The following specific projects are excluded from the requirements of this paragraph 3:

ix) The Tracy Gateway project, which has already agreed to an ag mitigation program (unless it receives any SSJID water, in which case the project's current agricultural mitigation fee will be increased from \$750 per acre to \$2,000 per acre according to this agreement);

x) The Tracy Hills project (unless it receives any SSJID water, in which case the project would be subject to the agricultural mitigation fee of \$2,000 per acre according to this agreement, for every acre of prime farmland in that project converted);

xi) Projects with signed development agreements such as Califia/River Islands and Mossdale Landing (Lathrop) and Presidio and B of A (Tracy);

xii) Richland Communities (Lathrop), except to the extent that the developer agrees to pay the Farmland Conversion Fee pursuant to a separate agreement with the Sierra Club.

xiii) Any development application for any property in the City of Tracy that has an Equivalent Consumer Unit ("ECU") or Residential Growth Allotment ("RGA") on or before the Effective Date of this Agreement, unless the ECU or RGA has expired, after which the project will be subject to the fee (this includes Plan C, South MacArthur, ISP, NEI and I-205);

xiv) Any infill project, as defined in paragraph 1(d); and

xv) Any project that has been conditioned on the payment of a fee for agricultural land mitigation or any other exaction imposed to mitigate for loss of agricultural land on or before the Effective Date of this Agreement (e.g. Tracy Gateway).

D. The duty imposed by this paragraph 3 is continuing until such time that the city has applied the Farmland Conversion Fee ordinance to eighty percent of the city's share of water from the SSJID project in acre-feet divided by 3 acre-feet per acre which is calculated in the following amounts for the Cities: Lathrop- 2,135 acres in the first phase of the Project and a total of 3,144 acres in the second phase of the Project; Manteca -3067 acres in the first phase and a total of 4933 acres in the second phase of the Project; and Tracy - 2667 acres; unless:

i) any person or entity initiates a civil or administrative action, claim or proceeding that may affect SSJID's water rights as related to the Project; or

ii) any person or entity initiates a civil or administrative action, claim or proceeding against the Project.

iii) any person's or entity's successful legal challenge of a City's Farmland Conversion Fee adopted pursuant to Paragraph 3 of this Agreement. Each City shall defend any challenge to its ordinance at the trial level, but shall not be responsible for appealing beyond the trial level any adverse decision to the Farmland Conversion Fee.

iv) the Farmland Conversion Fee cannot be legally imposed as against a particular development project.

E. Organizations agree not to contest the adequacy of mitigation imposed by a City for loss of farmland to development so long as the City imposes the Farmland Conversion Fee.

F. This paragraph 3 of this Agreement is subject to the definitions and terms set forth in paragraph 1 of this Agreement.

G. Escalon is not subject to the provisions of this paragraph 3.

4. SSJID shall issue a check in the amount of \$116,000 and made payable to Donald B. Mooney in settlement of any Claim for attorney's and costs fees relating to the Action.

5. The Parties shall file a Stipulation for Stay of Proceedings after all Parties have signed this Agreement. Organizations shall file a request to dismiss the Appeal, with prejudice, under California Rule of Court 20 within 5 court days after the third City's adoption of the Farmland Conversion Fee.

6. Except for the ability to enforce this Agreement, the Parties release and forever discharge the other, and their parent, subsidiary, affiliated organization, governing body, successors and assigns and each of their respective directors, officers, representatives, employees, agents and attorneys (collectively "*Released Parties*") of and from and waive any and all Claims, whether at law or in equity they ever had, now have, may have, or that ever may arise in the future against the Released Parties arising out of the subject matter of the Action or in any way related



to the Project. This Agreement is binding on the Parties and their governing bodies, agents, employees, successors, assigns, directors, officers, representatives, chapters, members, agents, attorneys, subsidiaries, parent organizations and affiliates.

7. Organizations will not commence, maintain, continue or voluntarily assist in any way in the prosecution of any Claim against the Agencies relating to any matter waived or released in this Agreement.

8. Organizations shall not initiate, support or participate in any Claim that may affect the Project or SSJID's water rights for supplying the Project, so long as no more than 44,000 acre-feet per year is supplied to the Project by SSJID. Organizations will not protest, take action against, or do anything that potentially impairs any effort or attempt by SSJID to amend, alter, transfer or in any way change its water rights for supplying the Project, so long as no more than 44,000 acre-feet per year of Stanislaus River water is supplied to the Project by SSJID. Nothing within this Agreement shall be interpreted as preventing or prohibiting Organizations from participating in multi-party proceedings or initiating multi-party proceedings that may have an indirect impacts on SSJID's collective water rights, such as Bay-Delta proceedings, TMDL standards, public trust obligations, etc., provided that Organizations do not challenge or contest the water rights used by SSJID to supply the Project.

9. Except as otherwise set forth herein, to the greatest extent possible, the parties, and each of them, expressly waive their rights under Section 1542 of the California Civil Code, which provides as follows:

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

10. Each Party declares that prior to the execution of this Agreement, it or its duly authorized representatives have apprised themselves of sufficient relevant data, either through experts or other sources of their own selection, in order that each Party might intelligently exercise its judgment in deciding whether to execute, and in deciding on the contents of, this Agreement. Each Party assumes the risk that facts, other than those facts that are represented or warranted to be true in this Agreement, may later be found to be other than or different from the facts now believed by it to be true. Each party declares that its decision to execute this Agreement is not influenced by any representation other than expressly set forth in this Agreement.

11. Neither the transfer of any consideration, the doing of any of the acts referred to in this Agreement, nor anything else contained in this Agreement shall be construed to be an admission on the part of any of the parties of any liability for or merit of any claims asserted by any of the other Parties. The Parties deny all such claims.

12. Each Party to this Agreement shall at its own expense perform all acts and execute all documents and instruments that may be necessary or convenient within reasonable bounds to carry out its obligations under this Agreement.

13. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California applicable to contracts between California residents made and to be performed in California.

14. The Parties mutually acknowledge they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the Parties caused the uncertainty to exist.

15. All prior agreements or understandings between the parties concerning the subject matter of this Agreement are incorporated into this Agreement, which constitutes the entire contract. This writing is intended by the Parties as the final, complete and exclusive expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous oral or written agreement.

16. No amendment or waiver of any provision of this Agreement will be enforceable or admissible unless set forth in a writing signed by the party against which enforcement or admission is sought. The waiver by any Party of any provision of this Agreement shall apply only to the circumstance expressly described in a signed writing.

17. Each Party represents and warrants that it has the sole right and exclusive authority to execute this Agreement. Each Party represents that he, she or it is duly authorized to enter into this Agreement on behalf of its governing bodies, parent organizations, affiliates and members.

18. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and counterpart signature pages may be assembled to form a single original document. The parties agree signatures received via facsimile transmission shall in all respects be deemed to be original signatures.

SIERRA CLUB

By:

Its

DELTAKEEPER

By:

Its

CALIFORNIA SPORT FISHING ALLIANCE

By:

Its

Approved as to Form

By \_\_\_\_\_  
Donald B. Mooney, Attorney for Sierra  
Club, DeltaKeeper and California  
Sportfishing Alliance

CITY OF TRACY

By: \_\_\_\_\_  
△  
Title: Mayor  
Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
△  
Title: City Clerk  
Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_  
△  
Title: △  
Date: \_\_\_\_\_

CITY OF LATHROP

By: \_\_\_\_\_  
△  
Title: Mayor  
Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_  
△  
Title: △  
Date: \_\_\_\_\_

CITY OF MANTECA

By: \_\_\_\_\_  
△  
Title: Mayor  
Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
△  
Title: City Clerk  
Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_  
△  
Title: △  
Date: \_\_\_\_\_

CITY OF ESCALON

By: \_\_\_\_\_  
Δ

Title: Mayor  
Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Δ

Title: City Clerk  
Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_  
Δ

Title: Δ  
Date: \_\_\_\_\_

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: \_\_\_\_\_

Title: President of the SSJID Board  
Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Title: Secretary of the SSJID Board  
Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_  
Steven Emrick

Title: General Counsel  
Date: \_\_\_\_\_

Bingham McCutchen

By: \_\_\_\_\_  
Stephen L. Kostka, attorneys for South San  
Joaquin Irrigation District and its Board of  
Directors and Cities of Manteca, Escalon, Lathrop  
and Tracy



protecting the farms that feed your family

## OFFICERS:

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President  
Ron Freitas  
Vice President  
Maxwell Norton  
Secretary  
Ken Oneto  
Treasurer

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Tim Byrd  
Mike Darnell  
Ron Doinssek  
Jim Gwarder  
Jon Harvey  
Donny Jackman  
Patrick Johnston  
Jim Jorgensen  
Larry Ruhstaller

## TRUSTEE COUNCIL:

George Gomes  
Ed Nishio  
Emily Rooney  
Paul Wenger

February 11, 2019

Mr. J.D. Hightower, Planning Manager  
Planning Department  
City of Manteca  
1001 W. Center St  
Manteca, CA 95337

Subject: Receipt of Ag Mitigation Fees

Dear J.D.,

This is to acknowledge receipt of the City of Manteca's check (#375377) in the amount of Seventy-Two Thousand One Hundred dollars and eighty-four cents (\$72,100.84).

Pursuant to the Memorandum of Understanding executed in December 2007 and the clarification letter dated February 28, 2008 between the City of Manteca and the Central Valley Farmland Trust the fees will be allocated as follows:

\$ 64,889.96– Applied to transaction costs and stewardship / monitoring.  
7,210.88– Applied to CVFT administrative costs  
\$ 72,100.84

**Please note our new name change, California Farmland Trust and contact information, Charlotte Mitchell. If you have any questions or need additional documentation, please contact me.**

Please review the above and don't hesitate to call with questions.

Sincerely,

Charlotte Mitchell  
Executive Director

RECEIVED  
FEB 14 2019  
COMMUNITY DEVELOPMENT  
DEPARTMENT