

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between the City of Santa Clara, a chartered California municipal corporation ("Santa Clara") and the City of San José, a chartered California municipal corporation ("San José"). "Parties," when referenced herein, includes Santa Clara and San José.

A. WHEREAS, on June 21, 2005, the City of San José approved the North San José Development Policies which included General Plan amendments, modifications to the North San José Area Development Policy, the North San José Deficiency Plan, the Floodplain Management Plan for North San José, and infrastructure implementation. ("North San José Project"). Qualifying as a "project" under the California Environmental Quality Act ("CEQA"), *California Public Resources Code section 21000 et seq. and California Code of Regulations, Title 14, Section 15000 et seq.*, San José prepared and certified an environmental impact report ("EIR") in support of the North San José Project.

B. WHEREAS, on July 28, 2005, Santa Clara filed a petition for writ of mandate, challenging San José's approval of the North San Jose Project, *City of Santa Clara, et al., v. City of San José, et al.*, 1-05-CV-046025. The City of Milpitas ("Milpitas") filed a separate petition for writ of mandate challenging the City of San José's approval of the North San José Project, *City of Milpitas, a municipal corporation v. City of San José, et al.*, 1-05-CV-046013. County of Santa Clara ("County") filed a separate petition for writ of mandate, also challenging San José's approval of the North San José Project, *County of Santa Clara v. City of San Jose, el al.*, 1-05-CV-046005. These actions were consolidated under master case number 1-05-CV-046005 (collectively "Litigation").

C. WHEREAS, trial in the Litigation was held on March 2, 2006, before the Honorable Leslie Nichols. The court ultimately rendered judgment in favor of County, the City of Milpitas, and Santa Clara on the basis that San José's determination that there were no feasible mitigation measures for impacts to transportation facilities under the jurisdiction or control of other public agencies was not supported by substantial evidence. However, the court found that San José's findings were timely made and that San José's findings concerning potable water supply and cumulative impacts on wastewater facilities were supported by substantial evidence.

D. WHEREAS, a Judgment and Peremptory Writ of Mandate were entered on March 28, 2006 and on May 8, 2006, Santa Clara filed a Notice of Appeal from the Litigation before the California Court of Appeal, Sixth Appellate District, Case No. H030242 ("Appeal").

E. WHEREAS, on December 5, 2006, Judge Nichols approved the Stipulation to Discharge Peremptory Writ of Mandate and Order Thereon ("Stipulation") of the three consolidated cases against the City of San José by the County of Santa Clara, the City of Milpitas, and the City of Santa Clara respectively (Master Case No. 1-05-CV046005 (consolidated with 1-05-CV046013 and 1-05-CV046025)) over the adequacy of the EIR for the North San José Project. The Stipulation included three Settlement

Agreements as exhibits. Exhibit 1 to the Stipulation is the settlement agreement with the City of Milpitas (“Milpitas Settlement Agreement”), Exhibit 2 is the Settlement Agreement among the City of San José, the County of Santa Clara, City of Santa Clara, and redevelopment agencies of San José and Santa Clara (“2006 Settlement Agreement”), and Exhibit 3 is the Settlement Agreement with the County of Santa Clara and other County-related agencies (“County Settlement Agreement”). The Stipulation resolved the Litigation and Appeal.

F. WHEREAS, the North San José Area Development Policy (NSJ-ADP) meters development permits in the policy area by the maximum industrial and commercial square footage and the number of housing units that may be developed within each of four phases specified in the NSJ-ADP, along with funding for transportation improvements identified in the policy.

G. WHEREAS, since the adoption of the NSJ-ADP in 2005, there have been significant changes to State laws, priorities and circumstances. Specific examples of changes to State laws, priorities and circumstances include, among others, the following: (i) the State of California requiring San José to identify over 60,000 housing units as part of the upcoming Housing Element; (ii) SB 743 adopted in 2013 replaced Level of Service with Vehicles Miles Traveled; (iii) SB 330 adopted in 2019 prohibiting a cap on housing units; (iv) additional environmental requirements such as reduction in Greenhouse Gas; and (v) approximately 8,000 housing units have been construction in the policy area but less than half of the industrial development.

H. WHEREAS, Santa Clara has alleged an anticipatory breach of the Phase I obligations in the 2006 Settlement Agreement by San José, while San José contends that the conditions precedent and deadlines for the performance of its Phase I and later phase obligations in the 2006 Settlement Agreement have not yet occurred (the “Dispute”).

I. WHEREAS, Santa Clara and San José participated in a mediation process which resulted in a recommended proposal for resolution of the differences between the Parties.

J. WHEREAS, due to changes to State laws, priorities, and circumstances, on May 17, 2022, the San José City Council approved (i) the settlement terms described in this Settlement Agreement between San José and Santa Clara; (ii) amendments to the NSJ-ADP to render it inapplicable to future development in that area; (iii) amendments to the traffic impact fee so that it will not apply to future development approvals in the NSJ-ADP area and will only continue to apply to previously-approved projects where a condition of approval requires the payment of the traffic impact fee; (iv) an Addendum under CEQA for the North San José Amendments; and (v) other actions to amend the NSJ-ADP (hereinafter the “North San Jose Amendments”). San José will maintain the General Plan Planned Job Capacity and Housing contemplated in the North San José Growth Area as detailed in Appendix 5: Growth Areas Planned Capacity by Horizon of the San José 2040 Envision General Plan.

K. WHEREAS, the Parties also acknowledge that San José may receive applications for development approvals prior to the effective date of the North San José Amendments and that it will be required to evaluate and consider the development approvals in accordance with the NSJ-ADP in effect prior to the effective date of such rescission.

L. WHEREAS, the Parties acknowledge that the milestones for the completion of Phase I of the NSJ-ADP and the advancement from Phase I to Phase II of the NSJ-ADP have not yet occurred, and that this Settlement Agreement will replace all of the Parties' benefits and burdens under the 2006 Settlement Agreement relating to all of the phases of development specified in the NSJ-ADP and the 2006 Settlement Agreement. Further, the Parties acknowledge that (i) the County is not a party to this Settlement Agreement; and (ii) this Settlement Agreement does not in any way impact the rights, obligations, or burden under the 2006 Settlement Agreement or County Settlement Agreement as they relate specifically to the County.

M. WHEREAS, the Parties agree that although the San José Redevelopment Agency and Santa Clara Redevelopment Agency are parties to the 2006 Settlement Agreement, there is no payment obligation to, and no enforceable obligation of, the redevelopment agencies in the 2006 Settlement Agreement or this Settlement Agreement that would accrue to the San José and Santa Clara Successor Agencies.

N. WHEREAS, the Parties now undertake to settle the Dispute and issues surrounding the North San José Amendments and 2006 Settlement Agreement in their entirety by entering into this Settlement Agreement, pursuant to which Santa Clara releases and extinguishes on a final basis all claims and potential claims against City arising out of, or in any way connected with, the subject matters described in the Dispute, North San José Amendments and 2006 Settlement Agreement.

NOW THEREFORE, the Parties agree as follows:

1. Incorporation. The Recitals above are hereby incorporated and made a part of this Settlement Agreement by this reference.

2. Effective Date. The Effective Date of this Settlement Agreement shall be the date upon which it is executed by all Parties. The Operative Date of this Settlement Agreement is the effective date of the North San José Amendments ("Operative Date").

3. Scope of Settlement. This Settlement Agreement shall settle, compromise, and forever discharge all claims of any and every kind, nature and character, which Santa Clara alleged, or could have alleged, related to the Dispute, North San José Amendments and 2006 Settlement Agreement arising from or based on any act or omission by the City of San José, City Departments, City elected officials, and all City employees, named or who could have been named in any lawsuit. Nothing in this Settlement Agreement shall affect, bind, or hinder the Parties' exercise of their respective police powers in considering legislative and adjudicative actions on land use and development projects within each Party's respective jurisdictions.

4. Consideration. In consideration for Santa Clara's agreements, promises, covenants, releases, and waivers stated herein, San José agrees to the following:

- a. \$1.5 million to County for the Montague I-880 Interchange. Subject to the terms of a separate written settlement agreement between San José and County, San José agrees to pay a total of One Million Five Hundred Thousand Dollars (\$1,500,000) to the County.
- b. 8-Lane Montague over Guadalupe River from 1st St. to Lick Mill.
  - (i) San José shall commence construction of the 8-Lane Montague over Guadalupe River from 1st Street to Lick Mill project within three (3) years from the Operative Date.
  - (ii) The project is required to be completed within five (5) years from the Operative Date.
  - (iii) San José shall obtain all permits and environmental clearance for the project. In the event that delays outside of San José's control within the time period for completion of construction, San José will promptly notify Santa Clara of any reasons for delays and length of proposed extensions.
  - (iv) In the event that San José fails to complete the project, San José will be required to complete alternative projects of substantially the same value that are beneficial to County and Santa Clara subject to County and Santa Clara's prior consent which shall not be unreasonably withheld.
  - (v) "Unanticipated delay" includes delays in permit review by outside agencies, CEQA litigation, force majeure events including but not limited to weather construction delays, failure to receive responsible or responsive bids for construction contracts, pandemic related delays, supply shortages, unexpected changes in state law that prevents the construction of the project, and other events of similar nature beyond the control of San José.
- c. Tasman Complete Streets Plan 2021 and Montague Expressway and North First Street Improvements (Trimble Flyover Substitute).

Santa Clara will accept completion of the following obligations in lieu of San José's obligations to complete the Trimble Flyover in Section 1.2 of the 2006 Settlement Agreement:

Subject to Section 4.c(vi) below, San José shall contribute a total of Twenty Eight Million Dollars (\$28,000,000) to improvements in the Tasman Complete Streets Plan 2021 (as finally adopted by the Valley Transportation Authority), Montague Expressway & North First Street, or other mutually agreed upon improvements with the County, through investment of Nine Million Three Hundred Forty Thousand Dollars (\$9,340,000) in plan improvements in San José, Nine Million Three Hundred Thirty Thousand Dollars (\$9,330,000) in plan improvements in

Santa Clara, and Nine Million Three Hundred Thirty Thousand Dollars (\$9,330,000) in plan improvements in the County, which may be reduced in accordance with the Subsections below, in the following manner:

- (i) San José shall complete improvements valued at Nine Million Three Hundred Forty Thousand Dollars (\$9,340,000) and Santa Clara shall complete improvements valued at Nine Million Three Hundred Thirty Thousand Dollars (\$9,330,000) under the Tasman Complete Streets Plan 2021 or Montague Expressway and North First Street within its own jurisdictions, but in no case will this obligation exceed the lesser of the full cost of the improvements or Seventy-Five percent (75%) of Nine Million Three Hundred Thirty Thousand Dollars (\$9,330,000), the equivalent of Six Million Nine Hundred Ninety Thousand Dollars (\$6,990,000).
- (ii) Improvements to be constructed within the County's jurisdiction will be subject to a separate settlement agreement between San José and the County.
- (iii) Any money not spent on Tasman Complete Streets Plan 2021, Montague Expressway and North First Street, or mutually agreed upon improvements with the County must have a similar beneficial effect on transportation in the geographic area of the NSJ-ADP.
- (iv) San José shall pay Santa Clara Nine Million Three Hundred Thirty Thousand Dollars (\$9,330,000) for the construction to complete Tasman Complete Streets Plan 2021 improvements within its jurisdiction in accordance with Section 4.c.(i) hereinabove within five (5) years of the Operative Date in accordance with the schedule below:
  - a) One Million Five Hundred Thousand Dollars (\$1,500,000) within ninety (90) days of the Operative Date.
  - b) One Million Five Hundred Thousand Dollars (\$1,500,000) one (1) year following the payment date in Section 4.c(iv)(a) above.
  - c) One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) two (2) years following the payment date in Section 4.c(iv)(a) above.
  - d) One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) three (3) years following the payment date in Section 4.c(iv)(a) above.
  - e) One Million Five Hundred Thousand Dollars (\$1,500,000) four (4) years following the payment date in Section 4.c(iv)(a) above.
  - f) One Million Three Hundred Thirty-Three Thousand Dollars (\$1,330,000) five (5) years following the payment date in Section 4.c(iv)(a) above.
- (v) Santa Clara agrees that payment from San José to Santa Clara in the total amount of Nine Million Three Hundred Thirty Thousand Dollars (\$9,330,000) as described in Section 4.c(iv) above shall

fully satisfy San José's obligation for the Trimble Flyover in Section 1.2 of the 2006 Settlement Agreement.

- (vi) Notwithstanding any of the foregoing, Santa Clara further agrees and acknowledges that San José's commitment to construct improvements within its jurisdiction and the County's commitment to construct improvements within its jurisdiction as described in this Section 4.c shall be subject to a separate written settlement agreement between San José and the County.
- (vii) In the event (a) San José does not enter into a separate settlement agreement (or amended settlement agreement) with the County for construction of improvements valued at Nine Million Three Hundred Thirty Thousand Dollars (\$9,330,000) or more and the statute of limitations period have expired for the County to enforce the 2006 Settlement Agreement, or (b) County does not take any action through mediation, litigation, or otherwise within the applicable statute of limitations period to enforce the 2006 Settlement Agreement or challenge the North San José Amendments, then San José agrees to make an additional payment to Santa Clara in the amount of Four Million Seven Hundred Thousand Dollars (\$4,700,000). This additional payment shall be no earlier than six (6) years following the payment date in Section 4.c(iv)(a) above.

As further described herein, the payments and completion of the obligations described in this Section 4 shall fully compensate Santa Clara for any and all damages claimed, or which Santa Clara could have claimed, arising from or related in any way to the subject matters in the Dispute, North San José Amendments, or related to the 2006 Settlement Agreement.

5. Release. Santa Clara and Santa Clara's representatives, successors, assigns, attorneys, and agents, hereby generally releases and forever discharge San José and all past and present employees, whether or not the employee was named or could have been named individually in any lawsuit. For purposes of this Settlement Agreement, the City of San José includes, without limitation, all City Departments and Agencies, the City Council, all past and present elected and appointed officials, City employees, and any person or entity to which the City may owe an obligation of contractual or implied indemnity relating to a released claim. The release includes, without limitation, any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liens, liabilities, attorney's fees, and demands of whatsoever nature relating to or arising out of the facts or circumstances alleged in the Dispute, North San José Amendments, or related to the 2006 Settlement Agreement, or that could have been alleged in the Dispute, North San José Amendments or related to the 2006 Settlement Agreement, whether or not such claims were actually asserted.

6. Release of Unknown Claims. Santa Clara understands this Settlement Agreement is a full and final settlement of all disputes and matters arising out of any

subject matter identified in this Settlement Agreement, including but not limited to all claims and causes of action asserted, or which could have been asserted in the Dispute, or related to the North San José Amendment and 2006 Settlement Agreement, and all present and future unknown and unanticipated injuries, losses or damages arising out of the Dispute, North San José Amendments, and 2006 Settlement Agreement (the "Released Matters"). Santa Clara acknowledges and understands Section 1542 of the Civil Code of the State of California provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

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Initials

Santa Clara represents that it has read, reviewed with counsel, and understood Civil Code Section 1542, and that it hereby waives all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the subject of the Dispute, North San José Amendments, and 2006 Settlement Agreement based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

7. Liability Not Admitted. The Parties acknowledge and agree that City's payment represents a compromise and release of disputed claims and that neither the payment, nor anything stated in this Settlement Agreement, constitutes or represents an admission by the City, or any other Party, of liability or responsibility of any kind, or a concession by any Party that assertions or allegations regarding the claims alleged herein are valid. Each Party fully assumes the risk that the facts or law surrounding such claims, and/or the other matters settled pursuant hereto, may be other than that Party believes them to be.

8. Parties to Bear Own Attorney's Fees and Costs. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with this Settlement Agreement, and the matters settled pursuant to this Settlement Agreement.

9. Consultation with Counsel. The Parties and each of them acknowledge they have carefully read and understand the terms of this Settlement Agreement and have consulted with legal counsel of their choice prior to execution and delivery of this Settlement Agreement. The Parties have voluntarily accepted the terms stated herein for the express purpose of making a full and final compromise and settlement.

10. Representations. Each person executing this Settlement Agreement hereby warrants that he/she has full authority to do so. Santa Clara further represents and warrants that it is the sole and rightful owner of the claims asserted herein; that it has not

assigned any claim or claims, or the right to receive payments that are the subject of this Settlement Agreement; and that no liens on the settlement proceeds have been asserted or exist.

11. Third Party Litigation.

a. In the event of third party litigation challenging this Settlement Agreement or enforcement of the 2006 Settlement Agreement as a result of this Settlement Agreement, including litigation with the County, San José shall protect, defend, hold harmless and indemnify Santa Clara from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all third party costs and third party attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with this Settlement Agreement. San José shall have sole and exclusive authority to control the defense of any third-party litigation, or otherwise settle any third-party litigation, including without limitation absolute and sole discretion to use the San José City Attorney's Office as defense counsel representing both San José and Santa Clara; to decide if an actual conflict of interest requires independent counsel to represent Santa Clara; and, if so, to select independent counsel to represent Santa Clara. In reliance on San José's compliance with the terms of this Settlement Agreement to ensure fair and reasonable representation for Santa Clara, Santa Clara hereby agrees it will not seek to disqualify the San José City Attorney's Office from continuing to represent Santa Clara in the event a conflict of interest arises during the course of such litigation. Nothing contained in this Settlement Agreement precludes Santa Clara from engaging counsel of its own choosing, however any such engagement shall be at Santa Clara's sole expense without the right of indemnity or reimbursement pursuant to this Settlement Agreement.

b. San José shall have no obligation under this Section 11 if Santa Clara (i) has breached or is in breach of this Settlement Agreement, (ii) fails to immediately notify San José in writing of any third party notices, claims or litigations, (iii) fails to fully cooperate and provide information, documents or reasonable assistance in the defense of such third party litigation, (iv) takes any action which may materially impede the ability of San José to defend the third party litigation, or (v) is in violation of State or federal laws pertaining to this Settlement Agreement (with the exception of any such violations alleged by the County). Santa Clara agrees and acknowledges that San José's obligations under this Section 11 (i) do not extend to any cost or reimbursement directly or indirectly related to Santa Clara's employees, consultants, independent contractors, or others who may assist in the defense of the third party litigation, (ii) do not extend to grossly negligent acts or omissions, or willful misconduct of Santa Clara, and (iii) is Santa Clara's sole and exclusive remedy for any third party litigation arising from, or alleged to arise in whole or in part from, or in any way connected with this Settlement Agreement.



c. In the event that this Settlement Agreement or any material term herein is invalidated as a result of such third party litigation, the terms of the 2006 Settlement Agreement shall remain in full force and effect.

12. Severability. If any provision in this Settlement Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court shall enforce the remaining provisions to the extent permitted by law.

13. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed upon the signing of the counterparts by the Parties hereto.

14. Binding Force and Effect. This Settlement Agreement shall be governed by California law. It shall bind and inure to the benefit of all Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.

15. Entire Agreement. This document is a fully integrated contract. It contains all agreements, covenants, understandings, representations, and warranties between the Parties concerning the subject matter of the Settlement Agreement. The Parties have made no other express or implied agreements, covenants, understandings, representations, or warranties concerning the subject matter of this Settlement Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, understandings, representations, covenants, and warranties concerning the subject matter of this Settlement Agreement, other than those referred to herein, are merged herein. This Settlement Agreement cannot be modified or amended by the exchange of electronic communications or any means other than a fully integrated writing signed by all Parties.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

**CITY OF SANTA CLARA:**

By: \_\_\_\_\_  
RAJEEV BATRA  
Interim City Manager

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
JAMES SANCHEZ,  
Interim City Attorney

**CITY OF SAN JOSE:**

\_\_\_\_\_  
JENNIFER A. MAGUIRE  
City Manager

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
NORA FRIMANN  
City Attorney