



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
Jim Shannon

**SUBJECT: SETTLEMENT WITH CITY OF
SANTA CLARA RELATED TO
NORTH SAN JOSE TRAFFIC
IMPACT FEES**

DATE: June 16, 2022

COUNCIL DISTRICT: #4

RECOMMENDATION

1. Approve a Settlement Agreement between the City of Santa Clara and the City of San José related to the North San José Traffic Impact Fees and authorize the City Manager and City Attorney to execute the Settlement Agreement.
2. Adopt the following 2022-2023 Appropriation Ordinance amendments in the Building and Structure Construction Tax Fund:
 - a) Establish the Montague Expressway - City of Santa Clara Settlement appropriation to the Transportation Department in the amount of \$1,500,000; and
 - b) Decrease the North San Jose New Development Reserve by \$1,500,000.

BACKGROUND

On May 17, 2022 (Agenda Item 10.2), the City Council (i) approved the Amended Settlement Agreement between the City of San José (“City”) and City of Santa Clara related to the North San José Traffic Impact Fees (“Amended Settlement Agreement”); (ii) approved amendments to the North San José Area Development Policy and associated documents (“North San José Amendments”); and (iii) directed the City Manager and the City Attorney to request a meeting with the County Executive and County Counsel for the purpose of resolving the County of Santa Clara’s (“County”) stated objections to the Amended Settlement Agreement. The link to Item 10.2 on the May 17, 2022 City Council agenda is provided in the footnote¹. The link includes the prior City Council Memo and Supplemental Memo explaining the history of the North

¹ <https://sanjose.legistar.com/LegislationDetail.aspx?ID=5638550&GUID=D6CEA6F4-DF42-4CB1-9B39-1A821A306882>

San José Area Development Policy, the 2006 Settlement Agreements between the City, County, and City of Santa Clara related to North San José, changes in State laws and circumstances since adoption of the North San José Area Development Policy, and details on the settlement terms of the Amended Settlement Agreement between the City and City of Santa Clara.

As City staff explained during its presentation of Item 10.2 on May 17, 2022, the Amended Settlement Agreement was drafted with the anticipation that the County would be a party to the amendment and if the County did not agree to the settlement terms, then the Amended Settlement Agreement would be revised into a two-party settlement agreement between the City and City of Santa Clara. The County has not agreed to the settlement terms described in the Amended Settlement Agreement, but the City and County have agreed to mediation and the parties have entered into a 90-day tolling agreement.

ANALYSIS

The proposed Settlement Agreement and Release before the City Council for consideration contains the same settlement terms previously approved by the City Council on May 17, 2022. A summary of the settlement terms is shown below:

1. Subject to the terms of a separate written settlement agreement between the City and County, City agrees to pay a total of \$1.5 million to the County of Santa Clara in support of Measure B projects.
2. City agrees to commence and complete the Montague Expressway expansion over the Guadalupe River from First Street to Lick Mill Boulevard at an estimated cost of \$9 million.
3. In lieu of the Trimble Road flyover, City agrees to contribute a total of \$28 million in traffic improvements over the next five years.

The Settlement Agreement and Release also includes the same indemnification provision as previously approved by the City Council and standard terms and conditions.

As directed by the City Council, the City Attorney's Office reached out to the County Counsel's Office after the May 17th meeting and the parties have agreed to mediation. The parties are in the process of selecting a mediator and have also entered into a 90-day tolling agreement. The 90-day tolling agreement will pause the statute of limitations on any potential lawsuits relating to the North San José Amendments, 2006 Settlement Agreements, and California Environmental Quality Act ("CEQA"), while the City and County attempt to come to a resolution.

CONCLUSION

Approval of the Settlement Agreement and Release will resolve the dispute between the City and City of Santa Clara relating to the North San José Amendments and 2006 Settlement Agreement. The proposed settlement terms are the same as previously approved by the City Council on May 17, 2022.

CLIMATE SMART SAN JOSE

Approval of the Settlement Agreement and General Release does not impact the City's Climate Smart activities.

PUBLIC OUTREACH

This memorandum and the proposed Settlement Agreement and Release will be posted on the City's Council Agenda website for the June 21, 2022 Council Meeting.

COORDINATION

The memorandum was coordinated with the City's Department of Transportation.

COST SUMMARY/IMPLICATIONS

As provided in the Supplemental Memorandum to Item 10.2 from the May 17, 2022 City Council meeting, the settlement terms obligate the City to provide a total of \$38.5 million from the Traffic Capital Program, funded by the Building and Structure Construction Tax Fund and the North San José Traffic Impact Fee Fund. The \$1.5 million payment to the City of Santa Clara is recommended to be funded from the Building and Structure Construction Tax Fund with resources previously set aside for North San Jose-related expenditures.

BUDGET REFERENCE

The table below identifies the fund and appropriation adjustments necessary to facilitate the settlement payment recommended as part of this memorandum.

Fund #	Appn #	Appn Name	<u>Current Total Appn</u>	Rec. Budget Action	<u>Amt for Settlement</u>	2022-2023 Proposed Capital Budget Page*	<u>Last Budget Action (Date, Ord. No.)</u>
429	NEW	Montague Expressway – City of Santa Clara Settlement	N/A	\$1,500,000	\$1,500,000	N/A	N/A
429	8462	North San José New Development Reserve	\$5,202,000	(\$1,500,000)	N/A	700	N/A

*The 2022-2023 Proposed Operating Budget was approved by the City Council on June 14, 2022 and is scheduled for adoption on June 21, 2022.

CEQA

Not a Project; File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment; Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental Environmental Impact Report to the Envision San José General Plan Final Program Environmental Impact Report (Resolution No. 77617).

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