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June 17, 2022

**SENT VIA EMAIL TO CITY CLERK FOR DISTRIBUTION TO HON. MAYOR AND
CITY COUNCIL**

Hon. Mayor Sam Liccardo and Councilmembers
City of San José
200 East Santa Clara Street
San José, California 95113

**Re: June 21, 2022 City Council Meeting Item No. 2.8: Comments on North San
José Settlement Agreement with City of Santa Clara**

Dear Mayor Liccardo and Council Members:

The County of Santa Clara (“County”) submits this letter to the City of San José (“City”) to express its concerns and preserve its objections to the above-referenced draft settlement agreement with the City of Santa Clara (“Draft Agreement”).

The Draft Agreement purports to modify the City’s obligations under a 2006 settlement agreement between the County, the City, and the City of Santa Clara (“2006 Agreement”). At its May 17, 2022 meeting, the City Council considered a similar Draft Settlement Agreement Amendment (“Draft Amendment”) and related amendments to the North San José Development Policy, the San José General Plan, Zoning Ordinance, and Municipal Code (collectively, the “NSJ Amendments”).

The County submitted a letter objecting to the Draft Amendment and the NSJ Amendments (the “May 17 Letter”). It explained that the City’s proposed actions violated the California Environmental Quality Act (CEQA) and constituted a breach and/or anticipatory breach of contract, extreme bad faith, and breach of the covenant of good faith and fair dealing by, among other things, disregarding the mitigation measures required under the 2006 Agreement.

Despite the County’s objections, the City adopted the NSJ Amendments and approved the 2022 Draft Amendment. On June 10, 2022, the City and the County executed a Tolling

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Agreement to preserve their respective positions and attempt to avoid litigation. The Tolling Agreement requires the parties to mediate and use their best efforts to resolve all disputes related to the 2006 Agreement, the NSJ Amendments, and the May 17 Letter. The County is therefore deeply concerned by the City's consideration of the Draft Agreement, which would, in an identical way to the Draft Amendment, result in the City's intentional breach of the 2006 Agreement. The Draft Agreement seems to fly in the face of the City's commitment to negotiate in good faith with the County as part of the mediation.

As explained in the May 17 Letter, the 2006 Agreement cannot be modified without the County's approval. The Draft Agreement attempts to sidestep this obvious issue by styling itself as a new agreement and disclaiming any impact on the County's rights under the 2006 Agreement. These changes are immaterial. The Draft Agreement suffers from the same defect as the Draft Amendment—it abandons the City's obligations under the 2006 Agreement without the County's consent. As explained in the May 17 Letter, the City's actions also violate CEQA by modifying binding mitigation measures without proper environmental analysis.

The County therefore reiterates and incorporates by this reference all the claims and objections asserted in the May 17 Letter. The County will use its best efforts to resolve this matter in mediation, as required under the Tolling Agreement. However, if the Draft Agreement moves forward and mediation is unsuccessful, the County reserve its right to assert these claims in court, subject to the extended timeline provided by the Tolling Agreement.

Thank you for your consideration.

Very truly yours,

JAMES R. WILLIAMS
County Counsel

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