



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nora Frimann  
City Attorney

Jennifer A. Maguire  
City Manager

**SUBJECT: SETTLEMENT WITH COUNTY  
OF SANTA CLARA RELATED  
TO NORTH SAN JOSE**

**DATE:** December 9, 2022

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**COUNCIL DISTRICT: 4**

## **RECOMMENDATION**

Approve a Settlement Agreement between the County of Santa Clara and the City of San José related to North San José and authorize the City Manager and City Attorney to execute the Settlement Agreement and related documents.

## **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 North San José (“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 and North San José Amendments. The link to Item 10.2 on the May 17, 2022 City Council agenda is provided in the footnote<sup>1</sup>. Footnote 1 below includes the link to the prior City Council Memo and Supplemental Memo explaining the history of the North 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 County letter dated May 17, 2022 to the City Council objecting to the Amended Settlement Agreement and North San José Amendments. On June 21, 2022 (Agenda Item 2.8), the City Council subsequently approved a Settlement Agreement between the City of San

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

José and City of Santa Clara that replaced the Amended Settlement Agreement<sup>2</sup>. Prior to the Council meeting, the County sent a letter dated June 17, 2022 reiterating their objections to the North San José Amendments and the settlement between the City of Santa Clara and City of San José.

Since June 2022, the County and City have engaged in mediation and settlement discussions. The parties have reached a tentative settlement as explained below.

## **ANALYSIS**

The proposed Settlement Agreement and Release before the City Council for consideration is posted online. A summary of the settlement terms is described below:

1. I-880/Montague Expressway Interchange Improvement. The City is responsible for completing the design and environmental documents for the I-880/Montague Expressway Interchange project. The project requires reconstructing the existing interchange and converting it from a full cloverleaf design to a partial cloverleaf design with two new traffic signals. The City must design and deliver the project based on the geometric study. The City and County may mutually agree in writing to an alternate project design if the California Department of Transportation (“Caltrans”) determines the alternate design achieves comparable or better congestion relief.

The City must complete the following for Caltrans review and approval: (i) the Project Study Report by December 31, 2024; (ii) environmental clearance including California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA) compliance by December 31, 2027; and (iii) Plans Specifications & Estimates by December 31, 2029. If there are other approvals required for the project, the parties will meet and confer on the additional timeline for the City to complete the additional deliverables. The City is also responsible to obtain funding from third parties for the I-880 Improvement until the project is fully funded. There is no deadline to obtain the full funding from third parties. Once the project obtains full funding from third parties for construction and any necessary approvals from Caltrans or others as applicable, City is then responsible to publicly advertise, bid, and award the construction contract, perform construction management, and complete the project.

2. McCarthy/O-Tootle I-880 Interchange Improvement. The City is responsible for completing the design and environmental documents for the McCarthy/O’Toole Interchange project. The McCarthy/O’Toole Interchange requires reconstructing

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<sup>2</sup> <https://sanjose.legistar.com/LegislationDetail.aspx?ID=5681754&GUID=6AF5112A-24C1-4BCD-AD9F-E3132E575224>

the existing at-grade intersection and constructing a grade-separated interchange. Specifically, the McCarthy/O'Toole Interchange must be designed as a "single-point urban" interchange or, if mutually agreed upon in writing by the parties, a design that achieves similar project goals and limits the need for right-of-way acquisition. The City must design and construct the project based on the geometric study. The City and County may mutually agree in writing to an alternate project design.

The City must complete the following for County review and approval: (i) the Project Study Report by December 31, 2024; (ii) environmental clearance including California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA) compliance by December 31, 2027; and (iii) Plans Specifications & Estimates by December 31, 2029. If there are other approvals required for the project, the parties will meet and confer on the additional timeline for the City to complete the additional deliverables. The City is also responsible to obtain funding from third parties until the project is fully funded. There is no deadline to obtain the full funding from third parties. Once the project obtains full funding from third parties for construction and any necessary approvals, City is then responsible to publicly advertise, bid, and award the construction contract, perform construction management, and complete the project.

3. Montague Widening (North 1st Street to Lick Mill Boulevard). Consistent with the settlement with the City of Santa Clara, City must develop, construct, and deliver the widening of Montague Expressway to four lanes between North 1<sup>st</sup> Street and Lick Mill Boulevard. This project must be completed by December 31, 2027.
4. Matching Funds for Measure B Projects. City must provide 10% of total project costs for VTA's Measure B Expressway Program Projects 6A, 6B, and 6C to satisfy the local match requirement for widening projects along the mainline of Montague Expressway.

Project 6A: Complete 8-lane Widening including HOV lanes and Auxiliary lanes between Trade Zone Boulevard and Main Street along Montague Expressway. The current estimate for Project 6A is \$13 million and City's share is \$1.3 million.

Project 6B: Complete 8-lane Widening including HOV lanes and Auxiliary lanes between Great Mall Parkway and Trade Zone Boulevard along Montague Expressway. The current estimate for Project 6B is \$13 million and City's share is \$1.3 million.

Project 6C: Complete 8-lane Widening including HOV lanes and Auxiliary lanes between Main Street and the McCarthy/O'Toole intersection along Montague

Expressway. The current estimate for Project 6C is \$22 million and City's share is \$2.2 million.

City must make payment within one year of project completion, provided there is additional time if the actual project costs exceed the estimates above.

5. Trimble Road Flyover. After the City completes the construction of the Montague/I-880 Interchange and the Montague/McCarthy/O'Toole Interchange as described above, the City will conduct a series of three vehicle delay studies at the intersection of the Montague Expressway and Trimble Road ("Studies"). If any of the three Studies reveal delays above the threshold of Level F (or mutually agreeable alternative threshold, then the City will be responsible for designing, obtaining funding from third parties, and completing the Trimble Flyover.
6. Valley Transportation Plan 2050. City and County shall each use their best efforts to ensure that the I-880 Interchange Improvement, the McCarthy/O'Toole Interchange, and the Trimble Flyover are included in Valley Transportation Authority's Valley Transportation Plan 2050.

The Settlement Agreement and Release also includes provisions: (i) terminating the 2006 Settlement Agreement; (ii) quarterly meetings; (iii) meet and confer process and mediation; (iv) attorney fee's to prevailing party; (v) standard releases; and (vi) other terms and conditions. The proposed Settlement Agreement and Release will be effective upon full execution and execution of a separate release between the County and City of Santa Clara. The City is not a party to the separate release between the County and City of Santa Clara but will execute as an acknowledgement.

The current tolling agreement between the County and City expires on December 15, 2022. If Council approves the proposed settlement agreement, the parties will extend the tolling agreement to allow time for the parties to execute the settlement agreement and City of Santa Clara to execute the separate release.

## **CONCLUSION**

Approval of the Settlement Agreement and Release will resolve the dispute between the City and County of Santa Clara relating to the North San José Amendments and 2006 Settlement Agreement.

## **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 December 13, 2022 Council Meeting.

## **COORDINATION**

The memorandum was coordinated with the City's Department of Transportation, Planning Building and Code Enforcement Department, the Office of Economic Development and Cultural Affairs, and the City Manager's Budget Office.

## **COST SUMMARY/IMPLICATIONS**

The proposed Settlement Agreement commits the City to staffing and procuring consultants to advance major projects, including design, environmental, preparing grant/funding applications, and ultimately overseeing construction. The proposed Settlement Agreement also commits the City to funding the 10% match requirement for certain improvements along Montague Expressway.

As the design of these projects has yet to be finalized or approved by responsible parties (for example, Caltrans or the Water District), the cost implications of the proposed Settlement Agreement are not knowable at this time. City staff estimates the cost to the City of the proposed Settlement Agreement could range from \$45 million to \$75 million in 2022 dollars, which would tentatively be expended over a 20-year horizon. The estimates take into account project cost ranges, soft cost variation, and, at the high end, the potential for the Trimble Flyover as a required project. The City currently has \$22.6 million in North San José transportation impact fee and/or new development reserves within the Traffic Capital Program available to advance these projects. Additional local funding in the Traffic Capital Program, from such sources as the Building and Structure Construction Tax and Construction Excise Tax revenues, and external grant funding will be required to complete all projects, as articulated in the proposed Settlement Agreement.

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**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).

NORA FRIMANN  
City Attorney

By /s/ Nora Frimann  
NORA FRIMANN  
City Attorney

  
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JENNIFER A. MAGUIRE  
City Manager

For questions please contact Johnny V. Phan, Chief Deputy City Attorney,  
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