

(ENDORSED)  
**FILED**

DEC 05 2006

Ch. Superior Court Santa Clara  
BY J. Zenzen DEPUTY

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10 CITY OF SAN JOSE, CITY COUNCIL OF  
11 THE CITY OF SAN JOSE, REDEVELOPMENT AGENCY  
12 OF THE CITY OF SAN JOSE

13 SUPERIOR COURT OF CALIFORNIA  
14 COUNTY OF SANTA CLARA

15 COUNTY OF SANTA CLARA  
16 Petitioner and Plaintiff,

17 v.  
18 CITY OF SAN JOSE, et al.,  
19 Respondents and  
20 Defendants.

21 CITY OF MILPITAS, a municipal  
22 corporation,  
23 Petitioner/Plaintiff,

24 v.  
25 CITY OF SAN JOSE, et al.,  
26 Respondents/Defendants.

27 CITY OF SANTA CLARA, et al.  
28 Petitioners/Plaintiffs,

v.  
CITY OF SAN JOSE, et al.  
Respondents/Defendants.

Master Case Number: 1-05-CV046005  
(Consolidated w/ 1-05-CV046013 and  
1-05-CV046025)

**STIPULATION TO DISCHARGE  
PEREMPTORY WRIT OF MANDATE  
AND ORDER THEREON**

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The parties hereto, by and through their attorneys of record, stipulate as follows:

- 1) The trial in this consolidated CEQA action took place on March 2, 2006.
- 2) In its March 2, 2006 Notice of Decision, the Court determined that the record showed no substantial evidence to support Respondent City of San Jose's determination that there were no feasible mitigation measures for impacts to transportation facilities under the jurisdiction or control of other public agencies.
- 3) Since the March 2, 2006 trial, the parties have worked diligently to negotiate agreements for the mitigation of extra-jurisdictional traffic impacts arising from the Project.
- 4) Attached hereto as **Exhibit-1** is a true and accurate copy of the fair-share agreement reached between the City of San Jose and the City of Milpitas. This agreement was finalized in August 2006.
- 5) Attached hereto as **Exhibit-2** is a true and accurate copy of the agreement reached between the County of Santa Clara, City of Santa Clara, Redevelopment Agency of the City of Santa Clara, the City of San Jose, and the Redevelopment Agency of San Jose. This agreement was finalized in November 2006.
- 6) Attached hereto as **Exhibit-3** is a true and accurate copy of the agreement between the County of Santa Clara, City of San Jose, and Redevelopment Agency of the City of San Jose. Because it also bears upon a separate action unrelated to the Project, the Santa Clara County Financing Authority and Silicon Valley Theatre Financing Corporation are also signatories to this agreement. This agreement was finalized in November 2006.
- 7) Collectively the agreements represent Respondents' commitment to invest millions of dollars for traffic improvements on Santa Clara County facilities in Milpitas and Santa Clara and to support regional funding for major traffic projects within Santa Clara.

- 1 8) Given the mitigation of traffic impacts outside of San Jose that will result  
2 from these agreements, Petitioners stipulate that the purpose of the March  
3 28, 2006 Peremptory Writ of Mandate has been fully satisfied.
- 4 9) Given the executed agreements, the time necessary to reach these  
5 agreements, and the regional benefits that will be realized by proceeding  
6 with the Project, Petitioners stipulate that Respondents have met the spirit  
7 and purpose of the Peremptory Writ of Mandate. Petitioners further stipulate  
8 that Respondents shall not be required to set aside the certification of the  
9 EIR, shall not be required to set aside any approvals for the Project, and  
10 shall not be required to prepare, circulate, or consider any new EIR in order  
11 to obtain a discharge of the Peremptory Writ of Mandate.
- 12 10) The appeal by the City of Santa Clara and Redevelopment Agency of the  
13 City of Santa Clara was dismissed by the Sixth District Court of Appeal on  
14 November 22, 2006. A true and accurate copy of the order of dismissal is  
15 attached hereto as **Exhibit-4**. On November 22, 2006, the Sixth District  
16 Court of Appeal issued its Remittitur. A true and accurate copy of the  
17 Remittitur is attached hereto as **Exhibit-5**.
- 18 11) On November 28, 2006, Petitioners City of Santa Clara and Redevelopment  
19 Agency of the City of Santa Clara filed a request for dismissal with prejudice  
20 of their Petition in this action. A file-endorsed copy of this Request for  
21 Dismissal is attached hereto as **Exhibit-6**.
- 22 12) The remaining parties to this action hereby stipulate that the March 28, 2006  
23 Peremptory Writ of Mandate may be discharged immediately.
- 24 13) Petitioners further acknowledge that the agreements with Respondents  
25 constitute the substantial satisfaction of the March 28, 2006 Judgment in this  
26 consolidated action and that said Judgment shall therefore be considered  
27 satisfied in full.
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14) This stipulation may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this stipulation, facsimile signatures may be used in lieu of original signatures.

Dated: DEC. 7, 2006

RICHARD DOYLE, City Attorney

By:   
BRIAN C. HOPPER  
Deputy City Attorney

Attorneys for Respondents and Defendants  
CITY OF SAN JOSE, CITY COUNCIL OF  
THE CITY OF SAN JOSE,  
REDEVELOPMENT AGENCY OF THE  
CITY OF SAN JOSE

Dated: NOV. 30, 2006

ANN RAVEL, County Counsel

By:   
LIZANNE REYNOLDS  
Deputy County Counsel

Attorneys for Petitioner and Plaintiff  
COUNTY OF SANTA CLARA

Dated: \_\_\_\_\_, 2006

MEYERS, NAVE, RIBACK, et al.

By: \_\_\_\_\_  
EDWARD GRUTZMACHER, ESQ.

Attorneys for Petitioner and Plaintiff,  
CITY OF MILPITAS

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Dated: \_\_\_\_\_, 2006

RICHARD DOYLE, City Attorney

By: \_\_\_\_\_  
BRIAN C. HOPPER  
Deputy City Attorney

Attorneys for Respondents and Defendants  
CITY OF SAN JOSE, CITY COUNCIL OF  
THE CITY OF SAN JOSE,  
REDEVELOPMENT AGENCY OF THE  
CITY OF SAN JOSE

Dated: \_\_\_\_\_, 2006

ANN RAVEL, County Counsel

By: \_\_\_\_\_  
LIZANNE REYNOLDS  
Deputy County Counsel

Attorneys for Petitioner and Plaintiff  
COUNTY OF SANTA CLARA

Dated: 12/11, 2006

MEYERS, NAVE, RIBACK, et al.

By: \_\_\_\_\_  
EDWARD GRUTZMACHER, ESQ.

Attorneys for Petitioner and Plaintiff,  
CITY OF MILPITAS

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**ORDER**

Pursuant to the stipulation between the parties and good cause appearing therefor,  
it is hereby ordered that the March 28, 2006 Peremptory Writ of Mandate be discharged in  
full.

Dated: DEC 15 2006

DESLIE G. NICHOLS  
JUDGE OF THE SUPERIOR COURT

# **EXHIBIT 1**

## SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Respondents City of San Jose, the City Council of the City of San Jose (collectively "SAN JOSE") and Petitioner City of Milpitas ("MILPITAS"). This Settlement Agreement addresses San Jose's fair-share contributions towards mitigation of transportation impacts within the City of Milpitas arising out of the North San Jose Area Development Policies Update project and constitutes the fair-share agreement between the parties for that project. As set forth herein, this Settlement Agreement shall also constitute the fair-share agreement between the cities of San Jose and Milpitas for the mitigation of transportation impacts arising from the City of Milpitas' as-of-yet unapproved Transit Area Plan. The effective date of this Settlement Agreement is August 22, 2006.

### RECITALS

- A. Whereas on July 28, 2006 the City of Milpitas filed suit against San Jose in the Santa Clara County Superior Court, case number 1-05-CV-046013, entitled *City of Milpitas, a municipal corporation v. City of San Jose, a municipal corporation; City Council of the City of San Jose, the governing body of the City of San Jose; and Does 1 through 10, inclusive* ("Action");
- B. Whereas this Action alleged, *inter alia*, that San Jose's approval of the North San Jose Area Development Policies Update ("NSJ Project") and certification of the North San Jose Area Development Policies Update Environmental Impact Report ("NSJ EIR") violated various provisions of the California Environmental Quality Act;
- C. Whereas this Action was ultimately consolidated with two separate actions: *County of Santa Clara v. City of San Jose, et al.*, No. 1-05-CV-046005, and *City of Santa Clara, et al. v. City of San Jose, et al.*, No. 1-05-CV-046025, under master case number 1-05-CV-046005;

- D. Whereas the trial in this consolidated action was held on March 2, 2006 before the Hon. Leslie Nichols in Department 6 of the Santa Clara County Superior Court;
- E. Whereas in its March 2, 2006 Notice of Decision, the court held that San Jose's findings were timely, that San Jose's findings concerning potable water supply were supported by substantial evidence, that San Jose's findings that the project would not have cumulative impacts on wastewater facilities were supported by substantial evidence, and that there was not substantial evidence to support San Jose's determination that there were no feasible mitigation measures for impacts to transportation facilities under the jurisdiction or control of other public agencies;
- F. Whereas on March 28, 2006, a Judgment and a Peremptory Writ of Mandate were entered in accordance with the March 2, 2006 Notice of Decision; and
- G. Whereas the parties now undertake to settle this action;

THEREFORE, the Parties agree as follows:

1. The NSJ EIR outlines a number of proposed improvements for the Montague Expressway within the City of San Jose to mitigate traffic impacts from the NSJ Project. The implementation of these improvements is scheduled to occur during specified phases of the NSJ Project as described in the NSJ EIR. In its Findings for the NSJ Project, Resolution No. 72768, the San Jose City Council determined that the NSJ Project included a comprehensive package of roadway improvements (including upgrades to freeway, expressway, and local street facilities). The Findings' Mitigation Monitoring and Reporting Program holds that the San Jose Department of Public Works will ensure implementation of the identified mitigation as described in the NSJ EIR based upon conditions and commitments included in the Final Public Works Clearance for development within the project area. The Mitigation Monitoring and Reporting Program further

holds that 85% of all infrastructure mitigation for any individual phase (and all infrastructure for any previous phase) must be built or its implementation reasonably assured prior to issuance of building permits for any subsequent phase.

2. San Jose affirms that it intends to enter into a Settlement Agreement with the County of Santa Clara ("County") which will include the following general elements:
  - a. San Jose Constructed Projects. In and as a part of the implementation of Phase I of the NSJ Plan, San Jose shall complete and fund mitigations as follows: Montague widening to eight lanes between Lick Mill to Trade Zone all portions of the Expressway regardless of City boundaries, including Interchange modifications at I-880 and the Trimble flyover; San Jose shall complete the McCarthy-O'Toole Interchange as a part of the implementation of Phase III of the NSJ Plan.
  - b. San Jose Funded Projects. San Jose shall fund up to an amount not to exceed \$11 million dollars, and County shall construct the Montague "base project" eight-lane improvements as identified in the Comprehensive County Expressway Planning Study –Montague Expressway Implementation Plan Tier 1A project, specifically:
    - (i) Complete Interchange modifications at I-680
    - (ii) Widening between I-680 and Park Victoria, and
    - (iii) Any widening remaining to be done between Capitol and I-680.

San Jose shall provide such funding no later than June 30, 2010. County shall make a good faith effort to complete all of these improvements within five and one-half years of receipt of San Jose's funds so long as San Jose's \$11 million contribution is sufficient to cover the improvements or alternate funds are available to complete the improvements.

- c. Montague/Mission/101 Interchange Project. County and San Jose agree to continue their support for inclusion in the Valley Transportation Plan 2030 ("VTP 2030 Plan") the reconstruction of the interchange at Montague and Highway 101, with improvements to Mission College Boulevard as identified in the Comprehensive County Expressway Planning Study – Montague Expressway Implementation Plan, Tier 1B project ("Montague/Mission/101 Interchange Project"). San Jose and County also agree that this is a high priority for State Transportation Improvement Program ("STIP") funding. County shall be solely responsible for all planning and design activities related to the Montague/Mission/101 Interchange Project. Such activities shall include but not be limited to: (i) the completion of the Project Study Report ("PSR"), estimated to cost \$500,000, within six months from the date of this Settlement Agreement; and (ii) the submission of such PSR to Caltrans within one year of the effective date of this Settlement Agreement. County shall fund and complete environmental clearance and final design work on the Montague/Mission/101 Interchange project, an estimated value of \$1.5 million, no later than June 30, 2010. If funding for the construction of the Montague/Mission/101 Interchange Project is not available on or before July 1, 2014, the County shall allocate \$1,500,000 to be used to commence construction of improvements for the Mission College Boulevard and Montague Expressway intersection and such other design work as may be necessary to improve the intersection for the ultimate interchange improvements at Highway 101 and Montague Expressway.
- d. San Tomas at Stevens Creek Widening Project. County and San Jose agree that STIP funding to extend the limits of the mitigation project for San Tomas Expressway widening to eight lanes at Stevens Creek (as identified in the EIR) to Saratoga to the north and Moorpark to the south is a high priority.
- e. County acknowledges that San Jose's consideration, as set forth in paragraph 4(a)-(d) above, constitutes adequate mitigation for traffic

impacts to County facilities outside of San Jose City limits arising from the NSJ Plan.

3. In light of San Jose's commitments identified in paragraphs 1 and 2 above, Milpitas agrees to accept the NSJ Project's transportation impacts to intersections and other facilities in Milpitas without further mitigation from San Jose.
4. Milpitas agrees that for purposes of this Settlement Agreement, the maximum number of trips from its Transit Area Plan project shall be the number of trips arising from a project with 7,185 housing units, 0.813 million sq ft Office, and 0.52 million sq ft of Retail ("Maximum Trips"). Milpitas may subsequently approve different proportions of housing, office and retail space for the Transit Area Plan, but approvals for the Transit Area Plan shall not result in development that would exceed the Maximum Trips.
5. Given that Milpitas shall not approve a Transit Area Plan that would exceed the Maximum Trips, San Jose agrees to the following as the limits of Milpitas' responsibility related to mitigation of San Jose traffic issues/impacts arising from the Transit Area Plan except as set forth in paragraph 7, below:
  - a. Milpitas shall work with the County and Santa Clara Valley Transportation Authority to finance and implement a plan for the improvement of the Montague Expressway in the Great Mall/ Capitol area consistent with the regional plan for Montague (estimated cost: \$35 million); Milpitas shall have discretion over the nature of its financing for these improvements (examples include, but are not limited to, the use of redevelopment funds, general funds, developer fees, etc.); and
  - b. Within one hundred twenty (120) days after its certification of the Environmental Impact Report for the Transit Area Plan becomes final, Milpitas shall provide San Jose \$200,000 to address significant traffic impacts from the Transit Area Plan in the Capitol Avenue corridor.

6. Given that Milpitas shall not approve a Transit Area Plan that would exceed the Maximum Trips, San Jose will accept transportation impacts to intersections within the North San Jose industrial area arising from the Transit Area Plan.
7. Should the total number of trips from the Transit Area Plan exceed the Maximum Trips, San Jose reserves the right to seek additional mitigation for transportation impacts from Milpitas.
8. San Jose agrees to engage in good faith negotiations for Milpitas' potential lease of up to one million gallons per day (MGD) of San Jose's wastewater discharge capacity allocation subject to the terms of the Master Agreement for Wastewater Treatment between the City of San Jose, City of Santa Clara and City of Milpitas, dated March 1, 1983, as amended, and any other applicable documents, statutes, or regulations.
9. Milpitas shall waive its costs and attorney's fees arising out of this Action and shall withdraw its pending motion for attorney's fees.
10. Milpitas shall support amendment of the March 28, 2006 Judgment, dismissal of the Action, discharge of the Peremptory Writ of Mandate, and any other reasonable steps designed to allow the Project to move forward as quickly as possible. Milpitas shall not require that San Jose set aside any NSJ Project approvals or recirculate any environmental documents for the NSJ Project.
11. This Settlement Agreement is contingent upon:
  - a. The City, Council, and the Redevelopment Agency of the City of San Jose executing an agreement with the County of Santa Clara to resolve the Fairgrounds and North San Jose litigation; and
  - b. The City and Redevelopment Agency of Santa Clara executing a settlement agreement with the County of Santa Clara or the City of San Jose to resolve the North San Jose litigation.

12. This Settlement Agreement shall become effective upon execution of the agreements described in paragraph 11 above, and the City of Milpitas' obligations under this Settlement Agreement shall commence at that time. Counsel for San Jose shall provide counsel for Milpitas with copies of the agreement(s) upon their execution. Except as set forth above, the City of Milpitas hereby waives any and all other claims relating to the Action, the NSJ Project, or the NSJ EIR. Section 1542 of the Civil Code of the State of California provides as follows:

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

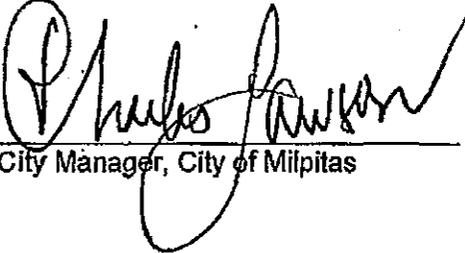
Milpitas hereby represents that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that it hereby waives any and all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected with the NSJ Project, Action, or NSJ EIR based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

13. The parties agree that this is a judicially supervised settlement pursuant to the terms of California Code of Civil Procedure Section 664.6, and that the court shall retain jurisdiction over the parties to enforce the terms of this Settlement Agreement should enforcement become necessary.
14. This Settlement Agreement may be modified or amended only by a written instrument signed by all parties hereto.
15. The laws of the State of California shall govern this Settlement Agreement.
16. Each person executing this Settlement Agreement on behalf of any other person or entity hereby warrants that he or she has full authority to do so.

17. The unenforceability, invalidity, or illegality of any provisions shall not render the other provisions of the Settlement Agreement unenforceable, invalid or illegal.
18. Nothing stated herein shall be construed as an admission of liability by any party to the Settlement Agreement.

IN WITNESS WHEREOF, the City of San Jose, City Council of San Jose, and the City of Milpitas have executed this Settlement Agreement upon the day and year above written.

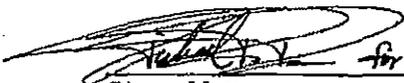
CITY OF MILPITAS

  
\_\_\_\_\_  
City Manager, City of Milpitas

CITY OF SAN JOSÉ

  
\_\_\_\_\_  
Richard Doyle, City Attorney, as  
Authorized Agent for Respondent,  
CITY OF SAN JOSE

APPROVED AS TO LEGAL FORM

  
\_\_\_\_\_  
Steve Mattas  
City Attorney, CITY OF MILPITAS

APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
George Rios, Assistant City Attorney  
CITY OF SAN JOSE

# **EXHIBIT 2**



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. A Judgment and Peremptory Writ of Mandate were entered on March 28, 2006. At the suggestion of Santa Clara County Superior Court Judge Leslie Nichols, the Parties have been meeting and conferring since entry of the Judgment to develop a fair share traffic mitigation agreement.
- E. On May 8, 2006, Santa Clara filed a Notice of Appeal from the Litigation, and that appeal is now pending before the California Court of Appeal, Sixth Appellate District, Case No. H030242 ("Appeal").
- F. The Parties now desire to settle all their respective disputes concerning, relating to, or arising out of the Litigation and the Appeal on the terms and under the conditions set forth in this Settlement Agreement, without the expense and inconvenience of further litigation, and without any admission or concession as to any liability, fact, claim or defense by either Party.

In consideration of the foregoing and in consideration of the covenants, warranties and promises set forth below, receipt of which is hereby acknowledged, the Parties agree as follows:

#### **AGREEMENT PROVISIONS**

1. **Settlement Terms.**

In consideration for terms and conditions set forth in this Settlement Agreement, the Parties shall take the following actions:

- 1.1 The Effective Date of this Settlement Agreement shall be when both it has been executed and when the separate Settlement Agreement between San José and the County relating to the Litigation has been executed. Santa Clara shall dismiss its Appeal within fifteen (15) days of the effective date of this Settlement Agreement and seek immediate issuance of a Remittitur from the Court of Appeal. Within seven days from issuance of a Remittitur from the Court of Appeal, Santa Clara shall dismiss its action filed with the Santa Clara County Superior Court, Case No. 1-05-CV-046025. In addition to the aforementioned dismissals, Santa Clara shall take all reasonable steps necessary to resolve the Litigation in a manner that will allow the North San José Project to be implemented and go forward as soon as possible, including, but not limited to supporting discharge of the Peremptory Writ of Mandate. Neither Santa Clara nor the County shall require or insist that San José set aside any existing North San José project approvals or recirculate any environmental documents for the North San José project.

- 1.2 As part of the Phase I infrastructure improvements, San José shall complete and fund mitigations as follows: widening Montague Expressway to 8-lanes between Lick Mill and Trade Zone, including all portions of the Expressway regardless of City boundaries, including Interchange modifications at I-880 and the Trimble flyover. As part of Phase III implementation, San José shall complete the McCarthy-O'Toole Interchange. (The phases referred to in this Settlement Agreement are identified in the March 2005 Draft Environmental Impact Report for the North San José Development Policies Update ("EIR") (pp. 15-18).)
- 1.3 The Comprehensive County Expressway Planning Study, Implementation Plan – Montague Expressway dated August 19, 2003, ("Expressway Study") identified the need to improve the interchange at Montague Expressway and Highway 101, with improvements to Mission College Boulevard as identified in the Expressway Study, Tier 1B project ("Montague/Mission/101 Interchange Project"). County, at its sole expense, shall provide funding for the preparation of and shall complete a Project Study Report ("PSR") for the Montague/Mission/101 Interchange Project. The PSR shall be prepared and submitted to CalTrans no later than twelve months after the Effective Date of this Settlement Agreement.
- 1.4 On or before June 30, 2010, County shall fund the design work for the construction of the Montague/Mission/101 Interchange Project as contemplated in the PSR prepared in accordance with this Settlement Agreement. The design work shall be completed on or before June 30, 2014. In no event shall County's funding responsibility exceed \$1,500,000.00.
- 1.5 Commencing immediately and until such time as funding is secured, VTA representatives from County and San José shall take all lawful actions to support the inclusion in the Valley Transportation Plan 2030 ("VTP 2030 Plan") and as a high-priority item for State Transportation Improvement Program ("STIP") funding the completion of construction of the Montague/Mission/101 Interchange Project. If funding for the construction of the Mission College improvements is not available on or before July 1, 2014, San José shall pay \$1,500,000 to County, and County shall allocate that \$1,500,000 for construction of the Montague/Mission/101 Interchange Project in conformity with the PSR and such other design work as may be necessary to improve the intersection for the ultimate interchange improvements at Highway 101 and Montague Expressway.
- 1.6 A sufficient time prior to when Phase IV of the project commences and continuing until funding occurs, County of Santa Clara representatives and City of San José representatives shall take all lawful actions to have the mitigation project for San Tomas Expressway Widening to 8-lanes between Moorpark (at the south) and El Camino Real (at the north) designated as a high-priority item for STIP funding. The intent of this subsection is to secure STIP funding for these improvements and have the improvements commenced by the time Phase IV begins.
- 1.7 Within six (6) months of the Effective Date of this Settlement Agreement, San José shall pay to Santa Clara Unified School District ("District") the sum of \$25,000 to retain a consultant agreeable to both the City of San José and the District to be used

by District to prepare a pupil generation report for students from the North San José Project area. Within six (6) months of the Effective Date of this Settlement Agreement, San José shall consult with District to create a scope of a school facility plan.

- 1.8 Within six (6) months from the completion of the pupil generation report, San José, working with the District, shall create a school facility plan, agreeable to both the City of San José and the District, to provide for designation of potential school sites. The City of San José shall prepare an analysis of the construction costs and operational impacts to District arising from approval of the North San José project based on information requested by the City of San José and provided by the District in a timely manner to the City of San José. This Settlement Agreement, preparation of the school facility plan, and preparation of the analysis of construction costs and operational impacts to District shall in no way create any additional legal or financial obligations between the City of San José and District.
- 1.9 Adjustments in the amount of the estimated construction costs of providing the specified public facilities listed above shall be adjusted according to adjustments in the Engineering News Record Construction Cost Index, published by the Engineering News Record (Twenty Cities Construction Index). Adjustments in the amount of the estimated planning, engineering, and other studies specified above shall be adjusted according to adjustments in the Consumer Price Index for All Urban Consumers (CPI-U) Engineering News Record Construction Cost Index, reported by the United States Department of Labor, Bureau of Labor Statistics (San Francisco-Oakland-San José index).

2. **Settlement by San José with City of Milpitas and County of Santa Clara.**

It is understood by all parties that the City of San José is in settlement discussions with the City of Milpitas regarding resolution of litigation pertaining to the North San José Development Policies and related matters, and that the City, Council and Redevelopment Agency of the City of San José are in settlement discussions with the County of Santa Clara to resolve litigation regarding the County's Fairgrounds and the North San José Development Policies. It is expressly understood and agreed that this Settlement Agreement is not contingent on the outcome of either of these matters.

2.1 **Acceptance of Traffic Impacts**

In light of San José's commitments identified in paragraphs (1.2) through (1.8) above, Santa Clara agrees to accept the NSJ Project's transportation impacts within the City of Santa Clara without further mitigation from San José.

3. **Releases by Santa Clara.**

Except for the obligations, representations, and warranties expressly created by, made in, or arising out of this Settlement Agreement, Santa Clara does hereby fully, finally and forever relieve, release, and discharge San José and County and their respective past and present affiliates, officers, directors, partners, members, trustees, beneficiaries, servants, employees, contractors, subcontractors agents, insurers, representatives, attorneys, and the predecessors, successors, assigns, partners, insurers, and all other related individuals and entities of each of them, from any and all claims, demands, damages, debts, liabilities, accounts, costs, expenses, liens, obligations, injunctive relief, fees, actions, causes of action (at law, in equity, or otherwise), suits, agreements, promises, rights, rights to subrogation, rights to contribution, and remedies of any nature whatsoever, known or unknown, fixed or contingent, which Santa Clara now has, ever had, or hereafter may have against San José and County, by reason of any matter, cause, or thing arising out of, based upon, or in any way relating to the June 2005 North San José Project approvals or any re-approvals or other actions required for dismissal, discharge of the Peremptory Writ of Mandate, or other final resolution of the Litigation. Nothing contained herein shall in any way limit Santa Clara's right and ability to challenge future approvals related to the North San José Project, except that Santa Clara agrees not to challenge any future approvals on the basis of environmental impacts either (1) previously identified in the existing EIR, or (2) alleged in the Litigation to have been unidentified, unmitigated, or insufficiently mitigated in the existing EIR or existing project approvals.

4. **Releases by County.**

Except for the obligations, representations, and warranties expressly created by, made in, or arising out of this Settlement Agreement, County on behalf of itself and all of its affiliates, does hereby fully, finally and forever relieve, release, and discharge the Santa Clara and San José and their respective past and present affiliates, officers, directors, partners, members, trustees, beneficiaries, servants, employees, contractors, subcontractors, agents, insurers, representatives, attorneys, and the predecessors, successors, assigns, partners, insurers, and all other related individuals and entities of each of them, from any and all claims, demands, damages, debts, liabilities, accounts, costs, expenses, liens, obligations, injunctive relief, fees, actions, causes of action (at law, in equity, or otherwise), suits, agreements, promises, rights, rights to subrogation, rights to contribution, and remedies of any nature whatsoever, known or unknown, fixed or contingent, which County now has, ever had, or hereafter may have against Santa Clara or San José and/or the Santa Clara Parties by reason of any matter, cause, or thing arising out of, based upon, or in any way relating to the June 2005 North San José Project approvals or any re-approvals or other actions required for dismissal, discharge of the Peremptory Writ of Mandate, or other final resolution of the Litigation. Nothing contained herein shall in any way limit County's right and ability to challenge future approvals related to the North San José Project, except that County agrees not to challenge any future approvals on the basis of environmental impacts either (1) previously identified in the existing EIR, or (2) alleged in the Litigation to have been unidentified, unmitigated, or insufficiently mitigated in the existing EIR or existing project approvals.

5. Releases by San José.

Except for the obligations, representations, and warranties expressly created by, made in, or arising out of this Settlement Agreement, San José, on behalf of itself and all of its affiliates, does hereby fully, finally and forever relieve, release, and discharge Santa Clara and County and their respective past and present affiliates, officers, directors, partners, members, trustees, beneficiaries, servants, employees, contractors, subcontractors, agents, insurers, representatives, attorneys, and the predecessors, successors, assigns, partners, insurers, and all other related individuals and entities of each of them, from any and all claims, demands, damages, debts, liabilities, accounts, costs, expenses, liens, obligations, injunctive relief, fees, actions, causes of action (at law, in equity, or otherwise), suits, agreements, promises, rights, rights to subrogation, rights to contribution, and remedies of any nature whatsoever, known or unknown, fixed or contingent, which San José now has, ever had, or hereafter may have against Santa Clara or County by reason of any matter, cause, or thing arising out of, based upon, or in any way relating to the Litigation.

6. California Civil Code Section 1542 Waiver.

It is the intention of the Parties in executing this Settlement Agreement that this instrument shall be effective as a full and final release, accord and satisfaction of each and every matter released. In furtherance of this intention, Santa Clara, San José and County each acknowledge their familiarity with and expressly, knowingly and intentionally waive the benefit of California Civil Code Section 1542, which is set forth below, and specifically agree that this release shall extend to all claims arising out of transactions related to the Gateway Project prior to the date of this Settlement Agreement which they do not know or expect to exist in their favor at this time. California Civil Code Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties understand and acknowledge the significance and consequences of this Settlement Agreement and of such specific waiver of Civil Code Section Section 1542 and expressly consent that this Settlement Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected claims, demands, obligations and causes of action, if any, as well as those relating to any other claims, demands, obligations or causes of action specified above. The Parties each further acknowledge and agree that their waivers of rights under California Civil Code Section 1542 are essential and material terms of this Settlement Agreement, and, without such waivers, this Settlement Agreement would not have been entered into.

7. **Discovery of Facts.**

Each of the Parties expressly and knowingly acknowledges that it or its attorneys may, after execution of this Settlement Agreement, discover claims, damages, facts, or law different from or in addition to those which each now knows or believes to exist or be applicable with respect to this Settlement Agreement. Nonetheless, it is the Parties' intention fully, finally and forever to settle and release each and every matter released in this Settlement Agreement, known and unknown, suspected or unsuspected, which now exist, may exist, or heretofore have existed, which is released in this Settlement Agreement. In furtherance of this intention, the releases given by Santa Clara, San José and County shall be and remain in effect as full and complete releases of all released matters notwithstanding the discovery or existence of any such additional or different claims, damages, facts, or law.

8. **No Admission of Liability.**

The Parties acknowledge that this Settlement Agreement is a compromise of disputed claims, and that neither this Settlement Agreement, nor any compliance with this Settlement Agreement or consideration pursuant to this Settlement Agreement, shall be construed as an admission by any of the Parties to this Settlement Agreement of any liability whatsoever and all such liability is hereby expressly denied. The Parties agree that this Settlement Agreement shall not be used by any Party in any other proceeding to establish liability or as evidence of any such liability.

9. **Entire Agreement between San José and Santa Clara.**

This Settlement Agreement contains all the terms and conditions agreed upon by Santa Clara and San José regarding the subject matter of this Settlement Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Settlement Agreement not expressly set forth or referred to in this Settlement Agreement are of no force or effect. The Parties agree that this Settlement Agreement is not contingent on the outcome of the separate settlements referenced in paragraph 2, above.

9.1 **Entire Agreement between Santa Clara and County**

This Settlement Agreement contains all the terms and conditions agreed upon by Santa Clara and County regarding the subject matter of this Settlement Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Settlement Agreement not expressly set forth or referred to in this Settlement Agreement are of no force or effect. The Parties agree that this Settlement Agreement is not contingent on the outcome of the separate settlements referenced in paragraph 2, above.

10. **Agreement Interpretation.**

This Settlement Agreement shall be deemed to have been drafted jointly by the Parties. It is agreed and understood that the general rule that ambiguities are to be construed against the drafter shall not apply to this Settlement Agreement.

11. **Enforcement of Agreement.**

The Parties, and each of them, agree that any action or proceeding brought to interpret or enforce the terms of this Settlement Agreement, or to seek damages for breach of a Party's performance of the terms of this Settlement Agreement, shall be brought before a mediator, at a mutually convenient location in California, and if such mediation is unsuccessful, then before a mutually agreeable impartial arbitrator. Any arbitration held pursuant to this Settlement Agreement shall be non-binding.

12. **Governing Law.**

This Settlement Agreement shall be construed and governed exclusively by the substantive laws of the State of California, without giving effect to its conflict of laws provisions.

13. **Headings.**

The headings of this Settlement Agreement are provided for convenience and reference only and shall not bear upon the interpretation or enforcement of this Settlement Agreement.

14. **Successors.**

This Settlement Agreement shall bind and inure to the benefit of the Parties and the respective successors, and assigns of each of them.

15. **Amendment and Modification.**

Any amendment or modification of this Settlement Agreement must be in writing, and signed by all of the Parties. Any amendment or modification not made in this manner shall have no force or effect.

16. **Notice.**

Any notice to be given to one of the Parties shall be in writing and shall be given either by personal delivery, overnight delivery, or by registered or certified mail with return receipt requested (with contemporaneous notice by facsimile) and addressed as follows:

To Santa Clara:  
City of Santa Clara  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408)615-3001  
Facsimile (408)249-7846

with a copy to:  
Office of the City Attorney  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2230  
Facsimile (408) 249-7846

To Redevelopment Agency of the City of Santa Clara:  
Redevelopment Agency of  
the City of Santa Clara  
1500 Warburton Ave.  
Santa Clara, CA 95050

To County of Santa Clara  
County Executive  
70 West Hedding Street  
11<sup>th</sup> Floor, East Wing  
San José, California 95110

with a copy to:  
Office of the County Counsel  
County of Santa Clara  
70 W. Hedding St.  
9<sup>th</sup> Floor, East Wing  
San José, CA 95110

To City of San José  
City Manager  
200 East Santa Clara Street  
17<sup>th</sup> Floor Tower  
San José, California 95113

with a copy to:  
Office of the City Attorney  
200 East Santa Clara Street  
San José, CA 95113-1905

To Redevelopment Agency of the City of San José  
Executive Director  
200 East Santa Clara Street  
14<sup>th</sup> Floor Tower  
San José, California 95113

with a copy to:  
Office of the General Counsel  
200 East Santa Clara Street  
San José, CA 95113-1905

Any Party may, by written notice to the others, designate a different person, address, telephone or facsimile number, or other information specified above, which shall be substituted for the one specified above.

17. **No Waiver.**

The failure of any of the Parties to insist upon strict adherence to any provision of this Settlement Agreement, or to object to any failure to comply with any provision of this Settlement Agreement, shall not be a waiver of that provision or preclude that Party from enforcing that provision. None of the provisions of this Settlement Agreement, including the provisions of this paragraph, shall be deemed to be waived, except by a writing signed by the Party against whom enforcement of the waiver is sought.

18. **Further Assurances.**

Each of the Parties agrees to do any and all acts or things reasonably necessary in connection with the performance of its obligations under this Settlement Agreement without undue delay or expense.

19. **Assistance of Counsel.**

The Parties, and each of them, represent and warrant that each has investigated the facts as deemed necessary to execute this Settlement Agreement; that each has had the opportunity to review and discuss this Settlement Agreement with their counsel; and that no payments, promises, representations, or inducements for the execution of this Settlement Agreement have been made or in any way relied on in executing this Settlement Agreement except for the separate settlement agreement between San José and County and as solely described in this Settlement Agreement.

20. **Costs and Fees.**

It is agreed and understood that each of the Parties shall bear its own costs and attorneys' fees with respect to the Litigation, the Appeal, and this Settlement Agreement, including all costs and attorneys' fees incurred in connection with, or in any way related to, the negotiation or consummation of this Settlement Agreement.

21. **Due Authority.**

Each individual signing this Settlement Agreement expressly states and warrants that he or she has due authority to sign and execute this Settlement Agreement on behalf of the person or entity for whom the individual signs.

22. **Counterparts**

This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

23. **Severability.**

If any provision of this Settlement Agreement is determined to be unenforceable, invalid, or illegal, the other provisions of this Settlement Agreement shall continue in full force and effect.

24. **Effective Date.**

This Settlement Agreement shall become effective, final, and binding on the Effective Date of this Settlement Agreement.

25. Incorporation of Preamble and Recitals.

The Parties to this Settlement Agreement agree and attest to the truth and accuracy of the provisions contained in the Preamble and Recitals set forth above. The provisions of the Preamble and Recitals are hereby incorporated and made a part of this Settlement Agreement by this reference. The Parties agree that this Settlement Agreement has been entered into, at least in part, in consideration of the provisions contained in the Preamble and Recitals, as well as the provisions contained in the balance of this Settlement Agreement.

The Parties acknowledge and accept the terms and conditions of this Settlement Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Settlement Agreement shall become valid and enforceable as of the Effective Date.

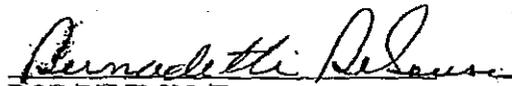
**CITY OF SANTA CLARA, CALIFORNIA,**  
a chartered California municipal corporation

Approved as to form:

  
MICHAEL R. DOWNEY  
City Attorney

By:   
JENNIFER SPARACINO  
City Manager

Attest:

  
for ROD DIRIDON, JR.  
City Clerk

1500 Warburton Avenue  
Santa Clara, CA. 95050  
Telephone: (408)615-2210  
Fax: (408)241-6771

Approved as to form:

COUNTY OF SANTA CLARA

\_\_\_\_\_  
ANN RAVEL  
County Counsel  
COUNTY OF SANTA CLARA

\_\_\_\_\_  
Chairperson  
Board of Supervisors

ATTEST

\_\_\_\_\_  
Clerk  
Board of Supervisors

25. Incorporation of Preamble and Recitals.

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The Parties acknowledge and accept the terms and conditions of this Settlement Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Settlement Agreement shall become valid and enforceable as of the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA,**  
a chartered California municipal corporation.

Approved as to form:

\_\_\_\_\_  
MICHAEL R. DOWNEY  
City Attorney

Attest:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

Approved as to form:

  
ANN RAVEL  
County Counsel  
COUNTY OF SANTA CLARA

ATTEST

  
Clerk PHYLLIS A. PEREZ  
Board of Supervisors

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

JENNIFER SPARACINO  
City Manager

1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408)615-2210  
Fax: (408)241-6771

COUNTY OF SANTA CLARA

  
Chairperson JAMES T. BEALL, JR.  
Board of Supervisors

APPROVED AS TO LEGAL FORM:

City Attorney

CITY OF SAN JOSÉ

Mayor

ATTEST

City Clerk

APPROVED AS TO LEGAL FORM:

General Counsel

REDEVELOPMENT AGENCY OF THE  
CITY OF SAN JOSÉ

Chairperson

ATTEST

Secretary

# **EXHIBIT 3**

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of this 16 day of November, 2006, by and among the County of Santa Clara ("County"), the Santa Clara County Financing Authority ("SCCFA"), the Silicon Valley Theatre Financing Corporation ("SVTFC"), sometimes collectively referred to as the "County Parties," and the City of San Jose ("City") and the Redevelopment Agency of the City of San Jose ("Agency"), sometimes the City and Agency are collectively referred to herein as the "City Parties." This Agreement shall also constitute the settlement agreement between the City and County for the mitigation of transportation impacts arising from the North San Jose Area Development Policies Update ("NSJ Project.")

### RECITALS

- A. The County, City and Agency previously entered into an Amended and Restated Agreement among the Redevelopment Agency of the City of San Jose, the County of Santa Clara, and the City of San Jose dated May 22, 2001 ("May 2001 Agreement"). The May 2001 Agreement remains in effect, and nothing herein is intended to amend that May 2001 Agreement except that Section VII, Paragraph I, Subpart 7, of the May 2001 Agreement, respecting the annexation of County pockets, shall now be read and interpreted in conjunction with that which is set forth in this Agreement.
- B. The County Parties entered into various agreements with several private parties to construct and operate a theater at the County's fairgrounds property ("Fairgrounds").
- C. On August 2, 2004, the City Parties filed a Complaint in Santa Clara County Superior Court, Case No. 104CV024291 ("Case No. 024291" or "Fairgrounds Litigation"), seeking a judicial determination as to whether the County's approval of the theater project at the Fairgrounds violated the May 2001

Agreement. This complaint set forth claims for declaratory relief against the County, and preliminary and permanent injunction against the County Parties.

- D. On or about October 14, 2004, the City Parties filed a First Amended Complaint in Case No. 024291, setting forth a claim for declaratory relief against the County, and interference with contractual relationship against SCCFA and SVTFC.
- E. On or about October 20, 2004, the venue was changed to the San Mateo County Superior Court, and this civil action was later transferred and assigned Case No. CIV442629 ("Case No. 442629").
- F. On December 13, 2004, the City Parties filed a Second Amended Complaint in Case No. 442629, setting forth claims for declaratory relief against the County, interference with contractual relationship against SCCFA and SVTFC, breach of contract against the County, petition for alternative and peremptory writs of mandamus against the County, and petition for writ of administrative mandamus against the County. On February 28, 2005, the County Parties filed an Answer to this Second Amended Complaint, and later on March 3, 2005, filed an Amended Answer.
- G. On April 28, 2005, the County filed a Cross-Complaint in Case No. 442629, setting forth claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and intentional interference with prospective economic relations against the City Parties. On or about July 13, 2005, the City Parties filed an Answer to this Cross-Complaint.
- H. On January 9, 2006, the Court of Appeal of the State of California, First Appellate District, reversed the November 22, 2004 Superior Court Order granting County Parties' special motion to strike as to the City Parties' injunction cause of action in the original August 2, 2004 complaint.

- I. On February 16, 2006, the San Mateo County Superior Court granted the County Parties' Motion for Summary Judgment in Case No. 442629, and issued an Order that all claims alleged in the Second Amended Complaint are adjudicated in favor of the County Parties and against the City Parties. In a separate Order dated February 28, 2006, the San Mateo County Superior Court granted the City Parties' Motion for Summary Adjudication as to the First Cause of Action (breach of Paragraph VII(P)(3) of the May 2001 Agreement) and Fifth Cause of Action (intentional interference with prospective economic relations) of the Cross-Complaint. The City Parties' motion was denied as to the Cross-Complaint's remaining causes of action.
- J. On July 28, 2005, the County filed suit against the City in the Santa Clara County Superior Court, Case No. 105CV046005, entitled *County of Santa Clara v. City of San Jose, et al.* ("Case No. 046005" or "North San Jose Litigation"), alleging, *inter alia*, that the City's approval of the NSJ Project and certification of the North San Jose Area Development Policies Update Environmental Impact Report ("NSJ EIR") violated various provisions of the California Environmental Quality Act of 1970 ("CEQA"). This North San Jose Litigation was later consolidated with two separate actions filed by the City of Santa Clara and Redevelopment Agency of the City of Santa Clara, and the City of Milpitas, and the consolidated action continued under Case No. 046005.
- K. On March 2, 2006, a trial was held in the North San Jose Litigation. In the Notice of Decision issued on March 2, 2006, the Court held that there was not substantial evidence to support the City's determination that there were no feasible mitigation measures for impacts to transportation facilities under the jurisdiction or control of other public agencies. The Court further held that San Jose's findings were timely, that San Jose's findings concerning potable water supply were supported by substantial evidence, and that San Jose's findings that the NSJ Project would not have cumulative impacts on wastewater facilities were supported by substantial evidence. On March 28,

2006, a Judgment and a Peremptory Writ of Mandate were entered in accordance with the Notice of Decision in the North San Jose Litigation.

- L. The County Parties and City Parties desire to settle and compromise all claims and defenses that were asserted in the Fairgrounds Litigation. The City Parties and the County further desire to settle and compromise all claims and defenses that were asserted in the North San Jose Litigation.

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

1. Resolution of the Fairgrounds Litigation

a. Entry of Judgment

In regard to the Second Amended Complaint in Case No. 442629, the City Parties agree to allow Judgment to be entered in favor of the County Parties against the City Parties respecting the February 16, 2006 Court Order granting the County Parties' Motion for Summary Judgment. The City Parties waive any appeal, and the County Parties waive their costs of suit and attorneys' fees respecting such judgment.

b. Dismissal of County Cross-Complaint

The County agrees to execute a request for dismissal with prejudice of its Cross-Complaint as to all cross-defendants, including the City Parties, within two weeks from the date of this Agreement.

c. Waiver of Claims and Damages

The County Parties hereby waive any and all claims or damages relating to or arising out of the Fairgrounds Litigation.

d. Payments by City and/or Agency

The City and/or Agency shall contribute the sum of \$22.5 million to County in three (3) equal installments of \$7.5 million to be used towards a community project that has been identified as the construction of a County Crime Laboratory, seismic upgrades to Superior Court or Valley Medical Center facilities, or seismic upgrades of other existing facilities that would benefit the citizens of City. The first payment shall be made no later than July 1, 2007; the second payment shall be made no later than July 1, 2008; and, the third payment shall be made by no later than July 1, 2009. It is the intent of the City and Agency that these payments will be made out of Agency bond funds. It is understood that if Agency bond funds are not available when installment payments are due, the City and/or Agency shall nevertheless make each installment payment from other sources of their choosing. It is further understood that these contributions shall be made in addition to any pass-through or delegated fund payments contained in the May 2001 Agreement.

The contribution of the funds set forth in this paragraph (d) shall be expressly contingent upon the execution of separate settlement agreements between the City of San Jose, the City of Santa Clara, the Santa Clara Redevelopment Agency, and the City of Milpitas to resolve the consolidated North San Jose Litigation. The County agrees to provide its best efforts to achieve final resolution of the consolidated North San Jose Litigation through executed settlement agreements between City Parties and the Cities of Milpitas and Santa Clara.

e. Annexation of County Pockets

In terms of the annexation of existing County Pockets (or urban unincorporated "islands") of unincorporated land that are scattered throughout the City's Urban Service Area, the parties agree as follows:

i. Annexation of County Pockets of 150 Acres or Less

City shall immediately initiate a process leading to the consideration by City's City Council of the annexation of all such existing County Pockets of 150 acres or less, and the City shall make good-faith efforts to complete all such County Pocket annexations by April 15, 2011. The respective parties recognize that legislative changes could affect the City's ability to annex such County Pockets, and that City shall not be held liable or responsible for delays or inabilities directly created by or resulting from changes in applicable State legislation. The County agrees that, in order to facilitate the processing of these annexations, it shall absorb the usual County costs associated with preparing annexation maps and providing Assessor's and Surveyor's reports, for which the County normally charges fees to the annexing entity. County shall pay for any LAFCO work and fees related to such annexations. County shall further pay any State Board of Equalization fees related to such annexations.

ii. Annexation of County Pockets Greater than 150 Acres

a) City will use good-faith efforts to initiate the processing of annexations for such existing County Pockets of greater than 150 acres by April 15, 2011, by commencing the processes necessary for the City Council to consider adoption of a Specific Annexation Plan for each such pocket subject to all applicable conditions and requirements of California law. The respective parties recognize that legislative changes could affect the City's ability to process or annex such County Pockets as contemplated herein, and that City shall not be held liable or responsible for delays or inabilities created by or resulting from changes in the applicable State legislation.

b) Each Specific Annexation Plan shall include estimated dates for the following (i) when pre-zoning will

be completed; (ii) when information regarding a comparison of services and charges will be mailed to property owners and registered voters; (iii) at least two community information meetings to be held; (iv) when the City will prepare and submit an annexation map to LAFCO; (v) when the City Council will consider formal initiation of annexation by resolution; and (vi) when the City will hold a protest hearing, if necessary. The City shall comply with the Cortese Knox Hertzberg Local Government Reorganization Act, and either consider immediate termination of the annexation proceeding, immediate completion of annexation without voter election, or immediate approval of annexation subject to voter election with an attempt to hold said election as soon as possible thereafter. An adverse election result for approval of annexation of any County Pocket shall relieve City from any further obligations under this Agreement to seek annexation of said County Pocket, unless there is a subsequent change in state law that would allow for annexation of said County Pocket without an election.

iii. The County shall cooperate with the City by providing, at the County's sole cost and expense, information that is reasonably necessary in order for the City to prepare a comparison of services and charges to be mailed to property owners and registered voters. The County shall provide to the City such information within a reasonable time following receipt of the City's request for such information.

iv. The parties shall meet and confer, pursuant to the provisions of Revenue and Taxation Code §99 and any other applicable California law, to discuss the sharing of revenues from the County pockets subject to annexation.

v. Force Majeure Provision

A court order, judgment, administrative proceeding, litigation, or legislation that prohibits the annexations of pocket(s) contemplated herein shall excuse the City's annexation obligation/performance under this Agreement. Any court order,

administrative proceeding, judgment, litigation, or legislation that delays the annexation of pocket(s) contemplated herein will affect the City's compliance with the April 15, 2011 deadline, but City shall complete the annexations as soon as possible subject to any and all legal requirements caused by the delay.

2. Resolution of the North San Jose Litigation

a. The NSJ EIR outlines a number of proposed improvements for the Montague Expressway within the City to mitigate traffic impacts from the NSJ Project. The implementation of these improvements is scheduled to occur during specified phases of the NSJ Project as described in the NSJ EIR. In its Findings for the NSJ Project, Resolution No. 72768, the City Council determined that the NSJ Project included a comprehensive package of roadway improvements (including upgrades to freeway, expressway, and local street facilities). The Findings' Mitigation Monitoring and Reporting Program holds that the City Department of Public Works will ensure implementation of the identified mitigation as described in the NSJ EIR based upon conditions and commitments included in the Final Public Works Clearance for development within the project area. The Mitigation Monitoring and Reporting Program further holds that 85% of all infrastructure mitigation for any individual phase (and all infrastructure for any previous phase) must be built or its implementation reasonably assured prior to issuance of building permits for any subsequent phase.

b. The County, City, and Agency agree to settle the North San Jose lawsuit as described herein conditioned on the following:

i. City Constructed Projects.

In and as a part of the implementation of Phase I of the NSJ Plan, City shall complete and fund mitigations as follows:  
Montague Expressway widening to 8 lanes between Lick Mill

and Trade Zone; all portions of the Expressway regardless of City boundaries, including Interchange modifications at I-880 and the Trimble flyover; City shall complete the McCarthy-O'Toole Interchange as a part of the implementation of Phase III of the NSJ Plan.

ii. City Funded Projects.

City shall fund up to an amount not to exceed \$11 million dollars, and County shall construct the Montague "base project" 8-lane improvements as identified in the Comprehensive County Expressway Planning Study, Implementation Plan - Montague Expressway Tier 1A project, specifically:

- (a) completion of Interchange modifications at I-680,
- (b) widening between I-680 and Park Victoria, and
- (c) any widening remaining to be done between Capitol and I-680.

City shall provide such funding no later than June 30, 2010. County shall make a good faith effort to complete all of these improvements within 5 ½ years of receipt of City's funds so long as City's \$11 million contribution is sufficient to cover the improvements or alternate funds are available to complete the improvements.

iii. Montague/Mission/101 Interchange Project.

County and City agree, to the extent allowed by law, to continue their support for inclusion in the Valley Transportation Plan 2030 ("VTP 2030 Plan") the reconstruction of the interchange at Montague and Highway 101, with improvements to Mission College Boulevard as identified in the Comprehensive County Expressway Planning Study, Implementation Plan - Montague Expressway, Tier 1B project ("Montague/Mission/101

Interchange Project"). The County and City also agree that this is a high priority for State Transportation Improvement Program ("STIP") funding. County shall be solely responsible for all planning and design activities related to the Montague/Mission/101 Interchange Project; provided, however, that County's financial obligations for the Montague/Mission/101 Interchange Project shall not exceed the amounts set forth in this Section 2.b.iii. Such activities shall include, but not be limited to, the completion of the Project Study Report ("PSR") estimated to cost \$500,000 and the submission of such PSR to Caltrans within 1 year of the effective date of this Agreement. On or before June 30, 2010, County shall fund the design work for the construction of the Montague/Mission/101 Interchange Project, as identified in the Expressway Study and as contemplated in the PSR prepared in accordance with this Settlement Agreement. The design work shall be completed on or before June 30, 2014. In no event shall County's funding responsibility for the design work exceed \$1,500,000.00. If funding for the construction of the Montague/Mission/101 Interchange Project is not available on or before July 1, 2014, City Parties shall pay \$1,500,000 to County, and County shall allocate that \$1,500,000 for construction of the Montague/Mission/101 Interchange Project in conformity with the PSR and such other design work as may be necessary to improve the intersection for the ultimate interchange improvements at Highway 101 and Montague Expressway.

iv. San Tomas at Stevens Creek Widening Project.

County and City agree that STIP funding to extend the limits of the mitigation project for San Tomas Expressway widening to 8 lanes between Moorpark (at the south) and El Camino Real (at the north) is a high priority. Commencing immediately and until such time as funding is secured, VTA representatives from County and City shall take all lawful actions to support the inclusion of the widening of San Tomas Expressway to 8 lanes between Moorpark and El Camino Real, as identified and

described in the Expressway Study in the VTP 2030 plan, as a high-priority item for STIP funding.

c. In light of City Parties' commitments identified in Paragraph 2(b) above, County agrees to accept the NSJ Project's transportation impacts on transportation facilities under the County's jurisdiction or control without further mitigation from City Parties.

d. County shall take all reasonable steps necessary to resolve the North San Jose Litigation in a manner that will allow the NSJ Project to proceed, including, but not limited to, supporting a motion to set aside the March 28, 2006 Judgment in Case No. 046005, discharge of the Peremptory Writ of Mandate, and dismissal of Case No. 046005. County shall neither require nor insist that City Parties set aside any of their existing approvals or circulate any new environmental documents for the NSJ Project.

3. No Admission of Liability

The parties agree that this Agreement is part of a compromise and settlement of disputed claims. The parties further acknowledge and agree that this Agreement shall not be construed or deemed to be evidence of any admission of any fact, matter or thing.

4. Waiver of Costs

The parties agree to waive all costs, fees, or sanctions against one another respecting the Fairgrounds Litigation and North San Jose Litigation.

5. Joint Statement

The parties have previously agreed on a joint statement regarding this Agreement.

6. Governing Law, Forum, and Jurisdiction.

a. This Agreement, respecting the resolution of Case No. 442629, shall be interpreted in accordance with and covered in all respects by the laws of the State of California, and the respective parties submit to the exclusive jurisdiction and venue of the San Mateo County Superior Court, the Honorable Mark Forcum, for purposes of interpretation and enforcement. In the event Judge Forcum is no longer sitting on the San Mateo County Superior Court bench at the time any issue regarding interpretation or enforcement arises, then the parties agree to submit the matter to a Judge selected by the Presiding Judge of the San Mateo County Superior Court.

b. This Agreement, respecting the resolution of the North San Jose Litigation, shall be interpreted in accordance with and covered in all respects by the laws of the State of California, and the respective parties submit to the exclusive jurisdiction and venue of the Santa Clara County Superior Court, the Honorable Leslie Nichols, for purposes of interpretation and enforcement. In the event Judge Nichols is no longer sitting on the Santa Clara County Superior Court bench at the time any issue regarding interpretation or enforcement arises, then the parties agree to submit the matter to a Judge selected by the Presiding Judge of the Santa Clara County Superior Court. To the extent that any dispute between City Parties and County regarding the North San Jose Litigation involves the City of Santa Clara and the separate Settlement Agreement entered into between City Parties, County, the City of Santa Clara, and the Redevelopment Agency of the City of Santa Clara, then the resolution provisions of that separate Settlement Agreement shall prevail.

7. Integration

The parties agree that the terms of this Agreement are contractual, and not mere recital, and constitute a fully binding and complete agreement between the County and the City

Parties. Except for the settlement agreement between the City Parties, City of Santa Clara, Redevelopment Agency of the City of Santa Clara, and County of Santa Clara in the North San Jose Litigation, which is intended to be consistent with the provisions of this Agreement with respect to the North San Jose Litigation, this Agreement supersedes any and all prior or contemporaneous agreements, representations, and understandings of and between the parties on those matters addressed in this Agreement. The parties understand that the terms of this Agreement may not be altered, amended, modified or otherwise changed in any respect of particular except by a writing duly executed by all of the parties hereto.

8. Construction and Interpretation

The parties, through their counsel, cooperated in the drafting in preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party. Further, the titles and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. The terms 'include', 'including' and similar terms shall be construed as though followed immediately by the phrase 'but not limited to.'

9. Severability

In the event that, any time subsequent to the execution of this Agreement, any portion or provision of it is found to be illegal, invalid, unenforceable, nonbinding or otherwise without legal force or effect, the remaining portion(s) will remain in force and be fully binding.

10. Counterparts

This Agreement may be executed by the parties in counterparts.

11. Additional Acts

The parties agree to do such acts and execute such documents as are necessary to carry out the provisions and purposes of this Agreement.

12. Notice

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To County

Parties: County of Santa Clara  
County Executive  
70 West Hedding Street  
11<sup>th</sup> Floor, East Wing  
San Jose, California 95110

To City:

City of San Jose  
City Manager  
200 East Santa Clara Street  
17<sup>th</sup> Floor Tower  
San Jose, California 95113

To Agency:

Redevelopment Agency of the City of San Jose  
Executive Director  
200 East Santa Clara Street  
14<sup>th</sup> Floor Tower  
San Jose, California 95113

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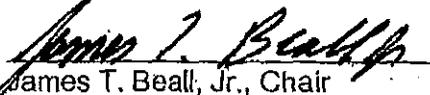
Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

IN WITNESS WHEREOF the parties have executed this Agreement upon the day and year above written.

ATTEST:

  
Phyllis A. Perez, Clerk  
Board of Supervisors

COUNTY OF SANTA CLARA

  
James T. Beall, Jr., Chair  
Board of Supervisors

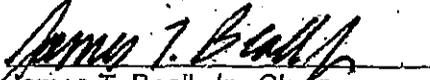
APPROVED AS TO FORM AND LEGALITY:

  
Ann Miller Ravel  
County Counsel

ATTEST:

  
Phyllis A. Perez  
Secretary

SANTA CLARA COUNTY FINANCING AUTHORITY

  
James T. Beall, Jr., Chair

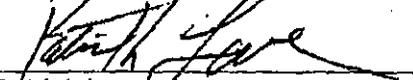
APPROVED AS TO FORM AND LEGALITY:

  
Ann Miller Ravel  
County Counsel

APPROVED AS TO FORM AND LEGALITY:

  
Ann Miller Ravel  
County Counsel

SILICON VALLEY THEATRE FINANCING CORPORATION

  
Patrick Love  
Executive Director

//

ATTEST

*[Handwritten Signature]*

City Clerk

CITY OF SAN JOSE

*[Handwritten Signature]*

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney

ATTEST

*[Handwritten Signature]*

Secretary

REDEVELOPMENT AGENCY OF THE  
CITY OF SAN JOSE

*[Handwritten Signature]*

Chairperson

APPROVED AS TO LEGAL FORM:

General Counsel

# **EXHIBIT 4**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

**COPY**

CITY OF SANTA CLARA, et al.,  
Plaintiffs and Appellants,  
v.  
CITY OF SAN JOSE, et al.,  
Defendants and Respondents.

Court of Appeal - Sixth App. Dist.  
**FILED**

NOV 22 2006

MICHAEL J. YERLY, Clerk

By \_\_\_\_\_  
DEPUTY

H030242

Santa Clara County No. CV046005, Santa Clara County No. CV046013, Santa Clara County  
No. CV046025

BY THE COURT:

Pursuant to the request of the appellant, the appeal filed on May 26, 2006, is  
dismissed. The remittitur shall issue forthwith.

Date: NOV 22 2006

**RUSHING, P.J.**

\_\_\_\_\_  
P.J.

# **EXHIBIT 5**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

**COPY**

Brian Cornelius Hopper  
Office of the City Attorney  
200 East Santa Clara Street  
San Jose, CA 95113

RE: CITY OF SANTA CLARA, et al.,  
Plaintiffs and Appellants,  
v.  
CITY OF SAN JOSE, et al.,  
Defendants and Respondents.

H030242  
Santa Clara County No. CV046005, Santa Clara County No. CV046013, Santa Clara  
County No. CV046025

**\*\* REMITTITUR \*\***

I, MICHAEL J. YERLY, Clerk of the Court of Appeal of the State of California, for the  
Sixth Appellate District, do hereby certify that the opinion or decision entered in the  
above-entitled cause on November 22, 2006, has now become final.

\_\_\_\_\_ Appellant  Respondent to recover costs  
\_\_\_\_\_ Each party to bear own costs  
\_\_\_\_\_ Costs are not awarded in this proceeding  
\_\_\_\_\_ See decision for costs determination

Witness my hand and the seal of the Court affixed at my office on

**NOV 22 2006**

**{SEAL}**

MICHAEL J. YERLY, Clerk

By:

**J. VALDEZ FLOR**

Deputy

# **EXHIBIT 6**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Susan Burns Cochran, SBN 136268 Santa Clara City Attorney's Office 1500 Warburton Avenue  Santa Clara, CA 95050  TELEPHONE NO.: (408) 615-2230	FOR COURT USE ONLY  NOV 28 06  A. FLORESCA
ATTORNEY FOR (Name): City of Santa Clara, Redevelopment Agency of SC <small>Enter name of court and name of judicial district and branch court, if any:</small>  Downtown Superior Court	
PLAINTIFF/PETITIONER: City of Santa Clara, Redevelopment Agency of Santa Clara et al. DEFENDANT/RESPONDENT: City of San Jose et al.	
<b>REQUEST FOR DISMISSAL</b> <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Writ of Mandate (CEQA)	CASE NUMBER: 105CV046005, 105CV046013 and 105CV046025

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1)  With prejudice (2)  Without prejudice
- b. (1)  Complaint (2)  Petition  
 (3)  Cross-complaint filed by (name):  
 (4)  Cross-complaint filed by (name):  
 (5)  Entire action of all parties and all causes of action  
 (6)  Other (specify):\* Petition in Action No. 105CV046005; 105CV046013 and 105CV046025

on (date):  
on (date):

Date: November 28, 2006

Susan Burns Cochran, SBN 136268  
(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

*[Signature]*  
(SIGNATURE)

Attorney or party without attorney for: City of Santa Clara, Redevelopment Agency of Santa Clara et al.

\* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Plaintiff/Petitioner  Defendant/Respondent  
 Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*  
 Date:

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

(SIGNATURE)  
 Attorney or party without attorney for:

\*\* If a cross-complaint or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

Plaintiff/Petitioner  Defendant/Respondent  
 Cross-complainant

(To be completed by clerk)  
 3.  Dismissal entered as requested on (date): NOV 28 2006

4.  Dismissal entered on (date): as to only (name):

5.  Dismissal not entered as requested for the following reasons (specify):

6.  a. Attorney or party without attorney notified on (date): NOV 28 2006  
 b. Attorney or party without attorney not notified. Filing party failed to provide  
 a copy to conform  means to return conformed copy

Date: NOV 28 2006

Kiri Torre  
 Chief Executive Officer/Clerk  
 A. FLORESCA  
 Deputy