

**OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA**

County Government Center
70 West Hedding Street
East Wing, 9th Floor
San José, California 95110-1770

(408) 299-5900
(408) 292-7240 (FAX)



James R. Williams
COUNTY COUNSEL

Greta S. Hansen
CHIEF ASSISTANT COUNTY COUNSEL

Robert M. Coelho
Tony LoPresti
Steve Mitra
Kavita Narayan
Douglas M. Press
Gita C. Suraj
ASSISTANT COUNTY COUNSEL

May 13, 2022

SENT VIA EMAIL

Rajeev Batra
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Purported Settlement Agreement Amendment Relating to North San José Development Policy (“NSJ Amendments”) between the City of San José (CSJ) and the City of Santa Clara (CSC)

Dear Mr. Batra:

This letter responds to the May 12, 2022 letter from Manuel Pineda, Assistant City Manager/Chief Electric Utility Officer to Harry Freitas, County of Santa Clara Director of Roads and Airports (“Pineda Letter”) relating to the CSJ’s and CSC’s proposed amendment (“2022 Draft Amendment”) to the November 16, 2006 Settlement Agreement and General Release relating to North San José that included the City of Santa Clara, the Redevelopment Agency of the City of Santa Clara, the County of Santa Clara, the City of San José, and the Redevelopment Agency of San José (“Original Agreement”).

As part of its City Council Meeting Agenda Packet on May 17, 2022, the CSJ has posted the 2022 Draft Amendment. As you are likely aware, the 2022 Draft Amendment only mentions and includes as signatories the City of San José and the City of Santa Clara, and not the other parties to the Original Agreement, including the County. This is in direct contradiction to basic contract law and Section 15 of the Original Agreement which states that:

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 and effect.** (Emphasis added)

Letter to Rajeev Batra, City Manager, City of Santa Clara
Re: Purported North San José Settlement Agreement Amendment
May 13, 2022
Page 2 of 3

Mr. Pineda's letter states that CSC is currently in the process of entering into a two-party amendment to the Original Agreement with CSJ. Again, it seems obvious that two parties to the Original Agreement cannot legally amend it without the agreement of all parties.

Amendment of the Original Settlement Agreement is by definition a legal matter that requires input from this Office and consultation with the Board of Supervisors, who has the sole legal authority to amend the Original Settlement Agreement. Contrary to the assertions in the Pineda Letter (that reference 2+ years of working with the County on the Draft 2022 Amendment), this Office was notified in writing for the first time in early March 2022 that the CSJ intended to take the NSJ Amendments to the City's Planning Commission on March 23, 2022 (which hearing did occur) and to the City Council on May 2, 2022. On April 28, 2022, our Office requested to CSJ that the NSJ Amendments item be continued to at least June 14, 2022 to allow for additional negotiations and consideration of any proposed settlement agreement amendments by our Board of Supervisors. This request was rejected and the item was deferred to the May 17, 2022 City Council meeting. The 2022 Draft Amendment was subsequently added to the City Council Agenda for consideration on May 17, 2022.

Since March 2022, the County and CSJ have worked cooperatively, including holding a meeting between our respective Offices on April 8, 2022, as well as a larger meeting between County and CSJ and CSC staff on April 19, 2022. On April 22, 2022, the CSJ sent an initial settlement proposal to our Office for review. Subsequently, the County has engaged with an expert traffic engineering firm to evaluate the potential implications of the CSJ's initial proposal, including the proposed deletion of the Trimble Flyover project even though the Original Agreement requires that it be built prior to the start of Phase 2 of the North San José project. The County has also asked the consultant to evaluate additional options for discussion. In short, the County is working in good faith with its consultants to diligently complete its analysis so that it can negotiate in an informed manner.

As recognized in the Pineda Letter, the County has not and cannot agree to the CSJ's initial proposed settlement terms. It is simply not reasonable for the CSJ to expect the County to agree to revised settlement terms without sufficient time to evaluate them, and reasonable minds would agree that a couple of weeks is not sufficient time.¹ This is why we believe a more productive course of action would be sufficient deferral to allow CSJ and County to conduct more substantial, informed discussions that would benefit both parties and their constituents.

The County is extremely concerned that any CSC approval of the 2022 Draft Amendment would constitute breach of contract, bad faith, and a breach of the covenant of good faith and fair dealing as a result of both cities' blatant disregard of the Original Agreement. The County is

¹ This is especially true in the context of the CSJ's mediation with the CSC on these same topics that we understand occurred for several *years*. It is unclear to us why the CSJ engaged the CSC without including the County in those same conversations when all three entities are parties to the Original Agreement.

Letter to Rajeev Batra, City Manager, City of Santa Clara
Re: Purported North San José Settlement Agreement Amendment
May 13, 2022
Page 3 of 3

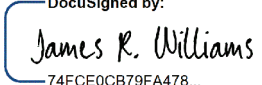
disappointed by the cities' course of action in letting the 2022 Draft Amendment get this far without concurrence of the County.

On a final note, in the spirit of cooperation, the County has not yet publicly asserted its legal rights in a comprehensive manner to both cities. However, in the event that the cities move forward with approving the 2022 Draft Amendment, the County will have no choice but to pursue all of its available legal remedies to protect its rights, including enforcement of the existing settlement agreements, causes of action for, including but not limited to, bad faith and breach of the covenant of good faith and fair dealing, as well as legal challenges to the flawed process that the CSJ has utilized to consider the NSJ Amendments. This is, of course, not the County's preferred course of action.

In order to avoid a waste of public resources on adversarial proceedings and in the hope that these resources can be put to productive use, we respectfully request that the CSC discontinue its consideration of the 2022 Draft Amendment until further discussions between the relevant parties can occur.

Thank you for your consideration.

Very truly yours,

DocuSigned by:

74FCE0CB79FA478...
JAMES R. WILLIAMS
County Counsel

- c: Honorable Board of Supervisors (via email)
- Jeffrey V. Smith, JD, MD, County Executive (via email)
- Miguel Márquez, JD, MPP, Chief Operating Officer (via email)
- Hon. Mayor Gillmor and Councilmembers (via email to City Clerk)
- Manuel Pineda, Assistant City Manager (via email)