

**AMENDMENT NO. 2
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
MOORE IACOFANO GOLTSMAN, INC.**

PREAMBLE

This agreement (“Amendment No. 2”) is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Moore Iacofano Goltsman, Inc. a California corporation (Contractor). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. The Parties previously entered into an agreement entitled “Agreement for Services Between the City of Santa Clara, California, and Moore Iacofano Goltsman, Inc.,” with an Effective Date of July 17, 2018 (Agreement); and
- B. The Agreement was previously amended by Amendment No. 1, dated June 1, 2020, and is again amended by this Amendment No. 2. The Agreement and previous amendment are collectively referred to herein as the “Agreement as Amended”; and
- C. The Parties entered into the Agreement as Amended for the purpose of having Contractor provide professional services to prepare a comprehensive plan for the Freedom Circle focus area, and the Parties now wish to amend the Agreement as Amended to enhance the scope of services and related funding.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

- 1. Section 2 of the Agreement as Amended, entitled “Term of Agreement” is amended to reflect a termination date of December 31, 2022.
- 2. Section 6 of the Agreement as Amended, entitled “Compensation and Payment” is amended to reflect a maximum compensation of seven hundred fifty-one thousand, six hundred thirty-five dollars (\$751,635), subject to budget appropriations.
- 3. Exhibit A of the Agreement as Amended, entitled “Scope of Services” is appended to include the attached “Additional Tasks,” dated June 8, 2021.

4. Exhibit B of the Agreement as Amended, entitled "Schedule of Fees" is hereby updated to reflect a total not to exceed amount of seven hundred fifty-one thousand, six hundred thirty-five dollars (\$751,635), subject to budget appropriations.
5. Except as set forth herein, all other terms and conditions of the Agreement as Amended shall remain in full force and effect. In case of a conflict in the terms of the Agreement as Amended and this Amendment No. 2, the provisions of this Amendment No. 2 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 2 as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

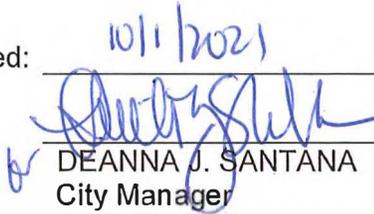
Approved as to Form:

Alexander Abbe

Digitally signed by Alexander Abbe
Date: 2021.09.29 14:12:40 -0700

Office of the City Attorney
City of Santa Clara

Dated: 10/1/2021



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

"CITY"

MOORE IACOFANO GOLTSMAN, INC.
a California corporation

Dated: 7.25.2021

By (Signature): 

Name: Chris Beynon

Title: Chief Development Officer

Principal Place of Business Address: 800 Hearst Avenue
Berkeley, CA 94710

Email Address: chrisb@migcom.com

Telephone: (510) 845-7549

Fax: (510) 845-8750

"CONTRACTOR"

I:\PLANNING\Admin\Contracts\M.I.G. - Moore Iacofano Goltsman, Inc\Freedom Circle Specific Plan\Amendment No. 2\Amendment No. 2 - Form.doc

**Additional Tasks
June 8, 2021**

Freedom Circle Focus Area Plan / Traffic Impact Analysis /EIR

Task	Description	Budget
TIA Additional Analysis (3 rd change order)	Analysis of an additional cumulative scenario to evaluate impacts specific to the Greystar development (without full build-out) in the cumulative condition.	\$32,000 (Hexagon labor) \$1,600 (MIG labor/admin) (\$16,380) (Contingency) =\$17,220
Contingency	Restore contingency (used for three PW-requested TIA change orders) and add buffer for additional TIA edits and EIR changes	\$48,780
Total		\$66,000



Agenda Report

21-1199

Agenda Date: 9/7/2021

REPORT TO COUNCIL

SUBJECT

Action on Amendment No. 2 to the Agreement with Moore Iacofano Goltsman, Inc. (MIG) for preparation of the Freedom Circle Focus Area Plan, Amendment No. 2 to Reimbursement Agreement with Freedom Circle Venture, LLC, and Related Budget Amendment (Deferred from August 24, 2021)

COUNCIL PILLAR

Promote and Enhance Economic, Housing, and Transportation Development

BACKGROUND

On August 27, 2019, the City Council directed staff to proceed with the long-range planning process to designate the Freedom Circle area as a Future Focus Area within the General Plan instead of the preparation of a Specific Plan. This direction was given following the decision by two of the three Freedom Circle property owners funding the Specific Plan (The Sobrato Organization and Irvine Company) to withdraw from their funding of the Freedom Circle Specific Plan process, which had begun in August 2018. The remaining property owner (Greystar DBA Freedom Circle Venture LLC) is continuing to fund the Focus Area process while also moving forward with their General Plan Amendment (GPA) application.

This item was scheduled for consideration by the City Council on August 24, 2021 as a consent calendar item. Councilmember Jain pulled the item to ask several questions. Staff requested that the item be continued to the September 7, 2021 meeting to provide adequate time to prepare a response to those questions.

DISCUSSION

Over the course of work on this project, additional tasks have been added related to the Traffic Impact Analysis (TIA). Funding for these additional tasks has come from the Service Agreement contingency. Continued work on the TIA reveals that further analysis is needed and, therefore, the formal Scope of Services for the consultant agreement needs to be expanded and supplemented with additional funding to complete this body of work.

The consultant agreement has been, and will continue to be, funded through a Reimbursement Agreement with the developer. Included in this report, is the related amendment to the Reimbursement Agreement to provide the additional funding necessary.

Responses to questions raised at the August 24, 2021 City Council meeting

Councilmember Jain requested information on two topics: 1) clarification of the scope of the project Environmental Impact Report (EIR); and 2) possible widening of the San Tomas Aquino Creek Trail. Councilmember Jain also asked that the project include a robust Transportation Demand

Management (TDM) Plan and be subject to the City's updated Climate Action Plan (CAP) and Building Reach Codes, currently under development.

TDM, CAP, and Building Reach Codes

Future development within the Focus Area would be subject to the requirements of the City's adopted Climate Action Plan and Building Codes at the time of permit issuance for new projects within the Focus Area. Based on current project schedules, updates to both documents are expected to be adopted and in effect prior to the issuance of entitlements within the Freedom Circle Focus Area and so new development would need to conform to their requirements. The project will include a TDM plan as required by the City's Climate Action Plan and other City policies.

EIR Scope

Per direction given by the City Council at the August 27, 2019 Council meeting, the project EIR will analyze the pending Greystar General Plan Amendment, a privately initiated application, as well as the City's proposal to create a Focus Area in the General Plan. The Greystar project, if approved by City Council, would proceed as an 1,100 unit residential land development project. The second element, amending the General Plan to create a Focus Area, would create support within the General Plan for the future development of a mix of up to 2,500 residential units and 2 million square feet of commercial/office development, but a future planning study and additional land entitlement work would be necessary before any specific projects could move forward to utilize this capacity. This approach is consistent with other Focus Areas identified within the General Plan, for which the General Plan identifies a potential amount of development capacity and general land use policies for the Focus Area, and which have subsequently been implemented through the preparation of a Specific Plan.

Trail Widening

Staff has discussed the potential widening of the San Tomas Aquino Creek trail with the project consultant (MIG), Valley Water staff, and a representative of Greystar. The Creek trail is located outside of the Focus Area project boundaries on land controlled by Valley Water and potential expansion of the Creek Trail is outside of the scope of the current project. Valley Water staff communicated that there is a chance they would be open to it provided that the design for the widening:

- Would not impact their operations on the affected creek reach
- Would provide access for maintenance
- Would maintain flow conveyance capacity and integrity of the levee
- Would not require removal of native trees or riparian vegetation
- Would avoid the need for new bridges.

The City would need to engage an engineer to prepare a schematic design for widening the trail and an environmental consultant to prepare a CEQA analysis. Widening the trail would require coordination regarding the adjacent utilities and engineering work related to widening the levee on which it sits and/or increasing the slope of the levee. Widening the Creek Trail at this location is not currently in the scopes of the City's Bicycle Master Plan, Pedestrian Master Plan, or Creek Trail Network Expansion Master Plan.

The CEQA analysis would likely include analysis of potential impacts to biology, hydrology and recreation. Because the trail is on top of the levee and near the creek, it would require coordination

the Army Corps and the California Department of Fish and Wildlife as well as Valley Water. Greystar has indicated a willingness to contribute towards the costs for a subsequent effort to widen the trail that does not impact their current project schedule, for which the EIR is scheduled to be in public circulation later this month.

This engineering and CEQA effort will require significant funding and a significant level of staff support. If Council is considering this effort it might be more appropriate to consider in context of all other Council funding and staff priorities for the Community Development and Public Works Departments. If the City Council directs staff to initiate work on widening the creek trail, staff will further develop a project scope and evaluate an appropriate process to engage with the consultants needed to undertake this effort.

ENVIRONMENTAL REVIEW

The actions being considered are simply to amend the Professional Services and Reimbursement Agreements. These actions do not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5), in that they are governmental organizational or administrative activities that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

Amendment No. 2 to the Professional Services Agreement with MIG increases the not-to-exceed amount by \$66,000 to \$751,635. The City’s consultant costs for preparation of the Freedom Circle focus area and Greystar General Plan Amendment are covered through a reimbursement agreement with the developer. The developer will deposit an additional \$66,000 following the execution of Amendment No. 2 to the Reimbursement Agreement. The additional funds will be collected in the City’s Prefunded Plan Review Fund from which payments will also be made.

**BUDGET AMENDMENT
FY 2021/22**

	Current	Increase/ (Decrease)	Revised
<u>Prefunded Plan Review Fund</u>			
<u>Revenues</u>			
Developer Contributions	\$0	\$66,000	\$66,000
<u>Expenditures</u>			
Freedom Circle Focus Area Plan	\$0	\$66,000	\$66,000

COORDINATION

This report has been coordinated with the Finance Department and the City Attorney’s Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website

and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>

RECOMMENDATION

1. Consistent with City Charter Section 1305 , "At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the **affirmative votes of at least five members** so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget," approve the FY 2021/22 budget amendment in the Prefunded Plan Review Fund to recognize developer contributions in the amount of \$66,000 and establish an appropriation for the Freedom Circle Focus Area Plan in the amount of \$66,000 (five affirmative council votes required to appropriate additional revenue);
2. Authorize the City Manager to execute Amendment No. 2 to the Agreement with Moore Iacofano Goltsman (MIG) for professional services to prepare the Freedom Circle Focus Area Plan and related Environmental Review documents by increasing the amount of the agreement by \$66,000 and extending the term of the agreement through December 31, 2022, for a revised not-to-exceed maximum compensation of \$751,635, subject to the appropriation of funds; and
3. Authorize the City Manager to execute Amendment No. 2 to the Reimbursement Agreement with Freedom Circle Venture LLC.

Reviewed by: Andrew Crabtree, Director, Community Development Department

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Amendment No. 2 to Professional Services Agreement with MIG
2. Amendment No. 2 to Reimbursement Agreement
3. Amendment No. 1 to Professional Services Agreement with MIG and RTC 20-102
4. Amendment No. 1 to Reimbursement Agreement
5. Original Professional Services Agreement with MIG and RTC 18-647
6. Original Reimbursement Agreement