

**REIMBURSEMENT AGREEMENT
FOR SPECIFIC PLANNING AND ENVIRONMENTAL PLANNING SERVICES
FOR THE FREEDOM CIRCLE SPECIFIC PLAN**

THIS AGREEMENT is dated for identification this 24TH day of August, 2018, by and among the CITY OF SANTA CLARA, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California, 95050 (hereinafter "CITY"), FREEDOM CIRCLE VENTURE, LLC, a Delaware limited liability company, with its primary business address at 450 Sansome Street, Suite 500, San Francisco, CA 94111 ("FCV"), THE SOBRATO ORGANIZATION, a California limited liability company with its primary business address at 10600 North De Anza Boulevard, Suite 20, Cupertino, CA 95014 ("TSO"), and FREEDOM CIRCLE LLC, a California limited liability company with its primary business address at 5451 Great America Parkway, Santa Clara CA 95054 ("TIC" and together with FCV and TSO, collectively, the "APPLICANTS"). CITY and any of the APPLICANTS may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

WHEREAS, CITY is initiating a Specific Plan and related Environmental Review (collectively, the "Freedom Circle Specific Plan") for certain real property commonly known as the "Freedom Circle Plan Area"; and

WHEREAS, APPLICANTS desire to develop separate mixed-use or residential projects (each a "Project") upon real property owned by APPLICANTS within the Freedom Circle Plan Area and prepare and submit applications to CITY for approval of the development and construction of their Projects (the "Applications"); and

WHEREAS, the processing of the Applications, preparation of the Freedom Circle Specific Plan and evaluation of the potential impacts of the Projects requires specialized expertise; and

WHEREAS, CITY is in need of specialized consulting services to review the Projects for such impacts, prepare the Freedom Circle Specific Plan and process the Applications for the Projects (the "Consultant Services") and CITY intends to enter into the agreement attached hereto as Attachment "A" (the "Service Agreement") with MIG (hereinafter referred to as "Consultant"), whereby Consultant will provide the Consultant Services to CITY; and

WHEREAS, APPLICANTS are willing and able to provide funding for the reimbursement of CITY's costs for the Consultant Services provided by Consultant pursuant to the terms of the Service Agreement.

NOW, THEREFORE, in consideration of the recitals and mutual promises contained herein, CITY and APPLICANTS agree as follows:

ARTICLE I - REIMBURSEMENT OF COSTS OF CONSULTANT SERVICES

APPLICANTS shall deposit funds into a deposit account established by CITY (the "Deposit Account") in accordance with Article II below. The funds deposited into the Deposit Account shall be used to reimburse CITY for the costs of the Consultant Services provided by Consultant pursuant to the terms of the Service Agreement. City agrees to enter into the Service Agreement with Consultant promptly following APPLICANTS' deposit of the Original Deposit Amount (as defined below) into the Deposit Account. The Consultant shall perform the Consultant Services (including the preparation of a Specific Plan document and an environmental document on behalf of CITY to evaluate environmental impacts and the completion of the other work contracted for in the Service Agreement), as directed by CITY in accordance with the Service Agreement and Consultant's "Scope of Work" set forth therein.

ARTICLE II – FUNDING OF DEPOSIT ACCOUNT

A. Promptly following the execution of this Agreement, APPLICANTS shall deposit funds into the Deposit Account for the purposes stated in Article I above in the amount of Nine Hundred Thousand dollars (\$900,000.00) (the "Original Deposit Amount"). Each of the APPLICANTS shall deposit an amount equal to one-third of the Original Deposit Amount into the Deposit Account. Provided any unexpended funds in the Deposit Account have not been previously returned to APPLICANTS in accordance with Paragraph C of Article IV below, such funds shall be returned to the APPLICANTS promptly after the City Council of CITY makes a decision on whether to certify the Final Environmental Impact Report for the Freedom Circle Plan Area. At any APPLICANT'S request, CITY shall promptly provide such APPLICANT with copies of all invoices and other documents (the "Cost Records") to verify the amounts released from the Deposit Account to reimburse CITY for the costs of the Consultant Services provided by Consultant pursuant to the terms of the Service Agreement. If any audit reveals inaccuracies between the Cost Records and the amounts released from the Deposit Account to reimburse CITY for the costs of the Consultant Services provided by Consultant pursuant to the terms of the Service Agreement, CITY shall cause such inaccuracy to be corrected within thirty (30) days of CITY'S receipt of such audit.

B. CITY agrees to stay within the scope and budget of the Service Agreement. In the event that additional services are required of Consultant, each of the APPLICANTS shall have the right to review and approve such additional services and the costs thereof, which approval may be granted or withheld by each of the APPLICANTS in its sole and absolute discretion. If CITY and APPLICANTS cannot agree to the scope and cost of said additional services in writing, this Agreement may be terminated by any Party pursuant to Article IV. CITY and APPLICANTS agree that each APPLICANT shall pay a one-third share of such additional funding, unless the parties agree to an alternate funding allocation as part of the review and approval of the scope and cost of said additional services. If CITY and APPLICANTS agree to the scope and cost of said additional services in writing, APPLICANTS shall deposit funds in an amount equal to the cost of said additional services into the Deposit Account (with each of the APPLICANTS depositing an amount equal to one-third of such costs into the Deposit Account) prior to the commencement of said additional services by the Consultant.

C. CITY reserves the right to seek reimbursement for costs incurred by City from any third parties who submit development applications under the Freedom Circle Specific Plan for properties within or in vicinity of the Freedom Circle Plan Area in the future. Any such reimbursement received by CITY from such third parties shall be paid by CITY to APPLICANTS, in equal one-third shares, promptly following CITY's receipt thereof in order to reimburse APPLICANTS for the funds withdrawn from the Deposit Account to reimburse CITY for the costs of the Consultant Services provided by Consultant pursuant to the terms of the Service Agreement.

ARTICLE III - CITY'S RESPONSIBILITIES

A. Except as otherwise provided in this Agreement, CITY shall diligently and in good faith administer the Service Agreement in accordance with the scope of work set forth therein.

B. CITY shall designate in writing a representative authorized to act on its behalf and to interact with APPLICANTS and Consultant with respect to this Agreement.

C. CITY shall not amend the "scope of work" or "compensation for services" provisions or any other provisions of the Service Agreement without APPLICANTS' prior written approval, which approval may be granted or withheld by each of the APPLICANTS in its sole and absolute discretion.

D. CITY shall forward any written information supplied by APPLICANTS to Consultant for its review. Consultant's scope of work and bid were based on the information available as of March 1, 2018, and CITY shall provide such information to APPLICANTS. As required by State law, CITY, as lead agency for the Freedom Circle Specific Plan, is required to make the final determination of the adequacy and completeness of the environmental evaluation and documentation for the Freedom Circle Specific Plan. CITY will control and administer the Service Agreement between CITY and Consultant.

ARTICLE IV - TERM AND TERMINATION

A. The effective term of this Agreement shall be from the date of execution of this Agreement until the date the Consultant Services to be performed by Consultant in accordance with the terms of the Service Agreement have been fully performed and paid for, unless this Agreement is terminated earlier in accordance with Paragraph B below.

B. Any of the Parties may terminate this Agreement without cause by giving the other Parties written notice of such termination ("Notice of Termination"), which clearly expresses that Party's intent to terminate this Agreement, and this Agreement shall terminate on the date that is thirty (30) calendar days after such Party's delivery of the Notice of Termination to the other Parties. In the event a Party elects to terminate the Agreement, the City and the remaining APPLICANTS shall meet and confer regarding the potential amendment or extension of this or a replacement Agreement to fund completion of the Specific Plan and related Environmental Review on terms that are mutually agreed upon by the CITY and non-terminating APPLICANTS.

C. In the event of the termination of this Agreement or the Service Agreement prior to the completion of the Consultant Services to be performed by Consultant in accordance with the terms of the Service Agreement, CITY shall promptly thereafter (i) prepare and deliver to APPLICANTS a statement of all amounts paid by CITY to Consultant in accordance with the terms of the Service Agreement and (ii) refund to APPLICANTS, in equal one-third shares, the Original Deposit Amount, less the amounts paid by CITY to Consultant in accordance with the terms of the Service Agreement as of the date of the termination of this Agreement.

ARTICLE V - GENERAL PROVISIONS

A. Successors and Assigns. This Agreement is binding on APPLICANTS and their respective agents, successors and assigns and legal representatives. APPLICANTS shall not assign or transfer their interest in this Agreement without the prior written consent of CITY, which shall not unreasonably be withheld, and any attempt to do so shall be voidable by CITY.

B. Applicable Laws and Attorneys' Fees. This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

C. Amendment. This Agreement may only be amended in writing and signed by all Parties. CITY and APPLICANTS acknowledge and agree that subsequent Parties may be added to this Agreement by way of amendment to establish such Parties' responsibility for their proportional share in the costs associated with the Service Agreement.

D. Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein. If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

E. Public Records. The Parties recognize and acknowledge that CITY is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.

F. Notices. Any notice required to be given to APPLICANTS shall be deemed to be duly and properly given if mailed to APPLICANTS, postage prepaid, addressed to:

FREEDOM CIRCLE VENTURE, LLC
450 Sansome Street, Suite 500
San Francisco, CA 94111

THE SOBRATO ORGANIZATION
10600 North De Anza Boulevard, Suite 20
Cupertino, CA 95014

FREEDOM CIRCLE LLC
5451 Great America Parkway
Santa Clara, CA 95054

or personally delivered to APPLICANTS at such address or at such other addresses as APPLICANTS may designate in writing to CITY.

Any notice required to be given CITY shall be deemed to be duly and properly given if mailed to CITY, postage prepaid, addressed to:

John Davidson, Planning Division
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

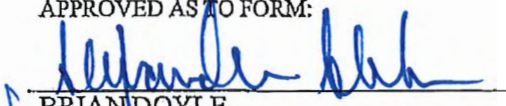
or personally delivered to CITY at such address or at such other addresses as CITY may designate in writing to APPLICANTS.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement, dated August 24, 2018, between the City of Santa Clara and APPLICANTS for services related to planning services, is executed by CITY and APPLICANT.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:


BRIAN DOYLE
City Attorney


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

ATTEST:


for JENNIFER YAMAGUMA
Acting City Clerk

"CITY"

FREEDOM CIRCLE VENTURE, LLC,
a Delaware limited liability company

By: 

(Signature of Person executing the Agreement on behalf of Applicant)

Name: Ali Warner

Title: Vice President

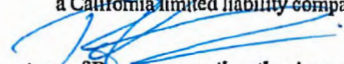
Local Address: 450 Sansome Street, Suite 500

San Francisco, CA 94111

Email Address: awarner@greystar.com

Telephone: (415) 524-0992

THE SOBRATO ORGANIZATION
a California limited liability company

By: 

(Signature of Person executing the Agreement on behalf of Applicant)

Name: Peter Tsai

Title: Vice-President, Real Estate Development

Local Address: 10600 N. De Anza Boulevard, Suite 200

Cupertino, CA 95014

Email Address: ptsai@sobrato.com

Telephone: (408) 886-6549

FREEDOM CIRCLE LLC
A California limited liability company

By: Carlene Matchniff
(Signature of Person executing the Agreement on behalf of
Applicant)

Name: Carlene Matchniff

Title: Vice President, Government Relations

Local Address: 5451 Great America Pkwy
Santa Clara, CA 95054

Email

Address: cmatchniff@irvinecompany.com

Telephone: (408) 330-0196

"APPLICANTS"