

**REIMBURSEMENT AGREEMENT
FOR SPECIFIC PLANNING AND ENVIRONMENTAL PLANNING SERVICES
FOR THE PATRICK HENRY DRIVE SPECIFIC PLAN**

THIS AGREEMENT is dated for identification this ____ day of ____, 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"), _____, with its primary business address at _____ ("____"), and _____ with its primary business address at _____ ("____") (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 "Patrick Henry Drive Specific Plan") for certain real property commonly known as the "Patrick Henry Drive Future Focus Area"; and

WHEREAS, APPLICANTS desire to develop separate mixed-use or residential projects (each a "Project") upon real property owned by APPLICANTS within the Patrick Henry Drive Future Focus 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 Patrick Henry Drive 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 Patrick Henry Drive 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

A. 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.

B. 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 – APPLICANTS' RESPONSIBILITIES

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 Eight Hundred Eleven Thousand Five Hundred and Two dollars (\$811,502.00) (the "Original Deposit Amount"). APPLICANTS have agreed to apportion the costs of the preparation of the Patrick Henry Drive Specific Plan based upon the pro rata share that each APPLICANT owns of the APPLICANTS' Property, as set forth in Exhibit "B." Provided any unexpended funds in the Deposit Account have not been previously returned to APPLICANTS in accordance with Paragraph D of Article V 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 Patrick Henry Drive Plan Area. At any APPLICANT'S request, subject to any redactions determined to be necessary by the City Attorney to preserve attorney-client privilege, 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. APPLICANTS agree to submit all required documents and to respond to CITY's reasonable requests for information in a timely manner.

ARTICLE III - CITY'S RESPONSIBILITIES

A. 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 V. 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 prior to the commencement of said additional services by the Consultant.

B. CITY reserves the right to seek reimbursement for costs incurred by CITY from any third parties who submit development applications under the Patrick Henry Drive Specific Plan for properties within or in the vicinity of the Patrick Henry Drive Plan Area in the future. CITY shall impose a specific plan fee upon such third parties pursuant to Government Code section 65456(a), plus interest thereon. Any such reimbursement received by CITY from such third parties shall be paid by CITY to APPLICANTS, 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.

C. 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. CITY agrees to prepare, publish and process the Patrick Henry Drive Specific Plan and all associated City approvals in an expeditious manner.

D. Subject to Article IV, Paragraphs B and C, below, CITY agrees to bring the Patrick Henry Drive Specific Plan and associated approvals to public hearings for consideration by the CITY's Planning Commission and City Council. Specifically, CITY commits to conduct at least one public hearing before the Planning Commission and one public hearing before the City Council to consider the Specific Plan.

E. 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.

F. 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 Patrick Henry Drive Specific Plan, is required to make the final determination of the adequacy and completeness of the environmental evaluation and documentation for the Patrick Henry Drive Specific Plan. CITY will control and administer the Service Agreement between CITY and Consultant.

ARTICLE IV – EXERCISE OF FUTURE DISCRETION

A. Independent Applications; No Obligation to Proceed with Development Transactions. None of the APPLICANTS have an obligation to any other APPLICANTS to proceed with their respective Applications; provided, however, that each APPLICANT shall promptly advise the other APPLICANTS and the CITY of any decision not to proceed with their respective Applications.

B. No Guaranty of CITY Approval. Notwithstanding any other provision of this Agreement, nothing herein shall commit or otherwise require the CITY to approve the Patrick Henry Drive Specific Plan or the Applications. The Parties agree that the City shall retain full

discretionary authority with respect to the Patrick Henry Drive Specific Plan and the Applications and may deny, condition, or approve the same, consistent with applicable law. Further, the City retains full authority under CEQA to impose feasible mitigation measures and/or adopt alternatives to reduce significant environmental impacts of the Specific Plan and/or the Applications.

C. No Influence on CITY Decisions. The APPLICANTS expressly understand and agree that all charges against Deposits paid to the CITY pursuant to this Agreement represent reimbursement for processing costs, and shall in no way influence the decision of the CITY concerning the planning, zoning, or development of any real property within the City or any decision concerning any public improvements, whether publicly or privately financed. No promises, representations, or warranties have been made, expressly or impliedly, by the CITY, its officers, agents, or employees, regarding the approval of the Environmental Impact Report, the Specific Plan, or the Applications. It is further specifically understood and agreed that no person has the authority to make any such promise, representation, or warranty. The Parties hereto understand and agree that the Deposits paid to the CITY by the APPLICANTS under this Agreement shall not influence any decision of the CITY, or guarantee any recommendation which is favorable to, or which benefits, the APPLICANTS.

ARTICLE V - 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, and CITY has held hearings in accordance with Article III, paragraph D, above, unless this Agreement is terminated earlier in accordance with Paragraph B below.

B. Any of the APPLICANTS may terminate this Agreement without cause by delivering to the other Parties written notice of such termination ("Notice of Termination"), which clearly expresses that APPLICANT's intent to terminate this Agreement, and this Agreement shall terminate on the date that is thirty (30) calendar days after such APPLICANT's delivery of the Notice of Termination to the other Parties; provided that, in the event that the APPLICANTS other than the terminating APPLICANT agree in writing, delivered to the CITY within such 30 day period, to assume the obligations of the terminating APPLICANT, then within this Agreement shall not terminate, and shall continue in full force and effect as to all Parties other than the terminating APPLICANT.

C. CITY may terminate this Agreement for cause by delivering to the other Parties a written 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 CITY's delivery of the Notice of Termination to the other Parties.

D. 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 pro-rata 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 VI - GENERAL PROVISIONS

A. Mutual Cooperation. CITY and APPLICANTS shall cooperate with one another and use good faith efforts in the timely processing of the Specific Plan and the Applications, consistent with this Agreement, and shall execute such other and further documents and take such other and further actions as may be necessary or convenient to effect the transaction described herein.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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:

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 _____, 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

ATTEST:

JENNIFER YAMAGUMA
City Clerk

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

“CITY”

a California limited liability company

By: _____

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

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: _____

a California limited liability company

By: _____

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

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: _____

A California limited liability company

By: _____

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

Name: _____

Title: _____

Local Address: _____

Email _____

Address: _____

Telephone: _____

“APPLICANTS”