

**CITY OF CLE ELUM, WASHINGTON
CITY HEIGHTS HOLDING LLC
AGREEMENT FOR PAYMENT OF PROFESSIONAL/STAFF/CONSULTANT
SERVICES**

This Agreement for payment of professional, staff, and consultant services (“Agreement”) is entered into by and between the City of Cle Elum, Washington, a municipal corporation of the State of Washington, hereinafter referred to as “the City,” and City Heights Holding, LLC, hereinafter referred to as “Developer.”

I. RECITALS

1. On June 11, 2009, an application was submitted to the City that would authorize a planned mixed-use development of 358 acres known as the City Heights Project.

2. A draft environmental impact statement (“EIS”) was prepared and circulated for public comment and on November 12, 2010 the City issued a final EIS for the proposed project.

3. The City Council subsequently approved ordinances in November of 2011 to approve the annexation of the 358 acres, to designate the project as a planned action (ORD 1353), to rezone the property from Residential to Planned Mixed Use (ORD 1354) and to execute a Development Agreement (ORD 1355).

4. Sean Northrop, the authorized agent for City Heights, advised the City in the summer of 2019 that he intends to proceed with the implementation of the proposed project.

5. City staff and officials, the authorized agent for City Heights, and consultants for both, subsequently took part in preliminary consultations related to the activation of the 2011 Development Agreement.

6. On March 18, 2020 City staff and officials, the authorized agent for City Heights, and consultants for both, participated in a formal pre-application meeting to preview the potential design of the first phase of development to implement the approved City heights development in accordance with the provisions of the approved development Agreement.

7. Since then, City staff and officials, the authorized agent for City Heights, and consultants for both, continued to engage in pre-application discussions.

8. This development will result in direct impacts on the City which will generate the need for professional, staff, and consultant services which, but for the development activities, would not be required.

9. The review and approval of applications to implement the approved Master Site Plan will also require a considerable amount of City Staff time and the participation of City consultants.

10. The City has adopted Chapter 17.150 CEMC relating to the reimbursement of costs incurred by the City associated with the processing of applications for land use developments; and

11. This Agreement shall be governed by Chapter 17.150 CEMC as adopted or hereinafter amended including the City's authority to determine whether the use of professional, staff, or consultants is reasonably necessary.

IN CONSIDERATION OF the mutual benefits and conditions set forth below, the parties hereto agree as follows:

II. PAYMENT TERMS

2.1 The City will charge Developer for all reasonable and actual costs (including benefits and overtime) of City staff time, and all reasonable and actual costs of City professional, consultant, and legal services billings, expended in processing Developer's development proposal(s) (hereafter, "Processing Costs"). This shall include pre-application consultations, the required pre-application meeting(s), and activities associated with the implementation of the approved Master Plan and Development Agreement, including the processing of applications for City permits and approvals.

2.2 The City will provide Developer with an estimated processing budget on request for any proposal, on a "best efforts" basis, but Developer shall in all events be responsible for the actual Processing Costs incurred. If the City determines that actual Processing costs are likely to exceed the estimated processing budget, it shall promptly notify Developer of the estimated additional amount and the reasons for the additional costs.

2.3 Developer shall make an initial deposit of \$15,000 with the City. At all times during the processing of Developer's development proposal(s), Developer shall make additional deposits as required in order to maintain a credit balance with the City in said amount. In the event such credit balance is insufficient to cover one month's Processing Costs, the deposit requirement may be reasonably increased by the City. When processing of Developer's development proposal(s) is complete, or this Agreement is terminated by Developer, the City shall render a final accounting and refund the remaining credit balance, if any, to Developer.

2.4 The City will provide Developer with an itemized monthly invoice for Processing Costs, including staff time and invoices from contracted consultants, if any, commencing on the fifth date of the month following the first month during which the City incurs Processing Costs. Developer shall pay the City's invoice within thirty (30) days of Developer's receipt of such invoice, subject to the provisions of paragraph 2.5 herein, together with any additional amounts required to maintain the required credit balance as required by paragraph 2.3 herein. If any sum required to be paid hereunder is not timely remitted, the City may suspend processing until payment is made, and/or may terminate

this Agreement and require the deposit of the full amount of Processing Costs incurred to the date of such termination.

2.5 If certain Processing Costs relate to other projects as well as Developer's, the City shall reasonably allocate costs between Developer and such other projects.

2.6 This agreement shall apply to processing costs incurred by the City commencing on the date the first implementing application is submitted by City Heights and shall remain in effect until terminated by the parties.

III. GENERAL PROVISIONS

3.1 If there is a legal challenge to any SEPA threshold determination regarding the Development or to the adequacy of any required environmental impact statement, or to the procedures followed, or permits issued by the City for the Developer's development proposal(s) (collectively, a "SEPA Related Challenge"), the City shall immediately notify Developer in writing. Upon such notification, the City shall determine, after reasonable consultation with the Developer, whether and on what basis (including Developer's written commitment to reimburse the City's costs and attorney fees) to defend the SEPA Related Challenge. It is understood by the parties that the City has limited resources and the Developer's commitment to pay the City's reasonable and actual costs, including attorneys' fees, for such defense (the "Defense Costs") may determine whether the City defends the challenge or not; provided, however, if, at any time during the City's defense of a Developer approved SEPA Related Challenge, Developer determines that it is no longer desirable for the City to defend such SEPA Related Challenge, then (a) Developer shall provide the City with written notice of such decision (the "Notification Date"), (b) within ten (10) days of the Notification Date, the City shall provide Developer with a final invoice of the Defense Costs incurred up to the Notification Date, and (c) the City may continue its defense of such SEPA Related Challenge with the understanding that the City will be responsible for paying all Defense Costs from and after the Notification Date. Notwithstanding the previous sentence, Developer shall be responsible for reasonable and actual costs, including attorneys' fees, incurred by the City directly related to the City's termination a SEPA Related Challenge defense as agreed by the parties.

3.2 The provisions of this Agreement are severable and independent, and if any such provision shall be determined by a court of competent jurisdiction to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall remain binding and enforceable to the extent permitted by law.

3.3 Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by Developer without prior written consent of the City.

3.4 Developer has the right to assign this Agreement to an entity affiliated with or formed by Developer. The City shall be given written notice of such assignment and

the entity formed by Developer shall thereupon become the Developer hereunder and succeed to all obligations and rights of Developer hereunder.

3.5 Developer shall have the right to terminate this Agreement immediately upon written notice to the City at which point the City shall render a final accounting and refund the remaining credit balance, if any, to Developer.

3.6 Each party may execute this Agreement separately and deliver their separately executed Agreement to the other party. This Agreement is fully executed and delivered when each party has executed a separate copy of this Agreement and delivered its executed copy to the other party. The separately executed copies of this Agreement, when taken together, shall constitute one and the same agreement. A party may deliver its signed copies of this Agreement to the other party electronically or via facsimile, and delivery of signed copies electronically or via facsimile shall have the same force and effect as delivery of a signed original.

3.7 All documents, drawings, specifications, and other materials submitted by the Developer in connection with the services rendered under this Agreement shall be a public record in accordance with the laws, rules, and regulations of the State of Washington and the City of Cle Elum.

3.8 The Developer and the City agree that the Developer is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Developer nor any employee of the Developer shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for paying, withholding, or otherwise deducting any customary state or federal payroll deductions, including but not limited to FICA, FUTA, state industrial insurance, state workers compensation, or otherwise assuming the duties of an employer with respect to the Developer or any employee of the Developer.

3.9 This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Either party may request changes to the Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

3.10 Notices to the City of Cle Elum shall be sent to the following address:

City Clerk Kathi Swanson

City of Cle Elum
119 West First Street
Cle Elum, WA 98922
Phone number: (509) 674-2262

(with copies to Mayor McGowan, City Planner Lucy Temple, and designated City Heights Project Manager, Gregg Dohrn)

Notices to the Developer shall be sent to the following address:

Sean Northrop
c/o City Heights Holding LLC
116 1/2 S Washington Street
Seattle, WA 98104-3479

3.11 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in Kittitas County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees, expert witness fees, and costs of suit.

3.12 The Recitals set forth at the beginning of this Agreement are deemed incorporated herein, and the parties hereto represent they are true, accurate and correct.

CITY OF CLE ELUM, WASHINGTON

CITY HEIGHTS HOLDING, LLC

By: _____
Jay McGowan, Mayor

By: _____
Sean Northrop

Date: _____

Date: 6/18/20

Attest/Authenticated:

Kathi Swanson, City Clerk

Approved as to Form:

Alexandra L. Kenyon, City Attorney