

Judge Paris K. Kallas, ret.
Arbitrator

IN ARBITRATION
JUDICIAL DISPUTE RESOLUTION, LLC

CITY HEIGHTS HOLDINGS, LLC,

Claimant,

v.

CITY OF CLE ELUM,

Respondent.

ORDER

This matter comes before the Arbitrator on cross-motions for summary judgment and declaratory relief, the City of Cle Elum’s (City) *Motion to Strike Portions of Declarations*, and City Heights Holdings, LLC’s (City Heights) *Motion for Entitlement to Fees and Costs as Prevailing Party*. The parties have submitted the following:

1. City Heights’ *Motion for Declaratory Relief and Specific Performance* (“City Heights’ *Motion*”) and attachments;
2. City’s *Response to City Heights’ Motion* and attachments
3. City Heights’ *Reply* and attachments;
4. City’s *Motion for Summary Judgment and Declaratory Judgment* (“City’s *Motion*”) and attachments;
5. City Heights’ *Opposition to City’s Motion* and attachments;

- 1 6. City's *Reply in support of City's Motion* and attachments;
- 2 7. City Heights *Motion for Entitlement to Fees and Costs as Prevailing Party*
- 3 (*"Motion for Attorney Fees and Costs"*);
- 4 8. City's *Response to City Heights' Motion for Attorney Fees and Costs*;
- 5 9. City Heights' *Reply in support of Motion for Attorney Fees and Costs*;
- 6 10. City's *Motion to Strike Portions of City Heights' Declarations (Motion to Strike)*,
- 7 and;
- 8 11. Oral argument on March 21, 2022.

9 Having considered the written submissions, governing case law, and oral argument, it is
10 hereby ORDERED:

11 **A. CITY'S MOTION TO STRIKE**

12 The City's *Motion to Strike* is granted in part and denied in part.

13 The *Motion to Strike* is granted to the extent the challenged declarations contain legal
14 opinions or factual statements that lack personal knowledge. In all other regards, the *Motion* is
15 denied. For example, Matthew Morgan served as the primary negotiator for the City and he is
16 competent to testify to the context and circumstances of negotiating and entering into the
17 *Development Agreement*.

18 **B. CROSS-MOTIONS**

19 The parties submit cross-motions for summary judgment and declaratory relief. The
20 parties accurately set forth the governing law. With that law in mind, the following relief is granted.

21 City Heights' *Motion* is granted and the City's *Motion* is denied.

22 The City's challenge to City Heights' standing fails for the reasons set forth in City
23 Heights' *Reply*.

24 The following declaratory relief is granted:

- 25 1. The City must comply with the procedures set forth in Appendix Q.

- 1 a. The City must issue completeness determinations within 14 days of receiving
2 the application. Under the plain language of Appendix Q, if within 14 days of
3 receipt of the application, the City fails to notify City Heights that the application
4 is incomplete then the application shall be deemed complete for purposes of
5 processing and commencement of the timelines set forth in Appendix Q.
6
7 b. The City must make a determination of whether the application is within the
8 scope of, and materially consistent with, the City Heights EIS, Planned Action
9 Ordinance, Master Site Plan and *Development Agreement* within 45 days of the
10 determination that the application is complete.
11
12 c. Appendix Q does not have a stop clock. The intent of the parties and the plain
13 language of the *Development Agreement* is that a consistency determination
14 must be made within 45 days of a finding that the application is complete.

15 2. The City may not decline to process Implementing Applications that are submitted
16 when other Implementing Applications are pending, subject to the negotiated *July 21, 2021*
17 *Settlement Agreement*, including but not limited to Q-22 and Q-24.

18 3. The City must comply with the *Development Agreement's* provisions relating to
19 Conditions of Approval.

- 20 a. The City may impose only Conditions of Approval that fall within the two
21 categories allowed under the *Development Agreement*.
22
23 b. When conditioning an application for an Implementing Approval, the City
24 may not use the allowance to add conditions for a serious threat to the public
25 health or safety, if in so doing the conditions added are related to a
circumstance that existed and was reviewed and conditioned as part of the
Development Agreement and EIS process.
c. When conditioning an application for an Implementing Approval, the City
may not add conditions that substitute for or seek to enforce State and Federal
law by overlaying City oversight. The City may add a condition that says the
applicant must comply with State and Federal law, including to obtain any
required State and Federal permits.

4. The payment of mitigation fees under the *Development Agreement* is not due until

1 an infrastructure permit for an entire phase of development is issued allowing for construction of an
2 infrastructure system to commence.

- 3 a. The stormwater vault building permit issued in June 2021 did not trigger City
4 Heights' obligation to pay mitigation fees under the *Development Agreement*
5 and no such fees are currently due.
- 6 b. The City's issuance of the Phase 1 Civil Engineering Approval triggers the
7 \$405,000 in mitigation fees at issue in the parties' motions. No interest is owed
8 by City Heights for this payment, if made within thirty (30) days of the receipt
9 of the City's invoice for such mitigation fees.

10 In addition to declaratory relief, the following specific performance is granted:

- 11 1. Upon receipt of this *Order*, the City shall promptly issue its consistency determination
12 for the Phase 2 Preliminary Plat.
- 13 2. Upon receipt of an application for an Implementing Approval, the City is to provide
14 only legally required public notice to citizens and other agencies and shall not actively
15 seek out additional comment or input.

16 **C. MOTION TO APPOINT A SPECIAL MASTER**

17 City Heights requests appointment of a Special Master to monitor the City's compliance
18 with the instant *Order*. The request is granted.

19 The parties are directed to promptly confer regarding selection of a Special Master,
20 payment of the Special Master, as well as a process by which disputes may be submitted to the
21 Special Master. The Special Master shall make recommendations to the undersigned and any
22 action recommended by the Special Master will be final only upon approval by the undersigned.
23 Once the parties have conferred, they shall promptly submit their proposal, in the form of an
24 Order, to the undersigned for review and approval.

25 Because a Special Master will be appointed, several matters are referred to the Special
Master for determination. These topics and disputes will be better served by a Special Master's
determination than being the subject of either a motion for summary judgment or declaratory
relief. Thus, in addition to disputes submitted by the parties, the Special Master shall consider

1 the following matters:

2 1. Whether, when the City determines that the application is outside of the scope of the
3 City Heights EIS, Planned Action Ordinance, Master Site Plan and *Development Agreement*, the
4 City should provide explicit reasons, including citations, for why the application (or part of the
5 application) is outside the scope as part of its determination.

6 2. Whether charging fees to City Heights for tasks and work exceed those fees required
7 to process Implementing Applications and thus whether such fees are improper.

8 3. Whether the City may use City Heights' challenges to fees invoiced under the cost
9 recovery agreement as a basis to stop review of the applications.

10 4. The process by which, under *Development Agreement*, the City takes possession and
11 ownership of all stormwater infrastructure for each phase of construction of the City Heights
12 development upon completion of the stormwater infrastructure for that phase.

13 5. The appropriate response to inquiries from citizens or agencies regarding the
14 development.

15 **D. MOTION FOR AWARD OF REASONABLE ATTORNEY FEES AND COSTS**

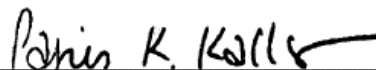
16 City Heights seeks an award of reasonable attorneys' fees and costs pursuant to Section
17 12.7.2 of the *Development Agreement*. The *Motion* is resolved by separate order.

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21 DATED this 8th day of April, 2022.

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Judge Paris K. Kallas, ret.
Arbitrator