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ARBITRATION SERVICE OF PORTLAND

**City of Stayton,**

**Claimant,**

vs.

**JCNW Family LLC,**

**Respondent.**

ASP No. 141222

**SUPPLEMENTAL AWARD**

In paragraph 2i of the Final Award entered in this ASP arbitration action, a provision was included by stipulation of the parties granting to the arbitrator continued “jurisdiction over the issues raised in this arbitration action and . . . authority . . . to resolve any and all impasses between the parties that may arise relating to the implementation of the remedial plan” adopted in the Final Award. In the development of the Temporary Stormwater Drainage System, the parties have reach an impasse.

The development of a Temporary Stormwater Drainage plan was included in the provisions of the Final Award to (1) allow limited development to proceed on the Phillips property while a permanent stormwater drainage plan was being developed, (2) improve the existing stormwater drainage system to prevent the unauthorized escape of stormwater on to private property, and (3) prevent escape of stormwater on to private property that would ultimately drain into waterways controlled by the Santiam Water Control District (SWCD). The language used in paragraph 2e reflects these underlying goals. It was anticipated that a temporary drainage system would be approved and constructed in time to improve the existing system

before receiving significant precipitation. The provision in the Final Award addressing the temporary drainage plan did not propose or anticipate obtaining the permission of the owners of adjacent lots to allow stormwater to drain into an infiltration facility situated on adjacent private parcels or to alter the language of the agreement entered into between Respondent and the SWCD.

Respondent initially proposed a temporary drainage system that would involve the building of a ditch across private property to an existing ditch which would take the stormwater from the Phillips property to Mill Creek; all of this with the permission of the owners of the private property to be impacted. After further discussion, Respondent now proposes what appears on its face to be a less complicated and tenable plan which would involve the following provisions:

1. Respondent would enter into a lease agreement with the first downstream property owner (Roberts) for the creation of a secondary stormwater detainment area;
2. A second control structure would be constructed on the Roberts property to measure stormwater runoff;
3. Respondent would secure approval from the SWCD to allow stormwater to drain west (towards the waterway controlled by the SWCD) under certain weather conditions.
4. Improvements would be made to the existing retention pond and weir as outlined in the initial proposal; Respondent would consider adding to this plan the installation of small infiltration systems on each lot where new construction would be allowed.

Given the stated goals to be achieved with the construction of a temporary system, this proposed plan – as generally outlined above – is hereby endorsed in concept as a reasonable interpretation and improvement of the provisions in the Final Award authorizing construction of a temporary stormwater drainage system.

#### Phase One

Improvements to the existing retention pond and weir could begin immediately. Before construction begins on this initial phase of the plan, Respondent will prepare a separate

document setting forth the exact construction that is being proposed for improvements to the existing retention pond and weir, including a timeline for completion. The City may make reasonable timely objections to this proposal before the Arbitrator grants final approval for Respondent to proceed.

Phase Two

The details for the Roberts lease, the ditch and retention pond on the Roberts' property, and the agreement with the SWCD will need to be developed before final approval of the balance of a temporary stormwater drainage plan can be achieved. To that end, Respondent is invited to promptly develop a detailed temporary drainage plan which will include (1) the construction details for the ditch and retention pond on the Roberts property, (2) the proposed lease for use of the Roberts' property, (3) the anticipated approvals required and (4) all proposed deadlines. The City will expedite a review of this proposal, with the understanding that "winter rains" have now arrived and that it is in the best interest of all concerned to promptly develop and construct a functional temporary drainage system. The Arbitrator will become involved as needed to assist with the development of this plan. It is anticipated that the temporary drainage system will be in place for a limited time, subject to an extension if progress is being made on the permanent plan. A ruling on the timing for issuance of building permits will be forthcoming as soon as a temporary drainage plan has been approved.

Dated this 26<sup>th</sup> day of October, 2015.

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Daniel L. Harris  
Arbitrator

