

ARBITRATION SERVICE OF PORTLAND

City of Stayton,

Claimant,

vs.

JCNW Family LLC,

Respondent.

ASP No. 141222

**SEVENTH SUPPLEMENTAL
AWARD**

This Seventh Supplemental Award is entered in furtherance of the conclusions and directives set forth in the Sixth Supplemental Award relating to the development of an appropriate final remedy arising from Respondent's breach of key provisions of the Development Agreement. The Sixth Supplemental Award chronicles the two and a half year history of this dispute – beginning with initiation of this arbitration process by the City of Stayton, and continuing through the entry of the Final Award in August 2015 and the issuance of six supplemental awards designed to develop an appropriate remedy.

The Sixth Supplemental Award (1) acknowledges that the remedial road taken from the Final Award has failed to reach the planned destination, (2) directs Claimant to complete all planning and construction requirements for the creation of both temporary and permanent storm water drainage facilities for managing storm water passing out of the Phillips development, and (3) requires the development of a framework, based on evidence received at a final hearing, to require Respondent to cover the costs associated with the completion of said requirements. A hearing was conducted and the necessary evidence relating to said requirements was received for consideration.

The Arbitrator prepared and distributed to the parties a draft Seventh Supplemental Award that contained proposed provisions and directives for completion of the stormwater drainage project. The parties provided additional information to the

Arbitrator in response to an invitation to comment on the draft supplemental award.

Scope of Jurisdiction

In the development of the Final Award, entered in August of 2015, the parties stipulated to the inclusion of a provision “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.” This provision has guided the many efforts, through supplemental awards, to develop temporary and permanent stormwater drainage plans.

The Claimant takes the position that the extended jurisdiction granted in the Final Award does not extend authority to the Arbitrator to compel the Claimant to perform Respondent’s obligations under the Development Agreement.¹ The Arbitrator agrees with this position. The Claimant cannot be compelled through this arbitration proceeding to complete this project. A plan for completion of the project will have to be developed by negotiated agreement or compelled otherwise.

Both parties have asked that this supplemental award by the last. To that end, the following ruling is entered.

Ruling

In the Statement of Claim asks the Arbitrator (1) for a determination that the Respondent has breached the Agreement, (2) for a determination that the stop work order is valid and that new building permits cannot be issued until the breaches have been corrected and approved, and (3) for an order requiring Respondent to correct each of the identified breaches of the Agreement. A Ruling is hereby entered on each of the requests

¹ The Claimant has stated that it will not take over the project if any of the following provisions are included in the Seventh Supplemental Award: use of a cost certifier, allowance of Respondent to bid on work relating to the project, exclusion of costs incurred by SWCD in the project budget, deference of the Cost Bill until after the project is completed, payment by Respondent of anything less than the full amount requested in its Cost Bill, and a mechanism for that requires the expenditure of any taxpayer funds received by the City. Respondent takes a different position on each of these issues.

for relief.

1. The Arbitrator has in the Final Award concluded, and does hereby conclude again, that Respondent breached the Development Agreement, as stated in the findings (facts), discussion and rulings set forth in the Final Award (incorporated by reference herein).
2. The Arbitrator has in the Final Award concluded, and does hereby conclude again, that the stop work orders are valid and may be reasonably enforced, as stated in the findings (facts), discussion and rulings set forth in the Final Award (incorporated by reference herein).
3. The Respondent shall reasonably correct each of the stated breaches of the Development Agreement.
4. As the prevailing party, the Claimant is awarded reasonable costs and disbursements, including attorney fees, for that period of time after the original Cost Bill was awarded. To be determined using the guidelines set forth in ASP Rule 34.

Dated this ____ day of June, 2017

Daniel L. Harris
Arbitrator