

Judge Paris K. Kallas, ret.  
Arbitrator

IN ARBITRATION  
JUDICIAL DISPUTE RESOLUTION, LLC

CITY HEIGHTS HOLDINGS, LLC,

Claimant,

v.

CITY OF CLE ELUM,

Respondent.

SUPPLEMENTAL ARBITRATION  
AWARD ON ATTORNEY FEES AND  
COSTS

The parties submitted this matter to arbitration. City Heights Holdings, LLC (City Heights or CHH) is represented by Margaret Y. Archer and Ryan C. Espesgard of Gordon Thomas Honeywell, LLP and Duana T. Koloušková and Dean Williams of Johns Monroe Mitsunaga Koloušková PLLC. The City of Cle Elum (the City) is represented by Alexandra Kenyon and Michael Kenyon of Kenyon Disend, PLLC, Kenneth W. Harper of Menke Jackson Beyer, LLP, and Rebecca S. Ashbaugh and Brittney S. Rivers of Ashbaugh Beal LLP.

The arbitration hearing took place over nine days, beginning September 30 and concluding October 10, 2024. The parties submitted testimony, expert reports, thousands of pages of exhibits, and extensive briefing. At the conclusion of the hearing, the City withdrew

1 its counterclaim for unpaid fees and costs incurred in reviewing and processing land use  
2 applications.

3 On November 5, 2024, the undersigned issued an Arbitration Award in which City  
4 Heights prevailed in its claims that the City breached its contractual obligations and was  
5 awarded damages.

6 As the prevailing party, City Heights submits *Claimant City Heights Holding, LLC*  
7 *Motion for Attorneys' Fees and Costs (Motion)*. The *Motion* includes a request for fees and  
8 costs charged to City Heights by Gordon Thomas Honeywell, LLP (GTH), Corr Cronin, LLP  
9 (Corr Cronin), and Johns Monroe Mitsunaga Koloušková, PLLC (JMMK). The parties  
10 submitted the following pleadings:  
11

- 12 1. CHH's *Motion*;
- 13 2. Declaration of Margaret Archer in Support of *Motion*;
- 14 3. Declaration of Sean Northrop in Support of *Motion*;
- 15 4. City of Cle Elum's *Opposition to Motion*;
- 16 5. CHH's *Reply in support of Motion (Reply)*; and,
- 17 6. Declaration of Ryan Espegard in Support of *Motion*.

18 The matter was submitted without oral argument.

## 19 I. DECISION

### 20 A. Governing Law

21 In Washington, attorney fees and costs may be awarded only if authorized by statute,  
22 by contract, or by a recognized ground in equity.<sup>1</sup> In this case, an award of attorney fees and  
23 costs is authorized by the Development Agreement.  
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<sup>1</sup> *Bowles v. Washington Dept. of Ret. System*, 121 Wn.2d 52, 70 (1993).

1 In Washington, the Lodestar method provides the foundation for determining a  
2 reasonable attorney fee and costs award.<sup>2</sup> The Lodestar method multiplies a reasonable  
3 hourly rate by the number of hours reasonably spent. The fee applicant carries the burden of  
4 proving the reasonableness of the requested fees and costs.<sup>3</sup> Courts and arbitrators must “take  
5 an active role” in assessing the reasonableness of requested attorney fees and costs.<sup>4</sup> Finally,  
6 courts and arbitrators “should discount hours spent on unsuccessful claims, duplicated or  
7 wasted effort, or otherwise unproductive time.”<sup>5</sup>

### 8 **B. Motion to Strike**

9  
10 The City moves to strike City Heights’ references to settlement communications. As  
11 the City correctly argues, Washington’s Uniform Mediation Act provides that “mediation  
12 communications are confidential to the extent agreed by the parties or provided by other law  
13 or rule of this state.” The City does not waive mediation confidentiality and moves to strike  
14 Exhibit 1 and Paragraph 2 of Sean Northrup’s Declaration. The City further disputes City  
15 Heights’ characterization of the parties’ settlement efforts.  
16

17 City Heights, in order to “keep the Motion focused” on the Lodestar analysis, agrees  
18 to strike the challenged portions of the record.<sup>6</sup> Accordingly, the motion to strike is granted.

### 19 **C . Gordon Thomas Honeywell, LLP Attorney Fees**

20 In determining a Lodestar Award, the court or arbitrator first considers whether the  
21 hourly rates are reasonable. Here, attorney Archer’s Declaration sets forth the hourly rates  
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23  
24 <sup>2</sup> *McGreevy v. Oregon Mutual Insurance Co.*, 90 Wn. App. 283, 291 (1998).

25 <sup>3</sup> *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 151 (1993).

26 <sup>4</sup> *Mahler v. Szucs*, 135 Wn.2d 398, 434 (1998). See also *Scott Fetzer*, 122 Wn.2d at 151.

<sup>5</sup> *Chuong Van Pham v. Seattle City Light*, 159 Wn.2d 527, 538 (2007).

<sup>6</sup> It bears noting, however, that there are instances in which federal courts conclude that settlement communications shed light on whether attorney fees are reasonable. See e.g., *Ingram v. Oroudjian*, 647 F.3d 925 (9<sup>th</sup> Cir. 2011).

1 charged by GTH attorneys and paralegals.<sup>7</sup> The standard hourly rates for GTH attorneys  
2 range from to \$300 to \$550. The standard hourly rates for the GTH paralegals range from  
3 \$165 to \$250. Attorney Archer's Declaration also describes the background and experience  
4 of the GTH professionals. City Heights meets its burden of establishing that the hourly rates  
5 are comparable with, if not below, the rates charged by the GTH professionals in the King  
6 County legal market with comparable experience handling comparable matters.  
7

8 In determining a Lodestar award, the next consideration is whether the time spent is  
9 reasonable. Attorney Archer's Declaration sets forth a detailed description of the time spent.  
10 An active and independent review of the timesheets establishes that City Heights fully meets  
11 its burden of establishing that the time spent is reasonable.

12 To say this was hard-fought litigation is an understatement.<sup>8</sup> The litigation spanned  
13 years, discovery was voluminous, experts were retained, sought-after damages were  
14 significant and the instant arbitration was the third arbitration in this matter. After appearing  
15 as counsel, GTH prepared for and successfully defended two summary judgment motions,  
16 reviewed voluminous discovery, conducted and defended all necessary depositions, and  
17 prepared for and conducted a nine-day arbitration hearing. All of this work was performed on  
18 a tight timeframe<sup>9</sup> and performed to outstanding standards.  
19

20 The City argues that any time spent in transferring the case from Corr Cronin to GTH  
21 is duplicative and should not be awarded. I disagree. When GTH came on board, it was  
22 faced with a client that was financially struggling due to the protracted litigation and the  
23

24 <sup>7</sup> In one instance, the *Motion* states that Attorney's Archer's hourly rate is \$525. All other references to the  
25 hourly rate, and the calculations, confirm this is a typographical error and the correct hourly rate is \$550.

26 <sup>8</sup> City Heights asserts, and the City does not deny, that in 2024 alone, the City paid its three law firms "no less  
than \$2,131,100 in hourly fees[.]" City Height's *Reply* at 2. While this is not dispositive, it shows the parties'  
legal fees are comparable.

<sup>9</sup> City Heights correctly argues that GTH undertook representation when the third "arbitration was in full swing  
and knowing an intense, concentrated effort would be required" to prepare. City Heights' *Reply* at 3.

1 City's repeated breaches of the Development Agreement. Corr Cronin's withdrawal is  
2 directly attributable to the need to obtain new counsel. The time spent by GTH in getting up  
3 to speed is not only reasonable, but absolutely necessary.

4 As noted, courts and arbitrators discount for fees spent on unsuccessful claims. Here,  
5 City Heights prevailed on the breach of contract claim, but did not obtain judgment on the  
6 tortious business interference and negligence claims. Thus, any Supplemental Award must be  
7 reduced for time spent on these claims.  
8

9 City Heights has appropriately reduced its fee request by \$19,157.50 for time spent on  
10 legal research and briefing specific to the tort claims. City Heights correctly argues that in all  
11 other regards, the tort claims are intertwined with the contract claims, both factually and  
12 legally. Because no further segregation may be made, no further reduction is required.<sup>10</sup>  
13

14 In addition to Lodestar fees, City Heights seeks an additur of \$1,434,350.38. Whether  
15 to award the additur is a difficult issue in this particular case. As explained in detail in the  
16 pleadings, GTH agreed to a hybrid hourly/contingency fee arrangement. The record makes  
17 clear that GTH recognized City Heights' predicament and that City Heights was no longer  
18 able to pay former counsel. GTH worked creatively with City Heights to provide legal  
19 representation, recognizing that without it, City Heights would likely be unable to pursue its  
20 worthy claims. Not only did GTH step up and provide access to justice, the work performed  
21 was outstanding, especially considering the tight timeframe and demanding tasks.  
22

23 That said, the caselaw is clear that awarding such an additur is granted only in rare  
24 instances, typically with a full contingency fee where the risks are high.<sup>11</sup> Such awards are  
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26 <sup>10</sup> See *Mayer v. Sto Industries, Inc.*, 156 Wn.2d 677, 693 (2006); *CKP, Inc. v. GRS Construction Co.*, 63 Wn.  
App. 601, 621-22 (1991).

<sup>11</sup> *Berryman v. Metcalf*, 177 Wn. App. 644, 668 (2013).

1 rare because the Lodestar amount is presumed to adequately compensate an attorney. For  
2 example, quality work is reflected in the hourly rate.<sup>12</sup> In addition, the labor-intensive nature  
3 of a matter is reflected in the number of hours spent. Here, the only reduction in GTH's  
4 requested fees is for legal research on the tort claims. All other hours are deemed reasonable  
5 and included in the Lodestar award. Finally, while this matter was hard-fought, the risks of  
6 prevailing were reduced given two prior Arbitration Awards issued against the City. To  
7 award the requested additur in these circumstances would be to stretch the caselaw too far.  
8

9 For all these reasons, City Heights is awarded a Lodestar attorney fee amount of  
10 \$896,668 for GTH attorneys and paralegals (\$915,825.50 minus \$19,157.50).

11 In addition, City Heights is awarded the time spent by GTH attorneys in preparing and  
12 presenting this *Motion*. Attorney Espegard's Declaration in Support of the *Reply* sets forth  
13 the applicable hourly rates and the time spent preparing the *Motion*. The time spent is  
14 reasonable, especially given the discount for time spent finalizing the *Reply*. Accordingly,  
15 City Heights is awarded an additional \$6,645 for GTH attorney fees.  
16

#### 17 **D. Corr Cronin Attorney Fees**

18 Corr Cronin attorneys represented City Heights in the second arbitration and initiated  
19 the third arbitration. As explained in Sean Northrup's Declaration, "the financial strain of  
20 CHH's dispute with the City became a considerable hurdle to CHH's ability to continue with  
21 this litigation." Sean Northrup Declaration at Paragraph 12. Unable to continue paying Corr  
22 Cronin, the firm withdrew effective November 9, 2023.  
23

24 Invoices for the fees sought are attached to Northrup's Declaration. The Invoices total  
25 \$1,185,694.84 in fees and costs. A portion of those fees and costs, however, were previously  
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<sup>12</sup> *Miller v. Kenny*, 180 Wn. App. 772, 825 (2014).

1 resolved by settlement, after City Heights prevailed in the second arbitration.<sup>13</sup> Making an  
2 appropriate adjustment, City Heights seeks \$875,122 in fees and \$83,908 in costs.

3 Attorney Archer's Declaration sets forth the hourly rates of the Corr Cronin attorneys.  
4 City Heights fully meets its burden of establishing that these rates are reasonable and  
5 comparable with rates charged by attorneys in the King County legal market with comparable  
6 experience handling comparable matters.  
7

8 Regarding the time spent, the Invoices reflect work developing the damages claim,  
9 representing City Heights in multiple mediations, and conducting extensive discovery,  
10 including conducting a privilege review. An independent review of the Invoices reveals the  
11 requested fees are reasonable. City Heights is awarded \$875,122 for attorney fees incurred by  
12 Corr Cronin.  
13

14 As noted, City Heights submits detailed Corr Cronin Invoices to support its fee  
15 request. The City challenges this approach, arguing that Corr Cronin attorneys should also  
16 submit affidavits explaining the reasonableness of their work. The challenge is rejected. The  
17 Invoices are detailed and allow an active and independent review of requested fees. In  
18 addition, having presided over this matter from the outset, including when Corr Cronin  
19 represented City Heights, I am directly aware of the nature of the work performed by Corr  
20 Cronin attorneys. The time spent by the Corr Cronin attorneys is reasonable.  
21

#### 22 **E. JMMK Attorney Fees**

23 Attorneys at JMMK advised City Heights on a variety of land use issues. In addition,  
24 the JMMK attorneys became part of the litigation team by consulting on mediation and  
25 litigation strategy.  
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<sup>13</sup> See June 1, 2022 Memorandum of Understanding, Arbitration EX J-44.

1 Attorney Archer's Declaration sets forth the hourly rates, which range from \$300 to  
2 \$525. City Heights meets its burden of establishing that these rates are reasonable in the King  
3 County legal market.

4 Attorney Archer's Declaration also provides JMMK Invoices that describe the legal  
5 services conducted in support of the litigation. Appropriately, City Heights does not seek fees  
6 for unrelated legal work. An independent review of the Invoices reveals that the time was  
7 spent on necessary legal tasks. Much of that time, however, was dedicated to consulting with  
8 and advising litigation counsel. The requested fees, however, fail to account for potential  
9 duplicative time. Accordingly, a deduction is in order.<sup>14</sup> City Heights is awarded \$74,400 for  
10 attorney fees incurred by JMMK. This represents an approximate five percent (5%)  
11 reduction.  
12

13 As noted, City Heights submits detailed JMMK Invoices to support its fee request.  
14 The City challenges this approach, arguing that JMMK attorneys should also submit affidavits  
15 explaining the reasonableness of their work. The challenge is rejected. The Invoices are  
16 detailed and allow an active and independent review of requested fees. In addition, having  
17 presided over this matter from the outset, I am able to independently review the role played by  
18 JMMK attorneys. The time spent by the JMMK attorneys is reasonable.  
19

#### 20 **F. Expert Fees, Costs, and Litigation Expenses**

21 City Heights seeks an award for the fees incurred by its retained experts. The work is  
22 outlined in detail in the *Motion* and the attached declarations. The expended expert fees are  
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25 <sup>14</sup> An approximate reduction is appropriate. *See for example, Absher v. Constr. Co. v. Kent School District*, 79  
26 Wn. App. 841, 848 (1996), where the Court provided the following guidance: although requiring active and  
independent review by the court/arbitrator, a fee award is not intended to be "an unduly burdensome proceeding"  
for the court/arbitrator. Accordingly, rather than proceed on a line-by-line analysis of the billing records, the  
*Absher* Court applied a one-third reduction of the requested fees.



1 reasonable. City Heights is awarded \$108,057.40 for Neil Beaton's work and \$54,800 for  
2 Mollie Carmichael's work.

3 City Heights also incurred expenses totaling \$216,948.18 preparing for and litigating  
4 this matter, for matters such as third-party discovery vendors, court reporter fees for  
5 depositions, and arbitration fees. The expenses are set forth in detail in the billing statement  
6 attached to attorney Archer's Declaration. The requested costs and expenses are reasonable  
7 and City Heights is awarded \$216,948.18 in costs.  
8

9 City Heights also incurred costs when represented by Corr Cronin, for matters such as  
10 a document vendor, mediation fees, arbitration fees, and advances to expert Neil Beaton.  
11 Review of the Invoices reveals the requested costs are reasonable. City Heights is awarded  
12 \$83,908 for costs incurred by Corr Cronin. The Award reflects appropriate reductions for  
13 costs related to the second arbitration and costs advance to expert Neil Beaton.  
14

15 For all these reasons, City Heights is awarded \$463,713.58 in expert fees, costs, and  
16 litigation expenses.

## 17 **II. SUPPLEMENTAL ARBITRATION AWARD**

18 For all the reasons stated herein, it is hereby ORDERED:

- 19 1. The City's motion to strike is granted.
- 20 2. City Heights' *Motion for Attorneys' Fees and Costs* is granted. City Heights is  
21 awarded and the City of Cle Elum shall pay a Supplemental Award of \$2,316,548.58, which  
22 is comprised of attorney fees of \$1,852,835 and litigation expenses and costs of \$463,713.58.  
23
- 24 3. The Supplemental Award shall bear interest from the date of confirmation at  
25 the rate of twelve percent (12%) per annum.  
26

4. As ordered in the November 5, 2024 Arbitration Award, entry of this Supplement Award on Attorney Fees and Costs shall neither amend nor delay enforcement of the November 5, 2024 Arbitration Award.

Dated this 22<sup>nd</sup> day of January, 2025.

Paris K. Kelly

Judge Paris K. Kallas, ret.  
Arbitrator