

## **AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into on the date last executed below by and between the City of Redmond, a municipal corporation (the "City") and Rory and Donna Veal, a married couple (the "Veals"). The City and the Veals are each a "Party" and together are referred to as the "Parties."

### **Recitals**

- A. The Veals own two parcels of land in the City of Redmond, namely that real property legally described in Exhibit A (the "North Veal Property") and that real property legally described in Exhibit B (the "South Veal Property") (together the North Veal Property and South Veal Property are referred to as the "Veal Properties").
- B. On August 23, 2018, the Veals filed a \$3,600,000 damages claim against the City for water trespass onto the North Veal Property (the "Damages Claim"). A component of the Damages Claim was the reduction in value to the North Veal Property that the Veals allege to have been caused by the City's position that a drainage feature on the North Veal Property (the "Drainage Feature") was a Category IV Stream regulated by the City under Redmond Zoning Code (RZC) Chapter 21.64.
- C. On December 20, 2018 the City denied the Damages Claim.
- D. The Veals have not yet filed a lawsuit against the City to pursue its Damages Claim in court.
- E. Since January 2019, the Parties have been engaged in efforts to reach agreement on a process that could resolve all or a portion of the Damages Claim without the need for litigation.
- F. The Parties have recently identified the City's code interpretation process, under RZC 21.76.070.D (the "Code Interpretation"), as a process that might be able to resolve all or a portion of the Damages Claim.
- G. This Process Agreement is intended to document the process the Parties agree to follow using a Code Interpretation.

NOW THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

### **Agreement**

- 1. The Recitals set forth above are incorporated herein by reference.
- 2. Scope of Code Interpretation. The Veals will file a request for a Code Interpretation by the City following the provisions of the Redmond Zoning Code (RZC) Chapter 21.64. The Parties agree

that the Code Interpretation that will be issued by the City will determine whether (1) the Drainage Feature on the North Veal Property is a City regulated Class IV stream, or (2) the Drainage Feature is not regulated by the City. If the City determines that the Drainage Feature is a Class IV stream, it will also determine whether it is a perennial or intermittent stream.

3. Person Responsible for Code Interpretation. As provided by the RZC, the Code Administrator is responsible for preparation and issuance of the Code Interpretation. The Code Administrator may delegate that responsibility.
4. Timing for Code Interpretation and Related Public Disclosure Requests.
  - a. The Veals will apply for the Code Interpretation within thirty days (30) of the Effective Date of this Agreement. A complete copy of the Code Interpretation, including all exhibits, will be provided by the City to all consultants retained by the City to assist the City on its preparation of the requested Code Interpretation.
  - b. The City will issue its Code Interpretation within sixty (60) days of the City's receipt of the Veals' request for a Code Interpretation.
5. Site Access. The City will be provided access to the North Veal Property in order to issue its Code Interpretation but such access shall be limited to gathering information specific to the Code Interpretation. Daytime access for parking at the South Veal's property at 9859 Red-Wood Road (Parcel 0225059135) will be permitted during the City's site visit. The City's access shall be limited to a fifty-foot wide corridor (twenty-five feet in width on either side of the center-line of the Drainage Feature) and shall be limited to non-invasive testing (e.g. visual observation, photographs, hand measurements, and hand-auguring). The site visit by the City is limited to one day and notice to the Veals shall be provided a minimum of five (5) days in advance. Permission to enter the Veal Properties will terminate after the site visit. The City shall return the Veal Properties to the same condition they were prior to such access. The City will defend and hold the Veals harmless from any and all claims or damages to the extent arising from, out of, or in connection with the City's access to the Veal Properties as a result of any act or action by the City's employees, agents, contractors or consultants.
6. Code Interpretation Appeals. The timing and process for any administrative or judicial appeals of the issued Code Interpretation shall be as set forth in the provisions of the RZC and RCW Chapter 36.70C.
7. Delay in Litigation and Tolling of Statute of Limitations.
  - a. The Veals agree not to file any judicial claims against the City related in any way to the Damages Claim starting on the Effective Date of this Agreement and ending on the date the City issues the Code Interpretation; or, if the Veals file an administrative appeal of the Code Interpretation, ending on the date the City Hearing Examiner issues a decision on such administrative appeal.

- b. The Parties agree that any statute of limitations or other time limitation applicable to any claim, defense or avoidance in any way related to the Damages Claim shall be tolled during the period between August 24, 2018 and ending on the date the City issues the Code Interpretation or, if the Veals file an administrative appeal of the Code Interpretation, ending on the date the Hearing Examiner issues a decision on such administrative appeal (the "Tolling Period"). The Parties further agree that they will not assert, plead, or raise any such claim, defense, or avoidance, or any defense or avoidance based on laches or other equitable principles concerning the timeliness of commencing a civil action as it relates to the Tolling Period, but the Parties reserve all rights to assert existing claims, defenses, or avoidance based on equitable principles, including statute of limitations and laches defenses, that are unrelated to the Tolling Period. This provision is not intended to affect any rights that existed on the commencement of the Tolling Period, but rather to preserve the status quo as it existed on the commencement of the Tolling Period. Nothing in this Agreement shall (1) restrict or otherwise prevent the Parties from asserting at any time any claim, defense, or avoidance that is unrelated to the subject matter of the Damages Claim; (2) be construed or characterized as an admission of liability or wrongdoing in any way pertaining to the claims, defenses, avoidances, or issues in the Damages Claim, or as an admission that any statutes of limitations or similar equitable defenses are applicable to the claims described herein. Except as expressly provided herein, the Parties reserve all existing rights, claims, privileges, defenses, avoidances, and contentions as against one another with regard to any actions or proceedings they may enter into pertaining to the Damages Claim, and the Parties proceed under this Agreement without prejudice to, or waiver of, those rights, privileges, defenses, avoidances, and contentions.
- c. In the event that the Mayor, as the individual executing this Agreement for the City, determines that he does not have the legal authority to agree to the tolling provisions of Section 7.b of this Agreement, and that such authority rests solely with the Redmond City Council, the Mayor shall notify the Veals of this determination within five (5) business days of the Effective Date of this Agreement and, within forty-five (45) days of Effective Date of this Agreement the Mayor agrees to present this Agreement to the City Council and recommend that the City Council authorize the Mayor to accept the provisions of Section 7.b. this Agreement. The Mayor shall notify Veal of the Council's decision within three (3) business days.
- d. The Parties agree that they will proceed with all other terms of this Agreement notwithstanding the fact that the provisions of Section 7.b. of this Agreement may not be enforceable unless and until the City Council authorizes the Mayor to agree to these terms; provided that if the Mayor notifies the Veals that he does not have the legal authority to agree to the tolling provisions and the City Council does not authorize the Mayor to accept the tolling provisions within the forty-five (45) day period, the Veals

may anytime thereafter file judicial claims against the City related in any way to the Damages Claim.

## 8. General Terms

- a. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified or amended in any way except in a writing signed by duly authorized representatives of the respective Parties.
- b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Agreement shall be in King County Superior Court.
- c. Headings. The headings and subheadings contained in this instrument are solely for the convenience of the Parties and are not to be used in construing this Agreement.
- d. Authority. Except as specifically provided in Section 7, the persons executing this Agreement on behalf of the respective Parties hereby represent and warrant that they are authorized to enter into this Agreement on the terms and conditions herein stated.
- e. Counterparts. This Agreement may be executed in counterparts, all of which shall be deemed an original as if signed by all Parties.
- f. Effective Date. This Agreement shall be effective on the last date this Agreement is executed by a party (the "Effective Date").
- g. Notice. Any notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when delivered by personally delivered, delivered by private courier service (such as Federal Express), three days after being deposited in the United States Mail, or by email and, on the same day, deposited in the United States Mail, addressed as follows:

To City:

Maxine Whattam  
Chief Operating Officer  
City of Redmond  
P.O. Box 97010  
Mail Stop 4NEX  
Redmond, WA 98073-9710  
Email: MWHATTAM@redmond.gov

To Veals:

Rory and Donna Veal  
9859 Redmond Woodinville Rd NE  
Redmond, WA 98052  
Email: [rveal@frontiernet.net](mailto:rveal@frontiernet.net)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed the day and year identified below.

CITY

By: 

Title: FINANCE DIRECTOR

Date: 7/18/19

VEALS

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_