

**FOURTH AMENDED UPPER KITTITAS COUNTY  
REGIONAL WASTEWATER TREATMENT FACILITIES  
PROJECT AGREEMENT, DEVELOPMENT AGREEMENT  
AND SERVICE AGREEMENT**

**BETWEEN**

**CITY OF CLE ELUM, TOWN OF SOUTH CLE ELUM, CITY  
OF ROSLYN AND SUNCADIA RESORT DEVELOPMENT LLC, F/K/A  
MOUNTAINSTAR RESORT DEVELOPMENT, LLC**

THIS AGREEMENT ("Agreement") is entered into on this \_\_\_\_ day of April, 2008, by and between the City of Cle Elum, Washington ("Cle Elum"), a second class municipal corporation organized under the laws of the State of Washington; the Town of South Cle Elum ("South Cle Elum"), a fourth class municipal corporation organized under the laws of the State of Washington; the City of Roslyn, Washington ("Roslyn"), a second class municipal corporation organized under the laws of the State of Washington; and Suncadia Resort Development, LLC, a Delaware Limited Liability Corporation, formerly known as MountainStar Resort Development, LLC, and referred to herein as "Suncadia". For purposes of this Agreement, Cle Elum, South Cle Elum and Roslyn are sometimes collectively referred to as "the Communities." The Communities and Suncadia are sometimes collectively referred to as "the Parties."

**RECITALS**

**I. Recitals relating to the Communities' existing facilities.**

A. WHEREAS Cle Elum owns and operates an existing wastewater treatment facility that provides wastewater treatment services to a service area that includes Cle Elum and South Cle Elum. Cle Elum's current National Pollution Discharge Elimination System ("NPDES") permit is set to expire in 2006, at which time Cle Elum will likely be required to modify its existing facility to comply with revised effluent limitations. Cle Elum's NPDES permit also requires that the City undertake improvements to its existing effluent discharge outfall to insure that the facility will meet water quality standards for ammonia; and

B. WHEREAS, if the Parties do not construct the regional facility contemplated in this Agreement, Cle Elum will be required to upgrade its existing facility, or construct a new facility, to comply with the terms of future NPDES permits. In recognition of these necessary modifications, prior to commencing collaboration with Roslyn and Suncadia toward the regional wastewater facility that is the subject of this Agreement, Cle Elum began facilities planning toward construction of a Biolac treatment system to treat the wastewater flows from Cle Elum and South Cle Elum. The construction of that system would have required capital expenditures by Cle Elum and South Cle Elum in excess of those communities' contribution pursuant to this Agreement; and

C. WHEREAS Roslyn owns and operates an existing wastewater treatment facility that provides wastewater treatment services to a service area that includes Roslyn and that portion of the community of Ronald that is within the service area of Kittitas County Water District No. 2. Pursuant to NPDES Permit No. 002233-1, Roslyn's existing wastewater treatment facility discharges to Crystal Creek under interim effluent limitations. More stringent limitations are scheduled to be imposed by the Department of Ecology on June 1, 2006, which standards would require significant capital upgrades to Roslyn's existing wastewater treatment facility; and

D. WHEREAS, if the Parties do not construct the regional facility contemplated in this Agreement, Roslyn will be required to upgrade its existing wastewater treatment facilities to comply with Ecology's NPDES permit. In recognition of these necessary modifications, prior to commencing collaboration with Cle Elum, South Cle Elum and Suncadia toward the regional wastewater facility that is the subject of this Agreement, Roslyn began facilities planning toward upgrading its treatment system to continue to treat Roslyn and Ronald's wastewater flows. Those upgrades would require capital expenditures by Roslyn in excess of Roslyn's contribution pursuant to this Agreement; and

## **II. Recitals relating to the Bull Frog Urban Growth Area ("UGA").**

A. WHEREAS, on June 23, 1998, the Cle Elum City Council established, pursuant to City of Cle Elum resolution No. 6/23/98-1, an Urban Growth Area ("UGA") of the City of Cle Elum, which includes the Bull Frog Flats area immediately west of the City; and

B. WHEREAS, on December 22, 1998, the Kittitas County Board of Commissioners adopted Ordinance No. 98-24 amending the County Comprehensive Plan to establish the Bull Frog Flats area immediately west of the Cle Elum city limits as part of Cle Elum's UGA. This decision is final and was not appealed; and

C. WHEREAS Suncadia is the owner of approximately 1,120 acres located in the Bull Frog Flats area of Kittitas County, which was recently annexed into the City of Cle Elum ("Suncadia's UGA Properties"). Suncadia's UGA Properties are described more fully in Exhibit 1 hereto; and

D. WHEREAS, on July 26, 2000, Suncadia entered into a Pre-annexation Agreement with Cle Elum ("Pre-annexation Agreement") in which Suncadia has agreed to enter into a cost sharing agreement whereby Suncadia will pay for all costs associated with wastewater facility improvements that would not otherwise be required to address existing deficiencies, but for Suncadia's proposed developments. A true and correct copy of the Pre-annexation Agreement is attached hereto as Exhibit 2 and incorporated herein by this reference. The Pre-annexation Agreement also specifies the general development standards that are applicable to the proposed development of Suncadia's UGA Properties. Suncadia and Cle Elum have also agreed in the Pre-annexation Agreement that Suncadia's expenditures for utility extension and capital improvements for the City to serve Suncadia's properties may be eligible for partial reimbursement by other property owners or by other new developments that specifically benefit from such improvements, through various legal reimbursement mechanisms such as a Local Improvement District, a Latecomer's Agreement, hookup charges, impact fees, or other legally appropriate mechanisms for reimbursement; and

E. WHEREAS Suncadia has submitted a notice of intention to commence annexation petition ("10% Petition") to the City of Cle Elum, pursuant to RCW 35.13.125, requesting that the Suncadia UGA Property be annexed to the City of Cle Elum; and

F. WHEREAS, on June 27, 2000, the City of Cle Elum by motion voted to accept Suncadia's 10% Petition and further agreed that the City would review and adopt preannexation zoning and planning to take effect immediately upon annexation pursuant to RCW 35.13.177 and 35.13.178; and

G. WHEREAS, in August, 2001, Suncadia submitted a series of development applications for a master planned community that includes all of Suncadia's UGA Properties. A Final Environmental Impact Statement on those development applications was published on March 18, 2002, and has not been appealed. Cle Elum issued a final decision approving those development applications on October 8, 2002. Cle Elum's final decision on those development applications further specifies the development standards that are applicable to Suncadia's UGA Properties; and

H. WHEREAS, based on the Washington Supreme Court's decision in *Grant County Fire Protection Dist. No. 5 v. City of Moses Lake*, 145 Wn.2d 702, 42 P.3d 394 (2002) (reconsideration granted, decision pending), the City of Cle Elum on October 8, 2002, voted to proceed with annexation of Suncadia's UGA Property pursuant to the election method, RCW 35.13.015, *et seq.*, instead of the petition method, RCW 35.13.125, *et seq.*; and

I. WHEREAS, on May 20, 2003, the City of Cle Elum conducted an annexation election, and the current residents within the City's Bullfrog UGA, which includes Suncadia's UGA Properties, voted to approve annexation to the City of Cle Elum. Suncadia's UGA Properties were annexed into the City of Cle Elum as of June 15, 2003; and

### **III. Recitals relating to the Suncadia Master Planned Resort ("MPR").**

A. WHEREAS the Growth Management Act, RCW 36.70A.360, allows for Master Planned Resorts ("MPR") outside of UGAs and further permits cities, special purpose districts and other purveyors to provide capital facilities, utilities, and urban services to MPRs; and

B. WHEREAS Suncadia owns additional property adjacent to the Cle Elum UGA, which is described more fully in Exhibit 3 hereto ("Suncadia's MPR Properties"). Suncadia has proposed development of its property described in Exhibit 3 as an MPR, as demonstrated in the Final Environmental Impact Statement issued on April 10, 2000. On October 10, 2000, Kittitas County approved Suncadia's proposal to develop its property described in Exhibit B as an MPR. The County's approvals were subject to appeals before the Kittitas County Superior Court and the Eastern Washington Growth Management Hearings Board. On September 22, 2001, Suncadia entered into a settlement agreement with the appellants in those appeals that resulted in dismissal of those appeals; and

**IV. Recitals Relating to the Cle Elum and South Cle Elum's Interim Improvements.**

A. WHEREAS, in July of 2000, the City of Cle Elum, Town of South Cle Elum and Suncadia entered into a development agreement addressing the funding, construction and allocation of capacity of various improvements to Cle Elum's existing wastewater treatment facility ("Interim Wastewater Agreement"). Those improvements, hereinafter referred to as "the Interim Improvements," have now been completed and it is anticipated that the Interim Improvements will provide additional capacity in Cle Elum's existing wastewater treatment facility. Pursuant to the Interim Wastewater Agreement, 2/3 of said additional capacity is allocated to Suncadia and the remaining 1/3 of said additional capacity is allocated to Cle Elum and South Cle Elum. With the construction of the Interim Improvements, Cle Elum has also attained compliance with previously issued Ecology compliance orders but has not addressed issues relating to its effluent discharge outfall. In accordance with the terms of the Interim Wastewater Agreement, Cle Elum and South Cle Elum's financial contribution to the regional wastewater facility that is the subject of this Agreement reflects a credit in an amount equal to Cle Elum and South Cle Elum's financial contributions, exclusive of grants, to the Interim Improvements. A true and correct copy of the Interim Wastewater Agreement is attached hereto as Exhibit 4; and

B. WHEREAS Cle Elum and South Cle Elum's total financial contribution to the Interim Improvements was \$200,000, with an additional contribution of \$671,322.35 from grant funds. Suncadia's total financial contribution to the Interim Improvements was \$1,217,561; and

C. WHEREAS, pursuant to the terms of the Interim Wastewater Agreement, Cle Elum and South Cle Elum have agreed to reimburse Suncadia for its financial contribution to the Interim Improvements through a capital reimbursement charge that is collected from all new connections utilizing any of the capacity created by those Interim Improvements; and

**V. Recitals Relating to the Regional Facility.**

A. WHEREAS representatives from Kittitas County, the Communities, Suncadia and regulatory agencies have been working together within the framework of a Regional Wastewater Committee to study the possibility of a regional wastewater treatment plant and related facilities that would serve the Communities as well as Suncadia's UGA and MPR Properties. Ecology has encouraged the Communities and Suncadia to work together in an effort to construct a single wastewater treatment facility that is capable of meeting all of the Parties' wastewater treatment needs; and

B. WHEREAS, on April 25, 2000, the City of Cle Elum retained Earth Tech, Inc. to undertake a facilities plan for a regional wastewater facility. On May 15, 2002, a draft of the Cle Elum Regional Sewerage Facilities Plan (hereinafter "Facilities Plan") was made available to the public and to Ecology. A public hearing on the draft Facilities Plan was held on August 13, 2002. The Final Facilities Plan was completed in September, 2002, and was approved by the Communities simultaneously with the initial entry into this Agreement in November of 2002. The Final Facilities Plan was approved by Ecology in May of 2003. A true and correct copy of the Final Facilities Plan is located at the Cle Elum, South Cle Elum and Roslyn City Halls and is

incorporated into this Agreement by this reference. An amendment to the Facilities Plan addressing the changes in the Regional Facility discussed in Exhibit 7 was submitted to the Department of Ecology in August of 2003. A true and correct copy of that amendment is located at the Cle Elum, South Cle Elum and Roslyn City Halls and is incorporated into this Agreement by this reference. A graphic depiction of the regional wastewater facility that is contemplated in the Facilities Plan is attached hereto as Exhibit 5; and

C. WHEREAS the regional wastewater facility that is described in the Facilities Plan (“the Regional Facility”) will be constructed in part at the site of Cle Elum’s existing wastewater treatment plant and will utilize a modified version of the discharge permit for Cle Elum’s existing wastewater treatment facility. As described in the Facilities Plan, the Regional Facility will also utilize some of the equipment and structures that are currently part of Cle Elum’s existing wastewater treatment facility, as modified by the interim improvements. Subject to the limitations in this Agreement, the Regional Facility will serve the current and future service areas of Cle Elum, South Cle Elum and Roslyn, as well as the Suncadia’s MPR Properties; and

D. WHEREAS the Parties have determined that a fundamental principle of the Parties’ participation in the Regional Facility is the principle of regional equity, whereby fees and charges for the Regional Elements are distributed uniformly among all Residential Customers and Residential Customer Equivalents connected to the Regional Facility, regardless of the location of the connection. In order to implement this principle of regional equity, the Parties have further determined that the following components of the Regional Facility generally benefit, directly or indirectly, all of the Parties to this Agreement: 1) the UGA/MPR interceptor, as discussed in Section 4.1 of the Facilities Plan and as shown on Ex. 5, hereto; 2) the Second Street interceptor, as discussed in Section 4.1 of the Facilities Plan and as shown on Ex 5, hereto; 3) the treatment plant site preparation, as discussed in more detail in Section 4.2 of the Facilities Plan, as may be amended pursuant to Ex. 7 hereto; 4) the upgraded sewage treatment facility, as discussed in Section 4.3 of the Facilities Plan and in the location shown on Ex. 5, hereto, as may be amended pursuant to Ex. 7 hereto; 5) the sludge management facilities, as discussed in Section 4.4 of the Facilities Plan, as may be amended pursuant to Ex. 7 hereto; 6) the Outfall, as discussed in Section 4.5 of the Facilities Plan and in the location shown on Ex. 5, hereto; 7) the ancillary facilities, as described in Section 4.6 of the Facilities Plan, as may be amended pursuant to Ex. 7 hereto; and 8) that portion of the Interim Improvements represented by the amount of Suncadia’s financial contribution to those Improvements that remains unreimbursed at such time as Cle Elum accepts delivery of the upgraded sewer treatment plant; and

E. WHEREAS the Regional Facility is sized based on an assumption that Roslyn will modify its existing wastewater collection and treatment facilities so that those existing facilities will attenuate Roslyn’s flows to the Regional Facility to a maximum of 0.75 million gallons per day (“MGD”) on a peak day (24-hour average) basis; and

F. WHEREAS the Parties anticipate that the Regional Facility will require expenditures for operation and maintenance in excess of the amount currently required to operate Cle Elum and Roslyn’s existing wastewater treatment facilities. The increased capacity resulting from the Regional Facility will add new ratepayers to the system, which will result in additional revenues through sewer rates. It is anticipated that the sewer rates paid by these additional ratepayers will

ultimately provide a substantial offset against the increased operation and maintenance costs associated with the Regional Facility. However, until these new ratepayers are added, the Communities will experience a fiscal shortfall in which existing revenues from sewer rates will not be sufficient to cover the increased operation and maintenance costs of the Regional Facility. Suncadia, as a primary beneficiary of the new capacity created by the Regional Facility, in accordance with Section 6.1.5.3 of the Pre-annexation Agreement, has agreed to reimburse the Communities for the operation and maintenance shortfall created by the Regional Facility; and

G. WHEREAS, each Party desires to retain ownership of any and all water relating to sewage and wastewater flows that the Party sends to the Regional Facility for treatment and discharge. Under Roslyn's current existing wastewater treatment system, the discharge receiving stream is an intermittent stream, Crystal Creek. Roslyn does not discharge to surface water during the dry season; Roslyn stores wastewater during the dry season and discharges to Crystal Creek when it is flowing. Upon connection to the Regional Facility, Roslyn's wastewater flow will be discharged to surface water continuously, which will yield a net increase in stream flow of the Yakima River downstream of Hanson Pond during the low flow season. Separately, the Reclaimed Water Act (RCW 90.46.120) provides that the owner of a wastewater treatment facility has the exclusive right to any reclaimed water generated by the wastewater treatment facility, and the Parties intend for each Party to have the right to reclaimed water generated from its flows; and

#### **VI. Recitals relating to Environmental Review.**

A. WHEREAS, on February 2, 2002, the City of Cle Elum retained Herrera Environmental Consultants to prepare an Environmental Impact Statement ("EIS") for implementation of the Facilities Plan. A Draft EIS ("DEIS") was released to the public on July 1, 2002; and

B. WHEREAS, on August 13, 2002, the Communities conducted a public hearing on the DEIS. A Final EIS ("FEIS") was published by the City of Cle Elum on September 30, 2002. A true and correct copy of the FEIS is located at Cle Elum, South Cle Elum and Roslyn City Halls and is incorporated into this Agreement by this reference; and

C. WHEREAS, on August 18, 2003, Herrera Environmental Consultants issued an addendum to the September 30, 2002 FEIS. A true and correct copy of the FEIS addendum is located at the Cle Elum, South Cle Elum and Roslyn City Halls and is incorporated into this Agreement by this reference; and

#### **VII. General Recitals.**

A. WHEREAS, Cle Elum will own and operate the Regional Facility (with the exception of the Roslyn interceptor), which will accept, treat, and discharge wastewater flows from Suncadia's MPR Properties and the service areas of Cle Elum, South Cle Elum, and Roslyn as provided in this Agreement; and

B. WHEREAS RCW 35.92.025 authorizes Cle Elum, South Cle Elum and Roslyn to charge property owners seeking to connect to their wastewater treatment systems a reasonable

connection charge as their respective City Councils determine proper so that property owners bear their equitable share of the cost of the wastewater treatment system; and

C. WHEREAS RCW 36.70B.170 authorizes Cle Elum, South Cle Elum and Roslyn to enter into a development agreement that obligates Suncadia to fund or provide services, infrastructure, or other facilities and that includes provisions whereby Suncadia is reimbursed over time for financing such public facilities; and

D. WHEREAS, in order to provide capacity for future connections in the Communities, Suncadia's initial contribution to the Regional Elements as discussed in this Agreement is in excess of Suncadia's pro rata share of the costs of the Regional Facility; and

E. WHEREAS pursuant to RCW 36.70B.200, a duly noticed public hearing was conducted on this Agreement on August 13, 2002. Duly noticed public hearings were conducted on the First Amendment to this Agreement on January 21, 2003 (South Cle Elum) and January 28, 2003 (Cle Elum and Roslyn). A duly noticed public hearing was conducted on the Second Amendment to this Agreement on May 6, 2003. A duly noticed public hearing was conducted on this Third Amendment to this Agreement on August 12, 2003 (all Communities), August 26, 2003 (Roslyn and Cle Elum) and September 2, 2003 (South Cle Elum). A duly noticed public hearing was conducted on this Fourth Amendment to this Agreement on December 4, 2007 (all Communities) and on December 11, 2007 (Roslyn); and

F. WHEREAS, except with regard to those portions of the Interim Wastewater Agreement that are addressed specifically herein, it is intended that this Agreement be consistent with and not supersede any agreement between Cle Elum and South Cle Elum relating to wastewater treatment and disposal service.

NOW, THEREFORE, the following AGREEMENT is made upon the basis of the foregoing recitals, and in consideration of the mutual promises and covenants herein, and the mutual benefits to be derived by the Parties therefrom.

## AGREEMENT

### **1. Definitions and Abbreviations.**

- 1.1 10% Petition: A notification submitted by the party initiating annexation to a City or Town notifying the City or Town of the initiating party's intention to commence annexation proceedings, as provided in RCW 35.13.125.
- 1.2 AAA: Abbreviation for the American Arbitration Association.
- 1.3 Agreement: This Upper Kittitas County Regional Wastewater Treatment Facilities Project Agreement, Development Agreement and Service Agreement between the City of Cle Elum, the Town of South Cle Elum, the City of Roslyn and Suncadia Resort Development, LLC, including all amendments thereto.

- 1.4 Capacity Share: Each Party's allocation of capacity of the Regional Elements, as more fully defined in Section 3.1, below.
- 1.5 Collection Facilities: The Facilities constructed, operated and maintained by each of the Parties for the collection of wastewater within their jurisdictions. For Cle Elum, Roslyn and the Suncadia Properties, the Collection Facilities include all sewerage collection and transportation facilities necessary to collect and transport sewerage flows to the MPR/UGA interceptor and/or the Second Street interceptor. For South Cle Elum, the Collection Facilities include all sewerage collection and transportation facilities necessary to collect and transport sewerage flows that are generated from connections on the South side of the Yakima River.
- 1.6 Communities: Collective term for the City of Cle Elum, the Town of South Cle Elum and the City of Roslyn.
- 1.7 DEIS: Abbreviation for Draft Environmental Impact Statement, as that term is used in the State Environmental Policy Act, Chapter 43.21C RCW.
- 1.8 Ecology: The Washington State Department of Ecology.
- 1.9 EIS: Abbreviation for Environmental Impact Statement, as that term is used in the State Environmental Policy Act, Chapter 43.21C RCW.
- 1.10 ERU: Abbreviation for Equivalent Residential Unit, as defined in Exhibit 6, hereto. "ERU," as used in this Agreement, refers to the Facility Plan calculation of the number of units that can be served by the anticipated capacity of the Regional Facility. ERU calculations are used in the Agreement to calculate the capital reimbursement charge (Section 2.2) and the Capacity Share (Section 3.1). "ERU" should be distinguished from "Residential Customer Equivalents," as that term is defined below.
- 1.11 Facilities Plan: The final Cle Elum Regional Sewerage Facilities Plan, prepared by Earth Tech, Inc., dated September, 2002, adopted by the Communities commensurate with the execution of this Agreement and amended in August 2003.
- 1.12 FEIS: Abbreviation for Final Environmental Impact Statement, as that term is used in the State Environmental Policy Act, Chapter 43.21C RCW.
- 1.13 Increased O&M Costs: The amount of the difference in Operations and Maintenance costs between the Communities' existing wastewater facilities and the Regional Elements, as more fully defined in Section 5.2, below.
- 1.14 Interim Improvements: The improvements to the City of Cle Elum's existing wastewater treatment facility constructed pursuant to the Interim Wastewater Agreement.



- 1.15 Interim Wastewater Agreement: That agreement between Cle Elum, South Cle Elum and various Suncadia entities entered into in July of 2000 and entitled Interim Wastewater Treatment Facilities Project Development Agreement.
- 1.16 MGD: Abbreviation for Million Gallons per Day.
- 1.17 MPR: Abbreviation for Master Planned Resort, as more fully defined in RCW 36.70A.360.
- 1.18 Suncadia: Suncadia Resort Development, LLC.
- 1.19 Suncadia's MPR Properties: The properties Suncadia intends to develop as an MPR, as more fully defined in Exhibit 3 hereto.
- 1.20 Suncadia Shortfall Payment: The Payment made by Suncadia to cover the O&M fiscal shortfall associated with the treatment capacity necessary to serve future ERUs in Suncadia's MPR and UGA Properties, as more fully defined in Section 5.4, below.
- 1.21 Suncadia's UGA Properties: The properties Suncadia intends to develop within Cle Elum's UGA, as more fully defined in Exhibit 1 hereto.
- 1.22 Notice of Demand: A notice served by a Party on all other Parties to this Agreement demanding arbitration, as more fully defined in Section 10.2, below.
- 1.23 Notice of Mediation: A notice served by a Party on all other Parties to this Agreement initiating mediation, as more fully defined in Section 10.1, below.
- 1.24 NPDES: Abbreviation for National Pollution Discharge Elimination System.
- 1.25 O&M: Abbreviation for Operations and Maintenance. O&M costs include any applicable public utility taxes.
- 1.26 Outfall: The piping and related improvements necessary to transport sewer effluent from the Regional Facility treatment plant to the Yakima River and discharge that effluent into the Yakima River.
- 1.27 Parties: A collective term for the parties to this Agreement: the City of Cle Elum, the Town of South Cle Elum, the City of Roslyn and Suncadia Resorts Development, LLC.
- 1.28 Pre-annexation Agreement: That Agreement entered into on July 26, 2000 between the City of Cle Elum and various Suncadia entities and entitled Pre-annexation Agreement, a copy of which is attached hereto as Ex. 2.
- 1.29 Regional Elements: The portions of the Regional Facility serving more than one Party to this Agreement. The specific Regional Elements are: 1) the UGA/MPR

interceptor, as discussed in Section 4.1 of the Facilities Plan and as shown on Ex. 5, hereto; 2) the Second Street interceptor, as discussed in Section 4.1 of the Facilities Plan and as shown on Ex. 5, hereto; 3) the treatment plant site preparation, as discussed in more detail in Section 4.2 of the Facilities Plan, and as modified in Exhibit 7 hereto; 4) the upgraded sewage treatment facility, as discussed in Section 4.3 of the Facilities Plan and in the location shown on Ex. 5, hereto, and as modified in Exhibit 7 hereto; 5) the sludge management facilities, as discussed in Section 4.4 of the Facilities Plan, and as modified in Exhibit 7 hereto; 6) the Outfall, as discussed in Section 4.5 of the Facilities Plan and in the location shown on Ex. 5, hereto; and 7) the ancillary facilities, as described in Section 4.6 of the Facilities Plan, and as modified in Exhibit 7 hereto.

- 1.30 Regional Elements Operation Account: As described in Section 5.5, below, an account established by the City of Cle Elum for receipts and payments related to the Regional Elements, as distinguished from receipts and payments for the City of Cle Elum's Collection System.
- 1.31 Regional Facility: The regional wastewater treatment facility and related improvements discussed more fully in Part IV of the Facilities Plan and as shown on Ex. 5, hereto, and as modified in Exhibit 7 hereto. The Regional Facility includes all of the Regional Elements as well as the Roslyn interceptor, as discussed in Section 4.1 of the Facilities Plan and as shown on Ex. 5, hereto.
- 1.32 Regional Sewer Committee: The advisory committee for regional sewer issues, made up of one representative of each Party, as more fully defined in Section 6.4, below.
- 1.33 Residential Customer Equivalents: The methodology for calculating an approximate number of single family-residential connections that are represented by connections to any Party's collection system that are not single-family residential units. As explained in Section 6.4, below, the calculation of Residential Customer Equivalents, which is based on metered water consumption (or metered sewer discharge, if available), is used to determine the appropriate distribution of regional costs to non-single-family residential users of the regional system.
- 1.34 Roslyn Elements: The improvements necessary to attenuate Roslyn's sewer flows as discussed in the Facilities Plan and to transport those flows to the Second Street interceptor, as more fully defined in the Facilities Plan and in Section 2.1.2, below. The Roslyn Elements include the Roslyn interceptor.
- 1.35 Treatment Plant Upgrade: The site preparation for and construction of the upgraded wastewater facility; the sludge facilities; the ancillary facilities; and landscaping, site improvements and any required mitigation for said facilities, all as described more fully in Exhibit 7.

1.36 UGA: Abbreviation for Urban Growth Area.

**2. Contributions to the Regional Facility.**

2.1 The Parties agree to allocate the capital costs of the Regional Facility as follows:

2.1.1 The City of Cle Elum and Town of South Cle Elum will collectively contribute a total of \$1,000,000 toward construction of the Regional Elements. This contribution is exclusive of any grants obtained by the Communities toward construction of the Regional Elements and is also exclusive of Cle Elum and South Cle Elum's contribution to the Interim Improvements.

2.1.2 The City of Roslyn will contribute: 1) all costs incurred as a result of the rehabilitation of its existing lagoon system to an attenuation system as discussed in the Facilities Plan; 2) all costs incurred as a result of the construction of the Roslyn interceptor, as that item is described in section 4.1 of the Facilities Plan and as shown on Ex. 5 hereto; and 3) all costs incurred as a result of the physical connection of the Roslyn interceptor to the Second Street interceptor constructed in Second Street in Cle Elum, as that item is described in the Facilities Plan. These items will be hereinafter referred to as the Roslyn Elements.

2.1.3 Subject to the restriction in Section 2.3, below, Suncadia shall contribute all remaining capital costs for the Regional Elements. Suncadia shall be entitled to partial reimbursement through the capital reimbursement charge discussed in Section 2.2, below.

2.1.4 The costs subject to Cle Elum, South Cle Elum and Suncadia's contribution discussed in Sections 2.1.1 and 2.1.3, above, include the costs and fees (including attorneys' fees) associated with the acquisition of property and/or easements, the environmental review and mitigation, the permitting and other regulatory approvals, the design, and the construction of the Regional Elements.

2.1.5 The un-reimbursed portion of Suncadia's expenditures on the Interim Improvements that are the subject of the Interim Wastewater Agreement attached hereto as Exhibit 4 shall be included in the costs subject to Suncadia's contribution under Section 2.1.3 and 2.1.4, above, and the capital reimbursement charge provisions of Section 2.2 below.

2.2 In order to partially reimburse Suncadia for the actual costs Suncadia pays under Sections 2.1.3, 2.1.4 and 2.1.5, above, each Community will establish a capital reimbursement charge process pursuant to RCW 35.92.025 or RCW 36.70B.170, as applicable, prior to Cle Elum's acceptance of the Regional Elements; provided that Roslyn will establish such process before it connects to Regional Elements.

Under each Community's capital reimbursement charge process, the capital reimbursement charge will be paid when a new ERU connects to the Regional Facility. The City of Roslyn's capital reimbursement charge will apply to new ERU connections in the City of Roslyn and its UGA and in the Ronald area through Roslyn's wastewater treatment and disposal service contract with Kittitas County Water District No. 2. The City of Cle Elum's capital reimbursement charge will apply to new ERU connections in the City of Cle Elum and its UGA, except those portions where sewer service is provided by South Cle Elum, and the Town of South Cle Elum's capital reimbursement charge will apply to new ERU connections in the Town of South Cle Elum, its UGA and those portions of the City of Cle Elum where sewer service is provided by the Town. The capital reimbursement provision discussed in this section shall be in addition to each Party's then current connection charge.

2.2.1 The capital reimbursement charge will be calculated as follows:

2.2.1.1. The total amount of the costs paid by Suncadia under Section 2.1.3, 2.1.4 and 2.1.5, above, will first be reduced by 56%. As explained in more detail in Exhibit 6 hereto, this reduction represents the percentage of new users in the system attributable to Suncadia's MPR Properties.

2.2.1.2. The remaining 44% of costs paid by Suncadia under Section 2.1.3, 2.1.4 and 2.1.5, above, is then divided by 2,978 to obtain a per ERU capital reimbursement charge that will be assessed at hook-up on all new ERUs to the regional system outside of Suncadia's MPR Properties. Exhibit 6 hereto provides a sample capital reimbursement charge calculation based on the Facilities Plan estimate of the Regional Facility costs, as modified pursuant to Exhibit 7 hereto. The per ERU capital reimbursement charge actually assessed shall also include an amount sufficient to pay any applicable public utility taxes.

2.2.1.3. The capital reimbursement payments collected by the Communities will be reimbursed to Suncadia over time until such time as Suncadia has been reimbursed 44% for its expenditures under Section 2.1.3, 2.1.4 and 2.1.5, above. At such time as Suncadia has been reimbursed 44% for its expenditure under Sections 2.1.3, 2.1.4 and 2.1.5, the Communities are no longer obligated to collect and disburse any capital reimbursement charge under this Agreement.

2.2.2 The capital reimbursement charge will be reimbursed as follows.

2.2.2.1. No later than the 15th day of every month, the Communities shall make payment to Suncadia in an amount equal to the total amount

of all capital reimbursement charge payments actually collected during the preceding month.

2.2.2.2. The capital reimbursement charge collected pursuant to this Section will be in addition to the then current general connection fee specified by Cle Elum, South Cle Elum and Roslyn ordinances for connections to those Communities' wastewater treatment systems.

2.2.2.3. Suncadia expressly acknowledges that this Section 2.2 in no way warrants that all capacity created by the Regional Elements will be utilized or that Suncadia will be fully reimbursed for the entirety of the funds it expends pursuant to Section 2.1.3, 2.1.4 and 2.1.5, above.

- 2.3 Suncadia shall be responsible for the design and construction of the Treatment Plant Upgrade in accordance with the terms and conditions of Exhibit 7. Suncadia shall use its best efforts to complete the Treatment Plant Upgrade by December 31, 2005.
- 2.4 The City of Cle Elum shall be responsible for design and construction of the new effluent discharge outfall from the treatment plant to the Yakima River (hereinafter "the Outfall") through the Design-Bid-Build contracting process described in Chapter 39.04 RCW. Cle Elum and South Cle Elum's \$1,000,000 contribution, discussed in Section 2.1.1, above, shall be applied first toward the design and construction of the Outfall. If, upon completion, the total costs of the design and construction of the Outfall, less any grant funds received for that design and construction, are less than \$1,000,000, Cle Elum and South Cle Elum shall contribute to the other aspects of the Regional Elements an amount equal to the difference between \$1,000,000 and the actual costs of design and construction of the Outfall, less any grant funds received for that design and construction. If the design and construction costs of the Outfall, less any grant funds received for that design and construction, exceed \$1,000,000, Suncadia shall contribute funds sufficient to cover those excess costs, subject to reimbursement to Suncadia through the capital reimbursement charge discussed in Section 2.2, above.
- 2.5 The Roslyn Elements include both the physical facilities and the legal and regulatory approvals necessary to construct and operate those physical facilities, including without limitation: the necessary right-of-way easements, use permits, regulatory approvals, environmental review in excess of the FEIS discussed in Recital VI.B., above, or licenses required for the construction of the Roslyn Elements and the transportation of wastewater from the Roslyn/Ronald service area to the Regional Facility.

- 2.5.1 The City of Roslyn shall be solely responsible for all costs incurred as a result of the Roslyn Elements. The City of Roslyn intends to obtain grant funding to cover some or all of the costs of the Roslyn Elements.
- 2.5.2 The City of Roslyn shall connect the Roslyn Elements to the Regional Elements within three (3) years of the time the Regional Elements become fully operational. If the City of Roslyn does not connect the Roslyn Elements to the Regional Elements within three (3) years of the Regional Elements becoming operational, this Agreement shall terminate as to Roslyn's obligations, and Roslyn's Capacity Share, as discussed in Section 3.1, below, shall revert to the City of Cle Elum. If the City of Cle Elum then uses Roslyn's Capacity Share to connect additional units within Cle Elum or South Cle Elum, such units shall be subject to the capital reimbursement charge discussed in Section 2.2, above. If Cle Elum instead transfers Roslyn's Capacity Share to a third party, any payment Cle Elum receives for such transfer shall be reimbursed to Suncadia and shall be used to offset Suncadia's expenditures under Section 2.1.3, 2.1.4 and 2.1.5, above. The three (3) year period referred to in this Subsection shall not include any period during which the issuance of any permit or approval necessary to construct and connect the Roslyn Elements is delayed or pending so long as Roslyn has exercised reasonable diligence in prosecuting the applicable permit application or approval process or during which such permit or approval is subject to an appeal or other litigation.
- 2.5.3 The City of Roslyn agrees to defend, indemnify and hold harmless the City of Cle Elum, the Town of South Cle Elum and Suncadia, their elected officials, officers, agents and employees, except to the extent resulting from their sole negligence or intentional act or omissions, for any and all expenses, damages, liability, claims and costs arising out of or relating to the construction, operation or maintenance of the Roslyn Elements. Claims and issues relating to Roslyn's Collection System are addressed in Section 6.6, below.
- 2.5.4 The City of Cle Elum, the Town of South Cle Elum and Suncadia shall use their best efforts to assist the City of Roslyn in timely obtaining rights-of-way easements, permits and regulatory approvals necessary to construct and operate the Roslyn Elements and serve the Roslyn/Ronald service area.
- 2.6 Suncadia shall be responsible for design and construction of the MPR/UGA interceptor and the Second Street interceptor, as described in section 4.1 of the Facilities Plan, in accordance with the terms and conditions contained in Exhibit 8, hereto. Suncadia shall use its best efforts to complete construction of the Second Street interceptor by December 31, 2004.

- 2.7 The City of Cle Elum shall use its best efforts to obtain all permits, right-of-way easements, use permits, regulatory approvals, or licenses required for the construction and operation of the Regional Elements, including any required modification of Cle Elum's NPDES permit for its wastewater treatment facility. The Town of South Cle Elum, the City of Roslyn and Suncadia shall use their best efforts to assist the city of Cle Plum in timely obtaining rights-of-way easements, permits and regulatory approvals necessary to construct and operate the Regional Elements.
- 2.8 Suncadia shall be responsible for the construction of the infrastructure necessary to collect and transport wastewater from Suncadia's UGA and MPR Properties to the Regional Elements (hereinafter referred to as Suncadia's Collection Facilities). The design, engineering, permitting and construction costs associated with Suncadia's Collection Facilities shall be borne solely by Suncadia and shall not be subject to the reimbursement provisions of this Agreement. Suncadia's Collection Facilities include both physical facilities and the legal and regulatory approvals necessary to construct and operate those physical facilities, including without limitation: the necessary right-of-way easements and use permits for transportation of wastewater from Suncadia's UGA and MPR Properties to the Regional Elements; treatment facilities and/or transportation lines located on Suncadia's UGA and MPR Properties; and all permits, licenses or other regulatory approvals required for the transportation of wastewater from Suncadia's UGA and MPR Properties to the Regional Elements. The City of Cle Elum, the Town of South Cle Elum and the City of Roslyn shall use their best efforts to assist Suncadia in timely obtaining rights-of-way easements, permits and regulatory approvals necessary to construct and operate Suncadia's Collection Facilities. Suncadia and the City of Cle Elum shall enter into a Developer Extension Agreement for the design and construction of any of Suncadia's Collection Facilities that Suncadia intends to dedicate to the City of Cle Elum.
- 2.9 The City of Cle Elum, the Town of South Cle Elum, and the City of Roslyn shall be responsible for the maintenance of, and any necessary improvements to, the infrastructure necessary to collect and transport wastewater from each Community's service area to the Regional Elements (hereinafter referred to as each Community's "Collection Facilities").

### **3. Allocation of Capacity from the Regional Elements.**

- 3.1 Based on the projected flows identified in the Facilities Plan, the actual total capacity of the Regional Elements is allocated as follows: Roslyn is allocated 21.127% of that capacity; Cle Elum and South Cle Elum are allocated 56.338% of that capacity to serve their existing users and future growth, including growth within Suncadia's UGA Properties; and Suncadia is allocated an additional 22.535% of that capacity to serve Suncadia's MPR Properties. These allocations of capacity are referred to herein as each Party's "Capacity Share." It is the Parties' intent, consistent with the Facilities Plan, that the Regional Elements will

provide a total capacity of 3.6 MGD. Each Party's Capacity Share also represents that Party's allowable maximum monthly average flow to the Regional Facility.

- 3.2 Each Party's Capacity Share as defined in Section 3.1 is subject to and conditioned upon completion of all construction, as well as receipt of all permits, easements and other regulatory approvals or licenses necessary to utilize the treatment capacity provided by the Regional Elements. Each Party holds all right, title, and interest in its Capacity Share. This ownership interest is of the Regional Elements' treatment capacity and not of the Regional Elements themselves or any of their permits, approvals, physical assets or components. A Party may transfer, on a temporary or permanent basis, some or all of its capacity share to any other Party. A Party may transfer, on a temporary or permanent basis, some or all of its capacity to a third party, subject to consent of all other Parties to this Agreement, which consent shall not be unreasonably withheld.
- 3.3 Suncadia's Capacity Share can be used to serve those portions of Suncadia's MPR development that have received any required development permits and regulatory approvals from affected agencies and jurisdictions.
- 3.4 Each Party shall have the exclusive right to any water quantity or water rights mitigation value, credits, or other benefits arising from or relating to the portion of the Regional Facility's effluent discharge to public waters of the State attributable to the Party's sewage and wastewater flows. In the event that RCW 90.46.120 or other provision of law provides Cle Elum with the rights to any reclaimed water generated by the Regional Facility from the other Parties' sewage and wastewater flows, then each Party shall have the right to a pro rata share of such reclaimed water or any benefits derived therefrom based on the Party's sewage and wastewater flow contribution, unless the Parties shall provide otherwise by agreement. However, no Party may take physical control of any effluent from the Regional Facility or otherwise undertake a reclaimed water project absent an agreement with Cle Elum.
- 3.5 Each Party shall use its best efforts to limit pollutant loadings (BOD and TSS) of its discharge to the Regional Elements to the amount set forth in the Facilities Plan (Table 2-12, attached hereto as Exhibit 9).

#### **4. Required Washington State Department of Ecology Project Approvals.**

- 4.1 The Communities and Suncadia acknowledge the important role of Ecology in the Regional Facility. Pursuant to Section 2.1, above, Suncadia shall fund and actively assist the Communities in their efforts to secure any Ecology approvals necessary for performance of the obligations under this Agreement.



## 5. Operation and Maintenance Costs.

- 5.1 The Parties agree that, to establish a uniform Operation and Maintenance (“O&M”) component for every Residential Customer Equivalent connected to the Regional Facility, the sewage disposal charges discussed in Section 6, below, will include a rate structure that equally divides the O&M costs of the Regional Elements to each Residential Customer Equivalent connecting to the Regional Facility, subject to pretreatment requirements and/or a surcharge for flows with pollutant loadings higher than domestic sewage, as discussed more fully in section 7.1.4, below, and further subject to the Suncadia Shortfall Payment, as that term is defined in Sections 5.3 and 5.4, below.
- 5.2 The parties acknowledge that the regional elements will have a higher O&M cost than either the existing wastewater treatment facilities or the wastewater treatment facility improvements that would have been necessary to serve the Communities without development of any of the Suncadia properties. The amount of this increased O&M cost shall be determined annually by subtracting a base O&M amount from the budgeted O&M costs for the Regional Elements (“Increased O&M Cost”). The base O&M amount shall be the total of the combined direct costs of treatment operations of the Roslyn and Cle Elum systems for the twelve (12) month period immediately preceding each party’s connection to the regional treatment plant, said amount to be determined by a licensed professional engineer and/or Certified Public Accountant. In calculating the annual Increased O&M Cost, the base O&M amount shall be adjusted annually, on June 30 of each year, commencing in 2007.
- 5.3 The annual Increased O&M Cost shall be reduced by an amount equal to the total of all new Residential Customers and Residential Customer Equivalents that have connected to the Regional Facility since the date on which the Regional Elements became fully operational multiplied by the monthly sewage disposal charge per Residential Customer Equivalent, as defined in Section 6.5.5, below, in effect the previous year. This credit reflects the fact that revenues from new connections reduce Increased O&M Costs.
- 5.4 The responsibility for the Increased O&M Cost discussed in Section 5.2 and 5.3, above, shall be divided as follows: 69.9% shall be allocated to Suncadia (the “Suncadia Shortfall Payment”), representing the allocation to the Suncadia UGA and MPR Properties, and 30.1% shall be allocated to the Communities as a whole representing current and future ERUs within the Communities. This division of the Increased O&M Cost between Suncadia and the Communities is based on the respective percentage of the total build out ERUs of the Regional Facility, as explained in more detail in Exhibit 10.
- 5.5 Cle Elum shall establish a new account for receipts of payments and disbursement of expenses for the Regional Elements O&M (“Regional Elements Operation

Account”), which account shall be separate and distinct from the account(s) for Cle Elum’s Collection System.

- 5.6 The Suncadia Shortfall Payment discussed in Sections 5.2 and 5.3, above, shall be paid monthly to the City of Cle Elum’s Regional Elements Operation Account and shall not be part of the monthly sewage disposal charge described in Section 6.4.5, below. Suncadia’s obligation under this paragraph shall continue until such time as the per Residential Customer Equivalent monthly sewage disposal charge is greater than or equal to the actual costs per Residential Customer Equivalent to operate the plant.
- 5.7 The 30.1% of the Increased O&M Costs allocated to the Communities becomes part of the monetary requirements discussed in Section 6.5.5, below, and is paid through monthly rates charged to sewer connections in the Communities.
- 5.8 Consistent with Paragraph 7.4.7 of the Pre-annexation Agreement, in the event this Agreement is terminated prior to the fulfillment of Suncadia’s shortfall obligations discussed in the Section 5.4, the Communities may, at their option, apply the capital reimbursement payments discussed in Section 2.2, above, to any unpaid portion of Suncadia’s Regional Sewer Shortfall Payment, and the Communities’ obligation to disburse those capital reimbursement payments to Suncadia shall be reduced accordingly.

## **6. Regional Facility Operation.**

- 6.1 The Parties shall deliver to the Regional Elements all of the sewage and industrial waste (except where rules and regulations prohibit discharge of a given high strength waste flow) collected by their respective Collection Systems, and Cle Elum shall accept the sewage and waste delivered by the Parties for treatment and disposal as hereinafter provided subject to such reasonable rules and regulations as may be adopted from time to time by the Cle Elum City Council, and the other Parties when appropriate, after consultation with the Regional Sewer Committee. Cle Elum shall not directly accept sewage or wastes from any person, firm or corporation which is located within the boundaries of or is delivering its sewage into the Collection Facilities of South Cle Elum, Roslyn or Suncadia’s MPR Properties without the written consent of the affected Party. The Parties shall not deliver sewage to any other agency for disposal without the written consent of Cle Elum.
- 6.2 Cle Elum shall construct, acquire or otherwise secure the right to use all facilities required for the disposal of sewage delivered to the Regional Elements pursuant to this Agreement and shall perform all services required for the maintenance, operation, repair, replacement or improvement of the Regional Elements, including any additions or betterments thereto. Additions or betterments to the Regional Elements shall be consistent with the most recent version of the City of Cle Elum’s Comprehensive Sewer Plan or Facilities Plan. Cle Elum’s

Comprehensive Sewer Plan and Facilities Plan shall be consistent with and responsive to the comprehensive plan adopted by each Community pursuant to and consistent with the Washington Growth Management Act, Chapter 36.70A RCW. This obligation of Cle Elum to plan for the Regional Elements consistent with and in response to the Communities' land use plans does not in any way obligate Cle Elum to fund the improvements necessary to provide sufficient sewer capacity for the Communities' growth beyond that anticipated in the Communities' existing land use plans. Future land use plans or modifications proposed by the Communities that affect wastewater treatment shall be transmitted to Cle Elum for review and comment regarding their relationship to the then current Cle Elum Comprehensive Sewer Plan and Facilities Plan prior to their adoption.

- 6.3 Connection to the Regional Elements shall be accomplished at the expense of the connecting Party and in accordance with the rules and regulations adopted by Cle Elum after consultation with the Regional Sewer Committee. Wastewater flows will be metered before (if the meter location is below all of the metering Party's wastewater and inflow contributions) or at the point where each Party discharges its flow into the Regional Elements. Also at that point, monitoring facilities will be established to sample each Party's flow for Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), and other pollutants as necessary or appropriate under sampling and monitoring procedures to be adopted by Cle Elum after consultation with the Regional Sewer Committee.
- 6.4 As described in Section 7.1.4, below, under rules and regulations adopted by each Party after consultation with the Regional Sewer Committee, each Party will require pretreatment of, and/or assess a surcharge on, high strength wastes in order to prevent damage to the Regional Facilities, to avoid or compensate for increased costs of accepting and treating high strength wastes, to prevent the entry of deleterious waste flows to the Regional Facilities, or for other reasonable purpose.
- 6.5 Commencing with the first month in which sewage is collected and delivered by the Parties to the Regional Elements, each Party shall pay to Cle Elum on or before the last day of each month during the term of this Agreement, a sewage disposal charge determined as provided in this Section 6.5.
  - 6.5.1 For the semi-annual, 6-month periods ending May 31 and November 30 of each year each Party shall submit a written report to Cle Elum setting forth (a) the number of single-family Residential Customers billed by that Party for local sewerage charges as of the last day of the period, (b) the total number of all customers billed by that party as of such day and (c) the total water consumption during such period for all customers billed by that Party, other than single-family Residential Customers. The semi-annual water consumption report shall be taken from water meter records in the immediately preceding April and October of each year and may be

adjusted to exclude water that does not enter the sanitary facilities of a party, consistent with rules and regulations to be adopted by the City of Cle Elum after consultation with the Regional Sewer Committee. Where actual sewage flow from an individual customer is metered, the metered sewage flows shall be reported in lieu of adjusted water consumption. The total semi-annual water consumption report in cubic feet shall be divided by 5840 to determine the number of Residential Customer Equivalents represented by each Party's customers other than single-family residences. The derivation of this formula is discussed in more detail in Exhibit 10, hereto. Cle Elum shall maintain permanent records of the semi-annual customer reports from each Party. Each Party's first semi-annual report shall cover the first six-month period following the date when sewage is first delivered to the Regional Elements by that Party and shall be submitted within thirty days following the end of the period. Succeeding reports shall be made for each six-month period thereafter and shall be submitted within thirty (30) days following the end of the period.

- 6.5.2 To form a basis for determining the monthly sewage disposal charge to be paid by each party during any particular semi-annual period, Cle Elum shall ascertain the number of Residential Customers and Residential Customer Equivalents of that Party. This determination shall be made by taking the sum of the actual number of Residential Customers reported as of the last day of the next to the last preceding quarter and the average number of Residential Customer Equivalents per period reported for the two periods ending with said next to the last preceding period.
- 6.5.3 For the initial period until each Party has submitted two consecutive semi-annual reports, the basic reported number of each party's Residential Customers and Residential Customer Equivalents shall be determined as provided in this Section 6.5.3. On or before the tenth day of each month beginning with the month prior to the month in which sewage from a party is first delivered to the Regional Elements, that Party shall submit a written statement of the number of Residential Customers and Residential Customer Equivalents estimated to be billed by that party during the next succeeding month. For the purpose of determining the basic reported number of Residential Customers or Residential Customer Equivalents of that Party for such next succeeding month, Cle Elum may at its discretion adopt either such estimate or the actual number of Residential Customers and Residential Customer Equivalents reported by that Party as of the last day of the next to the last preceding reported period. After the Party has furnished two consecutive semi-annual reports, the basic reported number of that party's Residential Customers and Residential Customer Equivalents shall be determined as provided in the Section 6.5.2, above.

6.5.4 If a Party fails to submit the required monthly and/or semi-annual reports when due, Cle Elum may make its own estimate of the number of that Party's Residential Customers and Residential Customer Equivalents and such estimate shall constitute the reported number for the purpose of determining sewage disposal charges.

6.5.5 The monthly sewage disposal charge payable by each Party to Cle Elum shall be determined as follows:

6.5.5.1 Prior to July 1st of each year Cle Elum shall determine the total monetary requirements for the disposal of sewage through the Regional Elements during the next succeeding calendar year. Such requirements shall include the cost of administration, operation, maintenance, repair and replacement of the Regional Elements (but not to include a general depreciation charge) or any of their components, establishment and maintenance of necessary working capital and reserves, the requirements of any resolution providing for the issuance of revenue bonds of Cle Elum to finance the acquisition or construction of sewerage facilities identified in Section 7.1.3, below, any applicable public utility taxes, plus not to exceed 1% of the foregoing requirements for general administrative overhead costs.

6.5.5.2 To determine the monthly rate per Residential Customer or Residential Customer Equivalent to be used during said next succeeding calendar year, the total monetary requirements for the disposal of sewage as determined in Section 6.5.5.1, above, shall first be reduced by the Suncadia Shortfall Payment, next be divided by twelve and finally the resulting quotient shall be divided by the total number of Residential Customers and Residential Customer Equivalents of all Parties for the December-May half-year period preceding said July 1.

6.5.5.3 The monthly sewage disposal charge paid by each Party to Cle Elum shall be obtained by multiplying the monthly rate by the number of Residential Customers and Residential Customer Equivalents of that Party.

6.5.6 A statement of the amount of the monthly sewage disposal charge shall be submitted by Cle Elum to each Party on or before the first day of each month and payment of such charge shall be due on the last day of such month. If any charge or portion thereof due to Cle Elum shall remain unpaid for fifteen days following its due date, the non-paying Party shall be charged with and pay to Cle Elum interest on the amount unpaid from its due date until paid at the rate of 6% per annum, and Cle Elum may, upon failure to pay such amount, enforce payment by any remedy available at law or equity.

- 6.6 The Parties irrevocably obligate and bind themselves to pay their respective sewage disposal charge out of the gross revenues of their sewage systems. The Parties further bind themselves to establish, maintain and collect charges for sewer service which will at all times be sufficient to pay all costs of maintenance and operation of their sewer systems, including payments for the Regional Elements.
- 6.7 The Parties shall secure and maintain with responsible insurers all such insurance as is customarily maintained with respect to sewage systems of like character against loss of or damage to their sewerage facilities and against public and other liability to the extent that such insurance can be secured and maintained. Cle Elum shall secure and maintain with responsible insurers all such insurance as is customarily maintained with respect to sewage systems of like character against loss of or damage to the Regional Elements and against public and other liability to the extent that such insurance can be secured and maintained. Any liability incurred by Cle Elum as a result of the operation of the Regional Elements shall be the sole liability of Cle Elum and any liability incurred by Cle Elum, South Cle Elum, Roslyn or Suncadia as a result of the operation of their Collection Facilities shall be the sole liability of Cle Elum, South Cle Elum, Roslyn or Suncadia, respectively.
- 6.8 Each Party shall keep permanent books and records of the respective rates established, the volumes of sewage delivered and discharged into the Regional Elements whenever such volumes are measured, and the number of Residential Customers and Residential Customer Equivalents reported. In addition, each Party shall keep complete records showing the amount billed to each of its customers for sewer service and the basis used for such billing including sewage flow and water consumption for each customer where applicable. Cle Elum shall keep complete books of account showing all costs incurred in connection with the Regional Elements. The records required by this paragraph shall be available for examination by any other Party at any reasonable time.

## **7. Regional Equity.**

- 7.1 Except as expressly provided in this Agreement, the Parties intend for that portion of the rates and charges and rules and regulations associated with the Regional Elements to apply uniformly to all Residential Customers and Residential Customer Equivalents connected to the Regional Facility. Such portion of such rates and charges shall include O&M attributable to the Regional Elements, but not including any costs of overhead, administration, or O&M attributable to any portion of a Party's Collection System other than the Regional Elements. The Parties further intend for such rates and charges and rules and regulations that relate to proposed new Residential Customers and Residential Customer Equivalents seeking to connect to the Regional Facility shall also apply uniformly to all such proposed new Residential Customers and Residential Customer Equivalents. To achieve this objective:

- 7.1.1 The capital reimbursement charge discussed in Section 2.2, above, has been calculated in a manner so that all new connections to the Regional Facility will pay the same capital reimbursement charge, regardless of the location of the connection.
- 7.1.2 Discharges of like flow and loading characteristics shall be subject to the same rates and charges and rules and regulations relating to the Regional Elements regardless of their location of origin in the service area of the Regional Elements. This equity principle applies to the Regional Elements, but it is not intended to affect a Party's control over local rates and charges to its Collection Facilities.
- 7.1.3 In the event that additional capital improvements are required to comply with new regulatory requirements and do not produce additional treatment capacity, then each Residential Customer and Residential Customer Equivalent connected to the Regional Facility shall be subject to the same rates and charges to fund those improvements, regardless of its location of origin in the service area of the Regional Facility. Cost sharing issues relating to capital improvements required for sludge handling are specifically addressed in Exhibit 7 hereto.
- 7.1.4 Rules and regulations that Cle Elum may establish, after review and input from the Regional Sewer Committee, as necessary to operate the Facility in the best interests of the Parties and the region's ratepayers or to comply with the NPDES permit shall apply equally to each Party. For example and not by way of limitation, rules or regulations concerning industrial users or pretreatment would apply equally to each Party. Each Party agrees to adopt and enforce uniform rules and regulations relating to pretreatment and/or a surcharge for sewerage or wastes of unusual quality or composition requiring special treatment by the Regional Elements. Said rules and regulations may include metering requirements for determining whether individual users are discharging such high-strength wastes to the Regional Elements. Said rules and regulations shall also prohibit discharge of toxic or untreatable waste into any Party's Collection Facilities. Said rules and regulations shall be developed with the participation of the Regional Sewer Committee.
- 7.1.5 This Agreement does not address or provide for additional capital improvements that produce additional treatment capacity or for any cost allocation of the same. Provisions herein concerning Capacity Shares, Residential Customers and Residential Customer Equivalents connected to the Regional Facility, ERUs that are planned for connection under the Facilities Plan, or other subjects do not represent a basis for allocating costs of improvements that result in additional treatment capacity, and are not intended by the Parties to do so.

## 8. Regional Governance.

- 8.1 The City of Cle Elum and the Town of South Cle Elum shall each be responsible for all matters relating to their respective Collection Facilities, including, without limitation, the establishment of new connections to those systems as well as the installation, maintenance, repair and replacement of those systems, in accordance with previous agreements between those municipalities. The City of Roslyn shall be responsible for all matters relating to its Collection Facilities, including, without limitation, the establishment of new connections to that system, as well as the installation, maintenance, repair and replacement of that system. The City of Roslyn shall also be responsible for all matters relating to the Roslyn Elements, including, without limitation, the installation, maintenance, repair and replacement of those Elements. Suncadia shall be responsible for all matters relating to Suncadia's Collection Facilities serving Suncadia's MPR Properties, including, without limitation, the establishment of new connections to that system as well as the installation, maintenance, repair and replacement of that system.
- 8.2 Title to the Regional Elements, including all facilities, improvements, permits, supplies, materials, equipment, fixtures, and other property of whatsoever kind or nature that is included in the Regional Elements, whether or not incorporated therein, shall be, and remain, in the City of Cle Elum. Title to the parcels of land on which the upgraded wastewater treatment plant discussed in the Facilities Plan is constructed is now, and shall remain, in the City of Cle Elum. As amongst the Parties to this Agreement, Cle Elum shall be responsible for the operation, maintenance and upkeep of the Regional Elements and compliance with the City's NPDES permit. However, each Party shall own title to its Capacity Share as a separate property interest as set forth in Section 3, above.
- 8.3 Cle Elum may enter into a Service Agreement for the operation of the Regional Elements, pursuant to Chapter 70.150 RCW. Based on their ownership of their Capacity Shares in the Regional Elements, residents of Roslyn, South Cle Elum and Suncadia's MPR Properties have an interest in the terms and conditions of that Service Agreement. Accordingly, the Parties intend for the Regional Sewer Committee to participate in the following major decisions concerning a Service Agreement for operation of the Regional Elements: initial entry into such a Service Agreement, renewal of such a Service Agreement, termination of such a Service Agreement and entry into any subsequent Service Agreement pursuant to Chapter 70.150 RCW. Cle Elum shall not make any major decisions concerning a Service Agreement with a Service Provider, including entry into a Service Agreement, renewal of a Service Agreement, termination of a Service Agreement, and entry into any subsequent Service Agreement (or other agreement for contract operations of the Regional Elements), without first raising the issue before the Regional Sewer Committee and receiving a recommendation from the Regional Sewer Committee, all in accordance with the process discussed in Section 8.4, below. Cle Elum shall provide the Regional Sewer Committee with the



opportunity to participate in the interview and negotiation process related to entry into or renewal of any Service Agreement pursuant to Chapter 70.150 RCW.

- 8.4 The Parties further desire that they each participate in the economical and equitable management of the Regional Elements. Accordingly, for the purpose of reviewing the operation and management of the Regional Elements, proposed and final budgets for the Regional Elements, and to foster cooperation between the Parties under this Agreement, the Parties create the Regional Sewer Committee. The Regional Sewer Committee shall be established and function as follows:
- 8.4.1 The Regional Sewer Committee shall be composed of four voting representatives, one from Cle Elum, one from South Cle Elum, one from Roslyn, and one from the utility provider for Suncadia's MPR Properties. The Parties may appoint alternate representatives to the Regional Sewer Committee to serve in the absence of a regular member. Alternate representatives, when replacing a regular member, shall have the authority to vote on Committee business. The Committee shall select its chair and such other officers, shall fix a time and place for meetings, and shall establish such rules and procedures as it deems appropriate, provided that the Committee meet at least quarterly. Cle Elum will provide staff to take minutes of all meetings of the Regional Sewer Committee and to provide notice of meetings and Committee business.
- 8.4.2 A quorum of three voting members must be present before the chair can recognize a call for a vote of the Committee. In the event that any Party's representative fails to attend three consecutive Regional Sewer Committee meetings, at the next meeting, the attendance requirement for a quorum shall be reduced to two voting members. Motions shall be passed by a simple majority of voting members present at the meeting. If any issue before the Committee results in a tie vote, the Committee shall not make a recommendation on that issue. However, upon the request of any Committee member, the outcome of a vote of the Committee that does not result in a recommendation will be forwarded to Cle Elum for information. The Regional Sewer Committee's action on all motions shall be in the form of a recommendation to Cle Elum. Cle Elum and the other Parties will give good faith consideration to a recommendation of the Committee when it takes action related to the subject matter of the recommendation. Committee recommendations will be advisory only to Cle Elum and to the other Parties.
- 8.4.3 Cle Elum will submit to the Regional Sewer Committee all proposed and final budgets, contracts, rules and regulations, plans for additions or betterments, and other matters it deems appropriate or the Committee requests relating to the Regional Elements. At least thirty (30) days prior to a Committee meeting in the third quarter meeting of each year, Cle Elum will submit the proposed annual operating budget and related

expense information to the Committee for its review, which review will be done promptly.

8.4.4 All Parties will submit to the Regional Sewer Committee annually and at other times when requested, all data relating to water consumption, sewage discharge, sewer connections and Residential Customer Equivalents, the total annual amount of capital reimbursement charge payments collected and reimbursed to Suncadia pursuant to Section 2.2, above, sewage quality, plans for additions or betterments to local Collection Facilities, and other information relating to the Regional Facility. Any Regional Sewer Committee representative may examine, during business hours after giving reasonable advance notice, the books and records of any Party that relate to the Regional Facility, administration thereof or of this Agreement.

8.4.5 The Regional Sewer Committee shall annually calculate the total amount of capital reimbursement charge payments that were collected and reimbursed to Suncadia pursuant to Section 2.2, above, during the preceding year. The Regional Sewer Committee shall also annually calculate the total amount capital reimbursement charge payments that were collected and reimbursed to Suncadia pursuant to Section 2.2, above, since Cle Elum accepted the Regional Elements, as well as the outstanding balance necessary to completely reimburse Suncadia for 44% its expenditures under Sections 2.1.3, 2.1.4 and 2.1.5, above.

## **9. Additional Obligations of the Communities.**

9.1 In consideration of the provisions of this Agreement, the Parties agree to use their best efforts to expeditiously complete the permitting, design and construction of all of the Regional Elements. However, the Parties also recognize that the permitting of the Outfall may require more time than the permitting of the other aspects of the Regional Elements. In recognition of the independent utility of the treatment plant upgrade and the outfall upgrade, the Parties hereby agree to pursue a permitting strategy that will, if necessary, allow construction of the upgraded treatment plant to commence prior to final permitting and construction of the upgraded outfall.

9.2 In consideration of the provisions of this Agreement, the Communities agree to use their best efforts to assist Suncadia in pursuing financing options, including tax exempt financing, for Suncadia's contribution to the Regional Elements, as described in Section 1.1.3, above. The obligations of the Communities in the foregoing sentence shall not obligate the Communities to support any financing option that creates any possibility that the Communities' ratepayers will be in any way responsible, directly or indirectly, for Suncadia's contribution to the Regional Elements.

- 9.3 In consideration of the provisions of this Agreement, the Communities agree to continue to use their best efforts to seek grant funding for system improvements to reduce the Infiltration and Inflow into the Regional Facility. The Communities further agree to continue to use their best efforts to seek grant funding for the Outfall.
- 9.4 In consideration of the provisions of this Agreement, Cle Elum and Suncadia agree as follows with respect to the issuance of letters and certificates of sewer availability to Suncadia.
- 9.4.1 Upon request by Suncadia at any time after Suncadia has posted with Cle Elum all security required under Exhibit 7 hereto, Cle Elum will promptly issue to Suncadia, or the utility provider for Suncadia's MPR Properties, if other than Suncadia, a letter certifying that when the Regional Elements become operational, Cle Elum will have the capacity to provide, and at that time will provide, sanitary sewer service to development authorized on Suncadia's MPR Properties, up to Suncadia's Capacity Share.
- 9.4.2 Upon request from time to time by Suncadia at any time after Suncadia has posted with Cle Elum all security required under Exhibit 7, hereto Cle Elum will promptly issue certificates of sanitary sewer availability to Suncadia or its successors and assigns, certifying that when the Regional Elements become operational, Cle Elum will have the capacity to provide, and at that time will provide, sanitary sewer service to development authorized on Suncadia's UGA Properties.
- 9.4.3 The letter of availability discussed in Section 9.4.1, above, and the certificates of availability discussed in Section 9.4.2, above, shall be subject only to the standard conditions ordinarily and typically included by Cle Elum in its certificates of sewer availability.
- 9.4.4 The provisions of Section 9.4.1 and its subsections are for the benefit of and enforceable by Suncadia and the utility provider for Suncadia's MPR Properties, and shall not inure to the benefit of any other Party. The provisions of Section 9.4.2 and its subsections are for the benefit of and enforceable by Suncadia, its successors and assigns, and shall not inure to the benefit of any other Party.

## **10. Additional Obligations of Suncadia.**

- 10.1 Suncadia agrees to defend, indemnify and hold harmless the Communities, their elected officials, officers, agents and employees, except to the extent resulting from the negligence or intentional act or omissions of the Communities, their elected officials, officers, agents or employees, for:

- 10.1.1 Any and all expenses, damages (including third-party consequential damages), liability, claims and costs arising out of any challenge to, or any delay in issuance of, the regulatory permits and approvals necessary for construction of the Outfall, including, without limitation, expenses, damages (including third-party consequential damages), liability, claims and costs relating to the decision to proceed with construction of other aspects of the Regional Elements prior to issuance of all permits for construction of the Outfall;
- 10.1.2 Any and all expenses, damages (including third-party consequential damages), claims or liability arising out of or relating to Cle Elum's February 12, 2003 Request for Proposals for Design – Build – Finance – Operate services relating to the site preparation for and construction of the upgraded wastewater treatment facility, the sludge facilities, and the auxiliary facilities of the Regional Elements;
- 10.1.3 Any and all expenses, damages (including third-party consequential damages), claims or liability arising out of any challenge to any Community's authority to assess, collect, and reimburse to Suncadia all or any portion of the capital reimbursement charge described in Section 2.2, above;
- 10.1.4 Any and all expenses, damages (including third-party consequential damages), claims or liability arising in connection with the design and construction of the Treatment Plant Upgrade. This agreement to defend, indemnify and hold harmless shall include, without limitation, any and all claims, costs (including costs of corrective action ordered by a regulatory agency), fees (including attorneys' fees), penalties, fines or damages (including third-party consequential damages) related to any delay in construction of the Treatment Plant Upgrade. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Suncadia and Cle Elum, its officers, officials, employees, and volunteers, Suncadia's liability hereunder shall be only to the extent of Suncadia's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Suncadia's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties;
- 10.1.5 Any and all expenses, damages (including third-party consequential damages), claims or liability arising out of or relating to the City of Cle Elum's issuance of letters of availability, as discussed in Section 9.4.1, above, or certificates of availability, as discussed in Section 9.4.2, above, including, without limitation, any and all such expenses, damages

(including third-party consequential damages), claims or liability relating to delayed completion of construction of the Regional Elements after the completion date identified in Exhibit 7, Attachment A; and

10.1.6 Any and all expenses, damages (including third-party consequential damages), claims or liability arising out of or relating to the construction of the MPR/UGA interceptor and the Second Street interceptor, as discussed more fully in Exhibit 8, hereto.

**11. Interim Improvements and the Interim Wastewater Agreement (Applicable Only to Cle Elum, South Cle Elum and Suncadia).**

11.1 In consideration of the provisions of this Agreement, Cle Elum, South Cle Elum and Suncadia hereby agree to amend Section 3 of the Interim Wastewater Agreement, attached hereto as Exhibit 4, by deleting Section 3.2 as follows:

**“3. Allocation of Additional Capacity from Interim Project.**

3.1 The Interim Project is designed to create approximately 150,000 gallons per day of additional capacity in Cle Elum’s wastewater treatment facility. Subject to the provisions of Paragraph 4.2, below, the increased capacity created by the Interim Project shall be allocated as follows: Suncadia shall be allocated 2/3 of the additional capacity created by the Interim Project (100,000 gallons per day) (“the Suncadia Allocation”) and the Communities shall be allocated 1/3 of the additional capacity of the Interim Project (50,000 gallons per day) (“the Communities’ Allocation”).

11.2 In consideration of the provisions of this Agreement, Cle Elum, South Cle Elum and Suncadia hereby agree that if, at such time as Cle Elum’s engineer can reliably determine, with Ecology concurrence, the actual capacity of the Interim Improvements, that capacity exceeds the 150,000 gpd anticipated capacity of the Interim Improvements, any capacity above that 150,000 gpd anticipated capacity shall be, and is hereby, assigned to Suncadia.

11.3 In consideration of the provisions of this Agreement, Cle Elum, South Cle Elum and Suncadia hereby agree that, at such time as Cle Elum’s engineer can reliably determine, with Ecology concurrence, the actual capacity of the Interim Improvements, Cle Elum and South Cle Elum will evaluate their anticipated capacity needs for the Interim Improvements, taking into consideration the then-anticipated completion date of the Regional Elements. If Cle Elum and South Cle Elum determine, in their sole discretion, that their Interim Capacity needs are less than their Interim Capacity allocation, Cle Elum and South Cle Elum will assign any such excess capacity to Suncadia at no charge in consideration of the other commitments in this Agreements.

11.4 Cle Elum, South Cle Elum and Suncadia hereby agree that the Interim Wastewater Agreement shall remain in effect until such time as the City of Cle Elum commits to connections to the Regional Elements. At such time as the City of Cle Elum commits to connections to the Regional Elements, the Interim Wastewater Agreement shall be terminated, its provisions having been superseded by the provisions of this Agreement.

## **12. Dispute Resolution.**

12.1 Mediation: The Parties agree to the following mediation process to resolve any dispute or claim arising under this Agreement. Nothing in this Section shall restrict or limit the ability of any Party to obtain injunctive relief in superior court if such injunctive relief is necessary to avoid imminent or irreparable harm to any of the Parties, which might occur prior to or during the pendency of the mediation process described herein:

12.1.1 In the event of a dispute or claim under this Agreement, a Party shall provide a written Notice of Dispute to the other Parties. The Notice of Dispute shall describe the nature of the dispute or claim. The Parties shall meet within ten (10) days of the receipt of a Notice of Dispute in an effort to resolve the dispute informally.

12.1.2 If any Party believes that the Parties are unable to resolve the dispute informally pursuant to Section 12.1.1, above, that Party may give written Notice of a Demand for Mediation (“Notice of Mediation”) to the other Parties. Within five (5) days of receipt of a Notice of Mediation, the Parties shall select a mediator meeting the qualifications requirements set forth in Section 12.2.2, below.

12.1.3 A meeting with the mediator shall be held within fourteen (14) days of the appointment of the mediator, on a date and at a time selected by the mediator after consulting the Parties. The mediator shall work with the Parties to produce a suitable compromise. The mediator shall establish the format of the mediation meeting.

12.2 Arbitration: In the event any dispute or claim arising from any provision of this Agreement is not resolved through mediation as set forth in Section 12.1 above, the dispute or claim shall, upon demand made by any Party, be resolved by expedited, mandatory, binding arbitration as set forth in this Section. Nothing in this Section shall restrict or limit the ability of any Party to obtain injunctive relief in superior court if such injunctive relief is necessary to avoid imminent or irreparable harm to any of the Parties, which might occur prior to or during the pendency of the arbitration process described herein.

12.2.1 Any Party may demand arbitration under this Section by providing the other Parties with written Notice of Demand for Arbitration (“Notice of

Demand”). The notice shall describe the reasons for the demand, the nature of the dispute and the amount, if any, of any disputed monetary Sum.

- 12.2.2 Within ten (10) days of receipt of the Notice of Demand, the Parties shall agree upon a single arbitrator meeting the qualification requirements described in Section 12.2.3, below. If the Parties are unable to agree upon an arbitrator within the ten (10) day period, the Parties shall submit a request for appointment of an arbitrator to the Seattle office of the American Arbitration Association (“the AAA”). The AAA shall have fifteen (15) days from the date of submission of such a request to designate an arbitrator meeting the qualification requirements described below. If the AAA is unable to find an arbitrator meeting the qualification requirements within such fifteen (15) day period, then within the earlier of ten (10) days from the expiration of such fifteen (15) day period or the receipt of notice from the AAA of its inability to find a suitable arbitrator, the Parties shall request that the Presiding Judge of the Superior Court for Kittitas County appoint an arbitrator who, in such Judge’s sole discretion, meets or most nearly meets the qualification requirements described below.
- 12.2.3 The mediator or arbitrator appointed in accordance with Sections 12.1.2 and 12.2.2, above, must be a licensed attorney with experience as a mediator or arbitrator, and with a minimum of fifteen (15) years of cumulative experience in the areas of municipal law, land use law, and commercial real estate or commercial litigation.
- 12.2.4 The arbitration hearing shall occur within thirty (30) days from the date on which the arbitrator is appointed as described above. The hearing shall in no event last longer than three (3) consecutive business days. There shall be no discovery or dispositive motion practice (such as motions for summary judgment or to dismiss or the like) except as may be permitted by the arbitrator. The arbitrator shall not be bound by the rules of civil procedure or evidence, but rather shall consider such writings and oral presentations as reasonable business persons would use in the conduct of their day-to-day affairs and may require the Parties to present the case in a manner as the arbitrator may determine to be appropriate, including submission of written declarations in a timely fashion. It is the intention of the Parties to limit live testimony and cross-examination to the extent necessary to ensure a fair hearing to the Parties on all issues, consistent with the time limitation contained herein. The venue of any arbitration hearing conducted pursuant to this Agreement shall be in Kittitas County, Washington.
- 12.2.5 The arbitrator’s decision shall be made within thirty (30) calendar days of the commencement of the arbitration hearing. The arbitrator shall have no

authority to fashion a compromise resolution of the dispute that has not been presented by any of the Parties. The award shall be final and judgment may be entered in any court having jurisdiction thereof. The arbitrator may award specific performance.

- 12.3 Costs: In the event mediation is invoked under these provisions, each Party to the mediation shall be responsible for its own costs and fees. The Parties to the mediation shall evenly divide the costs and expenses billed by the mediator. In the event arbitration is invoked under these provisions, the arbitrator shall be authorized to determine, in his or her discretion, which Party shall be responsible for payment of costs and fees, including reasonable attorneys' fees. The arbitrator shall also be authorized to determine, in his or her discretion, that each Party should be responsible for payment of its own costs and fees, including reasonable attorneys' fees.

### 13. General Provisions.

- 13.1 Miscellaneous. Time is of the essence of this Agreement and every provision hereof. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof, and there are no other express or implied agreements, oral or written, between the Parties with respect to the Regional Facility. This Fourth Amended Upper Kittitas County Regional Wastewater Treatment Facilities Agreement, Development Agreement and Service Agreement supersedes the Third Amended Upper Kittitas County Regional Wastewater Treatment Facilities Project Agreement and Development Agreement and all amendments thereto. Invalidity of any of the provisions contained in this Agreement or the application thereof to any person shall in no way effect, impair or invalidate any of the other provisions hereof. A Party may not assign its obligations or responsibilities under this Agreement without the consent of the other Parties, which shall not be unreasonably withheld. Subject to the provisions governing assignment, above, the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. This Agreement shall be construed in accordance with and under the laws of the State of Washington. 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. This Agreement may be amended only in writing signed by all Parties and approved by the Cle Elum, South Cle Elum and Roslyn City Councils. This Agreement may be executed in counterparts, each of which shall be deemed an original as if signed by all Parties.
- 13.2 Third Parties. Nothing in this Agreement creates any obligation to any third parties not a Party to this Agreement, including, without limitation, any obligation to provide sewer service to any entity not a party to this Agreement.



- 13.3 Voluntary Agreement. The Parties hereto intend and acknowledge that this Agreement is a voluntary contract binding upon the Parties hereto, as well as their successors and assigns. The Parties recognize that the financial obligations undertaken by Suncadia are voluntary, and Suncadia acknowledges that it is fully aware that the Communities have relied on Suncadia's recitals and commitments made above and further herein, and that it understands that the Communities have relied upon said recitals in making the decision to agree to fund the Regional Elements as contemplated herein. Suncadia acknowledges that it is entering into this Agreement knowingly and voluntarily in consideration of the benefits to be derived therefrom.
- 13.4 Uncontrollable Circumstances. No Party hereto shall have any liability to other Parties for failure to fulfill any of its obligations hereunder, including, without limitation, the indemnity provisions of Section 10 and Exhibit 7, and excluding payment obligations hereunder (including, without limitation, the capital reimbursement charge discussed in Section 2.2 and the reimbursement obligations discussed in Exhibit 7), if such fulfillment is materially delayed, hampered, interrupted or interfered with or becomes impossible by reason of an "Uncontrollable Circumstance(s)," as defined in Subsections 13.4.1 through 13.4.12 below, if such Uncontrollable Circumstance(s) is beyond the reasonable control of the Party asserting an Uncontrollable Circumstance as justification for not meeting or performing such obligations; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as any Party's failure to perform its obligations in accordance with the terms and conditions of this Agreement or a lack of reasonable diligence of either Party. The following acts, events or conditions may qualify as an Uncontrollable Circumstance:
- 13.4.1 an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Regional Facility as of the date hereof), flood, earthquake, tornado, epidemic, catastrophic fire or explosion, act of a public enemy, war, terrorism, blockade, insurrection, riot, general unrest, restraint of government and people, civil disturbance, sabotage or similar occurrence;
- 13.4.2 the order, injunction or judgment of any federal, State or local court, administrative agency or governmental body or officer with jurisdiction over the Communities, or of the Communities acting in their governmental capacity, including any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; provided, however, that such order, injunction or judgment did not arise in connection with or be related to the negligent or wrongful action or inaction of the Party relying thereon and that neither the contesting in good faith of any such order, injunction, or judgment nor the reasonable failure to so contest shall constitute or be construed as a wrongful or negligent action or inaction of such Party;

- 13.4.3 the suspension, termination, interruption, denial, failure to issue, unforeseeable delay in issuance, modification or failure of renewal of any governmental approval necessary to the operation and maintenance of the Regional Facility (or the existing Cle Elum facility during construction of the Treatment Plant Upgrade), if such act or event did not arise in connection with or be related to the negligent or willful action or inaction of the Party asserting an Uncontrollable Circumstance, provided, however, that neither the contesting in good faith of any such order nor the reasonable failure to so contest shall be construed as a negligent or willful action or inaction of such Party;
- 13.4.4 a change in the law applicable to wastewater treatment and disposal standards;
- 13.4.5 the loss, interruption or inability to obtain any and all utility services, including sludge disposal and electric power, necessary for the operation and maintenance of the Regional Facility (or the existing Cle Elum facility during construction of the Treatment Plant Upgrade) directly resulting in a partial or total curtailment of operations at the Regional Facility (or the existing Cle Elum facility during construction of the Treatment Plant Upgrade) for reasons other than the negligent, willful or wrongful action or inaction of the Party asserting an Uncontrollable Circumstance;
- 13.4.6 the failure of any subcontractor or supplier, other than a Suncadia subsidiary or Suncadia's general contractor responsible for design and construction of the Regional Elements, to furnish services, materials, chemicals or equipment on the dates agreed to; provided
- 13.4.6.1. such failure is itself the result of an Uncontrollable Circumstance(s);
- 13.4.6.2. such failure materially and adversely affects the ability of the Party asserting the Uncontrollable Circumstance(s) to perform its obligations; and
- 13.4.6.3. the Party asserting the Uncontrollable Circumstance(s) is not able reasonably to obtain substitute services, material, chemicals or equipment on the agreed upon dates;
- 13.4.7 national or local strikes, work stoppages or labor disputes other than those of a Party's employees, agents, contractors or subcontractors;
- 13.4.8 delays caused solely by another Party's acts or omissions;
- 13.4.9 receipt at the Regional Facility (or the existing Cle Elum facility during construction of the Treatment Plant Upgrade) of influent that does not meet specifications in applicable municipal, state, or federal regulations;

- 13.4.10 violations of the Communities' pretreatment discharge limits which are of such a quantity and quality so as to cause substantial disruption in the operations or biological activity of the Regional Facility (or the existing Cle Elum facility during construction of the Treatment Plant Upgrade);
- 13.4.11 the presence at Cle Elum's existing plant of subsurface structures, materials or conditions which adversely impact the obligations undertaken by any Party under this Agreement and of which the Party asserting the Uncontrollable Circumstance(s), through the exercise of reasonable diligence, could not reasonably be expected to have notice; and
- 13.4.12 the presence at Cle Elum's existing plant of Hazardous Substances, as that term is used in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, the Washington Model Toxics Control Act, RCW Ch. 70.105D, and the regulations promulgated under those provisions, which adversely impacts the obligations undertaken by any Party and of which the Party asserting the Uncontrollable Circumstance(s) did not know prior to execution of this Agreement.

- 13.5 Sludge Management. Any determination or requirement relating to sludge management that is provided for in Section 4(1) or 4(n) of Exhibit 7 to this Agreement shall not constitute an Uncontrollable Circumstance.
- 13.6 Limitation of Liability. Notwithstanding anything to the contrary contained in this Agreement (except as addressed in this Section 13.6), the aggregate liability of Suncadia under this Agreement for claims, damages or losses shall not exceed \$15,000,000, regardless of whether such liability arises out of breach of contract, guarantee or warranty, tort (including negligence), product liability, indemnity, contribution, strict liability or any other legal theory. The above liability cap does not apply to any of the following claims, damages or losses, which shall not be counted toward the calculation of the liability cap:
- 13.6.1 Any losses or liabilities sustained by Suncadia as the result of claims asserted by third parties against Suncadia from any cause other than injuries and/or damages caused by the negligent, grossly negligent, or willful misconduct of the Communities or by Uncontrollable Circumstance;
- 13.6.2 Any fines, penalties or attorneys' fees paid or sustained by Suncadia or the Communities to persons or entities other than the Communities due to a failure to comply with applicable law (other than as a result of the negligent, grossly negligent, or willful misconduct of the Communities or Uncontrollable Circumstance);

13.6.3 Any proceeds paid from Suncadia's insurance required hereunder, including insurance required pursuant to Exhibit 7 (including Attachments A and B) and Exhibit 8; and

13.6.4 Any amounts paid arising out of the gross negligence or willful misconduct of Suncadia.

The protections against liability provided above and elsewhere in this Agreement (including the indemnity provisions in Section 10 and Exhibit 7 of this Agreement and the Remedies Provision in Section 13.6 of this Agreement) shall survive the termination of this Agreement.

- 13.7 Remedies. Unless covered by the insurance policies provided by the Parties herein, neither Suncadia nor the Communities shall be liable to the other in any action or claim for consequential, incidental or special damages, loss of profits, loss of opportunity, loss of product, loss of use or punitive damages regardless of whether the action in which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), statute or otherwise.
- 13.8 Notices. All notices under this Agreement shall be in writing, and shall be delivered or mailed, and shall be effective as of the date of delivery, on the date of receipt as shown on the return receipt, or three days after the postmark date if there is no return receipt. Notices shall be addressed to the following addresses or to such other address as the Party may specify in writing:

**TO CLE ELUM:**

City of Cle Elum  
119 W. 1st Street  
Cle Elum, WA 98922

*With a copy to:*  
Erin L. Anderson  
Stoel Rives LLP  
900 SW 5<sup>th</sup> Ave., Suite 2600  
Portland, OR 97204

**TO SOUTH CLE ELUM:**

City of South Cle Elum  
PO Box 160

*With a copy to:*  
Kenyon Disend PLLC  
11 Front Street South  
Issaquah, WA 98027-3820

**TO ROSLYN:**

City of Roslyn  
PO Box 451  
100 East Pennsylvania Ave.  
Roslyn, WA 98941

*With a copy to:*  
Kenyon Disend PLLC  
11 Front Street South  
Issaquah, WA 98027-3820

**TO SUNCADIA:**

Suncadia Resort  
Development, LLC  
4240 Bullfrog Road  
Cle Elum, WA 98922t

*With a copy to:*  
Steve Roos  
Hillis Clark Martin and Peterson  
1221 Second Ave., Suite 500  
Seattle, WA 98101-2925

- 13.9 Exhibits. Exhibits 1 through 12 that are attached to the agreement are incorporated by reference into this Agreement as though fully set forth herein.
- 13.10 Effective Date. This Agreement shall become effective on the date it is executed by all Parties.

CITY OF ELUM

Witnesseth:

By *Charles J. Glondo*  
/s/ Charles Glondo  
Its             
/s/ Mayor  
Date:   /s/          

*Toni Fields*  
/s/ TONI FIELDS  
Toni Fields, Cle Elum City Clerk

TOWN OF SOUTH CLE ELUM

Witnesseth:

By *James L. Devere*  
/s/ JAMES L. DEVERE  
Its             
/s/ Mayor  
Date:   /s/          

*Dora Bannister*  
/s/ DORA BANNISTER  
Dora Bannister,  
South Cle Elum Town Clerk/Treasurer

Approved as to form:

*Erin L. Anderson*  
/s/             
By             
South Cle Elum Attorney

Approved as to form:

*Erin L. Anderson*  
/s/             
By             
/s/ ERIN L. ANDERSON  
Cle Elum Land Use  
Attorney

CITY OF ROSLYN

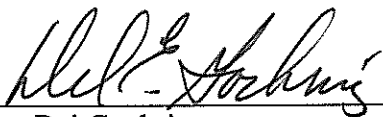
Witnesseth:

By *Jeri B. F. Porter*  
/s/ JERI PORTER  
Its             
/s/ Mayor  
Date:   /s/          

*Amber J. Shallow*  
/s/             
By: Amber Shallow  
Roslyn City Clerk - Treasurer

**SUNCADIA, LLC,**  
a Delaware limited liability company

By: Easton Ridge Investors, LLC,  
a Delaware limited liability company  
Its Managing Member



By: Del Goehring  
Its: Sr. Vice President  
Date: 6/19/08



By: Paul Eisenberg  
Its: Sr. Vice President  
Date: 6-18-08

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