

**AGREEMENT
RELATING TO FUNDING FOR THE
UPPER KITTITAS COUNTY TRANSFER STATION CONSTRUCTION COSTS
[FUNDING AGREEMENT 2]**

THIS AGREEMENT RELATING TO FUNDING FOR THE UPPER KITTITAS COUNTY TRANSFER STATION CONSTRUCTION COSTS ("Funding Agreement 2") is entered into this 2nd of July, 2002, by and between KITTITAS COUNTY SOLID WASTE, which is a Department of Kittitas County, a Washington municipal corporation (the "County"), and TRENDWEST INVESTMENTS, INC., a Washington corporation, and TRENDWEST PROPERTIES, INC., a Washington corporation (hereinafter referred to collectively as "Trendwest").

RECITALS

A. Trendwest owns and is proposing development of approximately 7,317 acres of real property in Kittitas County (the "Trendwest Property"), comprising 6,217 acres in the MountainStar Master Planned Resort ("MPR") and 1,100 acres in the City of Cle Elum's designated Urban Growth Area ("UGA").

B. On October 10, 2000, the Board of County Commissioners approved development of the MPR through its adoption of a series of MPR Approvals, including an MPR Project Development Permit with Conditions of Approval (Ordinance 2000-15). MPR Condition C-49 requires Trendwest to pay its fair share of costs associated with improvements required to mitigate identified adverse impacts on the Upper Kittitas County Transfer Station (the "Transfer Station") from the development of the MPR. Condition C-49 further provides that Trendwest's fair share contribution shall be fifty-four percent (54%) of the total costs for engineering and construction of Transfer Station improvements.

C. On February 6, 2001, the County and Trendwest entered an Agreement Relating to Funding for the Upper Kittitas County Transfer Station Phase I Upgrade ("Funding Agreement 1"). Under Funding Agreement 1, Trendwest agreed to reimburse the County for 54% of payments owed by the County to the Washington State Department of Community, Trade and Economic Development ("CTED") to repay a Public Works Trust Fund Loan for the conceptual design, design engineering and environmental studies for the Upper Kittitas County Transfer Station Phase I Upgrade (the "Project").

D. On March 28, 2002, the County and CTED entered a Public Works Trust Fund Construction Loan Agreement (Number PW-02-691-028) (the "Construction Loan Agreement"). Under the Construction Loan Agreement, the County will receive a loan not to exceed \$1,425,000 or 85% of construction costs, whichever is less, for construction of the Project (the "Construction Loan"). The County further agreed that up to \$353,255

will be funded by locally generated revenue (the "Local Project Share"), as shown on Attachment 1 (Scope of Work) to the Construction Loan Agreement.

E. On May 7, 2002, the County issued a Request for Proposals, including a description of the scope of work, for the Project. On June 5, 2002, the County received bids for the Project. The Base Bid plus Alternates #5 and #6 will bring Total Project Cost to \$2,020,656, requiring an added project cost of \$242,401.

F. Trendwest has a proposal before the City of Cle Elum (the "City") for annexation and development of its UGA property, including a Master Site Plan Application. On May 15, 2002, the City Planning Commission recommended approval of the Master Site Plan Application, with conditions. Recommended Condition 114 requires Trendwest to contribute its pro-rata share to the costs to construct improvements to the Transfer Station to mitigate identified adverse impacts from development of the UGA.

G. The combined solid waste loads of the MPR, as approved in the MPR Approvals, and the UGA, as proposed in the Master Site Plan Application recommended for approval, represents 61.6% of total anticipated loads, as shown on Attachment A to this Funding Agreement 2, which is incorporated herein by this reference.

H. Trendwest wishes to mitigate the impacts of future development of its properties, and to satisfy the conditions of MPR approval and UGA recommended approval, by contributing a fair share toward the construction costs of the Project pursuant to the authority and limitations provided by RCW 82.02.020.

THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants herein, the parties agree as follows:

AGREEMENT

1. Trendwest's Fair Share Payments for Construction of the Project.

Trendwest agrees to pay a fair share toward the construction costs of the Project as described in the scope of work identified in Recital E, above. Trendwest and the County agree to the following payment schedule for amounts due rather than an immediate payment by Trendwest of 61.6% of the Project cost as the Project cost invoices become due:

a. **Loan Repayments.** Trendwest shall make annual payments to the County in the amount of 61.6% of the annual loan repayments made by the County to CTED pursuant to § 4.06 of the Construction Loan Agreement. The County's loan repayments commence on July 1, 2003, and are due on July 1 of each year thereafter during the term of the County's loan. Accordingly, the County shall provide written notice to Trendwest on or before June 1, 2003, and on or before June 1 of each year thereafter during the term of the County's loan, identifying the amount of the County's annual loan repayment to CTED. Trendwest shall then remit payment to the County on or before June 30, 2003, and on or before June 30 of each year thereafter during the term of

the County's loan, in the amount of 61.6% of the County's annual payment for that particular year.

b. Loan Repayment Security. Trendwest has posted a bond in the amount of \$1 million in connection with the assignment of Trendwest obligations under the MPR Approvals from Trendwest Resorts, Inc., the former parent corporation of Trendwest, to Eagle Crest, Inc., the present parent corporation of Trendwest. The County acknowledges that this bond secures Trendwest's loan repayment obligations under this Funding Agreement 2 through December 31, 2003. Trendwest agrees to renew the bond annually in the amount of the remaining unpaid balance of Trendwest's loan repayment obligation until the Construction Loan is retired. Each renewal of the bond shall cover the period through December 31 of the next year. If Trendwest fails to renew the bond by November 1, 2003 and by November 1 of each successive year, Trendwest's obligation to repay the debt shall be accelerated and Trendwest shall be obligated to pay to the County an amount equal to 61.6% of the then remaining principal balance due under the Construction Loan Agreement. Such payment shall be due immediately upon failure to renew a bond for the successive one year period; provided, however, the County shall give Trendwest notice of default and an opportunity to cure as provided in Section 7, below, in order to provide Trendwest the opportunity to cure default and remove acceleration of the loan repayment.

c. Local Project Share and Other Costs. The County is required under § 4.02 of the Construction Loan Agreement to pay at least 15% of construction costs as the Local Project Share. Within 30 days of written notice from the County, but no sooner than thirty days before start of construction of the Project, Trendwest shall remit payment to the County of 61.6% of the Local Project Share, not to exceed \$217,605 (61.6% of \$353,255, which is the Local Project Share identified in Recital D, above). In addition to payment of the Local Project Share, within 30 days of written notice from the County, but no sooner than February 1, 2003, Trendwest shall remit 61.6% of the added project cost, not to exceed \$149,319 (61.6% of \$242,401, which is the added project cost identified in Recital E, above). Trendwest shall also be responsible for 61.6% of Project cost overruns, provided that if cost overruns exceed 5% of \$2,020,656, the Total Project Cost identified in Recital E, above, the County will consult with Trendwest regarding the reasonableness and necessity of those changes and added costs before approving such change orders or other costs. Trendwest shall not be obligated to pay for cost overruns from any change in the scope of work identified in Recital E, above, unless such change is reasonable and necessary to carry out the Project. PAID

d. Termination of Construction Loan Agreement. If CTED terminates the Construction Loan Agreement pursuant to §§ 4.14 or 4.15 of that Agreement, the County shall provide Trendwest written notice of termination of the Construction Loan Agreement. Trendwest shall then pay to the County 61.6% of the project costs as the project cost invoices become due. Within 30 days of written notice from the County that the Construction Loan has been terminated, Trendwest shall also pay to the County an amount equal to 61.6% of the outstanding balance of principal and interest due under the construction loan at the time of termination by CTED.

e. **Termination of Trendwest UGA Proposal.** In the event that the proposal for Trendwest's UGA property, which is still in the approval process, is terminated by Trendwest prior to substantial completion of the construction of the Project, Trendwest's fair share percentage shall be reduced to 54% (as shown on Attachment A) for all payments due subsequent to notice from Trendwest to the County that the UGA property project has been terminated.

2. **Assignment.** The rights and responsibilities of Trendwest hereunder may be assigned to any individual(s) or entity(ies) only in conjunction with any transfer or assignment of the obligations and responsibility for fulfillment of development obligations for the MPR or UGA.

3. **Notices.** Notices under this Agreement must be delivered personally or by depositing the same in the U.S. mail, certified, return receipt requested, postage prepaid, properly addressed and sent to the following addresses or such other addresses as each party may from time to time designate by written notice to the other:

TO KITTITAS COUNTY:

Kittitas County Solid Waste
Attn: Patti Johnson
925 Industrial Way
Ellensburg, WA 98926
Telephone: (509) 962-7070
Facsimile: (509) 962-7087

With a copy to:

Prosecuting Attorney Kittitas County
Kittitas County Courthouse
205 West 5th, Room 213
Ellensburg, WA 98926
Telephone: (509) 962-7520
Facsimile: (509) 962-7022

TO TRENDWEST:

Trendwest Investments, Inc.
Attn: Jon L. Barkee
P.O. Box 887
109 S. 1st Street
Roslyn, WA 98941
Telephone: (509) 649-3000
Facsimile: (509) 649-3059

With a copy to:

Richard M. Peterson
Hillis Clark Martin & Peterson
1221 Second Avenue, Suite 500
Seattle, WA 98101-1090
Telephone (206) 623-1745
Facsimile: (206) 623-7789

4. **Amendment.** This Funding Agreement 2 may be amended, in whole or in part, by mutual written consent of the Parties or their successors in interest.

5. **Entire Agreement.** Funding Agreement 1 and this Funding Agreement 2 represent the entire agreement between the parties with respect to the Project. There are no oral or other agreements that modify these Funding Agreements.

6. **Attorneys' Fees.** In the event of any litigation between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorneys' fees.

7. **Notice of Default/Opportunity to Cure/Dispute Resolution.** In the event a Party, acting in good faith, believes the other Party has violated the terms of this Agreement, the aggrieved Party shall give the believed offending party written notice of the alleged violation by sending a detailed written statement of the alleged breach. The alleged offending Party shall have thirty (30) days from receipt of written notice in which to cure the alleged breach. This notice requirement is intended to invite and facilitate a resolution by the Parties of any dispute prior to the institution of litigation. Upon providing notice of an alleged breach, the Parties agree to meet and agree upon a process for attempting to resolve any dispute arising under this Agreement. A lawsuit to enforce the terms of this Agreement shall not be filed until the latter of (a) the end of the thirty (30) day cure period or (b) the conclusion of any dispute resolution process agreed to by the Parties.

8. **Governing Law/Jurisdiction and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Jurisdiction and venue to enforce the commitments under this Agreement shall lie exclusively in the Kittitas County Superior Court.

9. **Severability.** In the event that any term, condition, provision, clause or portion of this Agreement is deemed by a court of competent jurisdiction to be unlawful, in excess of authority, void, unconstitutional, or unenforceable, or in conflict with any other applicable provision, condition, clause or other portion of this Agreement, it is the intent of the Parties that the remainder of this Agreement shall be unaffected and shall continue in full force and effect to carry out the intent of the Parties. To this end, any disputed terms and conditions are declared by the Parties to be severable from the others.

10. **Authority.** Each Party represents and warrants to the others that the individual signing below has full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the Party on whose behalf such person signed.

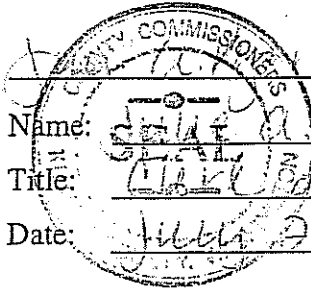
IN WITNESS WHEREOF, this Agreement has been entered into by and between Trendwest and the County as of the day and year first above written.

KITTITAS COUNTY SOLID WASTE

Witnesseth:

By Bill Hinkle
Name: Bill Hinkle
Title: BOCC chair
Date: July 2, 2002

Steve A. Kiersvik
Name: Steve A. Kiersvik
Title: Chair of the Board
Date: July 2, 2002



Approved as to form:

James E. Hurson, Deputy Prosecuting Attorney

TRENDWEST INVESTMENTS, INC.

By George C. Cockill
George C. Cockill
Director of Administration

Date: 7/2/02

TRENDWEST PROPERTIES, INC.

By George C. Cockill
George C. Cockill
Director of Administration

Date: 7/2/02

ATTACHMENT A
SOLID WASTE CALCULATIONS

Projected Solid Waste Contributed to Upper Kittitas County Transfer Station with UGA and MPR (in tons/year):

- A: Upper County = 5,759
B: MPR = 4,635 + 2,181 (induced impacts) = 6,816
C: UGA = 2,441
D: UGA Business Park = 14
E: A + B + C + D = Total Solid Waste Stream = 15,030

Total MPR/UGA Contribution: $(B + C + D) / E = 9,271 / 15,030 = 61.6\%$

Projected Solid Waste Contributed to Upper Kittitas County Transfer Station with MPR Only (in tons/year):

- A: Upper County = 5,759
B: MPR = 4,635 + 2,181 (induced impacts) = 6,816
E: A + B = Total Solid Waste Stream = 12,575

MPR Contribution: $B / E = 6,816 / 12,575 = 54\%$