

**AGREEMENT BETWEEN THE CITY OF CLE ELUM AND
THE PROJECT SPONSOR FOR THE
MITIGATION OF WATER SYSTEM IMPACTS
ASSOCIATED WITH THE BULLFROG UGA DEVELOPMENT**

This Bullfrog Flats UGA Water System Impacts and Mitigation Agreement (“**Agreement**”) is entered into by and between the City of Cle Elum, a Washington municipal corporation (“**City**”), and Bullfrog Flats LLC, a Washington limited liability company (“**Bullfrog Flats**” or “**Project Sponsor**”), effective as of MARCH 25, 2025 (“**Effective Date**”). This Agreement is intended as an amendment to and incorporated into a development agreement approved by the City in 2002 titled the “Development Agreement By and Between the City of Cle Elum, Trendwest Investments, Inc. and Trendwest Properties, Inc., Relating to the Development of Real Property Located within the Cle Elum Urban Growth Area, Commonly Known as the Bullfrog UGA dated October 30, 2002, (“**2002 Development Agreement**”).

RECITALS

- A. On October 30, 2002, the City and Bullfrog Flats’ predecessor in interest, Trendwest Properties, Inc., and Trendwest Investments, Inc., entered into the 2002 Development Agreement, including conditions of approval, authorizing development of property known as the “**Bullfrog UGA**” (the “**Project**”). The 2002 Development Agreement term was subsequently extended by the City and currently expires on October 30, 2027. The rights and obligations relating to development of the Bullfrog UGA contained in the 2002 Development Agreement were subsequently transferred from Trendwest to Sun 47 North. Sun 47 North and Bullfrog Flats have entered into an agreement for The Project Sponsor to purchase the Bullfrog UGA property from Sun 47 North, dependent on the outcome of the City’s decisions on Bullfrog Flats’ applications for the Bullfrog UGA and on Bullfrog Flats’ request to extend the 2002 Development Agreement. Upon such transfer of the Bullfrog UGA property from Sun 47 North to Bullfrog Flats, Bullfrog Flats is desirous of stepping into all of the outstanding obligations of the 2002 Development Agreement that are currently the responsibility of Sun 47 North.
- B. On September 19, 2024, the City issued a Notice of Complete Applications for The Project Sponsor’ applications for a Master Plat, a Boundary Line Adjustment, Preliminary Plats for three phases (parcels Phase S-1, Phase S-2 and Phase J) of the Bullfrog UGA development originally approved in the 2002 Development Agreement, a Request to Assign the 2002 Development Agreement to Bullfrog Flats, and a Request to Extend the 2002 Development Agreement term until 2037, (the “**Applications**”). Bullfrog Flats’ stated intent is to pursue development of the Bullfrog UGA property consistent with the existing 2002 Development Agreement.
- C. Under a previously executed Water Supply System Project Development Agreement dated June 19, 2001, by and among the City of Cle Elum, the Town of South Cle Elum, and Trendwest (the “**Water Supply DA**”), New Suncadia, LLC, Trendwest’s immediate

successor-in-interest, was responsible for paying a share of the cost of new regional water supply system ("**Water System**") improvements that would serve the Suncadia Master Planned Resort ("**MPR**") Property, as well as all costs necessary to transport water to the Bullfrog UGA property.

- D. The June 19, 2001 Agreement Relating to Water Supply for The Bullfrog Flats UGA governs transfer of water rights necessary to serve the property, which has not yet occurred. The Project Sponsor may transfer the water rights to the City in phases, and shall convey the rights, title and interest to these rights by one or more Statutory Warranty Deeds. If transferred in phases, the transferred water right shall be sufficient for the associated phase demands, including Qi, instantaneous flow rate (maximum peak hour rate) and Qa, annual volume.
- E. Potential impacts to the City's water system resulting from the construction of the proposed Project were previously analyzed as part of the City's previous SEPA review for the Project and other proposed development of the Bullfrog UGA. As part of its review of Bullfrog Flats' Applications, the City has issued an Addendum to the 2002 Final Environmental Impact Statement issued on March 18, 2002 ("**2025 Addendum**"). The 2025 Addendum includes a Water System Analysis memorandum ("**Water System Analysis**") that evaluates the City's current water system capacity and ability to serve the Project, applying current Department of Health standards and regulations and consistent with the City's final draft of its Water System Plan. Collectively, these SEPA review documents constitute the "**Environmental Documents**".
- F. The Environmental Documents determined that meeting the demands of the Project and other future development in Pressure Zone 3 would require construction of a new reservoir in Pressure Zone 3 ("**New Reservoir**"), an additional filter train with two million gallons per day (MGD) of capacity ("**Filter Train**"), and Pressure Zone 3 water pump in the existing Water System treatment plant ("**Zone 3 Water Pump**") (each, a "**Water System Improvement**" and, collectively, the "**Water System Improvements**"). The Zone 3 Water Pump is required now to serve any development within Pressure Zone 3, while the New Reservoir and Filter Train will be required to serve future development within Pressure Zone 3.
- G. The total estimated cost for designing and constructing all of the Water System Improvements based on Year 2024 cost estimates (including fifteen percent for design engineering, fifteen percent for construction engineering and construction administration, plus twenty percent contingency funding) is \$9,709,000.
- H. Bullfrog Flats' predecessor in interest, Sun Communities, LLC ("**Sun**"), acquired from their predecessor in interest a beneficial interest in a Water Tank Easement Agreement recorded under Kittitas County Auditor's File No. 202112100039 (the "**Water Tank Easement Agreement**") for the construction of the New Reservoir required as a part of the Water System Improvements, valued at approximately \$500,000 (the "**Water Tank Easement Cost**").¹ Bullfrog Flats obtained the Water Tank Easement Agreement as a successor in interest to Sun. As discussed below, the parties contemplate that Bullfrog Flats will assign to the City its rights in the Water Tank Easement Agreement as part of the Water System Improvements.

¹ See Water Tank Easement Agreement at § 6.

- I. The Water System Analysis discusses two methodologies for satisfying the Project Sponsor's obligations to pay its fair share of the Water System Improvements: Average Day Demand ("ADD") or Maximum Day Demand ("MDD"). The Project Sponsor's proportionate share of the Water System Improvements under these methodologies is 63% and 64%, respectively.
- J. The City concludes that the actual total cost of designing and constructing all of the Water System Improvements (the "Water System Improvements Cost") should be apportioned using the MDD methodology, due to maximum day demands triggering the improvements. Accordingly, the Project Sponsor's proportionate share of the cost of the Water System Improvements is 64%. The dollar amount of the Project Sponsor's proportionate share shall be hereafter referred to as the "**Project Sponsor's Proportionate Share**."
- K. Because the City owns, operates, and has familiarity with the Water System, the parties desire for the City to complete the construction of the Water System Improvements. Because the Zone 3 Water Pump is required now to serve the first phase of the Project and the parties wished to advance the design and construction of that improvement, the parties entered into a Cost Reimbursement Agreement executed December 11, 2024 ("**Zone 3 Pump Agreement**"), which governs the payment of that improvement.
- L. For the Water System Improvements, the Project Sponsor desires, with the City's concurrence, to place funds into a separate line item or in a separate account, the "**Water System Account**," to pay for the improvements. The City agrees to place all water connection charges collected in Pressure Zone 3 into the Water System Account to be used only to pay for the Water System Improvements as provided herein. Any additional contributions from the Project Sponsor required per the terms of this Agreement or the Zone 3 Pump Agreement, shall also be placed in the Water System Account to be used only to pay for the Water System Improvements. The parties further intend to use reasonable best efforts to seek public funds or pursue other available legal mechanisms to reimburse the Project Sponsor for any payments made by Project Sponsor in excess of Project Sponsor's Proportionate Share ("**Additional Water System Account Contributions**") as described in the Agreement section below.

NOW, THEREFORE, The Project Sponsor and the City agree as follows:

AGREEMENT

1. **Recitals Incorporated.** Recitals A – L recited above are hereby incorporated into this Agreement.
2. **Assignment of Water Tank Easement Agreement.** To facilitate the City's timely construction of the New Reservoir, the Project Sponsor will assign to the City its rights in the Water Tank Easement Agreement to provide the City with the property rights necessary to construct the New Reservoir. Such assignment shall be made at no cost to the City and shall occur within 30 days after the City has provided notice that the need for the New Reservoir has been triggered, as described in Section 4 below. Because the Water Tank Easement Cost is included in the total Water System Improvement Cost, and Project Sponsor is required to

assign the Water Tank Easement Agreement to the City, it is appropriate to reduce Project Sponsor' Proportionate Share by the Water Tank Easement Cost of \$500,000.

3. **Payment of Zone 3 Water Pump.** Because the Zone 3 Water Pump is required now to serve the first phase of the Project and the parties wished to advance the design and construction of that improvement, the parties entered into a Cost Reimbursement Agreement executed December 11, 2024 (i.e., the Zone 3 Pump Agreement), which governs the payment of that improvement. All Sections and terms of this Agreement shall apply to the Zone 3 Water Pump, including but not limited to the terms regarding potential legal mechanisms for reimbursement for any Additional Water System Account Contribution.
4. **Triggers for the Filter Train and the New Reservoir.** Because the existing water treatment plant is a regional infrastructure component, triggers are tied to regional demands, rather than independently to project demands. As such, "triggers" for the New Reservoir and Filter Train are set forth below. The City will annually review system capacity for these two Water System Improvements and will determine if any of the identified triggers have been reached.
 - a. The need for the Filter Train is "triggered" when potable water production (actual measured plus projected water supply demand for a phase of the Project for which a preliminary plat or other approval has been applied for) equals 4.0 million gallons per day for three or more days within a 12-month period, as determined pursuant to current Washington State Department of Health regulations and standards.
 - b. The need for the New Reservoir is "triggered" if Zone 3 storage requirement (actual demand plus projected water storage demand for a phase of the Project) is greater than 85% of existing capacity in the existing Zone 3 reservoir, including evaluation of equalizing storage, standby storage, and fire suppression storage, as determined pursuant to current Washington State Department of Health regulations and standards; provided that the City will attempt in good-faith to make adjustments to the allocation of storage throughout the City's Water System in order to maximize the remaining capacity of the existing Zone 3 Reservoir.
5. **Water System Account Established.** The Water System Account funds shall be used for the design and construction of the Water System Improvements and other purposes as provided herein. The City shall administer the City's use of the Water System Accounts as provided for herein.
 - a. The City may, after consultation with Project Sponsor and providing Project Sponsor an opportunity to review the anticipated costs, use funds from the Water System Account for the following purposes: to cover the cost of design, permitting, and construction of the Water System Improvements; to prepare funding applications in pursuit of grant funding to cover the cost of design, permitting, and construction of the Water System Improvements; to prepare cost estimate updates and detailed accountings under this Agreement; and to engage with consulting services as deemed necessary to help implement this Agreement. Consulting services may include, but

are not limited to, professional engineering, design and construction services, financial services, and legal services.

- b. Connection fees collected by the City from development of the Project (not including capital reimbursement charges under CEMC Ch. 13.14) shall be placed in the Water System Account to be used only for the purposes described herein.
- c. Connection fees collected by the City from other developers/property owners in Pressure Zone 3 after the effective date of this Agreement, as well as proceeds from City bonds, interfund loans, grants, and other funding sources issued or obtained for the purpose of funding the Water System Improvement Costs, shall be placed or deposited in the Water System Account.
- d. The construction cost estimates shall be updated and, potentially, additional deposits required throughout the design, bidding, contract award and final acceptance of the Water System Improvements as follows:
 - i. Within 30 days from the date a Water System Improvement (i.e., New Reservoir or Filter Train) is triggered as set forth in Section 4, Project Sponsor shall deposit funds into the Water System Account sufficient to cover the cost of design and bid preparation for the Water System Improvement(s), in an amount to be determined by the City ("Initial Water System Account Contribution"). Following this deposit, the City shall commence the design of the Water System Improvement(s). The City shall prepare a construction bid package and publish a bid advertisement for public works bidding for the Water System Improvements that are triggered. The City shall also prepare an updated construction cost estimate at the time the bid package is prepared.
 - ii. Prior to notice and publication of the bid package, Project Sponsor shall deposit additional funds, if any, necessary to bring the balance of the Water System Account to an amount equal to 100% of the current construction cost estimate.
 - iii. Within 30 days from the bid opening date for any Water System Improvement(s), the Project Sponsor shall deposit into the Water System Account any Additional Water System Account Contribution, if any, necessary to bring the balance of the Water System Account to an amount equal to the lowest responsible and responsive bid, including sales tax, plus fifteen percent of the bid amount for construction engineering and construction administration, plus contingency funding equal to ten percent of the construction bid ("**Contract Cost**").
- e. The City shall, no later than March 31st of each year, provide the Project Sponsor with a detailed accounting of the following: the funds available in the Water System Account and the characterization of those funds (e.g., collected water connection

charges, Additional Water System Account Contributions, and other alternative funding); the funds debited from the Water System Account in the past fiscal year and for what purpose; the Water System Improvements toward which those funds were directed; the current status and planned completion date for the Water System Improvements; and amounts remaining in the Water System Account.

- f. This annual detailed accounting may also include an updated cost estimate of the Water System Improvement(s) if such cost estimate update has been prepared based on comparable public works construction projects from the prior year, to determine if the Water System Account balance is adequate, or if additional contributions are necessary to account for inflation and other cost escalation. Should additional contributions become necessary to ensure funding for the outstanding Water System Improvement, the City shall provide Project Sponsor with notice and an explanation of why additional contributions are necessary to complete construction of the Water System Improvement. At the request of the Project Sponsor, the City agrees to meet and confer, and use reasonable efforts to value engineer the Water System Improvement to reduce, if possible, additional contribution requirements. Any additional contributions required shall be deposited by the Project Sponsor by June 30th of each year, unless the Parties agree to a different deadline.
- g. If, after the Water System Improvement(s) has been completed, the amount in the Water System Improvement Account is insufficient to fully pay the Water System Improvement Cost, within 30 days from receipt of notice from the City of that fact, the Project Sponsor shall pay an Additional Water System Contribution (if required) to bring the balance of the Water System Account to the amount remaining to be paid towards the Water System Improvement Cost. If there are funds remaining in the Water System Improvement Account after all Water System Improvements are completed, the Project Sponsor shall be entitled to be reimbursed from the Water System Improvement Account up to the total of its Additional Water System Contributions.
- h. As an added incentive for the City's efforts to apply for grants and pursue any other available, alternative funding mechanism to cover the Construction Costs to the maximum extent possible, if the City receives grants or proceeds from other alternative funding mechanisms intended to be used to pay the Contract Costs that exceed the Project Sponsor's Proportionate Share, the City may retain such money for other Water System maintenance or improvements provided all of the Water System Improvements have been constructed.

6. Possible Reimbursement or Credit for Additional Water System Contributions and Alternative Funding Sources. The parties agree that the Project Sponsor's Additional Water System Contributions are eligible for reimbursement. The parties also acknowledge that pursuing sources of funding the Contract Costs that exceed the Project Sponsor's Proportionate Share, rather than relying on the Project Sponsor's Additional Water System Contributions, may be advantageous to all interested parties by ensuring timely completion of the Water System Improvements. Various legal mechanisms for reimbursement or credit may include, but are not limited to, collection of water system connection on other new

development in the City that benefits from the Water System Improvements as provided under RCW 35.92.025; interfund loans; latecomer's agreement, pursuant to Chapter 35.92, RCW; a local improvement district, pursuant to Chapter 35.43, RCW; tax increment financing ("TIF"), Chapter 39.114, RCW; Community Revitalization Financing, Chapter 39.89 RCW; revenue bonds, reduced connection charges, Cle Elum Municipal Code 13.12.100(C); or such other legally appropriate mechanisms for reimbursement or credit. The City will work in good faith with Project Sponsor to explore and implement these mechanisms as appropriate and to pursue grants and other funding sources to pay for the Contract Costs above the Project Sponsor's Proportionate Share.

- a. The City will work in good faith with Project Sponsor to establish a capital reimbursement charge comparable to the charge currently set forth in CEMC Ch. 13.14. If established, the capital reimbursement charge shall be used as one mechanism to reimburse Project Sponsor until the amount of its Additional Water System Contributions are fully reimbursed.
- b. Another legal mechanism that the City will explore is an interfund loan, based on the sewer connection charges collected from the Project. To aid in a potential interfund loan, the City shall place all sewer connection charges collected from the Project in a separate line item or account. The City will work in good faith with Project Sponsor to explore the option of an interfund loan that would utilize those sewer connection charges to fund the amounts in excess of the Project Sponsor's Proportionate Share that may be necessary for the Water System Improvements.
- c. Nothing in this Agreement shall be construed to require the City to agree to the establishment of any reimbursement or funding mechanisms unless and until the City has complied with all of the constitutional and statutory requirements for consideration of such mechanisms, and only if the City then determines, in its sole discretion, that establishment of such mechanisms and the associated costs are consistent with those requirements. If the City establishes a reimbursement or funding mechanism, the parties will develop procedures regarding the administration, accounting, and any other procedures or logistics to implement the reimbursement or funding mechanism.

7. City Obligations.

- a. The City and Project Sponsor will work cooperatively to achieve the mutual goal of completing any required Water System Improvements for a particular phase of the Project in time to correspond with completion of said phase. The Project Sponsor shall provide a minimum of three years notice prior to completion of said phase such that the City can complete planning, engineering, and construction of said Water System Improvements. All required Water System Improvements necessary to serve a particular phase of the Project shall be completed prior to the first certificate of occupancy issuance for that particular phase, based on the "triggers" set forth above.

- b. Subject to reasonable terms, the City will grant any easements over, on or under City-owned property necessary for the Project Sponsor to connect the Project to the City's Water System as required by the City. In addition, the City will cooperate with Project Sponsor in good faith to assist Project Sponsor with obtaining easements from other property owners, including the Cle Elum-Roslyn School District, for such purposes.
8. **Water System Account Termination.** The Water System Account shall terminate on the earlier of the following: 1) the City's completion of construction of all the Water System Improvements, or 2) the expiration of the term of the 2002 Development Agreement as may be extended by separate City Council action ("**Termination Date**"). The City shall have the right to retain funds to pay for any obligations incurred under this Water System Mitigation Agreement prior to the Termination Date. Following payment of such obligations, the Project Sponsor shall then be entitled to a refund, up to any amount of Project Sponsor's Additional Water System Account Contributions not previously reimbursed, of any balance remaining in the Water System Account, exclusive of accrued interest and exclusive of any grants or proceeds from other alternative funding mechanisms intended to be used for construction of the Water System Improvements.
9. **Limitation of the Project Sponsor Responsibility.** By making the payments required by this Agreement, the City agrees that Project Sponsor will satisfy its obligations to mitigate for the Project's impacts on the City's Water Supply System for the Bullfrog UGA development as approved in the 2002 Development Agreement, including, without limitation, the first phase applications for subdivisions of Phase S-1, Phase S-2 and Phase J.
10. **Dispute Resolution.** In the event that any dispute, controversy, disagreement or impasse arises out of or relates to this Agreement ("Dispute"), such dispute shall be resolved pursuant to Section 11.18 of the Second Amendment to the 2002 Development Agreement.
11. **Severability.** If any term or provision of this Agreement; or its applicability to a particular situation, is found to be invalid, void or unenforceable by a court of competent jurisdiction, then the remaining provisions of this Agreement or its applications to other situations shall continue in full force and effect
12. **Mutual Drafting and Construction.** The Parties agree that both Parties participated fully in the negotiation and drafting of this Agreement and the rules of construction of ambiguities against the drafter shall not apply to either Party.
13. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts. Each Party agrees that this Agreement may be electronically signed, and that any electronic signature appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
14. **Parties and Authority.** The signatories below to this Agreement represent that they have the full authority of their respective entities to commit to all of the terms of this Agreement, to perform the obligations hereunder, and to execute the same.

[Signature Page Follows]

Signatures:


Bullfrog Flats LLC


City of Cle Elum

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