

**AGREEMENT BETWEEN THE CITY OF CLE ELUM AND
BULLFROG FLATS FOR THE
MITIGATION AND MONITORING OF TRANSPORTATION IMPACTS
ASSOCIATED WITH THE BULLFROG UGA DEVELOPMENT**

This Bullfrog Flats UGA Transportation Impacts Mitigation and Monitoring Agreement (“**Transportation Mitigation 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 (“**Project Sponsor**” or “**Bullfrog Flats**”), (collectively the “**Parties**”), effective as of March 25, 2025 (“**Effective Date**”). This Transportation Mitigation Agreement is intended as an amendment to and incorporated into a development agreement approved by the City in 2002 titled: “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**”) and is intended to replace and supersede the Transportation Monitoring Program Agreement for the Bullfrog UGA dated November 28, 2007 between Suncadia, LLC and the City of Cle Elum

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 Bullfrog Flats 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 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 issue a Notice of Complete Applications for Bullfrog Flats’ 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. The 2002 Development Agreement included seven traffic mitigation measures (condition #85 A-G) that were included as part of the 2002 approval for the Bullfrog UGA. As of the date of this Agreement, some of those mitigation measures have been installed by others; some have not.

D. On November 28, 2008, Suncadia LLC, predecessor in interest to Sun 47 North and Bullfrog Flats, and the City of Cle Elum entered into a Transportation Monitoring Agreement for the Bullfrog UGA (the “**TMP**”) to satisfy condition #92 of the Conditions of Approval.

E. Pursuant to the provisions of the 2002 Development Agreement, including, but not limited to section 6 of the 2002 Development Agreement and condition #92 of the Conditions of Approval attached to the 2002 Development Agreement related to traffic monitoring, the City contracted with Transportation Engineering Northwest (“**TENW**”) to conduct new traffic counts and complete a new traffic impact analysis to determine whether the transportation mitigation measures identified in the 2002 Development Agreement require modification or whether additional traffic impact mitigation measures are warranted to address potential impacts from the proposed project based on current traffic conditions (the “**2024 TENW Analysis**”).

F. The 2024 TENW Analysis included new traffic counts at 27 intersections and calculated expected levels of service at each of those intersections under existing conditions and in 2032 and 2037, based on reasonable assumptions regarding Bullfrog UGA and other projected project-specific or general background growth. Based on the 2024 TENW Analysis, the Parties to this agreement have identified nine intersections that are expected to operate below adopted levels of service between 2024 and 2037, including those from the 2002 Development Agreement that have not yet been constructed and have recommended intersection improvements (“**Intersection Mitigation Measures**”) that would address projected level of service failures at those nine intersections. These Intersection Mitigation Measures do not include four new intersections required to provide access to the Project more fully described in Recital ___ below and the connection to Douglas Munro Boulevard. These access intersections and the Douglas Munro Boulevard connection are the sole responsibility of the Project Sponsor to construct.

G. The 2024 TENW Analysis has also identified the proportionate share of traffic associated with the Project (“**Project Sponsor’s Proportionate Share**” or “**Project Share**”) and the background traffic or public share for each of these required transportation mitigation measures (“**Background Share**”). The intersections that are predicted to operate at levels of service below adopted standard and the year in which that failure is expected, based on the development assumptions in the 2024 TENW Analysis are as follows:

Year of Expected Failure	Intersection	Proposed Mitigation
2024 (existing condition)	#8—Ranger Station Rd/Miller Ave/W. Second St.	Turn restrictions
2024 (existing condition)	#12—N.Pine St./W. 1 st St.	Compact roundabout
2032	#9—N. Pine/W. 2 nd St (SR 903)	Compact roundabout
2032	#13—N.Stafford/W.2 nd (SR 903)	Compact roundabout
2032 or 2037*	#1—Bullfrog/I-90 EB Ramp	Compact roundabout
2032	#7—Denny/W. 2 nd (SR 903)	Turn restrictions

2032	#15—N.Oakes/W. 2 nd (SR 903)	Compact roundabout
2032	#21—Pennsylvania/1 st St	4-way stop
2037	#3—Bullfrog/Tumble Creek Dr.	Merge refuge lane

*Year depends on whether and how much business park development occurs: 2037 if no business park; 2032 if 50% business park.

H. Based on 2023 pre-design construction estimates, the estimated cost for the Intersection Mitigation Measures is as follows:

Intersection	Proposed Mitigation	2023-Pre-design Estimated Cost
#1—Bullfrog/I-90 EB Ramp ¹	Compact roundabout	\$1,370,000
#3—Bullfrog/Tumble Creek Dr.	Merge refuge lane	\$ 260,000
#7—Denny/W. 2 nd (SR 903)	Turn restrictions	\$ 130,000
#8—Ranger Station Rd/Miller Ave/W. Second St.	Turn restrictions	\$130,000
#9—N. Pine/W. 2 nd St (SR 903)	Compact roundabout	\$ 760,000
#12--N.Pine St./W. 1 st St.	Compact roundabout	\$ 970,000
#13—N.Stafford/W.2 nd (SR 903)	Compact roundabout	\$ 950,000
#15—N.Oakes/W. 2 nd (SR 903)	Compact roundabout	\$ 900,000
#21—Pennsylvania/1 st St	Four-way stop	\$ 40,000
Total:		\$5,510,000

These preliminary construction cost estimates used to calculate Project Sponsor's Proportionate Share payments and Background Share account contributions required by this Transportation Mitigation Agreement will be updated as described in Section 4 below.

I. The Project Sponsor's Proportionate Share payment for each Intersection Mitigation Measure varies depending on whether, how much of, and when (if ever) the business park portion of the project is developed. Based on the 2023 pre-design construction estimates and the two business park development assumptions in the 2024 TENW Analysis, the Project Sponsor's Proportionate Share of each Intersection Mitigation Measure is as follows:

Intersection	Project Share with 50% Business Park	Project Share with No Business Park
#1—Bullfrog/I-90 EB Ramp*	10.7%--\$ 146,590	10.6%--\$145,220
#3—Bullfrog/Tumble Creek Dr.	21.4%--\$ 55,640	15.4%--\$ 40,040
#7—Denny/W. 2 nd (SR 903)	19.7%--\$ 25,610	18.4%--\$ 23,920
#8—Ranger Station Rd/Miller Ave/W. Second St.	17.9%--\$ 23,270	11.9%--\$15,540
#9—N. Pine/W. 2 nd St (SR 903)	19.7%--\$ 149,720	13.2%--\$100,320

¹ Under Condition 85.G, Bullfrog Flats is entitled to seek contribution from the MPR development for its proportionate share of the impacts to this intersection. Bullfrog Flats acknowledges the City does not have authority to impose mitigation or require contribution from the MPR development, which is under the jurisdiction of Kittitas County.

#12--N.Pine St./W. 1 st St.	13.8%--\$ 133,860	9.2%--\$ 89,240
#13—N.Stafford/W.2 nd (SR 903)	17.4%--\$ 165,300	11.5%--\$109,250
#15—N.Oakes/W. 2 nd (SR 903)	16.4%--\$ 147,600	10.6%--\$ 95,400
#21—Pennsylvania/1 st St	13.9%--\$ 5,560	9.0%--\$ 3,600
Total:	\$853,150	\$ 622,500

*Level of service failure in 2032, if 50% Business Park. Level of service failure in 2037 if No Business Park.

J. The 2024 TENW Analysis identified a Project Share and a Background Share for each of the impacted intersections. The City and the Project Sponsor have agreed to a mitigation funding strategy that incorporates both proportionate share and transportation concurrency concepts by establishing a “**Transportation Account**” for each of the Intersection Mitigation Measures more fully described in Section 4 of this Transportation Mitigation Agreement. The Transportation Accounts may include funds from the following sources: (i) a Project Share, (ii) any public grant funds obtained for any of the Intersection Mitigation Measures (“**Grant Funds**”), (iii) any other funds from any reimbursement or credit mechanism that may be established pursuant to Section 7; (iv) any other funds obtained from traffic mitigation imposed on other development in the City (“**Other Development Traffic Mitigation**”), and (v) a Transportation Contribution by the Project Sponsor if required to cover the total cost to construct the Intersection Mitigation measure that will be eligible for subsequent reimbursement, if available from other sources pursuant to Section 7 below (collectively, “**Proportionate Share Method**”). This Proportionate Share Method is consistent with the transportation mitigation funding approach used in the 2002 Development Agreement, Condition #89.

K. The Parties acknowledge that the 2002 Development Agreement Condition #89, the Growth Management Act, Chapter 36.70A RCW and the City Comprehensive Plan all include the requirement for transportation concurrency, where the City cannot allow development to proceed if traffic from the proposed development would cause the level of service on city streets and intersections to fall below adopted acceptable levels of service, unless there is a plan or program providing sufficient certainty that the necessary intersection improvements will be constructed within six years of development approval. The City applied this same transportation concurrency concept to streets and intersections within the unincorporated areas of Kittitas County (“**County**”). Transportation concurrency allows the City to give the Project Sponsor the option of either waiting to construct a phase or subphase of the proposed development until the public share of the traffic mitigation measure is secured or, alternatively, the Project Sponsor may pay the Background Share of the required transportation mitigation and proceed with development. To adequately address concurrency requirements, the City and the Project Sponsor have agreed to an additional Project Sponsor contribution to be made into an account to ensure sufficient funds are available to construct the Intersection Mitigation Measures when required to satisfy concurrency (the “**Transportation Account Contribution**”) that will be eligible for subsequent reimbursement, if available from other sources pursuant to Section 7 below.

L. As of the Effective Date of this Transportation Mitigation Agreement, the Parties understand that the City only has dedicated public funds to cover approximately \$700,000 (of which approximately \$170,000 has been allocated and spent on design and construction engineering) of the Background Share for Intersection #13, and thus the City can make no guarantee regarding the future availability or City receipt of Grant Funds to apply to the

Background Shares of the Intersection Mitigation Measures costs. Upon execution of this Transportation Mitigation Agreement, the Parties have agreed to work diligently and cooperatively to seek Grant Funds and Other Development Traffic Mitigation, where warranted to maximize opportunities for other sources of funds for those Background Shares and thus reducing the Transportation Account Contribution obligation of the Project Sponsor described in Section 7 below. Any effort to obtain other sources of funds for Background Share are subject to the legal requirements, procedures and limitations applicable to other source funding mechanisms.

M. The 2024 TENW Analysis makes certain assumptions regarding the expected pace of project development and analyzes existing conditions (2024) and two future year conditions (2032 and 2037), based on those pace of development assumptions. Actual project development may occur at a faster or slower pace than assumed in the 2024 TENW Analysis and the Parties recognize that the trips generated by the project may trigger level of service failure and the corresponding need for mitigation at a time that may vary from the specific years identified in the 2024 TENW Analysis. This Transportation Mitigation Agreement includes provisions regarding future year monitoring and traffic impact analysis to confirm impacts and mitigation timing based on the actual pace of project development in Section 10.

N. The City and the Project Sponsor have reviewed the results and the recommended Intersection Mitigation Measures in the 2024 TENW Analysis and have conferred with the County and the Washington State Department of Transportation (“**WSDOT**”) to obtain their input on the analysis and the mitigation measures that are identified for those intersections under the jurisdiction of the County and WSDOT. The City met with representatives from the County and WSDOT on November 21, 2024 to discuss preliminary findings and to answer questions. The City provided a copy of the preliminary 2024 TENW Analysis to the County and WSDOT on November 1, 2024. The City met again with the County and WSDOT on November 21, 2024 to discuss the analysis and answer additional questions. The County provided comments on December 5, 2024. TENW and the City made additional changes to the draft 2024 TENW Analysis in response to the County’s comments.

O. The proposed Bullfrog UGA project includes four (“**Site Access Intersections**”) at existing public rights of way that were included in the 2024 TENW Analysis, identified as follows:

1. Bullfrog Road southern access (#30 in the 2024 TENW Analysis)
2. Bullfrog Road central access (#29 in the 2024 TENW Analysis)
3. Bullfrog Road north access (#28 in the 2024 TENW Analysis)
4. SR 903 and Bala Dr. (#31 in the 2024 TENW Analysis)

In addition, the 2002 Development Agreement requires the Project Sponsor to construct a connection to Douglas Munro Boulevard. The Project Sponsor will be responsible for 100 percent of the costs to design and construct these four Site Access Intersections and the Douglas Munro Blvd connection, subject to review and approval by the City, the County and potentially WSDOT where Site Access Intersection construction will occur at least partially within the public rights of way controlled by those respective state and local jurisdictions.

NOW, THEREFORE, Bullfrog Flats and the City agree as follows:

AGREEMENT

1. **Recitals Incorporated.** Recitals A – O recited above are hereby incorporated into this Transportation Mitigation Agreement as substantive provisions and basis for interpretation of its terms.

2. **Site Access Intersections.** Bullfrog Flats shall be responsible for all costs to design and construct the Site Access Intersections and the Douglas Munro Blvd connection described in Recital F above. Bullfrog Flats shall be required to obtain Kittitas County, WSDOT and/or City review and approval of the Site Access Intersection design and construction, based on which jurisdiction(s) controls the affected rights of way. Site Access Intersections #2 (Center access) and #3 (North access), shall be constructed prior to final plat approval for Phase S-1, Phase S-2 and Phase J, whichever occurs first. Ongoing maintenance of any elements of the Site Access Intersections that exceed County or City Road standards, such as, without limitation, additional landscaping or lighting located in the public right of way shall be the responsibility of the Project Sponsor.

3. **Concurrency Alternative.** If an improvement is demonstrated to be necessary because of projected level of service failures at an intersection, but there are not sufficient funds available to provide the required Background Share of costs, the Project Sponsor may elect to pursue one of the following options:

3.1. Either the Project Sponsor may agree to wait to construct the next Phase of development until funds are available for the Background Share, or

3.2. The Project Sponsor may agree to pay the required Background Share as a Transportation Account Contribution and proceed with the next phase of development.

4. **Transportation Account Established.**

4.1. Prior to final plat approval for Phase S-1, Phase S-2, or Phase J, whichever occurs first, the Parties shall have fully executed this Transportation Mitigation Agreement, and the Project Sponsor shall deposit the following amounts: (1) \$157,130.00, representing the Project Sponsor's Proportionate Share of all of the 2024 Intersection Mitigation Measures based on the 2023 construction cost estimate into the Transportation Accounts established by the City; (2) \$942,870, representing the Background Share of the 2024 Intersection Mitigation Measures, based on 2023 construction cost estimates; (3) \$268,500, representing the approximate design costs for Intersection #7, #9, and #15 of the 2024 TENW Analysis (calculated as 15% of the 2023 construction cost estimates); and (4) any remaining amount necessary for the construction of Intersection #13 of the 2024 TENW Analysis, for which the City has received partial grant funding. These Transportation Account funds shall be used for the design and construction of the Intersection Mitigation Measures and other purposes as provided herein. The City shall administer the City's use of the Transportation Account as provided for herein.

4.2. The City may, after consultation with Project Sponsor and providing Project Sponsor an opportunity to review the anticipated costs, use funds from the Transportation Account for the following purposes: to cover the cost of design, permitting, right of way acquisition, and construction of the Intersection Mitigation Measures; to prepare funding applications in pursuit of grant funding to cover the cost of design, right of way acquisition for and construction of the Intersection Mitigation Measures; to prepare cost estimate updates and detailed accountings under this Transportation Mitigation Agreement; and to engage with consulting services as deemed necessary to help implement this Transportation Mitigation Agreement. Consulting services may include, but are not limited to, professional engineering, design, and construction services, financial services, and legal services.

4.3. With respect to the 2032 and 2037 Intersection Mitigation Measures, Project Sponsor shall have the option to deposit additional funds into the Transportation Account for these mitigation measures at any point before the 2032 and 2037 Intersection Mitigation Measures are triggered. The City and Project Sponsor have discussed the fact that the availability of such funds will aid the City's ability to apply for Grant Funds and other alternative funding mechanisms.

4.4. The construction cost estimates and, correspondingly, the Project Sponsor Proportionate Share and the Background Share shall be updated and, potentially additional deposits required, throughout the design, bidding, contract award and final acceptance of the Intersection Mitigation Measures as follows:

4.4.1. Within 30 days from the date the 2024, 2032 and 2037 Intersection Mitigation Measures are triggered as set forth in this Agreement, the Project Sponsor shall deposit additional funds into the Transportation Account so that the total funds in the Transportation Account are sufficient to cover 100% of the then-current construction cost estimate, as calculated and approved by the jurisdictional authority, for the triggered Intersection Mitigation Measure(s) (2024, 2032 or 2037). Following this deposit, the jurisdictional authority shall commence the design of the Intersection Mitigation Measure(s). The jurisdictional authority shall prepare a construction bid package and publish a bid advertisement for public works bidding for the Intersection Mitigation Measures that are triggered. The jurisdictional authority shall also prepare an updated construction cost estimate at the time the bid package is prepared.

4.4.2. Prior to notice and publication of the bid package, if the current construction estimate exceeds the construction cost estimate that was the basis of the prior Project Sponsor Proportionate Share payment and Transportation Account payment, the Project Sponsor shall deposit additional funds to provide 100% of the current construction cost estimate.

4.4.3. Within 30 days from the bid opening date for any Intersection Mitigation Measure(s), the Project Sponsor shall deposit into the Transportation Account any additional Project Sponsor's Proportionate Share for those Intersection Mitigation Measure(s) and any additional Transportation Account Contribution necessary to pay for the cost equal to the lowest responsible and responsive bid, plus twenty percent of the bid amount for construction

engineering and construction administration, plus contingency funding equal to ten percent of the construction bid (“**Contract Cost**”).

4.4.4. After the Intersection Mitigation Measure(s) has been accepted by jurisdictional authority’s governing body, the construction contract has been closed out and thus construction costs have been finalized, the City shall prepare a final detailed accounting for the constructed Intersection Mitigation Measure(s) and the respective Transportation Account(s). If the Intersection Mitigation Measure(s)’ final cost exceeds the Contract Cost for the Intersection Mitigation Measure(s), within 30 days from receipt of the final accounting, Project Sponsor shall pay both Project Sponsor’s Proportionate Share and the Transportation Account Contribution (if required) for any amount of the final construction cost that exceeds the Contract Cost. If the Intersection Mitigation Measure(s) cost is below the Contract Cost for the Intersection Mitigation Measure(s), Project Sponsor shall be entitled to a reimbursement for any amount of that difference remaining in the Transportation Account that Project Sponsor paid above the Project Sponsor’s Proportionate Share.

4.5. If the City receives Grant Funds or proceeds from other alternative funding mechanisms intended to be used for construction of any of the Intersection Mitigation Measures that exceed the Background Share, the City may retain such money if all of the Intersection Mitigation Measures have been constructed, and if the terms of the Grant Funds or alternative funding mechanism allows City retention of these funds. Any such surplus funds shall not be applied to reduce Project Sponsor’s Proportionate Share obligations, nor eligible for refund to the Project Sponsor as described in Section 8 below.

4.6. The City shall, no later than March 31st of each year, provide the Project Sponsor with a detailed accounting of the following:

4.6.1. The funds credited to the Transportation Accounts from (a) Project Sponsor Proportionate Share contributions, (b) Grant Funds, (c) Other Development Traffic Mitigation and (d) Project Sponsor Transportation Account Contribution;

4.6.2. The funds debited from the Transportation Accounts in the past fiscal year and for what purpose;

4.6.3. The Intersection Mitigation Measure(s) toward which those funds were directed;

4.6.4. The current status and planned completion date for the Intersection Mitigation Measures; and

4.6.5. The amount remaining in the Transportation Accounts.

4.6.6. This annual detailed accounting may also include an updated cost estimate of Intersection Mitigation Measures if such cost estimate update has been prepared as described in Section 4.2 above based on comparable public works construction projects from the prior year, to determine if the Transportation Account balance is adequate, or if additional contributions (both

Project Sponsor Proportionate Share and Transportation Account Contribution) are necessary to account for inflation and other cost escalation. Should additional contributions become necessary to ensure funding for the outstanding Intersection Mitigation Measures, the City shall provide the Project Sponsor with notice and an explanation of why additional contributions are necessary to complete construction of the Intersection Mitigation Measures. At the request of the Project Sponsor, the City agrees to meet and confer, and use reasonable efforts to value engineer the Intersection Mitigation Measure 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.

5. **Required Intersection Mitigation Measures.** The City and the Project Sponsor agree that the following Intersection Mitigation Measures, or an alternative intersection mitigation measure that may be approved by the City, the County and/or WSDOT (whichever public entity has jurisdiction over the intersection), are required to address projected level of service failures based in part due to traffic from the Bullfrog UGA development. The expected timing for these projected level of service failures and the need for these Intersection Mitigation Measures are as follows:

5.1. **2024 Existing Condition Intersection Mitigation Measures:**

#8 Ranger Station Rd/Miller Ave/W. Second St.	Turn restrictions
#12 N.Pine St./W. 1 st St.	Compact Roundabout

These 2024 Existing Condition Intersection Mitigation Measures shall be included as a condition of final plat approval for Parcels Phase S-1, Phase S-2 and Phase J, by establishing the Transportation Accounts for each of the Intersection Mitigation Measures with the Project Sponsor making the Project Sponsor's Proportionate Share payment and the Transportation Account Contribution payments for these two 2024 Intersection Mitigation Measures as described in Section 4.1 above. The Transportation Account for these 2024 Intersection Mitigation Measures shall be established and all funds deposited prior to final plat approval by the City for Phase S-1, Phase S-2 or Phase J, whichever occurs first. Additionally, as further described in Section 4.1 above, at the time the Transportation Account is established for these 2024 Intersection Mitigation Measures, the City shall also establish a Transportation Account for each of the 2032 and 2037 Intersection Mitigation Measures described in Section 5.2 and 5.3, and the City shall deposit any funding received from the Project Sponsor for all 2032 and 2037 Intersection Mitigation Measures into those Transportation Accounts. Should the Project Sponsor elect to proceed with development of any other parcel or phase prior to final plat approval for Phase S-1, Phase S-2 and Phase J, the City reserves the right to require establishment of the Transportation Account and deposit of all of the funds described in this section prior to commencement of such alternative construction in addition to any other traffic impact mitigation that may be warranted by such alternative construction. The City shall be responsible for the design and construction of these 2024 Intersection Mitigation Measures, funded by the Transportation Account.

5.2. **2032 Intersection Mitigation Measures:**

#7 Denny/W. 2 nd (SR 903)	Turn restrictions
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#9 N. Pine/W. 2 nd St (SR 903)	Compact Roundabout
#13 N.Stafford/W.2 nd (SR 903)	Compact Roundabout
#15 N.Oakes/W. 2 nd (SR 903)	Compact Roundabout
#21 Pennsylvania/1 st St	Four-way Stop

These 2032 Intersection Mitigation Measures shall be included as a condition of final plat approval for Parcels Phase P1, Phase P2, Phase P3, Phase P4, and Phase M or binding site plan or building permit approval for Phase B or any of the business park parcels, by establishing the Transportation Account with Bullfrog Flats making the Proportionate Share payment and the Transportation Account Contribution payments for each of these 2032 Intersection Mitigation Measures prior to City approval of the first final plat or binding site plan for any of these phases. as further described in Section 4 above. The City shall be responsible for the design and construction of Intersection #7, #9, #13, and #15, funded by the Transportation Accounts. The City shall offer to the City of Roslyn all payments made into the Transportation Account by the Project Sponsor attributable to the Intersection #21 improvement, provided the City of Roslyn agrees to spend those funds on the four-way stop recommended in the 2024 TENW Analysis. These 2032 Intersection Mitigation Measures shall not be a condition of approval of the Affordable Housing units required by Condition 19 in the 2002 Development Agreement.

5.3. 2037 Intersection Mitigation Measures:

#3 Bullfrog Road and Tumble Creek Drive	Merge Refuge Lane
#1 Bullfrog Road/I-90 EB On-ramp	Compact Roundabout

The 2037 Intersection Mitigation Measures above shall be included as a condition of final plat approval for Parcels Phase P1, Phase P2, Phase P3, Phase P4, and Phase M or binding site plan or building permit approval for Phase B or any of the business park parcels, by establishing the Transportation Account with Project Sponsor making the Project Sponsor Proportionate Share payment and the Transportation Account Contribution payments for the 2037 Intersection Mitigation Measures as described in Section 4 above. Intersection #3 improvements must be reviewed and approved by Kittitas County, even if the Project Sponsor takes the lead in the design and construction of that Intersection Mitigation Measure. The City shall offer to the County all payments made into the Transportation Account by the Project Sponsor attributable to the Intersection #3 improvement, provided the County agrees to spend those funds on the merge refuge lane recommended in the 2024 TENW Analysis. WSDOT shall be responsible for the design and construction of Intersection #1, if warranted. The City shall offer to WSDOT all payments made into the Transportation Account by the Project Sponsor attributable to Intersection #1 improvements, provided WSDOT agrees to spend those funds on the compact roundabout recommended in the 2024 TENW Analysis or other adequate mitigation measure for that intersection approved by WSDOT. These 2037 Intersection Mitigation Measures shall not be a condition of approval of the Affordable Housing units required by Condition 19 in the 2002 Development Agreement.

6. Monitoring and Updated Impact Analysis to Determine the Timing of 2032 and 2037 Intersection Mitigation Measures. The need for and timing of the 2032 Intersections (#7, 9, 13, 15, and 21) and 2037 Intersections (#1 and #3) shall be reviewed and confirmed or

modified based upon the results of the traffic monitoring and impact analysis update described in Section 10. Funding for this traffic monitoring and impact analysis update shall either be the responsibility of the applicant for any future phase of Bullfrog UGA development for which applications are filed after October 30, 2027, or funded by the City out of the Transportation Account described in Section 4.2 above, if no application for future phases is pending when the City determines traffic monitoring is warranted to determine timing for 2032 or 2037 Intersection Mitigation Measures.

7. Possible Reimbursement or Credit for Transportation Account Contribution.

The Parties agree that a portion of Project Sponsor's Transportation Account Contributions are in excess of Project Sponsor's Proportionate Share and therefore eligible for reimbursement or credit. To the extent that the City spends funds from the Transportation Account Contribution for actual Intersection Mitigation Measure design, permitting, right of way, bidding and construction costs (excluding cost estimate updates, annual detailed accounting of the Transportation Account, updated monitoring and impact analysis and Grant Fund applications), the Parties agree to diligently pursue various legal mechanisms for reimbursement or credit for the Transportation Account Contribution amounts in excess of the Project Share. Possible reimbursement mechanisms may include but are not limited to latecomer's agreement, pursuant to Chapter 35.72, 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 or transportation impact fees, Chapter 82.02, RCW. However, nothing in this Transportation Mitigation Agreement shall be construed to require the City to establish any reimbursement or credit mechanisms unless and until the City has complied with all of the constitutional and statutory requirements for consideration of such mechanisms, and then only if the City determines, in its sole discretion, that the establishment of the reimbursement mechanism is consistent with those requirements. If the City establishes a reimbursement or credit mechanism, the Parties will develop procedures regarding the administration, accounting, and any other procedures or logistics to implement the reimbursement or credit mechanism.

8. Transportation Account Termination and Potential Refund. This

Transportation Mitigation Agreement, and the Parties' obligations hereunder, shall terminate on the earlier of the following: (i) completion of construction of all of the Intersection Mitigation Measures; or (ii) the expiration of the term of the 2002 Development Agreement as may be extended by separate City Council action (the "**Termination Date**"). Upon termination, the City shall have the right to retain funds to pay for any obligations incurred under this Transportation Mitigation Agreement prior to the Termination Date. Following payment of such obligations, if any funds remain in the Transportation Accounts on the Termination Date that are properly attributed to Project Sponsor's additional Transportation Account Contribution, the Project Sponsor shall be entitled to a refund of any amount attributed to Project Sponsor's additional Transportation Account Contribution. The Project Sponsor shall not be entitled to a refund of any Project Sponsor's Proportionate Share payment, any Grant Fund sources or any Other Development Traffic Mitigation Funds. As added incentive for the City to pursue public funds for the Intersection Mitigation Measures during the term of this Transportation Mitigation Agreement, the Parties agree that the City shall be entitled to retain any funds remaining in the Transportation Accounts that came from public sources, subject to any limitations contained in those public sources of funds.

9. **Limitation of Project Sponsor Responsibility.** By depositing the Project Sponsor's Proportionate Share into the Transportation Account in accordance with the terms of this Agreement, and subject to the provision above that address additional Project Sponsor contribution requirements to achieve transportation concurrency, the City agrees that Project Sponsor will satisfy its obligations to mitigate for the Project's transportation impacts 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. **Future Traffic Monitoring.** The Parties hereby agree that Condition # 92 from the 2002 Development Agreement regarding ongoing traffic monitoring requirements is hereby amended by deleting those requirements in the 2002 Development Agreement and superseding prior implementing agreements, including Attachment 5 to the 2002 Development Agreement, "Final Draft MountainStar MPR Transportation Monitoring Program" dated April 30, 2002 and the "Transportation Monitoring Program Agreement for the Bullfrog UGA" dated November 28, 2007, and replacing it with the traffic monitoring requirements contained in this section.

10.1. No additional traffic monitoring shall be required for construction and occupancy of all the residential units approved in the Phase S-1, Phase S-2 and Phase J subdivisions, provided Project Sponsor files and obtains final plat approval for those phases within five (5) years from the date of preliminary plat approval as provided by CEMC 16.30.040A and the conditions of the preliminary plat approvals for those phases.

10.2. No additional traffic monitoring shall be required for construction and occupancy of residential units or up to 450,000 square feet of commercial development in the business park parcels in any additional subdivision or binding site plan applications filed on or before October 30, 2027. Additional traffic monitoring and updated traffic impact assessment shall be required for any binding site plan or building permit application to construct more than 450,000 square feet of commercial development in the business park parcels, whether filed before or after October 30, 2027.

10.3. Annual traffic monitoring is not required.

10.4. Updated traffic monitoring and an updated traffic impact analysis may be required if the Project Sponsor, or its successor in interest, files an application for a major modification to the Bullfrog UGA development approved in the 2002 Development Agreement in the City's reasonable discretion. Costs associated with this update shall be the responsibility of the applicant for the major modification.

10.5. Updated traffic monitoring and an updated traffic impact analysis may be required for any preliminary subdivision or binding site plan applications filed after October 30, 2027. The appropriate scope of those updates, including but not limited to methods and locations for traffic counts and level of service standards to be applied to impose mitigation shall be determined by the City at the time of such applications. Costs associated with this update shall be the responsibility of the applicant for these future subdivisions or binding site plans. Once an updated traffic impact analysis for applications filed after October 30, 2027, has been prepared

and approved by the City, and traffic mitigation measures confirmed or modified, no additional traffic monitoring will be required for development consistent with those applications unless or until the term of the 2002 Development Agreement, as may be extended, has expired.

10.6. Updated traffic monitoring and an updated traffic impact analysis may, at the City's reasonable discretion, be required if or when the Project Sponsor asks to extend the 2002 Development Agreement from October 30, 2027, to October 30, 2032; if or when the Project Sponsor asks to extend the 2002 Development Agreement from October 30, 2032, to October 30, 2037; and if or when Project Sponsor requests any further extension of the 2002 Development Agreement beyond October 30, 2037.

10.7. The City may use Transportation Account funds to conduct updated traffic monitoring and an updated traffic impact analysis if deemed necessary to support Grant Fund applications.

11. **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.

12. **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

13. **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.

14. **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.

15. **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.

Signatures:

Bullfrog Flats LLC




City of Cle Elum

1. Definitions

1.1. 2002 Development Agreement. 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.

1.2. 2024 TENW Analysis. Updated traffic counts and traffic impact analysis prepared by Transportation Engineering Northwest dated December, __, 2024.

1.3. Applications. Bullfrog Flats' submitted applications dated _____ 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.

1.4. Background Share. The percentage of total traffic at an intersection requiring mitigation associated with background growth or identified projects other than the Bullfrog UGA development.

1.5. Bullfrog UGA. Real property authorized to be developed according to the 2002 Development Agreement, entered into on October 30, 2002, between the City and Bullfrog Flats' predecessor in interest, Trendwest Properties, Inc., and Trendwest Investments, Inc.

1.6. County. Kittitas County.

1.7. City. City of Cle Elum.

1.8. Contract Cost. The cost equal to the lowest responsible and responsive bid, plus twenty percent of the bid amount for construction engineering and construction administration, plus contingency funding equal to ten percent of the construction bid.

1.9. Effective Date. Date of execution for the Transportation Mitigation Agreement.

1.10. Grant Funds. Any public grant funds obtained for any of the Intersection Mitigation Measures.

1.11. Intersection Mitigation Measures. Nine intersections identified in the 2024 TENW Analysis that are expected to operate below adopted levels of service between 2024 and 2037 and recommended intersection improvements that would address projected level of service failures at those nine intersections.

1.12. Other Development Traffic Mitigation. Other funds obtained from traffic mitigation imposed on other development in the City.

1.13. Parties. The City of Cle Elum and Bullfrog Flats.

1.14. Project Sponsor or Bullfrog Flats. Bullfrog Flats LLC, a Washington limited liability company.

1.15. Project Sponsor's Proportionate Share or Project Share. The percentage of total traffic at an intersection requiring mitigation associated with the Bullfrog UGA development.

1.16. Proportionate Share Method. Funding strategy that includes the Project Share, any public grant funds obtained for any of the Intersection Mitigation Measures, any other funds obtained from traffic mitigation imposed on other development in the City and a Transportation Account Contribution that may be eligible for subsequent reimbursement, if available from other sources.

1.17. Site Access Intersections. Four site access intersections included in the proposed Bullfrog UGA project that were identified in the 2024 TENW Analysis: (1) Bullfrog Road southern access (#30 in the 2024 TENW Analysis); (2) Bullfrog Road central access (#29 in the 2024 TENW Analysis); (3) Bullfrog Road north access (#28 in the 2024 TENW Analysis); (4) SR 903 and Bala (#31 in the 2024 TENW Analysis).

1.18. TENW. Transportation Engineering Northwest.

1.19. Termination Date. The date when the Transportation Mitigation Agreement, and the Parties' obligations hereunder, terminate.

1.20. Transportation Account. Account where funds are credited from (a) Project Sponsor Proportionate Share contributions, (b) Grant Funds, (c) Other Development Transportation Mitigation, and (d) Project Sponsor Transportation Account Contribution.

1.21. Transportation Account Contribution. Additional contribution from the Project Sponsor to be put into an account to ensure sufficient funds are available to construct the Intersection Mitigation Measures when required to satisfy concurrency.

1.22. Transportation Mitigation Agreement. The Bullfrog Flats UGA Transportation Impacts Mitigation and Monitoring Agreement entered into by and between the City of Cle Elum, a Washington municipal corporation and Bullfrog Flats intended as an amendment to and incorporated into the 2002 Development Agreement.

1.23. WSDOT. The Washington Department of Transportation.

Attachment A Table Summary of Intersection Mitigation Measures							
Year of Failure	Intersection	Jurisdiction	Proposed Mitigation	2002 Mitigation	2023-Predesign Estimated Cost	Project Share % with 50% Business Park	Project share with No Business Park
2024							
	#8 — Ranger Station Rd/Miller Ave/W. Second St.	WSDOT/ City of Cle Elum	Turn Restrictions	—	\$ 130,000	17.9% — \$ 23,270	11.9% — \$15,540
	#12 — N.Pine St./W. 1 st St.	City of Cle Elum	Compact Roundabout	#85 E — Not Completed	\$ 970,000	13.8% — \$ 133,860	9.2% — \$ 89,240
2032							
	#7 — Denny/W. 2 nd (SR 903)	WSDOT/ City of Cle Elum	Merge Refuge Lane	—	\$ 130,000	19.7% — \$ 25,610	18.4% — \$ 23,920
	#9 — N. Pine/W. 2 nd St (SR 903)	WSDOT/ City of Cle Elum	Compact Roundabout	—	\$ 760,000	19.7% — \$ 149,720	13.2% — \$100,320
	#13 — N.Stafford/W.2 nd (SR 903)	WSDOT/ City of Cle Elum	Compact Roundabout	#85 D — Not Completed ²	\$ 950,000	17.4% — \$ 165,300	11.5% — \$109,250
	#15 — N.Oakes/W. 2 nd (SR 903)	WSDOT/ City of Cle Elum	Compact Roundabout	—	\$ 900,000	16.4% — \$ 147,600	10.6% — \$ 95,400
	#21 — Pennsylvania/1st St	WSDOT/ City of Roslyn	4-Way Stop	—	\$ 40,000	13.9% — \$ 5,560	9.0% — \$ 3,600
2037							
	#1 — Bullfrog/I-90 EB Ramp	WSDOT	Compact Roundabout	#85 G — Not Completed	\$ 1,370,000	10.7% — \$ 146,590	10.6% — \$145,220
	#3 — Bullfrog/Tumble Creek Dr.	Kittitas County	Merge Refuge Lane	—	\$ 260,000	21.4% — \$ 55,640	15.4% — \$ 40,040
					Total = \$ 5,510,000	Total = \$853,150	Total = \$622,500

² City has been awarded partial grant funding for this intersection.