WATER RIGHTS LEASE AGREEMENT

This Water Rights Lease Agreement ("Agreement") is entered into between Kittitas County (the "County"), a Washington municipal corporation, and the City of Roslyn ("Roslyn" or the "City"), a Washington municipal corporation, each a "Party" and collectively the "Parties." This Agreement takes effect on January 1, 2014.

RECITALS

A. Roslyn owns two senior water rights confirmed in Dept of Ecology v. Acquavella that the City holds to mitigate for impacts to senior water rights when the City uses its municipal water supply in drought years or periods of water shortage: i) Court Claim No. 00521, with a priority date of July 30, 1885, and assigned Certificate No. S4-83606 by Ecology, and ii) Court Claim No. 00402, with a priority date of April 30, 1875, and assigned Certificate No. S4-83623 by Ecology. Together, these two water rights are Roslyn's "Mitigation Water Rights." Through the water system planning process, Roslyn has evaluated its need for the Mitigation Water Rights over a 40-year planning period and concluded that it has surplus mitigation water rights in the short term.

B. Roslyn and the Department of Ecology ("Ecology") entered a Trust Water Right Agreement, dated April 23, 2010, governing the use of the Mitigation Water Rights. The Trust Water Right Agreement, among other things, requires Ecology approval of any lease and temporary removal from the trust water rights program, and the Parties acknowledge this requirement as a precondition to the County taking control of the water rights leased herein.

C. As a component of its water system plan update, Roslyn recently completed a long-range water supply and demand forecast including the need for the Mitigation Water Rights. The forecast shows that Roslyn has a surplus of at least 130 acre-feet (consumptive use) for the six-year planning horizon. Ecology recently reviewed Roslyn's long-range forecast and concurred in the analysis.

D. The County is in litigation and negotiations regarding compliance with the growth management act ("GMA") requirements to adopt measures to protect surface and ground water. As part of a resolution of the GMA dispute, the County intends to establish a water mitigation program ("County Water Program") to provide water mitigation credits to landowners seeking to drill new groundwater wells in the lower County where municipal water supply is not available or connection to a water purveyor is not viable. The County intends to acquire water rights permanently or on a long-term basis to enable the water mitigation program. For initial set up of the water mitigation program, however, the County wishes to lease some of Roslyn's surplus mitigation water rights in the short term. The County desires to take control of the "Leased Water Rights" (specifically defined below) as soon as possible to enable timely commencement of the County Water Program.
NOW THEREFORE in consideration of the foregoing recitals, incorporated herein, and mutual covenants and promises contained herein, the Parties hereby agree as follows:

AGREEMENT

1. Term of Lease. This Agreement takes effect on January 1, 2014, and the term of County’s lease of the City’s water rights under this Agreement shall continue for a term of five (5) years ending on December 31, 2018. Prior to the end of the five-year term, however, the County may terminate this Agreement effective at the end of a calendar year by providing Notice of termination to the City before October 31 of that calendar year, provided that the County may not provide such notice for 2014. At the end of the term or the calendar year during which the County has given timely Notice of termination, this Agreement will terminate and the “Leased Water Rights” revert to the City without any further action by either Party. The Parties may agree by written amendment to extend the term of the Agreement.

2. Quantity of Leased Water Rights. Pursuant to the terms and conditions of this Agreement, the City hereby leases to the County a portion of the water right confirmed under Court Claim No. 00521 equal to 50 acre-feet (annual consumptive use quantity) (the “Leased Water Rights”). In the event that the County may not have used all 50 acre-feet during one of first three years of the term of this Agreement, then Roslyn, in its sole discretion, may substitute a 50-acre-foot portion of the water right confirmed under Court Claim No. 00402. Roslyn will provide Notice to the County of such substitution, and the substituted portion of Court Claim No. 00402 shall become the Leased Water Rights.

3. Administration of Leased Water Rights. The County will keep accurate records of its land use approvals and use of the Leased Water Rights and will report on the same in a timely fashion to Ecology and Roslyn. Specifically, the County agrees to require a measuring device for new domestic wells mitigated by the Leased Water Rights and to report relevant data to Ecology and Roslyn in form and substance consistent with the terms of any settlement or adjudicated result in the GMA matter. For Roslyn, the County’s timely performance reporting will facilitate the City’s protection against relinquishment of the Leased Water Rights.

4. Payment by County to City. For each year of the lease term, the County will make an annual lease payment to the City of $25,000.00 (“Annual Lease Payment”). The Annual Lease Payment is based on $500.00 per acre-foot of consumptive use quantity of the Leased Water Rights. The County will make the Annual Lease Payment to the City by March 31 of each year during the term of this Agreement. In addition to the Annual Lease Payment, no later than 30 days after the Agreement signed by both Parties, the County will make a one-time payment to the City in the amount of $7,500.00 to offset City costs and expenses relating the lease.

5. Interruption. Roslyn reserves the right to suspend the County’s use of the Leased Water Rights during a calendar year and use the Leased Water Rights for Roslyn’s mitigation purposes. Roslyn shall provide Notice to the County of any such interruption, and Roslyn shall use best efforts to provide such Notice as soon as Roslyn becomes aware of the need. In the event that Roslyn exercises the right under this paragraph 5, then no Annual Lease
Payment will be due and payable for that calendar year (or Roslyn will refund an Annual Lease Payment made for such a year). An interruption event in one calendar year will not change or alter the terms of this Agreement for the remaining years in the lease term.

6. **Dispute Resolution.** If for any cause, any Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if any Party violates any material term or condition of this Agreement, the aggrieved Party shall give the other Party Notice of such failure or violation. The responsible Party shall be given the opportunity to correct the violation or failure within fifteen (15) working days. The County and the City agree to make all reasonable efforts to resolve, through good faith negotiation, any disputes concerning the terms and conditions of this Agreement or any alleged breach. If negotiations are not successful, the County and the City shall utilize non-binding mediation as an alternative dispute resolution process. The County and the City will evenly split mediation costs. In the event that such non-binding mediation is not successful, the County and the City agree that venue for any judicial action shall be in the Superior Court of the State of Washington for Kittitas County. The prevailing Party in any judicial proceeding shall be entitled to recover its reasonable attorney’s fees and costs.

7. **County Water Program Indemnity.** The County shall defend, indemnify and hold the City and its elected officials, agents, employees, and contractors harmless from and against any and all claims, liabilities, suits, damages, and costs and expenses (including without limitation consultant fees and attorney fees) arising from or in connection with the County’s Water Program or this Agreement.

8. **Governing Law.** This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington. The laws of the State of Washington shall govern any question or dispute regarding this Agreement.

9. **Assignment.** This Agreement is specific to the Parties and may not be assigned by any Party.

10. **Waiver.** If either Party fails to exercise its rights under this Agreement, it shall not be precluded from subsequent exercise of its rights. A failure to exercise rights shall not constitute a waiver of any other rights under this Agreement, unless stated in a letter signed by an authorized representative of the Party and attached to the original Agreement.

11. **Severability.** If any terms or other provision or this Agreement is invalid, illegal, or incapable of being enforced, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as they conform to the requirements of applicable law and the economic or legal substance of the transactions contemplated hereunder is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereunder are consummated as originally contemplated to the greatest extent possible.
12. **Agreement Amendments.** This Agreement may be amended by mutual agreement of the County and the City. Amendments shall not be binding unless they are in writing, duly approved by the Parties’ governing bodies, and signed by personnel authorized to bind each of the Parties.

13. **Integrated Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous understandings or agreements with respect thereto.

14. **No Third Party Beneficiaries.** The Parties expressly disclaim any intent to create any third party beneficiaries, and nothing in this Agreement is intended to confer upon any person or entity other than the Parties hereto any rights, benefits, or obligations hereunder.

15. **Notice and Project Management.** “Notice” in this Agreement means a letter delivered by a Party to the other Party’s Project Manager by electronic mail and first class U.S. mail. The Project Manager for each Party shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement. The designated Project Manager for each Party is:

   County: Julie Kjorsvik  
   Clerk of the Board  
   Board of County Commissioners  
   205 W 5th Ave, Rm. 108  
   Ellensburg, WA  98926  
   (509)962-7508  
   email: julie.kjorsvik@co.kittitas.wa.us

   Roslyn: Brandi Taklo  
   City Clerk  
   100 E. Pennsylvania Ave  
   Roslyn, WA  98941  
   509-649-3105  
   email: roslyn@inlandnet.com

A Party may change the Project Manager by Notice of the other Party.

16. **Representations of the Parties.** Each Party represents and warrants that it has duly approved, executed, and delivered this Agreement and that it has all necessary authority to enter into this Agreement and to perform its terms and obligations. Each Party represents and warrants that the approval, execution, and delivery have been duly authorized by the appropriate board or council, and no other act or proceeding on the part of any Party is necessary to authorize entry into or performance of this Agreement.
IN WITNESS WHEREOF, the authorized representatives of the Parties have duly executed this Agreement as of the date stated above.

KITTITAS COUNTY

By: ____________________________
[Name]

Title: __________________________

Date: __________________________

CITY OF ROSLYN

By: ____________________________
[Name]

Title: __________________________

Date: __________________________

4/28/2014