AGREEMENT TO ASSIGN TRUST WATER RIGHTS

THIS AGREEMENT TO ASSIGN TRUST WATER RIGHTS is made and entered into this 15th day of May, 2014, by and between Thomas E. Roth and Kathleen A. Roth, (hereinafter collectively referred to as “Roth” or “Assignor”), and Kittitas County, a political subdivision of the State of Washington (hereinafter referred to as the “County” or “Assignee”).

RECITALS

A. WHEREAS, Roth is a party to a Trust Water Right Agreement, which Roth entered into with the Washington State Department of Ecology, Yakima River Basin Trust Water Rights Program (hereinafter referred to as “Ecology”) on February 28, 2012 (hereinafter the “Roth Trust Water Right Agreement”). The Roth Trust Water Right Agreement is attached hereto as Exhibit A; and

B. WHEREAS, the Roth Trust Water Right Agreement provides the terms and conditions under which water rights conveyed by Roth to Ecology by Water Right Conveyance dated March 5, 2012 and recorded under Kittitas County Auditor’s File No. 201 are used and managed for a variety of purposes, including but not limited to mitigating for domestic use of water from permit exempt groundwater wells; and

C. WHEREAS, the water rights that are in trust pursuant to the Roth Trust Water Right Agreement form part of a water bank consisting of two separate sets of Trust Water Rights: the “Roth Trust Water Right,” which is legally described in Exhibit C of the Roth Trust Water Right Agreement, and was conveyed to Ecology by Water Right Conveyance recorded under Auditor’s File No. 201203130018; and the “Clennon Trust Water Right,” a third-party trust water right conveyed to Ecology under a separate Trust Water Right Agreement which pertains to a separate agreement with and conveyance to Ecology by Water Right Conveyance recorded under Auditor’s File No. 201203130019 (hereinafter collectively referred to as the “Roth-Clennon Trust Water Rights”); and

D. WHEREAS, Roth has previously irrevocably obligated 1.03 consumptive acre-feet of the Roth Trust Water Right to third parties and has tentatively obligated 0.143 consumptive acre-feet of the Roth Trust Water Right; and

E. WHEREAS, Roth agrees to assign to the County and the County desires to purchase all of Roth’s beneficial interest in the Roth Trust Water Right held by Ecology except the quantities referenced in Recital D.

NOW, THEREFORE, in consideration of the foregoing, payment of the assignment price and of the mutual covenants hereinafter set forth, the parties hereto hereby agree as follows:
1. Assignment. Subject to the terms and conditions set forth in this agreement and the contingencies described herein in Paragraph 3, Roth agrees to assign to the County the following portions of the Roth Trust Water Right Agreement (Agreement) with Ecology.

1.1 Roth Trust Water Right. Roth agrees to assign to the County all of the Agreement except for the portion that has been irrevocably obligated to serve as mitigation for third party beneficiaries. The parties agree that the quantity of the Roth Trust Water Right that has been irrevocably obligated is 1.03 consumptive acre-feet and that has been tentatively obligated 0.548 consumptive acre-feet. Thus, 1.578 consumptive acre-feet is not available for assignment to the County. Therefore, the remaining quantity of the Roth Water Right to be assigned to the County is 9.48 acre-feet of consumptive use, unless the tentatively obligated 0.548 consumptive acre-feet are not irrevocably obligated by November 30, 2014 and in that instance an additional 0.548 consumptive acre-feet are will be assigned to the County.

1.2 Purchase Price. The County agrees to pay to Roth the sum of $122,000.00, payable in cash at closing for the currently unobligated 9.482 consumptive acre-feet, with an addition payment of $8,000.00 payable in cash if Roth assigns the currently-tentatively obligated 0.548 consumptive acre-feet to the County.

1.2.1 Roth and the County agree and acknowledge the actual number of ERUs the beneficial interest in the Trust Water Rights conveyed by Roth to the County may (i) vary depending on the specific circumstances of each ERU mitigation; (ii) may change over time based on Ecology’s and/or the Washington State Department of Health’s interpretation of how much domestic water a single family residence needs and/or uses; and/or (iii) vary depending on how and the circumstances under which the County allows third parties to rely on the Roth Trust Water Rights in the future.

1.2.2 Roth and the County agree and acknowledge the geographic area and the time of year the Trust Water Rights may be used to mitigate for domestic use is not certain and depends on the particular circumstances of each specific ERU mitigation request and may change in the future.

1.2.3 The County acknowledges and agrees that Roth has made no promises, representations or warranties of any kind that relate to: (i) the extent and validity of the water rights that are the subject of the Roth Trust Water Right Agreement; (ii) the quantity of ERUs the Trust Water Rights can be used to mitigate for; (iii) the geographic location where the Trust Water Rights can be used to mitigate ERUs; or (iv) the season of use during which the Trust Water Rights can be used.

1.2.4 Roth and the County acknowledge and agree that how the Trust Water Rights are used and managed to mitigate for domestic use is subject to Ecology’s approval.

1.2.5 Roth and the County acknowledge and agree that through this assignment the County will assume Roth’s place and role in the Trust Water Right Agreement with Ecology.
2. **Earnest Money.** The County hereby deposits, and receipt is hereby acknowledged of, a $1,000.00 promissory note in the form attached hereto as Exhibit B as earnest money in part payment of the purchase price for the aforesaid Trust Water Right. The earnest money promissory note and this Agreement shall be held by the Closing Agent for the benefit of the parties hereto.

3. **Contingencies.** Roth and the County agree that Roth’s obligation to assign the Roth Trust Water Rights to the County and the County’s obligation to accept and pay for the assignment of the Roth Trust Water Right shall be contingent upon timely satisfaction of the following events, which events are hereinafter referred to as “Contingencies”:

3.1 **Funding and Resolution Ratifying Agreement.** This Agreement is contingent upon (i) the County’s ability to obtain funding in order to pay for the assignment of the Trust Water Rights and (ii) the Kittitas County Board of Commissioners passing a resolution in the ordinary course of its business ratifying this Agreement and appropriating sufficient funds for the assignment of the Trust Water Rights on or before August 1, 2014.

3.2 **Ecology Consent.** Consent by Ecology on or before closing of the Assignment of the Trust Water Right Agreement shall be deemed given when Ecology signs the consent in the form attached hereto as Exhibit C provided, however, if Ecology’s consent is appealed, then Ecology’s consent shall be deemed given when any appeals of Ecology’s consent are resolved in a manner that preserves the essential terms of this Agreement. In the event Ecology consents to the assignment of the Trust Water Right Agreement and in the consent attaches terms and conditions to the assignment of the water which are not acceptable to Roth or the County, then, in that event, Roth or the County has the option, to be exercised in Roth or the County’s sole and absolute discretion, to cancel this sale and receive a full refund of the earnest money. Roth or the County must elect to cancel this sale within fourteen (14) days of Ecology’s consent. If Roth or the County fail to object within said fourteen (14) day period, then they will be deemed to have consented to any terms or conditions Ecology attaches to Ecology’s consent; and

3.3 **Notice of Assignment to Ecology.** In advance of the execution of this agreement, Roth agrees to provide written notice of this assignment to Ecology, pursuant to paragraph 9 of the Roth Trust Water Agreement with Ecology, executed and dated February 28, 2012.

4. **No Litigation.** To the best of Assignor’s knowledge, no litigation, suit, arbitration, claim, or proceeding, at law or equity, judicial, municipal, or administrative, with the exception of the Acquavella water rights adjudication, is pending or threatened, which does or could materially affect the use or possession of the Roth Trust Water Right, or involve the County due to its respective use of and interest in the Roth Trust Water Right.

5. **No Violation of Agreements.** To the best of Assignor’s knowledge, this Agreement and the performance of the parties hereunder will not violate any written or oral
contract, agreement, or instrument to which Assignor is a party or that affects any portion of the Roth Trust Water Right.

6. **Assignment of the Trust Water Rights.** Assignor’s interest in the Roth Trust Water Right is free and clear of all encumbrances or defects. Title to the Water Right shall be by assignment to the County in the form attached hereto as Exhibit D.

7. **Closing.**

7.1 **Definitions.**

7.1.1 **Closing Agent.** For purposes of this Agreement “closing agent” shall be defined as a person authorized to perform escrow services pursuant to the provisions of Chapter 18.44 of the Revised Code of Washington who is designated by the parties hereto to perform such services.

7.1.2 **Date of Closing.** For purposes of this Agreement, “date of closing” shall be construed as the date upon which all appropriate documents are recorded and proceeds of this sale are available for disbursement to Assignor. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to Assignor.

7.1.3 **Place and Time of Closing.** The sale shall be closed in the offices of Stewart Title, Ellensburg (hereinafter the “Closing Agent”), within twenty-one (21) days after the waiver of Contingencies, but in any event on or before August 1, 2014, which shall be the **Termination Date.**

7.2 **Obligations of Assignee and Assignor at Closing.** Assignee and Assignor shall deposit with the Closing Agent all instruments, documents, and monies necessary to assigning the Roth Trust Water Right from Assignor to Assignee and close the sale in accordance with this Agreement.

7.3. **Payment of Assignment Costs.**

7.3.1 **Costs to be divided Equally.** Escrow fees, if any, the closing fee charged by the closing agent and document preparation fees shall be divided equally between Assignor and Assignee.

7.3.2 **Costs to be paid by Assignor.** Assignor shall pay all real estate excise taxes, attorney’s fees incurred by Assignor, if any, and other charges normally borne by an Assignor.

7.3.3 **Costs to be paid by Assignee.** Assignee shall pay Assignee’s attorney fees, if any, and those costs or expenses normally allocated to an Assignee in a real estate transaction.
8. **Default.** If the Assignor defaults (that is fails to perform the acts required of it) in its contractual performance herein, the Assignee may seek specific performance pursuant to the terms of this Agreement, damages or rescission. If the Assignee seeks damages or rescission, the earnest money, upon demand, shall be refunded. If the non-defaulting party seeking damages or rescission is Assignor, the earnest money, upon demand, shall be forfeited and paid to Assignee. In the event the Assignee fails, without legal excuse, to complete the purchase of the Roth Trust Water Right, the earnest money deposit made by the Assignee shall be forfeited to the Assignor.

9. **Execution of All Documents.** Assignor and Assignee, individually and severally, hereby acknowledge that the execution of all documents associated with this transaction will substantially affect their legal rights and that each has the opportunity to obtain and consult with independent legal counsel for the purposes of this transaction and matters relating thereto.

10. **Attorneys’ Fees.** If either party hereto is required to retain an attorney to enforce any provision of this Agreement, whether or not a legal proceeding is commenced, the substantially prevailing party shall be entitled to reasonable attorneys’ fees regardless of whether at trial, on appeal, in any bankruptcy proceeding, arbitration matter or without resort to suit.

11. **Governing Law.** This Agreement shall be interpreted, construed and enforced according to the laws of the State of Washington and venue shall be in Kittitas County, Washington.

12. **Notices.** Subject to the requirements of any applicable statute, any notices required or permitted by law or under this Agreement shall be in writing and shall be (i) personally delivered, (ii) sent by first class certified or registered mail, return receipt requested, with postage prepaid, or (iii) dispatched by facsimile transmission (accompanied with reasonable evidence of receipt of transmission and with a confirmation copy mailed no later than the day after transmission) to the parties’ addresses set forth above. Either party may change such address for notice. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if mailed, on the earlier of receipt or two (2) days after deposit thereof in the U.S. mail.

13. **Time of Performance.** Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto, including, but not limited to, the proper tender of each of the sums required by the terms hereof to be paid.

14. **Section Headings.** The word or words appearing at the commencement of sections and subsections of this Agreement are included only as a guide to the contents thereof and are not to be considered as controlling, enlarging or restricting the language or meaning of those sections or subsections.

15. **Invalidity.** In the event any portion of this Agreement should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof unless the court’s ruling includes a determination that the principal purpose and intent of this Agreement are thereby defeated.
16. **Legal Relationships.** The parties to this Agreement execute the same solely as an Assignor and an Assignee. No partnership, joint venture or joint undertaking shall be construed from these presents, and except as herein specifically provided, neither party shall have the right to make any representation for, act on behalf of, or be liable for the debts of the other. All terms, covenants and conditions to be observed and performed by either of the parties hereto shall be joint and several if entered into by more than one person on behalf of such party, and a default by any one or more of such persons shall be deemed a default on the part of the party with whom said person or persons are identified. No third party is intended to be benefited by this Agreement. Any married person executing this Agreement hereby pledges his or her separate property and such person’s and his or her spouse’s marital communities in satisfaction hereof.

17. **Assignment; Successors.** Neither the Assignee nor the Assignor may sell, transfer, assign, pledge or encumber its interest in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. A purported sale, transfer, assignment, pledge or encumbrance without prior written consent of the other party shall be null and void and of no force or effect. Subject to the restrictions contained herein, the rights and obligations of the Assignee and Buyers shall inure to the benefit of and be binding upon their respective estates, heirs, executors administrators, successors, successors-in-trust and assigns.

18. **Entire Agreement.** All understandings and agreements previously existing between the parties, if any, are merged into this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, neither party relying upon any statement or representation made by the other not embodied herein. This Agreement may be modified only by a written amendment executed by all parties.

19. **Interpretation.** This Agreement has been reviewed by both parties and each party has had the opportunity to consult with independent counsel with respect to the terms hereof and has done so to the extent that such party desired. No stricter construction or interpretation of the terms hereof shall be applied against either party as the drafter hereof.

20. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument. All such counterparts together shall constitute a fully executed Agreement. Facsimile transmission of this Agreement and retransmission of any signed facsimile transmission shall be the same as delivery of an original.

21. **Amendment.** This Agreement may not be modified or amended except by the written agreement of the parties.

IN WITNESS WHEREOF the parties have signed and delivered this Agreement as of the day and year first above written.

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ASSIGNORS:

THOMAS E. ROTH

________________________________________

Date: ________________________________

KATHLEEN A. ROTH

________________________________________

Date: ________________________________

Assignor’s address: __________________________

Assignor’s phone: __________________________

ASSIGNEE:

KITTITAS COUNTY

By: ________________________________

Title: bec- chairman

Date: 5/15/14

Assignee’s Address: 205 W. 5th Ave.

#108 Ellensburg, WA 98926

Assignee’s phone: 509-962-7508
INDEX TO EXHIBITS

Exhibit B: Form of Promissory Note
Exhibit C: Form of Notice of Assignment of Trust Water Rights and Consent to Assignment of Trust Water Rights
Exhibit D: Form of Irrevocable Partial Assignment of the Beneficial Interest in a Trust Water Right
EXHIBIT A
(Trust Water Right Agreement)

Trust Water Right Agreement (Roth)
Trust Water Right Agreement (Roth)

This Trust Water Right Agreement is made and entered into as of the 28th day of February, 2012, by and between the Washington State Department of Ecology, State Trust Water Right Program (“Ecology”) and Thomas E. Roth and Kathleen A. Roth (Roth).

Whereas, Ecology is the trustee of the Yakima River Basin Trust Water Rights Program as authorized under Chapter 90.38 RCW (the “Trust”); and

Whereas, Roth is the owner of certain water rights in the mainstem of the Yakima River as more particularly described and quantified in Exhibit A (WRTS File No. CS4-016765b5d@2 (the “Application”)), and presently appurtenant to the land legally described in Exhibit B (the “Land”), each such exhibit being attached hereto and incorporated herein; and

Whereas, Roth has filed an Application for Change with the Kittitas County Water Conservancy Board to change the purpose of use of his water rights to Instream Flows and Water Banking, to place the Water into the Trust for the purpose of enhancing in-stream flows and providing mitigation water to offset and allow for the permitting of new water rights to be used for any lawful purpose within the Yakima River basin; and

Whereas, Ecology has reviewed the Water Conservancy Board’s recommendation and accepted the Board’s findings as to the extent and validity of the Water and is prepared to issue its Trust Water Right Report of Examination concerning the extent and validity of the Water (the “ROE”) and its trust water certificate (the “Certificate”). Exhibit D documents that determination, including quantification of the consumptive quantity associated with the right; and

Whereas, subject to the terms of this Agreement and the Application, Ecology confirms that it is willing, able and authorized to hold the Water in the Trust as provided for herein;

Now, therefore, in consideration of the forgoing, the mutual covenants and undertakings as hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. The purpose of this Agreement and the primary reason Roth is willing to place the Water into the Trust is to provide a senior water right as off-setting mitigation that will allow Roth or third parties to apply for and receive new ground water withdrawal or surface water diversionary permits or Water Budget Neutral Determination within the Yakima River basin, particularly within Kittitas County. These new water rights will be mitigated by way of a permanent designation of such portion of Roth’s beneficial interest in the Water in Trust as reasonably required to ensure no impairment to TWSA or other water rights; provided that any portion of such mitigation may also be provided by other means.

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(Trust Water Right Agreement)
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2. This Agreement shall be effective upon its mutual execution, and the Trust shall commence upon the close of an escrow established by the parties as hereinafter provided. The term of this Agreement shall then be for so long as any portion of the Water remains in the Trust (the “Term”). The escrow shall be opened upon the mutual execution of this Agreement and its deposit with the Escrow Agent.

2.1 The escrow shall close within thirty (30) days of the occurrence of the last of the following events: mutual execution of all agreements and documents contemplated by or collateral to this Agreement; Roth’s deposit of an executed quit claim deed in recordable form of the Water to the Trust substantially in the form of Exhibit C attached hereto and incorporated herein (the “Deed”); the giving of all requisite public notices for actions contemplated or referred to herein; the deposit of Ecology’s letter accepting the Water into the Trust (the “Acceptance”); the deposit of the ROE and the Certificate, each in form and content acceptable to Roth; and the expiration of all notice, comment and appeal periods related to the full implementation of this Agreement, the ROE, and the Certificate. The parties shall execute appropriate escrow instructions to the Escrow Agent, and all escrow costs shall be shared equally by the parties.

2.2 Upon closing the Escrow Agent shall record the Deed with the Kittitas County Auditor and/or such other places as may be appropriate and shall deliver the ROE and Certificate to Roth.

3. Once this agreement is executed, Roth and Ecology may begin the process of designating parties to receive mitigation credit based upon the Water held in the Yakima Pilot Water Bank. Development activities that are eligible for mitigation under this Agreement may include commercial, single-family or multi-family residential development and incidental irrigation occurring within Kittitas County. The process for Roth to identify recipients of mitigation credit and for Ecology to issue mitigated permits is as follows:

3.1 Roth may propose or Roth may enter into a contract with a third party to provide a portion of the Water in Trust as mitigation on such terms consistent with this Agreement as Roth may elect. Roth or such third party shall make application to Ecology (or, if appropriate, to a water conservancy board) to appropriate surface or ground water at the desired location and for the intended use and quantities, together with all regularly required supporting information (hereinafter a “New Application”). As part of the New Application or Water Budget Neutral Determination, such third party shall include documentation as needed to conform to WAS 173-539A-050 and in a format prescribed by Roth the specific quantity of the Water in Trust as required to offset the consumptive loss associated with the uses described on the application. If required by Ecology Roth will also co-sign the New Application.

3.2 Upon receipt of a complete New Application, Ecology, pursuant to WAC 173-539A-080, shall accept and timely process it under RCW 90.03.260-.340 and Chapter 90.44 RCW utilizing such portion of the Water in Trust as reasonably needed.
under the quantity allocation set out in Exhibit D which, together with any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal.

3.3. Ecology will prepare a public notice and send it to the applicant for publication in a newspaper with general circulation in the area as required by RCW 90.03.

3.4. The applicant must publish the notice and ensure that the newspaper transmits an affidavit of publication to Ecology.

3.5. Ecology will complete a Water Transfer Working Group ("WTWG") project description and will present it to the WTWG. Ecology, in consultation with the U.S. Bureau of Reclamation, will determine if some or all of the Water Roth designates would be assigned to the Reclamation-Ecology storage and delivery exchange contract.

3.6. Ecology will investigate the New Application or Request for a Determination of Water Budget Neutrality and prepare a Report of Examination or determination recommending issuance or denial of a permit based on applicable policy, rules, and law. Ecology's review of New Applications shall also include the following considerations:

3.6.1 In order to develop and confirm performance standards as set forth in any respective report of examination, Roth and/or such third party shall provide information to reasonably show or estimate, as the case may be, that the consumptive uses of the proposed project, when offset by the mitigation water allocated from the Trust and any other proposed mitigation measures, do not increase the consumptive use of water.

3.7. Ecology's permit relative to the New Application or its Water Budget Neutral Determination will specify the conditions and limitations on the use of water in a manner consistent with the Water held in the Yakima Pilot Water Bank as mitigation. Conditions relating to measuring and reporting water use and for reimbursement of any Ecology costs to administer the Reclamation-Ecology Exchange Contract will also be included in the permit.

4. Roth shall have the right at any time to withdraw the Application, terminate this Agreement and remove from the Trust any portion of the Water that has not been permanently allocated as mitigation of other water uses as set forth in this Agreement.

5. In the event Ecology prepares to issue an ROE for a New Application or Finding of Water Budget Neutrality, it will publish the draft ROE on its internet site. If the form and substance is acceptable to Roth and to the third party applicant, if any, Roth shall cause an escrow to be opened for such transaction at the Escrow Agent upon the mutual execution and deposit of the fully executed agreement between Roth and the third party applicant, if any, or the deposit of any other documents required for closing. The escrow
shall close within thirty (30) days of the occurrence of the last of the following events: mutual execution of all agreements and documents contemplated by or collateral to this Agreement; Roth's deposit of an executed document in a form acceptable to Ecology permanently allocating a portion of the then available and unallocated Water in the Trust to the proposed purpose as set forth in the New Application or Finding of Water Budget Neutrality; the giving of all requisite public notices for actions contemplated by such transaction; deposit of the ROE and the new water right permit, each in form and content acceptable to Roth and each third party, if any; the expiration of all notice, comment and appeal periods related to the full implementation of this Agreement, the ROE, and the new water right permit; and the deposit of all monies, documents and things relevant and necessary to conclude the transaction between Roth and any third party. All escrow costs shall be shared equally between Roth and the third party. Roth and any third party having the right to do so under an agreement with Roth, may, at any time prior to closing of escrow and without cause, withdraw the New Application or request for a statement of water budget neutrality or otherwise prevent any allocation of any portion of the Water to such transaction.

6. During the Term and in its capacity as a fiduciary, Ecology shall hold and manage the Water in trust pursuant to chapter 90.38 RCW and this Agreement as part of the total water supply available ("TWSA") in the Yakima River. Ecology:

6.1 Shall take no position and make no assertions that the quantities and beneficial use of the Water is other than as stated in Exhibits A and D and paragraph 3 above, and this representation shall also apply to any Water removed from the Trust;

6.2 Shall, in addition to the protections against relinquishment in RCW 90.38.000, at all times during the Term manage, maintain, preserve and protect for the benefit of Roth and its successors, assigns and assigns all aspects and attributes of the Water, including, but not limited to, the priority date, the total diversionary right, instantaneous quantity, and annual consumptive quantity from impairment, challenges, claims and relinquishment;

6.3 Shall process all New Applications and requests for statements of water budget neutrality where portions of the Water is proposed as mitigation and shall take all steps necessary to comply with any restrictions imposed by other agreements to which Ecology may be subject, including, but not limited to memorandums of agreement and groundwater moratoriums or subsequently enacted water right processing rules; and

6.4 Shall not assess or charge Roth any costs or fees for maintaining the Water in the Trust; provided that Ecology may charge third parties its regular costs and fees for water right applications, transfers and investigations or costs attributable to assignment of a portion of the Water to Ecology's USBR contract for storage and exchange contract.

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6.5 May, if it concludes following consultation, required assign some or all of a designated portion of the trust water right to the Reclamation-Ecology exchange contract.

7. In keeping with the purpose of this Agreement and as a material part of the consideration for this Agreement upon which its execution is dependent:

7.1 Roth makes the following undertakings, representations and warranties to Ecology:

7.1.1 Roth is authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

7.1.3 Upon its full execution, this Agreement is binding upon Roth in accordance with its terms.

7.1.4 Roth shall use his best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

7.2 Ecology makes the following undertakings, representations and warranties to Roth:

7.2.1 Ecology is a division of the State of Washington duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

7.2.2 Each individual executing this Agreement on behalf of Ecology is duly authorized to execute and deliver this Agreement.

7.2.3 Upon its full execution, this Agreement is binding upon Ecology in accordance with its terms.

7.2.4 Ecology shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

8. If either party defaults in its obligations under this Agreement; or if this Agreement, or a material portion thereof, be declared illegal or unenforceable; or, either party, through no fault or action by such party, should be incapable or prevented from performing any material obligations or actions, the non-defaulting party in the event of a default or either party in any other event shall have the right to the following:

8.1 As the computation of damages may be difficult, continue this Agreement and bring an action to specifically perform this Agreement.
8.2 Declare the Agreement null and void, whereupon the parties shall cooperate to end the trust water right relationship in an orderly manner as follows:

8.2.1 Roth shall identify all in-process designation agreements and inform Ecology of their status. Roth shall not make representations regarding in-process designations and shall each instance work with Ecology to determine in whether an assignment should be completed. If Ecology agrees, the permit process will be completed promptly in accordance with applicable policies, rules, and law.

8.2.2 Ecology shall promptly convey to Roth or his designee the portion of the trust water right not yet designated and assigned as mitigation for individual ground water and surface water permits. If any reserve has been set aside to address uncertainty Ecology will retain such reserve until it is either assigned to individual permits or Ecology determines some or all of the reserve is unnecessary. Any reserve not needed shall be promptly conveyed by Ecology to Roth.

8.2.3 Each party shall be responsible for their own costs associated with ending the trust water right relationship in an orderly manner.

8.3 Pursue any other remedy now or hereafter available.

8.4 In no event shall the termination of this Agreement alter or affect any Water previously allocated for mitigation, permits granted relative to New Applications or statements of water budget neutrality.

9. This Agreement may be assigned by Roth upon the giving of written notice to Ecology. This Agreement is binding upon and inures to the benefit of the parties to the Agreement as well as upon and to the benefit of their respective heirs, personal representatives, assigns and other successors in interest.

10. Any notice or communication required by this Agreement between Roth and Ecology shall be given to the addresses set forth below:
To Ecology:

Water Resources Section Manager
Washington Department of Ecology
Central Regional Office
15 West Yakima Avenue, Suite 200
Yakima, Washington 98902-3452

To Roth:

Thomas Roth
10036 Valmay Avenue NW
Seattle, Washington 98177

11. No provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be unenforceable for any reason outside the control of the parties and subject to the provisions of Paragraph 9.2, the party finding itself unable to enforce the provision may, at its sole discretion, declare this entire Agreement to be null and void.

12. If either party fails to exercise its rights under this Agreement, it will not be precluded from subsequent exercise of its rights under this Agreement. A failure to exercise rights will 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.

13. Amendments to this Agreement must be in writing and signed by an authorized representative of each of the parties.

14. Each party shall protect, defend, indemnify, and hold the other hold harmless from and against their respective acts and omissions and for all third party claims arising out of or related to this Agreement.

15. This Agreement will be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall be in Kittitas County, Washington.

This Agreement is executed as of the date first above written.
WASHINGTON DEPARTMENT OF ECOLOGY

By: Mark Kemmer, Section Manager
    Water Resources Program/CRO
    Date: 2/28/12

ROTH

By: Thomas E. Roth
    Thomas E. Roth
    Date: 2/16/12

By: Kathleen A. Roth
    Kathleen A. Roth
    Date: 2/16/12

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Exhibit A (WRTS File No. CS4-01676sb5d@2 (the "Application")

Exhibit A
(Trust Water Right Agreement)
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Exhibit B – The Land

Water rights formerly appurtenant to Kittitas County Parcel Numbers: 954234, 954235, 954236, and 954237. Lots A1, A2, A3 and A4 as described and delineated in that certain Plat of Airport Highlands, Kittitas County Plat P07-29, being that part of Section 29, T. 20 N., R., 16 E. W.M., Kittitas County, Washington, as recorded under Kittitas County Auditor’s Recording Number 200804230023: and

Kittitas County Parcel Numbers: 954238, 954239, 954240, 954241. Lots B1, B2, B3 and B4, as described and delineated in that certain Plat of Airport Meadows. Kittitas County plat P07-19, being a part of Section 29, T. 20 N., R. 16 E.W.M., Kittitas County, Washington, as recorded under Kittitas County Auditor’s Recording Number 200804250017; and

Kittitas County Parcel Numbers: 952445, and 952446. Lots C and D as described and delineated in Airport Road Estates. Short Plat SP-06-88, being a part of Section 29. T. 20 N., R. 16 E.W.M. Kittitas County, Washington, as recorded under Kittitas County Auditor’s Recording Number 200703220006.
When recorded return to:

Thomas and Kathleen Roth
10036 Velmay Avenue NW
Seattle, Washington 98177

Document Title(s) (or transactions contained therein):

1. Water Right Conveyance (Exhibit C to Trust Water Right Agreement)

Reference Number(s) of Documents assigned or released:

N/A

Grantor(s) (Last name first, then first name and initials):

1. Thomas Roth and Kathleen Roth

Grantee(s) (Last name first, then first name and initials):

1. State of Washington, Department of Ecology

Legal description:

PTN of water rights part of Court Claim Nos. 1676 and 2222 within Subbasin No. 5 in the Yakima River Basin Water Rights Adjudication, Yakima Superior Court Case No 77-2-01484-5, formerly appurtenant to PTN of Sec. 29, T. 20 N, R. 16 E, E.W.M, County of Kittitas, State of Washington.

Full legal description is on page 1 of document.

Assessor’s Property Tax Parcel/Account Numbers:

20-16-290510-001 (954234); 20-16-29051-0002 (954235); 20-16-29051-0003 (954236); and 20-16-29051-0004 (954237)
When recorded return to:

Thomas and Kathleen Roth
10036 Valmey Avenue NW
Seattle, Washington 98177

WATER RIGHT CONVEYANCE

THOMAS and KATHLEEN ROTH (Grantor), for no consideration, hereby conveys and quit claims to the STATE OF WASHINGTON (Grantee), a water right for 18 acre-feet per year (afy) (11.03 afy consumptive use), and 0.165 cubic feet per second (cfs) under Court Claim Nos. 1676 and 2222 within Subbasin No. 5 in the Yakima River Basin Water Rights Adjudication, State of Washington v. James J. Acquavella, et al., (Yakima Superior Court Cause No 77-2-01484-5) for a period of use of May 15 through July 31, annually (the “Water Right”), consistent with the orders dividing the water rights entered in the above-captioned case on August 11, 2011 and January 19, 2012.

The Water Right was formerly appurtenant to the real property legally described as:

Lot A of Airport Road Estates, SP 06-88, in the County of Kittitas, State of Washington, as per plat recorded in Book 1 of Short Plats, pages 138 and 139, records of said County, Section 29, Township 20 North, Range 16 E. W.M.

Situate in the County of Kittitas, State of Washington.

By modification order of the Department of Ecology dated July 11, 2011, the Water Right is now severed from the above-described property, and is appurtenant to the Yakima River, as described below, and is authorized for the purpose of instream flow and water banking mitigation purposes:

Yakima River

Primary Reach: within the ordinary high water mark of the Yakima River commencing at a point on the Yakima River approximately 750 south and 1,150 feet east from the north quarter corner of Section 35, T. 20 N., R. 15 E.W.M. (approximate Yakima River Mile 181.5), and terminating at approximately 500 feet south and 2,040 feet west of the NE ¼ of Section 5, T. 19 N., R. 16 E.W.M. (approximate Yakima River Mile 178).

Secondary Reach: within the ordinary high water mark of the Yakima River commencing at a point on the Yakima River approximately 500 feet south and 2,040 feet west of the NE ¼ of Section 5, T. 19 N., R. 16 E.W.M. (approximate Yakima River Mile 178), and terminating at the confluence of the Columbia River and the Yakima River.

Grantor conveys and quitclaims the Water Right to the State of Washington in perpetuity to be administered and managed by the Department of Ecology as a trust water right under the Trust Water Program established in chapter 90.38 RCW.

Page 1

Exhibit A
(Trust Water Right Agreement)
Page 14 of 16
DATED this ___ day of __________, 2012.

GRANTOR:

Thomas Roth                        Kathleen Roth

STATE OF WASHINGTON                COUNTY OF ____________
                                    ss

I certify that I know or have satisfactory evidence that Thomas Roth is the person who appeared before me and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Notary Public in and for the State of Washington
Residing at ________________________________
My appointment expires: ____________________

STATE OF WASHINGTON                COUNTY OF ____________
                                    ss

I certify that I know or have satisfactory evidence that Kathleen Roth is the person who appeared before me and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Notary Public in and for the State of Washington
Residing at ________________________________
My appointment expires: ____________________

Page 2
EXHIBIT B
(Form of Promissory Note)

PROMISSORY NOTE

Ellensburg, WA

FOR VALUE RECEIVED, KITTITAS COUNTY, a political subdivision of the State of Washington ("Borrower"), promises to pay to the order of THOMAS E. ROTH AND KATHLEEN A. ROTH ("Payee"), the sum of One Thousand Dollars ($1,000.00) with interest thereon, from the date first written above on the terms and conditions set forth herein.

1. **Interest Rate.** The interest rate on the unpaid principal balance of this Promissory Note shall be zero (0%) percent per annum simple interest.

2. **Payment.** The Promissory Note shall be payable at closing or upon termination of the terms of Assignment Agreement of even date.

3. **Default.** In the event any payment required to be paid by this Promissory Note is not paid within five (5) days after the date on which it was due, then the Maker shall be in default. If such default is not cured within five (5) business days after delivery or attempted delivery by registered mail as set forth in this Note that such payment is in default, the whole sum of both principal and interest shall become immediately due and payable at once without further notice at the option of the Holder hereof.

4. **Default Interest.** From the date of any default under this Note to the date of reinstatement, if any, this Note shall bear interest at the rate of twelve percent (12%) per annum.

5. **Severability.** The provisions of this Promissory Note are severable to the extent that any provision or clause of this Note which conflicts with the applicable law shall not affect other provisions of this Note, which shall be given effect without the conflicting provision.

6. **Attorneys’ Fees.** In the event this Promissory Note is placed in the hand of an attorney for collection or if suit shall be brought to collect any of the principal or interest of this Promissory Note, Maker shall pay reasonable attorneys’ fees in addition to all costs of collection and expense of suit.

7. **Waiver of Presentment.** Presentation for payment, notice of dishonor, protest, and notice of protest are hereby waived.

8. **Nonwaiver.** Failure to exercise any right or option of Holder shall not constitute a waiver of right to exercise such right or option if Maker is in default hereunder.

9. **Execution as Principal.** Each Maker of this Promissory Note executes the same as a principal and not as surety.

10. **Applicable Law.** This Promissory Note shall be governed by and construed and enforced in accordance with the laws of the State of Washington. Venue for any action arising from or in connection with this Promissory Note shall be in the federal and state courts of Kittitas County Superior Court.

11. **Notices.** All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to the terms of this Promissory Note or the Security Agreement securing this Promissory Note shall be in writing and shall be deemed to have been properly given if sent by registered mail, postage prepaid, return receipt requested, to the addresses of the parties.
EXHIBIT C
(Form of Notice of Assignment of Trust Water Rights
and Consent to Assignment of Trust Water Rights)

NOTICE OF ASSIGNMENT OF TRUST WATER RIGHTS
AND
CONSENT TO ASSIGNMENT OF TRUST WATER RIGHTS

THIS NOTICE OF ASSIGNMENT OF TRUST WATER RIGHTS AND CONSENT TO ASSIGNMENT OF TRUST WATER RIGHTS is entered into this ______ day of ______, 2014 by and between the Washington State Department of Ecology ("Ecology"), Kittitas County, a political subdivision of the State of Washington (the "County") and Thomas E. Roth and Kathleen A. Roth ("Roth").

RECITALS

A. WHEREAS, Roth is a party to a Trust Water Right Agreement, which Roth entered into with the Washington State Department of Ecology, Yakima River Basin Trust Water Rights Program on February 28, 2012 (hereinafter the "Trust Water Right Agreement"). The Trust Water Right Agreement is attached hereto as Exhibit A; and

B. WHEREAS, the Trust Water Right Agreement provides the terms and conditions under which water rights conveyed by Roth to Ecology by Water Right Conveyance dated March 03, 2012 and recorded under Kittitas County Auditor's File No. 201203130018 are used and managed for a variety of purposes, including but not limited to mitigating for domestic use of water from permit exempt groundwater wells; and

C. WHEREAS, the water rights that are in trust pursuant to the Trust Water Right Agreement consist of two separate sets of Trust Water Rights: the "Roth Trust Water Right," which is legally described in Exhibit C of the Roth Trust Water Right Agreement, and was conveyed to Ecology by Water Right Conveyance recorded under Auditor's File No. 20120313008; and the "Cleonon Trust Water Right," a third-party trust water right conveyed to Ecology under a separate Trust Water Right Agreement which pertains to a separate agreement with and conveyance to Ecology by Water Right Conveyance recorded under Auditor's File No. 201203130019 (hereinafter collectively referred to as the "Roth-Cleonon Trust Water Rights"); and

D. WHEREAS, Roth has previously irrevocably obligated 1.03 consumptive acre-feet of the Roth Trust Water Right to third parties and has tentatively obligated 0.548 consumptive acre-feet of the Roth Trust Water Right; and

E. WHEREAS, Roth agrees to assign to the County and the County desires to purchase all of Roth's beneficial interest in the Roth Trust Water Right held by Ecology except the quantities referenced in Recital D; and

G. WHEREAS, the Trust Water Rights Agreement referenced above in Recital B requires Roth to give notice of the assignment and Roth and the County desire to seek Ecology's consent to the assignment and Ecology desires to now consent.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto hereby agree as follows:

Exhibit C
(Form of Notice of Assignment of Trust Water Rights
and Consent to Assignment of Trust Water Rights)
Page 1 of 2
1. **Notice of Assignment.** The purpose of this Notice and Consent is for Roth to comply with Section 9 of the Trust Water Agreement, which requires Roth to give written notice of Roth’s intention to assign the Trust Water Rights to the County. Ecology acknowledges being notified of Roth’s assignment.

2. **Ecology Consent.**

 Ecology hereby consents to the assignment by Roth to the County of the Trust Water Right Agreement and the beneficial use of 9.487 acre-feet of consumptive use of the Roth Trust Water Right identified on Exhibit C of the Trust Water Right Agreement and in so consenting Ecology agrees and acknowledges that 1.03 consumptive acre-feet of the Roth Trust Water Right have been previously irrevocably assigned to third parties by Roth and 0.548 consumptive acre-feet of the Roth Trust Water Right are tentatively assigned to third parties by Roth.

3. **Continuing Effect.**

 The County, Roth and Ecology agree that these water rights will continue to be owned by Ecology subject to the Trust Water Rights Agreement, which will remain in full force and effect until and unless amended by either the County and Ecology and/or the County and/or Roth consistent with Section 13 of the Trust Water Right Agreement.

IN WITNESS WHEREOF the parties have signed and delivered this Notice and Consent as of the day and year first above written.

**STATE OF WASHINGTON**
**DEPARTMENT OF ECOLOGY:**

By: 
Print Name: 
Its: 

**KITTITAS COUNTY**

By: 
Title: 

**THOMAS E. ROTH & KATHLEEN A. ROTH**

By: Thomas E. Roth

By: Kathleen A. Roth

---

*Exhibit C*
*Form of Notice of Assignment of Trust Water Rights and Consent to Assignment of Trust Water Rights*

Page 2 of 2
EXHIBIT D
(Form of Irrevocable Partial Assignment of the Beneficial Interest in a Trust Water Right)

<table>
<thead>
<tr>
<th>TREASURER’S USE ONLY</th>
<th>RECORDER’S USE ONLY</th>
</tr>
</thead>
</table>

After recording return to:

PETER DYKSTRA
Plauché and Carr LLP
811 First Ave., Suite 630
Seattle, WA 98104

DOCUMENT TITLE: IRREVOCABLE PARTIAL ASSIGNMENT OF THE BENEFICIAL INTEREST IN A TRUST WATER RIGHT

ASSIGNOR: THOMAS E. ROTH AND KATHLEEN A. ROTH

ASSIGNEE: KITTITAS COUNTY, a political subdivision of the State of Washington

LEGAL DESCRIPTION: N/A

ASSESSOR’S TAX PARCEL NOS.: N/A

IRREVOCABLE PARTIAL ASSIGNMENT OF THE BENEFICIAL INTEREST IN A TRUST WATER RIGHT

The Assignor, THOMAS E. ROTH AND KATHLEEN A. ROTH (hereinafter “Roth” or “Assignor”), for and in consideration of Ten Dollars ($10.00) and other valuable consideration in hand paid, does hereby irrevocably assign and convey to KITTITAS COUNTY, a political subdivision of the State of Washington (hereinafter the “County” or “Assignee”) such portion of the retained beneficial interest of Roth under that certain Trust Water Agreement dated February 28, 2012 between Roth and the Washington State Department of Ecology (the “Trust Water Rights Agreement”), a true and correct copy of which is attached hereto as Exhibit A, which placed certain water rights into the Yakima River Basin Trust Water Rights Program as authorized under Chapter 90.38 RCW to be administered by the Washington State Department of Ecology:

The quantity of water assigned subject to the Trust Water Rights Agreement is as follows:

9.887 consumptive acre-feet per year of the Water Right identified in

Exhibit D
(Form of Irrevocable Partial Assignment of the Beneficial Interest in a Trust Water Right)
Page 1 of 2
Exhibit C of the Trust Water Right Agreement attached hereto and incorporated herein by reference.

The water rights so assigned are assigned subject to the terms and conditions of the Trust Water Right Agreement.

Dated this ____ day of _____________, 2014.

EXHIBIT – TO BE SIGNED AT CLOSING

Thomas E. Roth

Kathleen A. Roth

STATE OF WASHINGTON

County of Kittitas

On this day personally appeared before me Thomas E. Roth, as the individual who executed the within and foregoing instrument, and acknowledged that he was authorized to sign the same as the free and voluntary act and deed, for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____________, 2014

EXHIBIT – TO BE SIGNED AT CLOSING

Printed Name:
Notary Public in and for the State of Washington
My appt. expires:

STATE OF WASHINGTON

County of Kittitas

On this day personally appeared before me Kathleen A. Roth, as the individual who executed the within and foregoing instrument, and acknowledged that she was authorized to sign the same as the free and voluntary act and deed, for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____________, 2014

EXHIBIT – TO BE SIGNED AT CLOSING

Printed Name:
Notary Public in and for the State of Washington
My appt. expires:

Exhibit D
(Form of Irrevocable Partial Assignment of the Beneficial Interest in a Trust Water Right)