

Agreement to Lease Water for Irrigation

This Agreement to Lease Water for Irrigation (“Lease Agreement”) is made and entered into this ___ of September, 2017 (“Lease Effective Date”) by and between Kittitas County, a political subdivision of the State of Washington, (“the County”) and Craig and Nancy Schnebly, a married couple (“Schnebly”). The County and Schnebly are collectively referred to herein as the “Parties.”

Factual Background

A. WHEREAS, Schnebly owned all of the water under Water Rights Certificates Nos. S4-85098-J and S4-84524-J in Coleman Creek, with a priority date of April 7, 1871 (“1871 Water Rights”), which are more fully described in Exhibit A, attached hereto and incorporated herein;

B. WHEREAS, a portion of the 1871 Water Rights will be sold by Schnebly to the County (“County’s 1871 Water Rights”) pursuant to a water rights purchase and sale agreement dated February 24, 2016 and modified on December 12, 2016, and again on September ___, 2017, which the Parties intend to close on or before October 1, 2017 (the “Schnebly PSA”). A copy of the Purchase and Sale Agreement is attached to this Agreement as Exhibit B and incorporated herein;

C. WHEREAS, Schnebly owned Water Rights Certificates Nos. S4-84433-J and S4-84434-J in Coleman Creek (“1886 Water Rights”), a tributary of the Yakima River, which are more fully described in Exhibit C, attached hereto and incorporated herein;

D. WHEREAS, the 1886 Water Rights will be sold by Schnebly to Kittitas County pursuant to the Schnebly PSA, which the Parties intend to close on or before October 1, 2017.

E. WHEREAS, place of use and purpose of use of the 1871 Water Rights and the 1886 Water Rights were changed from irrigation to instream flow and mitigation in the Report of Examination issued by Ecology on May 11, 2017 (“ROEs”), which is attached to this Agreement as Exhibit D and incorporated herein;

F. WHEREAS, upon closing of the Schnebly PSA, Kittitas County will have acquired the County’s 1871 Water Rights and the 1886 Water Rights from Schnebly, and the Parties are working to place the 1871 Water Rights and the 1886 Water Rights into the Yakima River Basin Trust Water Rights Program as authorized under Chapter 90.38 RCW and Chapter 90.42 RCW (the “TWRP”);

G. WHEREAS, the Parties agreed, in Paragraph 10 of the Schnebly PSA as amended, that the County will lease to Schnebly and Schnebly will lease from the County at least enough water to irrigate 82 acres each year for ten (10) years, commencing with the 2018 irrigation season (“Leaseback Provision”); and

H. WHEREAS, the Parties wish to lay out more the process for implementing the Leaseback Provision.

Agreement

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

1. **Factual Background.** The foregoing statements of factual background are true, correct and incorporated into this Lease Agreement by this reference.

2. **Term of Agreement.** The term of this Lease Agreement shall commence on the Effective Date and continue through October 1, 2027 (“Agreement Term”), unless sooner terminated or extended by modification or amendment hereto, as provided in paragraphs 9 and 14.

3. **Contingent on Closing of Schnebly PSA.** This Lease Agreement is contingent on the closing of the Schnebly PSA. If the Schnebly PSA fails to close, this Lease Agreement shall be null and void.

4. **Annual Lease of Water.** The County and Schnebly will meet in February of each year during the Agreement Term (“Annual Lease Meeting”) to determine the total amount of water to be leased by the County to Schnebly in that year in accordance with the following.

4.1.1 The County shall lease to Schnebly and Schnebly shall lease from the County water sufficient to irrigate 82 acres each year (“Minimum Leaseback Amount”) from the County’s 1871 Water Rights and the 1886 Water Rights.

4.1.2 The County may, in its own discretion, elect to lease to Schnebly additional water from the 1886 Water Rights.

4.1.3 If the County elects to lease any additional portion of the 1886 Water Rights to any party other than Schnebly, the County shall inform Schnebly at the Annual Lease Meeting of its intent to do so, and Schnebly shall have fifteen (15) days to exercise Schnebly’s first option to lease more water than the Minimum Leaseback Amount at the lease price identified in the County’s proposed lease agreement to the other party.

4.1.4 The County and Schnebly shall agree in writing within twenty (20) days of the Annual Lease Meeting to the total amount of water to be leased by the County to Schnebly in that year (“Total Annual Lease Amount”).

4.1.5 Within five (5) days of the Parties’ written agreement regarding the Total Annual Lease Amount, the County shall notify the Washington State Department of Ecology of the Total Annual Lease Amount and the use, if any, of the County’s 1871 Water Rights and the 1886 Water Rights for the purposes set forth in this Lease

Agreement.

5. Annual Lease Payment Amount. At the Annual Lease Meeting, the County and Schnebly will determine the total annual lease price to be paid by Schnebly to the County (“Total Annual Lease Payment”) in accordance with the following:

5.1.1 Schnebly will pay the County an annual lease price equal to the number of acres of water leased from the County multiplied by per acre price established by the Kittitas Reclamation District for water for each specific year of the Lease for the Minimum Leaseback Amount and any additional water that the County might choose to lease to Schnebly pursuant to paragraph 4.1.2 above.

5.1.2 If Schnebly chooses to exercise the first option to lease additional water pursuant to paragraph 4.1.3, Schnebly shall pay the County the lease price identified in the County’s proposed lease agreement to the other party for any additional water leased by Schnebly pursuant to the first option.

5.1.3 Schnebly shall pay the County the Total Annual Lease Payment within thirty (30) days of receipt of an invoice from the County, which shall be issued by the County no earlier than March 15th of each year and no later than May 1st of each year.

6. Diversion Limitation. Schnebly agrees to limit its diversion of water in each year to the Total Annual Lease Amount plus the 76.76 acre-feet per year of the 1871 Water Rights retained by the Schnebly in paragraph 3 of the Schnebly PSA for irrigation of the 23.05 acres identified on Exhibit D of the Schnebly PSA. (This diversion limitation does not include the separate quantity of 6.66 acre-feet per year under the 1871 Water /Rights to be retained by Nash for irrigation of 2.0 acres, as contemplated under the ROEs.)

7. Notice. Any notice or communication required by this Agreement between the County and Schnebly shall be given to the addresses set forth below:

The County:

Kittitas County
Board of Commissioners
205 W 5th Avenue, Suite 108
Ellensburg WA 98926-2887

Schnebly:

Craig Schnebly
2570 Schnebly Road
Ellensburg WA 98926

8. **Advice of Counsel.** The parties acknowledge they have had the opportunity to consult with their own legal counsel regarding this Agreement.

9. **Entire Agreement; Modifications.** This Lease Agreement constitutes the entire agreement of the County and Schnebly with respect to the Lease of the County's 1871 Water Rights and the 1886 Water Rights. Any prior correspondence, letters of intent, memoranda, understandings, offers, negotiations and agreements, oral or written, other than the Schnebly PSA, are replaced in total by this Lease Agreement. This Lease Agreement may not be modified or amended except by a written instrument signed by both parties.

10. **Counterparts/Facsimile Execution.** This Lease Agreement may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one contract, binding on the County and Schnebly, even though the signatures of all parties may not appear on any one counterpart. For purposes of this Agreement, original instruments or telephonic or electronic mail facsimiles in any number of counterparts, all of which together shall constitute one and the same of a signed counterpart of this Lease Agreement.

11. **Construction.** This Lease Agreement will be governed by and construed under the laws of the State of Washington. The captions and paragraph titles used in this Agreement are for reference only and will not be used in the interpretation of this Agreement or any related document. If any provision of this Agreement is determined to be illegal, void or unenforceable, such determination will not affect any other provision of this Agreement and all such other provisions will remain in full force and effect.

12. **Governing Law; Venue.** This Lease Agreement shall be interpreted, construed and enforced according to the laws of the State of Washington and venue for any disputes arising under this Agreement shall be in Kittitas County, Washington.

13. **Assignment; Successors.** Neither the County nor Schnebly may sell, transfer, assign, pledge or encumber its interest in this Lease 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 County and Schnebly shall inure to the benefit of and be binding upon their respective estates, heirs, executors, administrators, successors, successors-in-trust and assigns.

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

This Lease Agreement has been signed by the County and Schnebly as of the Effective Date.

KITTITAS COUNTY:

SCHNEBLY:

By:
Its:

By: Craig Schnebly

By: Nancy Schnebly

ACKNOWLEDGEMENTS

State of Washington
County of _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated her authority to execute the instrument as the authorized agent for KITTITAS COUNTY, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated: _____ Name: _____

NOTARY PUBLIC for the State of _____,
residing at _____
My appointment expires: _____

State of Washington
County of _____

I certify that I know or have satisfactory evidence that Craig Schnebly 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.

Dated: _____ Name: _____

NOTARY PUBLIC for the State of _____,
residing at _____
My appointment expires: _____

State of Washington
County of _____

I certify that I know or have satisfactory evidence that Nancy Schnebly 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.

Dated: _____ Name: _____

NOTARY PUBLIC for the State of _____,
residing at _____
My appointment expires: _____

EXHIBITS

Exhibit A: Water Rights Certificate Nos. S4-85098-J and S4-84524-J

Exhibit B: Purchase and Sale Agreement

Exhibit C: Water Rights Certificate Nos. S4-84433-J and S4-84434-J

Exhibit D: May 11, 2017 Reports of Examination