

OPTION AGREEMENT FOR PACKAGE B MITIGATION CERTIFICATES

THIS OPTION AGREEMENT FOR PACKAGE B MITIGATION CERTIFICATES (hereinafter “this Agreement”) is made and entered into this ____ day of _____, 2017 (“Option Agreement Effective Date”), by and between Kittitas County, a political subdivision of the State of Washington (hereinafter referred to as the “County”) and Craig and Nancy Schnebly, husband and wife (hereinafter referred to as “Optionees” or “Schnebly”). The County and Optionees are referred herein collectively as the “Parties”).

RECITALS

A. WHEREAS, Optionees are current owners of real property in Kittitas County, which is legally described in Exhibit A attached and hereby incorporated into this Agreement (hereinafter “the Property”); and

B. WHEREAS, Optionees want to retain the ability to develop the Property for residential use but are in the process of selling the water rights currently appurtenant to the Property to the County; and

C. WHEREAS, the Optionees and County are currently working together to ensure that the County provide water mitigation certificates for domestic water supply in the County, including on the Property, as part of the Water Rights Purchase and Sale Agreement dated February 24, 2016, amended first on December 12, 2016, and amended second on the Option Agreement Effective Date (hereinafter collectively, “the Water Rights Agreement”), which is attached as Exhibit B; and

D. WHEREAS, the County currently operates the Kittitas County Water Bank and has water available to support mitigation of new groundwater uses in certain parts of Kittitas County in the form of a Package A, equivalent to 0.10 acre-feet of consumptive use of water, and a Package B, equivalent to 0.125 acre-feet of consumptive use of water; and

E. WHEREAS, the County does not yet own or manage water rights or a water bank that can provide mitigation for domestic water supply on the Property, but the Parties anticipate that the County will have such water rights or water bank pursuant to the successful closing of the Water Rights Agreement; and

F. WHEREAS, Optionees want the opportunity to use up to thirty-four (34) Package B mitigation certificates for domestic water supply for the Property (“Package B Mitigation Certificates”) upon the County’s successful acquisition of water to support said mitigation on the Property.

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

1. Option. Subject to the terms and conditions set forth in this agreement and subject to Option exercising this Option under the provisions of paragraph 4 below, the County and the Optionees hereby agree that the County shall sell and the Optionees shall buy Package B Mitigation Certificates upon the following terms and conditions.

2. Option Consideration. The County fully agrees and acknowledges that the consideration given by the Optionees in the form of the Water Rights Agreement, including, in particular, the Second Amendment to the Water Rights Agreement, constitutes legal, adequate, and valuable consideration for the purposes of this Agreement.

3. Exercise of Option. To exercise the Option, Optionees must provide the County with written notice of their intent to exercise the Option and such notice shall include the total number of Package B Mitigation Certificates the Optionees wish to purchase, not to exceed thirty-four (34) and list of the parcels on which the Package B Mitigation Certificates will be used. Optionees must purchase all of the Package B Mitigation Certificates that it elects to purchase under this Agreement in a single purchase, payable in cash at closing.

4. Purchase Price. Should the Optionees exercise this Option, Optionees agree to pay to the County Four Thousand Six Hundred Thirty-Two Dollars and Forty-Five Cents (\$4,632.45) per acre-foot of consumptive water use associated with the Package B Mitigation Certificates for which Optionee exercises this Option. By way of example, currently the Parties anticipate that if Optionees exercise the Option for the maximum of thirty-four (34) Package B Mitigation Certificates, that would be equivalent to approximately 4.25 acre-feet of consumptive use water (34 multiplied by 0.125 acre-feet), thus the Purchase Price would be Nineteen Thousand Six Hundred Eighty-Seven Dollars and Ninety-One Cents (\$19,687.91).

4.1 The County and the Optionees agree and acknowledge the specific circumstances of each Equivalent Residential Unit (“ERU”) mitigation (i) 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 (ii) vary depending on how and the circumstances under which the County allows third parties to rely on water rights in County water banks in the future.

4.2 The County and the Optionees agree and acknowledge the geographic area and the time of year 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.

4.3 The County and the Optionees acknowledge and agree that how water rights are used and managed to mitigate for domestic use is subject to Ecology’s approval.

5. Condition Precedent. The County and the Optionees agree that the Optionees’ ability to exercise this Agreement is conditioned on the County acquiring the water rights under the Water Rights Agreement and establishing a water bank authorized in sufficient quantities to issue the Package B Mitigation Certificates for domestic use for the Property. If the County is unable to establish a water bank authorized in sufficient quantities to issue the Package B

Mitigation Certificates for domestic use for the Property on or before January 1, 2019, then this Agreement shall expire.

5.1 If this Agreement expires under the provisions of Paragraph 5, then the County and the Optionees agree that the County will work with the Optionees and the Washington Department of Ecology to return to the Optionees the 20 acre-feet of consumptive use water associated with the Second Amendment to the Water Rights Agreement (“the Schnebly Development Water”). In connection therewith, the Parties’ respective Trust Water Right Agreements with Ecology shall confirm that re-conveyed Schnebly Development Water shall remain in trust for instream flow enhancement or similar Ecology-approved purposes until such time as Schnebly may elect to change and put Schnebly Development Water to alternative, out-of-stream uses, including without limitation, sale and transfer of water to other lands and mitigated domestic and/or irrigation permits or approvals, subject to applicable administrative water right permit or transfer application requirements.

5.2 If the County and the Optionees need to execute the provisions of paragraph 5.1, the Optionees shall reimburse the County for the Schnebly Development Water at the same price for which the County purchased the Schnebly Development Water, to wit Ninety-Two Thousand Six Hundred and Forty-Nine Dollars (\$92,649.00).

5.3 If the County and the Optionees need to execute the provisions of paragraph 5.1, the Parties shall share equally in any costs associated with returning the Schnebly Development Water from the County to the Optionees.

6. Closing.

6.1 Definitions.

6.1.1 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.

6.1.2 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 the County. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to Assignor.

6.1.3 Place and Time of Closing. The sale shall be closed in the offices of Stewart Title, Ellensburg (hereinafter the “Closing Agent”), within one-hundred (120) days after the exercise of the Option, but in any event **on or before December 1, 2028, which shall be the Termination Date.**

6.2 Obligations at Closing. The County and Optionees shall deposit with the Closing Agent all instruments, documents, and monies necessary to transfer the Package B

Mitigation Certificates to Optionee and close the sale in accordance with this Agreement.

6.2.1 Recording of Mitigation Certificates. The County and Optionees agree that, as part of Closing, all Package B Mitigation Certificates for which Optionee exercises this Option shall be legally recorded by Optionee with the Kittitas County Auditor's office on the title record with each parcel on which a Package B Mitigation Certificate will be used.

6.3. Payment of Closing Costs.

6.3.1 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 the County and Optionees.

6.3.2 Costs to be paid by the County. The County shall pay all real estate excise taxes, attorney's fees incurred by the County, if any, and other charges normally borne by a Seller.

6.3.3 Costs to be Paid by Optionees. Optionees shall pay Optionees' attorney fees, if any, and those costs or expenses normally allocated to a Buyer in a real estate transaction.

7. Execution of All Documents. County and Optionees, 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.

8. 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.

9. Governing Law and Venue. 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.

10. 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.

11. 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.

12. 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.

13. Legal Relationships. The parties to this Agreement execute the same solely as a Seller and Optionee. 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.

14. Assignment; Successors. Neither the County or the Optionees 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 County and the Optionees shall inure to the benefit of and be binding upon their respective estates, heirs, executors, administrators, successors, successors-in-trust and assigns.

15. Entire Agreement. All understandings and agreements previously existing between the parties regarding this Agreement, 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.

16. 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.

17. 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.

18. 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.

OPTIONEES:

COUNTY:

CRAIG SCHNEBLY

KITTITAS COUNTY

Date: _____

By: _____

Title: _____

Date: _____

NANCY SCHNEBLY

Date: _____

County's Address: _____

County's phone: _____

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 his 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: _____

INDEX TO EXHIBITS

Exhibit A: Description of the Property

Exhibit B: Water Rights Agreement