

## Agreement for Transfer of Water Rights

This Agreement for Transfer of Water Rights (“Agreement”) is entered into between the TRUST FOR PUBLIC LAND (“TPL” or “Seller”) and KITTITAS COUNTY, a political subdivision of the State of Washington (hereinafter “the County”), as of 5/17, 2017 (“Effective Date”).

### Factual Background

A. This Agreement is for the transfer of a portion of the water rights described in Exhibit A to this Agreement (“Water Rights”), which is attached to this Agreement and incorporated by this reference. Two individual water rights were confirmed to claim 00383 in the Yakima River Adjudication, *State of Washington Department of Ecology v. Acquavella*, Yakima Superior Court No. 77-2-01484-5. The Conditional Final Order (CFO) for Subbasin 3, which includes the Water Rights, was signed on February 8, 2001. Teanaway Valley Family Farm, LLP moved for a partition of water rights under this claim, which the Yakima Superior Court granted on June 2<sup>nd</sup>, 2003. Ownership of the Water Rights remained with Teanaway Valley Family Farm, LLP following the partition. Teanaway Valley Family Farm, LLP was subsequently merged into Teanaway Valley Family Farm, LLC (“TVFF”) on or about June 5, 2008.

B. TPL is a “nonprofit nature conservancy organization” as defined in Revised Code of Washington (“RCW”) 64.04.130 and RCW 84.34.250, and is a tax-exempt organization under Internal Revenue Code Section (“IRC”) 501(c)(3), whose mission is to protect land for people to ensure healthy, livable communities for generations to come. TPL achieves its mission by, among other things, helping to complete real estate transactions for transfer for permanent protection by a government or community land trusts. TPL anticipates that it will purchase real property appurtenant to the Water Rights and transfer title of land and an associated single residential exempt well to the Washington Department of Fish and Wildlife (“WDFW”). The appurtenant real property is described in Exhibit B to this Agreement, attached hereto and incorporated herein by this reference (the “Property”).

C. TPL and the County enter into this Agreement in anticipation of TPL acquiring title to the Water Rights and the property appurtenant to the Water Rights, which is more fully described in Exhibit B, attached hereto and incorporated by reference (“Appurtenant Property”), from TVFF on or around June 30, 2017, and then severing the Water Rights from the Appurtenant Property and simultaneously transferring title to the Appurtenant Property to WDFW. The parties acknowledge that as of the Effective Date of this Agreement, TPL does not own the Water Rights or the Appurtenant Property. If TPL does not acquire title to the Water Rights and Appurtenant Property by June 30, 2017, this Agreement shall terminate and be of no further force or effect.

D. On June 5, 2006, Washington Water Trust (hereinafter “WWT”) entered into an

agreement to lease “Corner Water” from the TVFF. On December 4, 2007 WWT entered into a second agreement to lease “Late Season Water.” These two lease agreements were each amended on April 9, 2008 and April 16, 2010. The lease term for the agreements is from 2008 through September 30, 2022. Both lease agreements contain an option to purchase the portion of the Water Rights currently under lease (the Corner Water and Late Season Water) and specified the purchase price. The agreements also provide that the 18% of all rental payments made under the agreements will be credited toward the purchase price.

E. By way of separate agreement, WWT agreed to exercise its option to purchase from Seller a portion of the Water Rights currently under lease. The portion of Water Rights WWT seeks to purchase is described in Exhibit C and incorporated by this reference herein (“WWT Exercised Trust Water Rights”). TPL intends to transfer to the County the remaining Water Rights (the Water Rights not being purchased by WWT), which are described in Exhibit D, which is attached hereto and incorporated herein by this reference (“Kittitas County Water Rights”). The quantities of water described in Exhibits C and D are estimates. The actual quantities to be purchased will be determined in the Report of Examination to be issued pursuant to Section 4 of this Agreement. WWT will continue to lease the Corner Water and the Late Season Water under the existing lease agreements through September 30, 2022.

F. The County wishes to purchase and permanently transfer the Kittitas County Water Rights to the Washington Trust Water Rights Program to be used in part as mitigation for existing and/or future groundwater withdrawals in Kittitas County, as allowed under RCW Chapters 90.03, 90.38, 90.42, and 90.54., subject to the County’s right to provide use of the Kittitas County Water Right to WDFW for a period of up to five (5) years following the Closing Date for the purpose of allowing WDFW to irrigate and restore the Appurtenant Property pursuant to a separate agreement to be entered into between the County and WDFW.

G. Seller now wishes to sell all of the Kittitas County Water Rights for the purposes and in consideration of the mutual promises between the County and Seller, as stated in this Agreement.

### **Agreement**

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Sellers agree as follows:

1. **Factual Background.** To the best of Seller’s actual knowledge, the foregoing statements of factual background are true, correct, and incorporated into this Agreement by this reference.

2. **Transfer of the Kittitas County Water Rights.** Subject to all of the terms, covenants, and conditions set forth in this Agreement, Seller hereby agrees to transfer the Kittitas County Water Rights described in Exhibit D, to the extent that Ecology approves the permanent transfer of such water rights to the Washington Trust Water Rights Program, as stated in

Ecology's report(s) of examination ("Report of Examination") to be issued in connection with the Change Application, subject to any modifications made by a reviewing body on appeal. Seller understands that: (a) Ecology's Report of Examination will be based upon the actual historical use of water pursuant to the Water Rights; (b) in quantifying the County Water Rights, Ecology will consider various factors such as consumptive use, conveyance losses, and return flows; and (c) the County Water Rights that Ecology approves for transfer to the Washington Trust Water Rights Program may include a lesser quantity of water or a shorter annual period of use than is described in Exhibit D or that were confirmed in the Yakima River Adjudication (*Acquavella*).

**3. Consideration for the Kittitas County Water Rights.** On or before the Acquisition Closing Date, the County will deposit Three Hundred and Eighty Two Thousand Five Hundred Eighty Four Dollars (\$382,584.00) (the "County's Contribution") into escrow in connection with the transactions contemplated by this Agreement. The County's Contribution will be applied towards TPL's purchase of the Water Rights and the Appurtenant Property from TVFF at the Acquisition Closing (defined below) as contemplated and provided for above, as well as the cost of certain capital improvements to the Appurtenant Property.

**4. Ecology Change Application.** Within five(5) days after the Effective Date of the Agreement, WWT will deliver to Seller and the County one or more counterpart applications (collectively, the "Change Application"), in the form prescribed by Ecology, for transfer of the Kittitas County Water Rights pursuant to this Agreement and transfer of WWT Exercised Trust Water Rights to the Washington Trust Water Rights Program pursuant to a separate agreement between Seller and WWT. Within 5 days after WWT delivers to Seller the Change Application, Seller will: (i) obtain the signature of the owner of the Water Rights on all counterparts of the Change Application and (ii) deliver to WWT all of the original signed counterparts of the Change Application. Seller is not required to pay any of the costs associated with the Change Application or its approval by Ecology. However, Seller will cooperate with Kittitas County and WWT in all aspects of the application process and will allow WWT and the County to defend any objections and pursue any appeals relating to the Change Application. Seller is not obligated to pay any of the costs relating to any objections or appeals, unless the objection or appeal is based upon: (i) an action taken by Seller or by the owner of the Water Rights, without WWT's and the County's written consent, after the Effective Date; or (ii) a breach by Seller of any of their representations or warranties contained in this Agreement. In either of such cases, Seller will pay all costs relating to the objection or appeal, to the extent that such objection or appeal is related to the actions of Seller or the owner of the Water Rights, as described in the preceding sentence. WWT will file the Change Application with Ecology no later than 5 days after receipt of the signed copies from Seller as provided under this section.

**5. Escrow.**

**5.1 Escrow Agent.** The term "Escrow Agent" means First American Title Insurance Company in Seattle, Washington, that will, pursuant to separate agreement, act as the

escrow agent and closing agent for the Closing of the acquisition of the Appurtenant Property TPL and TPL's conveyance of the Appurtenant Property to WDFW.

5.2 Seller's Deposits to Escrow. On or before the Closing Date, Seller will deliver to the Escrow Agent the following:

5.2.1 Deed. A duly executed and acknowledged Bargain and Sale Deed and Assignment of Warranties, in the form attached hereto as Exhibit D, conveying to Kittitas County good, marketable, and indefeasible fee simple title to those portions of the Kittitas County Water Rights that Ecology approves for permanent transfer to the Washington Trust Water Rights Program.

5.2.2 FIRPTA and REET Affidavit. A duly executed and acknowledged FIRPTA Tax Affidavit from the Seller, in the form attached hereto as Exhibit E stating that neither the Seller executing any of the instruments of conveyance nor any persons receiving any proceeds from the sale of the Kittitas County Water Rights are "foreign persons" as defined in Internal Revenue Code Section 1445 and related regulations and a standard form Washington Real Estate Excise Tax Affidavit.

5.2.3 Other Documents. Such other documents necessary or advisable to effect the valid consummation of the transaction described in this Agreement regarding the Kittitas County Water Rights, or required by the Escrow Agent, all duly executed and acknowledged where appropriate.

5.2.4 Seller's Escrow Instructions. Seller's written instructions to the Escrow Agent regarding the procedures to be followed for Closing regarding the Kittitas County Water Rights, all of which must be in accordance with this Agreement or approved in writing by Kittitas County.

5.3 Kittitas County's Deposits to Escrow. On or before the Closing Date, WWT will deliver to the Escrow Agent the following:

5.3.1 Evidence of Kittitas County's deposit of the County's Contribution into escrow to be applied toward TPL's purchase of the Appurtenant Property and Water Rights from TVFF.

5.3.2 Other Documents. Such other documents necessary or advisable to effect the valid consummation of the transaction described in this Agreement, or required by the Escrow Agent, all duly executed and acknowledged where appropriate.

5.3.3 Kittitas County's Escrow Instructions. Kittitas County's written instructions to the Escrow Agent regarding the procedures to be followed for Closing and recording regarding the Kittitas County Water Rights, all of which must be in accordance with this Agreement or approved in writing by Sellers.

5.4 Prorations and Closing Costs. If any cost described in this Section 5.4 is not subject to precise determination by the Closing Date, Kittitas County and the Seller will cooperate after Closing and account to each other for correct prorations at such time as the precise costs are determined.

5.4.1 Real Property Taxes. All real property taxes (if any) allocated by the taxing authorities to the Kittitas County Water Rights will be prorated between Kittitas County and the Seller as of the Closing Date.

5.4.2 Title Transfer Costs. The Seller will pay all recording fees, real estate excise taxes, and all other transfer and conveyance taxes imposed by any governmental authority upon the sale of the Kittitas County Water Rights pursuant to this Agreement.

5.4.3 Title Report Costs. Kittitas County will pay for the Preliminary Title Report.

5.4.4 Escrow Fees. Kittitas County and the Seller will each pay one-half of the Escrow Agent's fees for its services rendered in connection with this transaction.

5.4.5 Legal Fees. Each party will be responsible for paying for any and all legal services rendered to that party.

5.4.6 Other Costs. Except as expressly provided above, all other charges, costs, and expenses of any nature related to the ownership of the Kittitas County Water Rights and accruing prior to Closing will be paid by the Seller. In addition, Seller will be responsible for payment of any other taxes on the Purchase Price, including but not limited to income tax.

## **6. Closing.**

6.1 Defined. The term "Closing" means the transfer and conveyance of the Kittitas County Water Rights from Seller to Kittitas County, in accordance with the terms, covenants, and conditions of this Agreement. The term "Acquisition Closing" means the transfer of the Appurtenant Property and Water Rights from TVFF to TPL.

6.2 Closing Date. The Acquisition Closing will occur no later than June 30, 2017. Closing of the transfer of Water Rights from Seller to the County will occur ("Closing Date") no later than 90 days after the date that Ecology issues its Report of Examination, unless Ecology's Report of Examination is appealed, in which case Closing will occur no later than 90 days after the termination of such appeal(s). However, Seller and Kittitas County may agree in writing that Closing will occur on another date.

7. Conditions Precedent. Seller may waive, in whole or in part, any condition precedent to Seller's obligation to sell under this Agreement. Kittitas County likewise may

waive, in whole or in part, any condition precedent to Kittitas County's obligations under this Agreement. Unless Seller and Kittitas County expressly agree otherwise in writing, all conditions precedent described in this Section 7 will be deemed waived once both Kittitas County and Seller have delivered to the Escrow Agent all items that each is required to deliver to the Escrow Agent pursuant to this Agreement.

7.1 Conditions Precedent to Seller's Obligation to Sell Kittitas County Water Rights. Seller is not obligated to sell the Kittitas County Water Rights to the County unless and until the following conditions are met, have occurred, or are waived:

7.1.1 Payment of the County's Contribution. On or before the Acquisition Closing Date, Kittitas County will have deposited the County's Contribution into the Escrow to be applied toward TPL's purchase of the Appurtenant Property and Water Rights as provided for in this Agreement.

7.1.2 Other Obligations of Kittitas County. On or before the Closing Date, Kittitas County will have performed each of its obligations under this Agreement.

7.1.3 Approval of Change Application. Prior to Closing, the Change Application will be approved as filed by WWT (or subject only to such variations as are acceptable to Kittitas County, to WWT and to Sellers) through issuance of a Report of Examination. In addition, any objections or appeals filed with respect to the Change Application or Report of Examination, will be resolved to Seller's satisfaction prior to Closing.

7.1.4 Purchase of Appurtenant Property. Seller is not obligated to sell the County the Kittitas County Water Rights unless and until Seller has completed its purchase of the Appurtenant Property from TVFF and its conveyance of the Appurtenant Property to WDFW.

7.2 Conditions Precedent to Kittitas County's Obligation to Purchase Kittitas County Water Rights. Kittitas County is not obligated to purchase the Kittitas County Water Rights unless and until the following conditions are met, have occurred, or are waived:

7.2.1 Inspection of Water Rights. At all times prior to the Closing Date, but after Kittitas County provides at least 24 hours prior notice, Seller will (a) allow Kittitas County, its assigns, and their agents to inspect and reinspect all aspects of the Kittitas County Water Rights; and (b) make available to Kittitas County and its assigns all documents within Seller's possession or control concerning the Kittitas County Water Rights. If Kittitas County in its absolute discretion is not satisfied with any aspect of the Kittitas County Water Rights, Kittitas County may rescind this Agreement at any time before Closing, by delivering to Seller written notice of Kittitas County's election to rescind.

7.2.2 Approval of Change Application. Prior to Closing, the Change Application for Kittitas County Water Rights will be approved as agreed to by TPL and Kittitas

County and filed by WWT (or subject only to such variations as are acceptable to Kittitas County, to WWT and to Sellers) through issuance of a Report of Examination. In addition, any objections or appeals filed with respect to the Change Application or Report of Examination will be resolved to Kittitas County's satisfaction prior to Closing.

7.2.3 No Material Adverse Change. Between the Effective Date and the Closing Date, there will be no material adverse change to the Kittitas County Water Rights, including, without limitation, the following: (a) adverse changes in legal or equitable title to the Kittitas County Water Rights; (b) defaults, breaches, violations or actions filed or taken under any mortgages, deeds of trust, or any other document or agreement related to the Kittitas County Water Rights; and (c) the creation or occurrence of additional, or any adverse change to, legal restrictions related to the Kittitas County Water Rights.

7.2.4 Funding and Ratification. On or before the Acquisition Closing Date, (i) the County will secure and deposit the County Contribution into Escrow and (ii) the Kittitas County Board of Commissioners will pass a resolution in the ordinary course of its business ratifying this Agreement and authorizing the application of the County's Contribution toward the purchase of the Appurtenant Property and Water Rights as provided for in this Agreement. In the event either of these conditions precedent are not satisfied or waived by June 30, 2017, then this Agreement shall terminate and the funds provided by the County under Section 3 of the this Agreement will be returned to the County within 30 days of termination.

7.2.5 Truth of Representations and Warranties. All of Seller's representations and warranties contained in this Agreement will be true and correct as of the Closing Date.

7.2.6 Other Obligations of Sellers. On or before the Closing Date, Seller will have performed all of its other obligations under this Agreement.

**8. Seller's Covenants, Warranties, and Representations.** In addition to the covenants, warranties, and representations contained elsewhere in this Agreement (and in any of the documents executed in connection with this Agreement) or implied by law, Seller makes the following covenants, warranties, and representations, each of which: (i) is material and being relied upon by Kittitas County, (ii) is true in all respects as of the Effective Date, and (iii) will be true in all respects at Closing.

8.1 Title. At Closing, the Seller will deliver good, marketable, and indefeasible fee simple title to the Kittitas County Water Rights, and the same will be free and clear of all material liens, claims, encumbrances, and defects of title except as approved by Kittitas County under Section 10 of this Agreement. To the best of the Seller's knowledge, there are no leases, rental agreements, service contracts, option agreements, mortgages, deeds of trust, or other written or oral commitments, arrangements, agreements, or obligations of any kind affecting the Kittitas County Water Rights, apart from WWT's June 5, 2006 Agreement for Lease of (Corner) Water Rights and WWT's December 4, 2007 Agreement for Lease of (Late

Season) Water Rights With Option to Purchase, both as amended on April 9, 2008 and April 16, 2010.

8.2 No Relinquishment or Abandonment. To the best of Seller's actual knowledge, no period of five consecutive years of partial or total nonuse of the Kittitas County Water Rights has occurred since 1967 (the year in which Chapter 90.14 RCW became effective), except for those reasons specifically identified in RCW 90.14.140. Furthermore, to the best of Seller's actual knowledge, no portion of the Kittitas County Water Rights has been intentionally unused for a period of time sufficient to constitute abandonment under the common law in the State of Washington.

8.3 No Takings. To the best of Seller's knowledge, there are no existing, proposed, or contemplated condemnation or eminent domain proceedings that would affect the Kittitas County Water Rights in any way.

8.4 No Litigation. To the best of Seller's knowledge, other than the Yakima River Adjudication, no litigation, suit, arbitration, claim, or proceeding, at law or equity, judicial, municipal, or administrative, is pending or threatened, which does or could materially affect the purchase, use, or possession of the Kittitas County Water Rights, or involve Seller or Kittitas County due to their respective use of, and interest in, the Kittitas County Water Rights.

8.5 No Violation of Agreements. To the best of Seller's knowledge, this Agreement and the performance of the parties hereunder, including, without limitation, the purchase of the Kittitas County Water Rights or any portion thereof by Kittitas County, will not violate any written or oral contract, agreement, or instrument to which the Seller is a party or that affects any portion of the Water Rights.

9. Title. Title of Seller at closing is to be free of encumbrances or defects, except nondelinquent taxes and assessments and encumbrances and defects approved by Kittitas County after examination of Seller's title to the Kittitas County Water Rights. Rights reserved in federal patents or state deeds, existing easements or other restrictions not inconsistent with Kittitas County's intended use, and other governmental regulations or provisions shall not be deemed encumbrances or defects. Following execution of this Agreement, Kittitas County shall conduct an examination of Seller's title to the Kittitas County Water Rights. Kittitas County shall give written notice to Seller of any defects or encumbrances in Seller's title to which Kittitas County objects within ten (10) days following execution of this Agreement, and Seller shall have the option of curing such defects and encumbrances to which Kittitas County objects prior to closing. Seller must notify Kittitas County of its intent to cure defects or encumbrances within 10 days of receiving notice. In the event Seller elects not to cure such defects or encumbrances, Kittitas County must elect to accept such defects or encumbrances in Seller's title as Seller declines to cure or, alternatively, to terminate this Agreement. In the event Kittitas County elects to terminate this Agreement, the Agreement shall terminate and be of no further force or effect, and the funds provided by the County under Section 3 of this Agreement will be returned to the County within 30 days of termination.



10. **Memorandum of Agreement.** At any time after the Effective Date, Kittitas County may record in the applicable land title records a memorandum or other notice of this Agreement. Seller will cooperate with Kittitas County in the preparation, signing, and recording of the memorandum. Kittitas County will provide Seller with copies of any documents recorded.

11. **Remedies, Attorneys' Fees.** If any party breaches this Agreement, the other party may pursue any remedies available at law or in equity. The prevailing party in any action brought to remedy a breach of this Agreement shall be entitled to its reasonable attorney fees and costs.

12. **Entire Agreement; Modifications.** This Agreement constitutes the entire agreement of Seller and Kittitas County with respect to the purchase of the Kittitas County Water Rights. Any prior correspondence, letters of intent, memoranda, understandings, offers, negotiations, and agreements, oral or written, are replaced in total by this Agreement. This Agreement may not be modified or amended except by a written instrument signed by both parties.

13. **Survival.** Except as expressly otherwise provided in this Agreement, all of the obligations, covenants, indemnities, warranties, representations, and the remedies for breach thereof, as set forth in this Agreement, will survive Closing unimpaired, and will not merge into the conveyance documents or the recording thereof.

14. **Successors and Assigns.** This Agreement will inure to the benefit of and be binding upon the parties to this Agreement, and their respective heirs, successors and assigns. Kittitas County's interest under this Agreement may not be assigned to anyone other than Ecology, without approval of the Seller.

15. **Counterparts/Facsimile Execution.** This 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 Kittitas County and Seller, even though the signatures of all parties may not appear on any one counterpart. For purposes of this Agreement, a facsimile of a signed counterpart of this Agreement delivered to the other parties will constitute valid execution and delivery of the Agreement by the party that signs and sends such facsimile.

16. **Construction.** This Agreement will be governed by and construed under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall lie in Kittitas County, 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.

This Agreement has been signed by Seller and Kittitas County as of the Effective Date

COUNTY:  
KITTITAS COUNTY

Seller:  
TRUST FOR PUBLIC LAND

By:   
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas E. Tyner  
Its: Division Legal Director

Address:

Address: 901 5th Avenue,  
Suite 1520  
Seattle, WA 98164

**ACKNOWLEDGEMENTS**

State of Washington  
County of King

I certify that I know or have satisfactory evidence that Thomas E. Tyner is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated his authority to execute the instrument as an authorized agent of THE TRUST FOR PUBLIC LAND, and acknowledged it 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 Kittitas

I certify that I know or have satisfactory evidence that Paul Sewell 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 KITTITAS COUNTY, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated: May 17, 2017 Name: Julie Kjorsvik  
NOTARY PUBLIC for the State of wa,  
residing at Ellensburg



My appointment expires: 2/19/18

**EXHIBITS**

**Exhibit “A”:** Description of Seller’s Water Rights

**Exhibit “B”:** Legal Description of Appurtenant Property

**Exhibit “C”:** WWT Exercised Trust Water Rights (Estimate)

**Exhibit “D”:** Kittitas County Water Rights (Estimate)

**Exhibit “E”:** Bargain and Sale Deed and Assignment of Warranties

**Exhibit “F”:** FIRPTA Tax Affidavit

**Exhibit A: Water Rights**

**Water Right 1: Court Claim 00383 (A)05635, Certificate S4-83722-J**

Source: Teanaway River through a ring well and unnamed stream (John's Creek)

Purpose of Use: Irrigation of 23.5 acres and stock water

Period of Use: May 1 through September 15 for irrigation; continuous for stock watering

Instant Quantity: 0.47 cubic foot per second

Annual Quantity: 91 acre-feet per year for irrigation, 1 acre-foot per year for stock watering

Priority Date: June 30, 1888

Point of Diversion: Ring well: 1,190 feet south of the center of Section 10, T. 20 N., R. 16 E.W.M., close to the line separating the NE $\frac{1}{4}$ SW $\frac{1}{4}$  from the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10.

Unnamed Creek: 400 feet north and 850 feet east of the center of Section 10, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M.

Place of Use: Those portions of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M. lying northerly of the Teanaway River and southerly of the Teanaway Road, EXCEPT that portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 10 lying northwesterly of the following described line: Beginning at a point on the north line of said SW $\frac{1}{4}$ NE $\frac{1}{4}$  that is 275 feet west from the northeast corner of said SW $\frac{1}{4}$ NE $\frac{1}{4}$  and thence running southwesterly to a point on the south line of said SW $\frac{1}{4}$ NE $\frac{1}{4}$  that is 400 feet east of the southwest corner of said SW $\frac{1}{4}$ NE $\frac{1}{4}$ , which is the terminus of said described line. AND EXCEPT that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M. lying southeasterly of the following described line: Beginning at the northeast corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$  and thence running southwesterly to the southwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ , which is the terminus of said described line.

Limitations of Use: The ring well must tap and utilize water within the unconsolidated alluvial sediments.

When stream flows are unable to fully satisfy all Teanaway River water rights, this priority right shall be regulated in favor of senior water right holders based upon the present adjudicated rights.

When there is surplus water in the Teanaway River after all existing rights are satisfied, up to an additional 0.47 cubic foot per second may be diverted. This water will normally only be available for a 30 day period in

May and June.

Comments: This water right reflects changes approved pursuant to Water Right Change Application No. CS4-00383CTCL(A).

**Water Right 2: Court Claim 00383 (A)05635, Certificate S4-83724-J**

Source: Teanaway River through a ring well and unnamed stream (Fred's Creek)

Purpose of Use: Irrigation of 26.5 acres and stock water

Period of Use: May 1 through September 15 for irrigation; continuous for stock watering

Instant Quantity: 0.63 cubic foot per second

Annual Quantity: 114 acre-feet per year for irrigation, 1 acre-foot per year for stock watering

Priority Date: June 30, 1889

Point of Diversion: Ring well: 1,190 feet south of the center of Section 10, T. 20 N., R. 16 E.W.M., close to the line separating the NE $\frac{1}{4}$ SW $\frac{1}{4}$  from the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10

Unnamed stream: 350 feet north and 500 feet east of the center of Section 10, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M.

Place of Use: That portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M. lying northeast of the Teanaway River

Limitations of Use: The ring well must tap and utilize water within the unconsolidated alluvial sediments.

When stream flows are unable to fully satisfy all Teanaway River water rights, this priority right shall be regulated in favor of senior water right holders based upon the present adjudicated rights.

When surplus water is available in excess of that needed to satisfy all the existing rights to the Teanaway River, up to an additional 0.63 cubic foot per second may be diverted. This water is normally available only for a 30 day period during May and June (0.63 cfs diverted 24 hours a day for 30 days would produce an additional 37.5 acre-feet).

Comments: This water right reflects changes approved pursuant to Water Right Change Application No. CS4- 0383CTCL@1(A)

**Exhibit B: Legal Description of Appurtenant Property**

**Property Appurtenant to Water Right No. 1:**

23.5 acres of Kittitas County Tax Parcel No. 865536 (also known as 20-16-10000-0009) and 875536 (also known as 20-16-10000-12):

That portion of the NE1/4SW1/4 of Section 10, T. 20 N., R. 16 E.W.M., lying northeast of the Teanaway River.

**Property Appurtenant to Water Right No. 2:**

26.5 acres of Kittitas County Tax Parcel No. 194835/224835 (also known as 20-16-10000-0002 and 20-16-10000-0005):

Those portions of the SW1/4NE1/4 and NW1/4SE1/4 of said Section 10, T. 20 N., R. 16 E.W.M., lying northerly of the Teanaway River and southerly of the Teanaway Road.

Except that portion of the SW1/4NE1/4 of said Section 10, lying northwesterly of the following described line: Beginning at a point on the north line of said SW1/4NE1/4 that is 275 feet west from the northeast corner of said SW1/4NE1/4 and thence running southwesterly to a point on the south line of said SW1/4NE1/4 that is 400 feet east of the southwest corner of said SW1/4NE1/4, which is the terminus of said described line.

AND Except that portion of the NW1/4SE1/4 of Section 10, T. 20 N., R. 16 E.W.M. lying southeasterly of the following described line: Beginning at the northeast corner of said NW1/4SE1/4 and thence running southwesterly to the southwest corner of said NW1/4SE1/4, which the terminus of said described line.

(The Appurtenant Property is a portion of a larger property consisting of 215 acres that The Trust for Public Land is acquiring from Teanaway Valley Family Farm, LLC and conveying to the Washington Department of Fish and Wildlife).

**Exhibit C: WWT Exercised Trust Water Rights (Estimate)**

**Water Right 1: Court Claim 00383 (A)05635, Certificate S4-83722-J**

Source: Teanaway River through a ring well and unnamed stream (John's Creek)

Purpose of Use: Current: Irrigation of 4.875 acres from May 1 through September 15 and 12.75 acres from August 1 through– September 15  
After Purchase: Instream Flow

Period of Use: After Purchase: May 1 through September 15, corresponding to the period of use

Quantity: After Purchase\*: 0.16 cubic foot per second from May 1 through September 15, 0.37 cubic foot per second from August 1 through September 15, 46.05 acre-feet per year

Priority Date: June 30, 1888

Point of Diversion: Current: Ring well: 1,190 feet south of the center of Section 10, T. 20 N., R. 16 E.W.M., close to the line separating the NE $\frac{1}{4}$ SW $\frac{1}{4}$  from the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10.  
Unnamed Creek: 400 feet north and 850 feet east of the center of Section 10, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M.  
After Purchase: None

Place of Use: Current: Those portions of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M. lying northerly of the Teanaway River and southerly of the Teanaway Road, EXCEPT that portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 10 lying northwesterly of the following described line: Beginning at a point on the north line of said SW $\frac{1}{4}$ NE $\frac{1}{4}$  that is 275 feet west from the northeast corner of said SW $\frac{1}{4}$ NE $\frac{1}{4}$  and thence running southwestery to a point on the south line of said SW $\frac{1}{4}$ NE $\frac{1}{4}$  that is 400 feet east of the southwest corner of said SW $\frac{1}{4}$ NE $\frac{1}{4}$ , which is the terminus of said described line. AND EXCEPT that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M. lying southeasterly of the following described line: Beginning at the northeast corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$  and thence running southwestery to the southwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ , which is the terminus of said described line.  
After Purchase: Instream in the Teanaway River in the primary reach, as defined by Ecology, and in the secondary reach from the point of return flows downstream to the confluence of the Yakima River with the



Columbia River.

\*This is an estimate only. Ecology will determine the actual quantity of water used for irrigation on the stated number of acres during the stated period of time when it reviews the Change Application(s).

**Water Right 2: Court Claim 00383 (A)05635, Certificate S4-83724-J**

Source: Teanaway River through a ring well and unnamed stream (Fred's Creek)

Purpose of Use: Current: Irrigation of 7.5 acres from May 1 through September 15 and 12.375 acres from August 1 through September 15

After Purchase: Instream Flow

Period of Use: After Purchase: May 1 through September 15, corresponding to the period of use

Quantity: After Purchase\*: 0.29 cubic foot per second from May 1 through September 15, and 0.05 cubic foot per second from August 1 through September 15, 68.23 acre-feet per year

Priority Date: June 30, 1889

Point of Diversion: Current: Ring well: 1,190 feet south of the center of Section 10, T. 20 N., R. 16 E.W.M., close to the line separating the NE $\frac{1}{4}$ SW $\frac{1}{4}$  from the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10

Unnamed stream: 350 feet north and 500 feet east of the center of Section 10, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M.

After Purchase: None

Place of Use: Current: That portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M. lying northeast of the Teanaway River

After Purchase: Instream in the Teanaway River in the primary reach, as defined by Ecology, and in the secondary reach from the point of return flows downstream to the confluence of the Yakima River with the Columbia River.

\*This is an estimate only. Ecology will determine the actual quantity of water used for irrigation on the stated number of acres during the stated period of time when it reviews the Change Application(s).

**Exhibit “D”: Kittitas County Water Rights (Estimate)**

**Water Right 1: Court Claim 00383 (A)05635, Certificate S4-83722-J**

Source: Teanaway River through a ring well and unnamed stream (John's Creek)

Purpose of Use: Current: Irrigation of 17 acres from May 1 through July 31, 1.625 acres from May 1 through September 15, and 4.25 acres from August 1 through September 15  
After Purchase: Instream Flow and Mitigation

Period of Use: After Purchase: Year-round

Quantity: After Purchase\*: 0.31 cubic foot per second, May 1 – July 31, 0.10 cubic feet per second from August 1 through September 15, 38.43 acre-feet per year

Priority Date: June 30, 1888

Point of Diversion: Current: Ring well: 1,190 feet south of the center of Section 10, T. 20 N., R. 16 E.W.M., close to the line separating the NE $\frac{1}{4}$ SW $\frac{1}{4}$  from the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10.  
Unnamed Creek: 400 feet north and 850 feet east of the center of Section 10, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M.  
After Purchase: None

Place of Use: Current: Those portions of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M. lying northerly of the Teanaway River and southerly of the Teanaway Road, EXCEPT that portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 10 lying northwesterly of the following described line: Beginning at a point on the north line of said SW $\frac{1}{4}$ NE $\frac{1}{4}$  that is 275 feet west from the northeast corner of said SW $\frac{1}{4}$ NE $\frac{1}{4}$  and thence running southwesterly to a point on the south line of said SW $\frac{1}{4}$ NE $\frac{1}{4}$  that is 400 feet east of the southwest corner of said SW $\frac{1}{4}$ NE $\frac{1}{4}$ , which is the terminus of said described line. AND EXCEPT that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M. lying southeasterly of the following described line: Beginning at the northeast corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$  and thence running southwesterly to the southwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ , which is the terminus of said described line.  
After Purchase: Instream in the Teanaway River in the primary reach, as defined by Ecology, and in the secondary reach from the point of return flows downstream to the confluence of the Yakima River with the

Columbia River.

\*This is an estimate only. Ecology will determine the actual quantity of water used for irrigation on the stated number of acres during the stated period of time when it reviews the Change Application(s).

**Water Right 2: Court Claim 00383 (A)05635, Certificate S4-83724-J**

Source: Teanaway River through a ring well and unnamed stream (Fred's Creek)

Purpose of Use: Current: Irrigation of 16.5 acres from May 1 through July 31, 2.5 acres from May 1 through September 15, and 4.125 acres from August 1 through September 15

After Purchase: Instream Flow and Mitigation

Period of Use: After Purchase: Year-round

Quantity: After Purchase\*: 0.34 cubic foot per second, May 1 – July 31, 0.13 cubic feet per second from August 1 through September 15, 45.19 acre-feet per

Priority Date: June 30, 1889

Point of Diversion: Current: Ring well: 1,190 feet south of the center of Section 10, T. 20 N., R. 16 E.W.M., close to the line separating the NE $\frac{1}{4}$ SW $\frac{1}{4}$  from the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10

Unnamed stream: 350 feet north and 500 feet east of the center of Section 10, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M.

After Purchase: None

Place of Use: Current: That portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M. lying northeast of the Teanaway River

After Purchase: Instream in the Teanaway River in the primary reach, as defined by Ecology, and in the secondary reach from the point of return flows downstream to the confluence of the Yakima River with the Columbia River.

\*This is an estimate only. Ecology will determine the actual quantity of water used for irrigation on the stated number of acres during the stated period of time when it reviews the Change Application(s).

**Exhibit “E”: Quit Claim Deeds and Assignment of Warranties**

**QUIT CLAIM DEED AND ASSIGNMENT OF WARRANTIES (Water Rights)**

When Recorded Return to:

(Space above this line for recorder's use only)	
<b>DOCUMENT TITLE:</b>	Bargain and Sale Deed and Assignment of Warranties(Water Rights)
<b>REFERENCE NUMBER(S) OF RELATED DOCUMENTS:</b>	N/A
Additional reference numbers on page(s) <u>N/A</u> of document.	
<b>GRANTORS:</b>	Trust for Public Land
<b>GRANTEE:</b>	Kittitas County
<b>ABBREVIATED LEGAL DESCRIPTION:</b>	Ptn. of Section 10, T. 20 N., R. 16 E.W.M.
Additional legal on Exhibit 2 of document.	
<b>ASSESSOR'S TAX PARCEL NO(S).</b>	865536 875536

**BARGAIN AND SALE DEED and ASSIGNMENT OF WARRANTIES (Water Rights)**

The Trust for Public Land of 901 5<sup>th</sup> Avenue, Suite 150, Seattle, WA 98164, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, (a) bargains, sells and conveys to Kittitas County, (“GRANTEE”), the water rights legally described on Exhibit 1 attached hereto, situate in the County of Kittitas, State of Washington, which have been severed from the real property legally described on Exhibit 2, attached hereto, to which they previously were appurtenant and (2) assigns all warranties received from its grantor, Teanaway Valley Family farm, LLC with respect to the water rights..

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.**

Dated: \_\_\_\_\_, 201\_.


**GRANTOR:**

THE TRUST FOR PUBLIC LAND

---

**GRANTEE:**

KITTITAS COUNTY

By  Paul Jewell  
Its: Chairman, Kittitas County Board of Commissioners

**[Attach appropriate acknowledgements]**

**EXHIBIT 1: WATER RIGHTS  
of Bargain and Sale Deed and Assignment of Warranties**

To be completed with description of Kittitas County Water Rights in Ecology's Report of Examination, subject to any modifications made by a reviewing body on appeal.

**Exhibit 2: PREVIOUSLY APPURTENANT REAL PROPERTY  
of Bargain and Sale Deed and Assignment of Warranties**

Property Appurtenant to Water Right No. 1:

23.5 acres of Kittitas County Tax Parcel No. 865536 and 875536: located in the SE and NE quarters of Section 10, T. 20 N., R. 16 E.W.M. and lying south of the Teanaway Road and north of the Teanaway River.

Kittitas County Tax Parcel No. 865536 (also known as 20-16-10000-0009) and

Kittitas County Tax Parcel No. 875536 (also known as 20-16-10000-12)

That portion of the NE1/4SW1/4 of Section 10, Township 20. North, Range 13 East, W.M., lying northeast of the Teanaway River.



**BARGAIN AND SALE DEED and ASSIGNMENT OF WARRANTIES (Water Rights)**

When Recorded Return to:

(Space above this line for recorder's use only)	
<b>DOCUMENT TITLE:</b>	Bargain and Sale Deed and Assignment of Warranties (Water Rights)
<b>REFERENCE NUMBER(S) OF RELATED DOCUMENTS:</b>	N/A
Additional reference numbers on page(s) <u>N/A</u> of document.	
<b>GRANTOR:</b>	Trust for Public Land
<b>GRANTEE:</b>	Kittitas County
<b>ABBREVIATED LEGAL DESCRIPTION:</b>	Ptn. of Section 10, T. 20 N., R. 16 E.W.M.
Additional legal on Exhibit 2 of document.	
<b>ASSESSOR'S TAX PARCEL NO(S).</b>	194835/224835

**BARGAIN AND SALE DEED and Assignment of Warranties(Water Rights)**

The Trust for Public Land of 901 5<sup>th</sup> Avenue, Suite 150, Seattle, WA 98164, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, (a) bargains, sells and conveys to Kittitas County, ("GRANTEE"), the water rights legally described on Exhibit 1 attached hereto, situate in the County of Kittitas, State of Washington, which have been severed from the real property legally described on Exhibit 2, attached hereto, to which they previously were appurtenant and (2) assigns all warranties received from its grantor, Teanaway Valley Family farm, LLC with respect to the water rights.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.**

Dated: \_\_\_\_\_, 201\_.

**GRANTOR:**

THE TRUST FOR PUBLIC LAND

By \_\_\_\_\_

Its: \_\_\_\_\_

**GRANTEE:**

KITTITAS COUNTY

By  \_\_\_\_\_

Its: *PAUL JEWELL*  
*Chairman, Kittitas Co.*  
*Board of Commissioners*

**[Attach appropriate acknowledgements]**

**EXHIBIT 1: WATER RIGHTS  
of Bargain and Sale Deed and Assignment of Warranties**

To be completed with description of Kittitas County Water Rights in Ecology's Report of Examination, subject to any modifications made by a reviewing body on appeal.

**Exhibit 2: PREVIOUSLY APPURTENANT REAL PROPERTY  
of Bargain and Sale Deed and Assignment of Warranties**

26.5 acres of Kittitas County Tax Parcel 194835/224835, (also known as 20-16-10000-0002 and 20-16-10000-0005):

Those portions of the SW1/4NE1/4 and NW1/4SE1/4 of said Section 10, T. 20 N., R. 16 E.W.M., lying northerly of the Teanaway River and southerly of the Teanaway Road.

Except that portion of the SW1/4NE1/4 of said Section 10, lying northwesterly of the following described line: Beginning at a point on the north line of said SW1/4NE1/4 that is 275 feet west from the northeast corner of said SW1/4NE1/4 and thence running southwesterly to a point on the south line of said SW1/4NE1/4 that is 400 feet east of the southwest corner of said SW1/4NE1/4, which is the terminus of said described line.

AND Except that portion of the NW1/4SE1/4 of Section 10, T. 20 N., R. 16 E.W.M. lying southeasterly of the following described line: Beginning at the northeast corner of said NW1/4SE1/4 and thence running southwesterly to the southwest corner of said NW1/4SE1/4, which the terminus of said described line.

**Exhibit “F”: FIRPTA Tax Affidavit**

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. To inform the Transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by THE TRUST FOR PUBLIC LAND (the “Transferor”), the undersigned hereby certified the following on behalf of the Transferor:

1. That the Transferor is the owner of the following described water right: *[fill in attributes of Kittitas County Water Right No. 1 as described in ROE to be issued by Ecology]*
2. That the Transferor is the owner of the following described water right: *[fill in attributes of Kittitas County Water Right No. 2 as described in ROE to be issued by Ecology]*
3. The Transferor is not a non-resident alien for purposes of the U.S. income taxation (as such term is defined in the Internal Revenue Code and Income Tax Regulations).
4. The Transferor’s U.S. taxpayer identification number is \_\_\_\_\_.
5. The Transferor’s address is \_\_\_\_\_ WA \_\_\_\_\_.
6. The Transferor understands that this certification may be disclosed to the Internal Revenue Service, and that any false statement contained herein could be punished by fine, imprisonment, or both.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS CERTIFICATION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT AND COMPLETE.

\_\_\_\_\_  
Transferor’s Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Place of Signature

