

APPLICATION FOR TRANSFER TO GOVERNMENTAL AUTHORITY

(Pursuant to Section 367.071(4)(a), Florida Statutes)

TO: Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

COMMISSION  
CLERK

14 MAR 31 AM 8:28

RECEIVED-FPSC

The undersigned hereby makes application for the approval of the transfer of  
(all or part) of the facilities operated under Water Certificate No. 227-W and/or  
Wastewater Certificate No. NA located in Pasco County, Florida,  
and submits the following:

PART I APPLICANT INFORMATION

A) The full name (as it appears on the certificate), address and telephone number of  
the seller (utility):

Kemple Water Company  
Name of utility

( 813) 782-2972 ( )  
Phone No. Fax No.

37502 Marcliff Terrace  
Office street address

Zephyrhills, FL 33541  
City State Zip Code

Same as above  
Mailing address if different from street address

NA  
Internet address if applicable

B) The name, address and telephone number of a representative of the utility to contact concerning this application:

Christina Kemple (813 ) 782-2972  
Name Phone No.

37502 Marcliff Terrace  
Street address

Zephyrhills, FL 33541  
City State Zip Code

C) The full name, address and telephone number of the governmental authority:

City of Zephyrhills  
Name of utility

( 813 ) 780-0000 (813) 780-0005  
Phone No. Fax No.

5335 8th Street  
Office street address

Zephyrhills, FL 33542  
City State Zip Code

Mailing address if different from street address

www.ci.zephyrhills.fl.us  
Internet address if applicable

D) The name, address and telephone number of a representative of the governmental authority to contact concerning this application:

James Drumm, City Manager ( 813-780-0000  
Name Phone No.

5335 8th Street  
Street address

Zephyrhills, FL 33542  
City State Zip Code

**PART II      FINANCIAL INFORMATION**

- A)      Exhibit    A    - A copy of the contract pursuant to Rules 25-30.037(4)(c) and (d), Florida Administrative Code.
  
- B)      Exhibit \_\_\_\_\_ - A statement regarding the disposition of customer deposits and the accumulated interest thereon.    (N/A)
  
- C)      Exhibit \_\_\_\_\_ - A statement regarding the disposition of any outstanding regulatory assessment fees, fines or refunds owed.    (N/A)
  
- D)      Exhibit    B    - A statement that the buyer (governmental authority) obtained from the utility or the Commission the utility's most recent available income and expense statement, balance sheet and statement of rate base for regulatory purposes and contributions-in-aid-of-construction.
  
- E)      Indicate the date on which the buyer proposes to take official action to acquire the utility:

\_\_\_\_\_ April 30, 2014 \_\_\_\_\_.

If only a portion of the utility's facilities is being transferred, a revised territory description and map of the utility's remaining territory must be provided, as discussed in PART III, below.

**IF THE UTILITY'S ENTIRE FACILITIES ARE BEING TRANSFERRED, PLEASE DISREGARD PART III OF THIS APPLICATION FORM.**

**PART III      CERTIFICATION**

A)      **TERRITORY DESCRIPTION**

Exhibit \_\_\_\_\_ - An accurate description of the utility's revised territory. If the water and wastewater territory is different, provide separate descriptions.

Note: Use the Survey of Public Lands method (township, range, section, and quarter section), if possible, or a metes and bounds description. Give the subdivision or project name. The description should **NOT** refer to land grants or plat books, but may use geographic boundaries (i.e., road right-of-ways, railroads, rivers, creeks, etc). The object is to make the description as brief, but as accurate as possible.

B) **TERRITORY MAPS**

Exhibit \_\_\_\_\_ - One copy of an official county tax assessment map or other map showing township, range and section with a scale such as 1"=200' or 1"=400' on which the remaining territory is plotted by use of metes and bounds or quarter sections and with a defined reference point of beginning. If the water and wastewater territory is different, provide separate maps.

C) **TARIFF SHEETS**

Exhibit \_\_\_\_\_ - The original and two copies of tariff sheet(s) revised to show correct service territory. Please refer to Rules 25-9.009 and 25-9.010, Florida Administrative Code, regarding page numbering of tariff sheets before preparing the tariff revisions. (Pages 11-12.) Sample tariff sheets are attached. (Pages 13-16.)



EXHIBIT "A"

**UTILITY  
ASSET ACQUISITION AGREEMENT**

By and Among

CITY OF ZEPHYRHILLS, FLORIDA,  
AS BUYER

and

RICHARD KEMPLE, CHRISTINA KEMPLE,  
KEMPLE WATER CO.

Dated

MARCH 24, 2014

**UTILITY  
ASSET ACQUISITION AGREEMENT**

**THIS AGREEMENT**, is made and entered into as of this 24<sup>th</sup> day of MARCH, 2014, by and among City of Zephyrhills, a municipal corporation (the "City" or "Buyer"), Richard and Christina Kemple, 37502 Marcliff Terr., Zephyrhills, Florida and Kemple Water Co.(collectively sometimes referred to as "Kemple" or "Seller").

**WITNESSETH:**

**WHEREAS**, Kemple owns a (1) potable water supply and distribution system, land and appurtenances consisting of Parcel Id Nos. 01-26-21-0040-00000-00A0 and 01-26-21-0050-00000-00B0 that are the subject of this Agreement in Pasco County, Florida; and

**WHEREAS**, pursuant to Section 180.301, Florida Statutes, the City held a public hearing on the 24<sup>th</sup> day of MARCH, 2014, concerning the proposed purchase and sale of the water and wastewater utility assets owned by Kemple that are the subject of this Agreement, and made a determination that the purchase and sale of such assets is in the public interest; and

**WHEREAS**, the City, in determining if such a purchase and sale is in the public interest, considered, at a minimum, all of the factors set forth in Section 125.3401, Florida Statutes; and

**WHEREAS**, Kemple has consented to sell its water assets to the City.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, representations and agreements contained herein, the parties to this Agreement do undertake, promise and agree for themselves, and their permitted successors and assigns as follows:

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

**SECTION 1.01. DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings as defined herein unless the context requires otherwise:

**"Agreement"** means this Utility Asset Acquisition Agreement, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

**"Board" or "Council"** means the City Council of the City of Zephyrhills, Florida.

**"Kemple"** means Richard Kemple and/or Christina Kemple, and/or Kemple Water Co., and its successors and assigns.

**"Effective Time"** means 12:01 a.m., Eastern Time, on the Closing Date so long as funds in the amount of the Purchase Price are transferred to Kemple and the ownership transfer documents are released from escrow at any time on such date.

**"Easements"** means all rights, privileges, easements, licenses, prescriptive rights, rights-of-ways, and rights to use public and private roads, highways, streets, railroads and other areas owned or used by Kemple in connection with the construction, reconstruction, installation, expansion, maintenance and operation of the Purchased Assets.

**"Environmental Laws"** includes all federal, state and local environmental laws and regulations, including, without limitation: (1) the United States Clean Water Act (also known as the United States Federal Water Pollution Control Act), 33 U.S.C. §§ 1251 et seq.; (2) the United States Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; (3) the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§



9601 et seq.; (4) the United States Superfund Amendment and Reauthorization Act of 1986, Public Law 99-499, 100 Stat., 1613; (5) the United States Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (6) the United States Safe Drinking Water Act, 42 U.S.C. § 300j-8; (7) Chapter 403 Florida Statutes; and (8) regulations related thereto. Any reference to legislative act or regulation shall be deemed to include all amendments thereto and all regulations, orders, decrees, judgments or notices issued thereunder.

**"Environmental Site Assessment" or "ESA"** has the meaning set forth in Section 4.04(A) of this Agreement.

**"Excluded Assets"** means those assets, properties and rights, tangible and intangible, real and personal, of Kemple described in **Appendix O** hereto which shall not be sold, conveyed, or transferred to the City pursuant to this Agreement.

**"Knowledge"** means, with respect to an individual who is a natural being, the actual knowledge or awareness of a particular fact or other matter, or facts or matters a prudent person could be expected to discover or otherwise be aware thereof in the ordinary course of conducting his business.

**"Material" or "Materiality"** means, except as used in Section 4.05 herein, a level of significance that would have affected any decision of a reasonable person in that person's position regarding whether to enter into this Agreement or would affect any decision of a reasonable person in that person's position regarding whether to consummate the transaction contemplated by this Agreement.

**"Purchase Price"** has the meaning set forth in Section 3.03 of this Agreement.

**"Purchased Assets"** has the meaning set forth in Section 3.02(A) of this Agreement.

**"Purchased Assets Closing"** means the closing of the transactions contemplated by this Agreement at which the Purchase Price has been paid by the City to Kemple and all of the documents executed by Kemple and the City at the Escrow Closing are released from escrow.

**"Purchased Assets Closing Date"** shall have the meaning set forth in Section 5.01 of this Agreement.

**"Real Estate Warranty Period"** has the meaning set forth in Section 2.02 of this Agreement.

**"Real Property"** means the real property owned by Kemple and conveyed to the City in fee simple pursuant to this Agreement.

**"Tax"** means any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, Real Property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereof imposed, assessed or collected by or under the authority of any governmental body or payable under any tax-sharing agreement or any other contract.

**"Title Policy"** has the meaning set forth in Section 4.06(A) of this Agreement.

**"Utility System"** means all (1) potable water supply and distribution systems owned by Kemple.

**SECTION 1.02. CONSTRUCTION AND INTERPRETATION.**

(A) Words that indicate a singular number shall include the plural in each case and vice versa, and words that import a person shall include legal entities, firms and corporations.

(B) The terms "herein," "hereunder," "hereby," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date of execution of this Agreement; and the term "hereafter" shall mean on or after the date of execution of this Agreement.

(C) Words that reference only one gender shall include all genders.

(D) This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

**SECTION 1.03. INCORPORATION.** The Appendices hereto and each of the documents referred to therein are incorporated and made a part hereof in their entirety by reference.

**SECTION 1.04. SECTION HEADINGS.** Any headings preceding the texts of the several Articles, Sections, or Appendices in this Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for the convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

**SECTION 1.05. REPRESENTATION BY COUNSEL; CONSTRUCTION.** Each party acknowledges and represents to the other that it has been represented by legal counsel in connection with the preparation and execution of this Agreement and related documents, and each party, therefore, acknowledges and agrees that any rule of construction or interpretation of language against the drafting party shall not be applicable to this Agreement or any related

document.

**ARTICLE II**  
**REPRESENTATIONS**

**SECTION 2.01. REPRESENTATIONS OF THE CITY.** The City makes the following representations, which representations shall survive the Purchased Assets Closing for a period of twelve (12) months.

(A) The City is duly organized and validly existing as a subdivision of the State of Florida.

(B) The City has full power and authority to enter into the transactions contemplated by this Agreement.

(C) The City has or will prior to closing fulfill/fulfilled and complied with the provisions of Section 125.3401, Florida Statutes, relative to the purchase of the Utility System by a governmental agency.

(D) The City is not in default under any provisions of the laws of the State of Florida material to the performance of its obligations under this Agreement. The execution, delivery and performance of this Agreement and the consummation by the City of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of the City. Assuming the due authorization, execution and delivery by Kemple, this Agreement constitutes a valid and legally binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with general principles of equity.

(E) The authorization, execution, performance and delivery of this Agreement and the consummation by the City of the transactions contemplated by this Agreement will not conflict with, violate or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order, or any provision of the Constitution or the laws of the State of Florida relating to the City or its affairs, or any ordinance, resolution, agreement, lease or other instrument to which the County is subject or by which it is bound.

(F) There is no action, suit, investigation or proceeding pending or, to the City's knowledge, threatened against or affecting the City, at law or in equity or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision, ruling or finding would adversely affect the transactions contemplated by this Agreement or which in any way would adversely affect the validity of this Agreement or any other agreement or instrument to which the City is a party and which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement.

(G) The City has not dealt with any broker, salesman or finder in connection with the transactions contemplated by this Agreement and no sales commissions or finder's fees are due or payable as a result hereof.

(H) The City has conducted its own independent investigation, review and analysis of the Utility System, and acknowledges that it has been provided adequate access to the, properties, assets, premises, books and records, and other documents and data of Kemple for such purpose. The City acknowledges and agrees that: (i) in making its decision to enter into this Agreement and to consummate the transactions contemplated by this Agreement, the City has relied upon its own investigation and the express representations and warranties of Kemple

set forth in Section 2.02 of this Agreement (including the related portions of the Appendices hereto); and (ii) neither Kemple nor any other person has made any representation or warranty as to Kemple or the Purchased Assets, except as expressly set forth in Section 2.02 of this Agreement (including the related portions of the Appendices hereto).

**SECTION 2.02. REPRESENTATIONS OF Kemple.** Kemple makes the following representations and warranties, which representations and warranties shall survive the Purchased Assets Closing for a period of six (6) months, except for those set forth in Sections 2.02(E) which shall survive for a period of twelve (12) months ("Real Estate Warranty Period").

(A) The execution, delivery and performance of this Agreement and the consummation by Kemple of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of Kemple. Assuming the due authorization, execution and delivery by the City, this Agreement will be valid and enforceable against Kemple in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with the general principles of equity.

(C) There are no current actions, suits or proceedings at law or in equity pending or, to Kemple's knowledge, threatened against Kemple before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the Purchased Assets or Kemple's right and ability to make and perform this Agreement; nor is Kemple aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding. Kemple is not materially in default with respect to any permit, order or decree of any court or of any administrative or governmental agency or instrumentality affecting

the Purchased Assets. Kemple agrees and covenants that it shall have a continuing duty to disclose to the City up to and including the Purchased Assets Closing the existence and nature of all pending judicial or administrative suits, actions, proceedings and orders which in any way relate to the construction, operation or maintenance of the Utility System.

(D) Kemple has not dealt with any broker, salesman or finder in connection with the transactions contemplated by this Agreement and no sales commissions or finder's fees are due or payable as a result hereof.

(E) Kemple acknowledges that the Utility System has been owned and operated from time to time using "doing business as" or other fictitious names as well as by other predecessors in interest. Whenever this Agreement refers to "Kemple," "Purchased Assets," or "Utility System," Kemple represents and agrees that such terms include all predecessors in interest, Richard and Christina Kemple, and Kemple Water Co. and "d/b/a" entities for purposes of this Agreement and specifically are included in the "Purchased Assets" and "Utility System" being sold by Kemple and purchased by the City under this Agreement. At the Purchased Assets Closing, Kemple will convey to the City all Purchased Assets, including Real Property, permits and all other contracts, agreements, approvals and other interests in the Purchased Assets necessary for the City to operate the Utility System.

(F) Kemple is the sole owner of the Utility System and the Purchased Assets.

(G) Kemple has or will deliver, prior to Closing, to the City the documents set forth as follows:

(1) a schedule providing recording references for the Real Property owned by Kemple, to Seller's Knowledge at the time of execution of this Agreement, to be conveyed to the City.

(2) a schedule identifying all known Easements with respect to the Purchased Assets to Seller's Knowledge at the time of execution of this Agreement, provided that, the Appendix shall not include public rights-of-ways, platted easements and general rights to use public roads, highways, and streets to be conveyed to the City.

(3) a list of Kemple's water assets comprising the Utility System with a value of \$200 or more to be conveyed to the City.

(4) a schedule of all current or active federal and Florida Department of Environmental Protection and Water Management District permits, applications or other documents, together with effective dates and any expiration dates, which authorize the operation of the Utility System by all such applicable governmental authorities and which schedule designates which, if any, of these permits or other documents are not transferable.

(5) an inventory of the equipment and other personal property, used by Kemple in connection with the operation of the Utility System to be conveyed to the City. Kemple agrees to transfer to the City all records of any kind related to customers.

(6) a schedule of all operating and vendor contracts affecting the Utility System, along with all notices of cancellation.

(7) a schedule which sets forth all service agreements under which Kemple has any continuing or outstanding water service obligations.

(8) a schedule of all other executory agreements entered into between Kemple and third parties which would reasonably be considered to be an encumbrance upon the Purchased Assets and which are to be assumed by the City, including, without limitation, any leasehold agreements.



(9) a schedule of the current tariff which sets forth the most current schedule of rates, fees and charges that Kemple is authorized to impose.

(10) a schedule of notices received by Kemple regarding environmental or operational non-compliance, if any.

(11) a schedule of Excluded Assets of the Utility, if any.

(H) Kemple shall, prior to the Closing, secure all required consents from third parties necessary to comply with the terms of any of the agreements to be assumed by the City or that are necessary for the City's ownership, operation and use of the Purchased Assets.

(I) To its knowledge, Kemple is not in violation of any governmental law, rule, regulation, permitting condition, or other governmental requirement of any type or nature which violation would have a material adverse effect on the Utility System or the Purchased Assets.

(J) To the knowledge of Kemple, (1) there are no hazardous substances (as that term is defined in the Environmental Laws), located upon or beneath the Real Property to be conveyed to the City at concentrations that could reasonably be expected to result in the owner or operator of the Real Property being required to remediate such hazardous substances under Environmental Laws, and (2) Kemple is in compliance with all applicable Environmental Laws. Kemple has not received any written notice from any governmental authority finding non-compliance with applicable Environmental Laws.

(K) Kemple has no knowledge of material facts adversely affecting the physical condition of the Purchased Assets which are not readily observable or which have not been disclosed or provided by Kemple to the City in connection with this transaction or otherwise.

## ARTICLE III

### PURCHASE AND SALE OF ASSETS

**SECTION 3.01. PURCHASE AND SALE COVENANT.** At the Purchased Assets Closing, the City shall purchase and Kemple shall sell and convey the Purchased Assets to the City upon the terms and subject to the conditions set forth in this Agreement. At the Purchased Assets Closing, the City shall assume responsibility for the performance and satisfaction of Kemple's obligations in accordance with Assignment and Assumption Agreements as set forth in the Appendices hereto.

### **SECTION 3.02. PURCHASED ASSETS.**

(A) The assets of Kemple to be purchased by the City hereunder (the "Purchased Assets") shall consist of those assets, business properties, and rights (both tangible and intangible) that Kemple owns at the Purchased Assets Closing:

(1) All fee simple Real Property as bearing parcel ID Nos. 01-26-21-0040-00000-00A0, and 01-26-21-0040-00000-00B0 hereof;

(2) All Easements recorded or otherwise existing and any others that Kemple owns or possesses that are necessary for the use of the Purchased Assets;

(3) All water wells, water supplies, wells, collection, transmission, and distribution system piping, pumping, of every kind and description whatsoever including, without limitation, all trade fixtures, leasehold improvements, lift stations, pumps, generators, controls, tanks, distribution, collection or transmission pipes or facilities, valves, service connections, and all other physical facilities, appurtenances and property installations used in the operation of the Utility System, as filed with the Florida Public Service Commission Water

Tariff, June 30, 1975, and all improvements to said water system, together with an assignment of all existing and assignable third party warranties and ownership documents;

(4) All equipment and other personal property, including, but not limited to, customer records, customer meters, meter reading devices;

(5) All as-built surveys and water plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, maintenance and operating manuals, engineering reports, calculations, computer studies, accounting, and business records of Kemple and all other information relating to the Utility System, in each case, controlled by or in the possession of Kemple that relate to the description and operation of the Utility System;

(6) To the extent that they may be transferred, all necessary regulatory approvals subject to all conditions, limitations or restrictions contained therein; all existing permits and other governmental authorizations and approvals of any kind necessary to construct, operate, expand, and maintain the Utility System according to all governmental requirements;

(7) The following records in paper and electronic form, as available: (i) all information required to be maintained related to the Purchased Assets; (ii) all information provided through the due diligence process; (iii) engineering project files; (iv) electronic map files; (v) plans for engineering projects; (vi) environmental files; (vii) developer files; (viii) daily operations logs; (ix) operations files; (x) any consents or administrative orders; (xi) service and warranty records; (xii) equipment logs, operating guides, and manuals; (xiii) database of customer accounts and customer records; (xiv) updated fixed asset list; and (xv) copy of the general ledger; and (xvi) any other records related to the operation of the Utility System;

(8) All claims of Kemple against third parties, whether choate or inchoate, known or unknown, contingent or non-contingent, relating to (a) the Purchased Assets and (b) a tacking of time periods for any prescriptive easement or adverse possession claim; and

(10) All leases and other agreements.

(B) The Purchased Assets shall be conveyed by Kemple to the City free and clear of all liens or encumbrances, subject to the Permitted Exceptions.

(C) The Purchased Assets do not and shall not include the Excluded Assets as set forth in this Agreement, if any.

(D) Within sixty (60) days after the Purchased Assets Closing, Kemple shall remove all Excluded Assets from the Real Property portion of the Utility System. Such removal shall be done in such manner as to avoid (1) any damage to the Purchased Assets, and (2) any disruption to the operation of the Utility System after the Closing. The cost of repairing any damage to the Purchased Assets resulting from such removal shall be paid by Kemple to City within sixty (60) days of receipt of written notice. Should Kemple fail to remove the Excluded Assets within such sixty (60) day period, the City shall have the right, but not the obligation, (1) to remove the Excluded Assets at Kemple's sole cost and expense; (2) to store the Excluded Assets and to charge Kemple all storage costs associated therewith; or (3) to exercise any other right or remedy conferred by this Agreement. Kemple shall, within sixty (60) days of receipt of written notice, reimburse the City for all costs and expenses incurred by the City in connection with any Excluded Assets not removed from the Utility System by Kemple within the timeframe provided above.

(E) The City does not assume any debts, liabilities, obligations, or other financial or service obligations of Kemple, except as returning a pro-rata share of the utility payments made by Kemple's customers in an amount not to exceed \$6,160.80, said amount shall be deducted from the purchase price, hereto or except as may be expressly provided hereunder. The City does not assume and shall not be liable for any expense, assessment, exposure, fine, penalty, liability, act or omission of any kind whatsoever imposed or required by any third party, whether known or unknown, contingent, liquidated or not liquidated, arising or accruing under contract, tort, or pursuant to statute, rule, ordinance, law, regulation or otherwise, arising or accruing before the Closing Date, regardless of when the claim is made. Kemple shall remain liable for and shall pay, perform or discharge all such liabilities and obligations. The City does not assume, and is not liable for, any litigation pending at the Closing involving Kemple or the Purchased Assets.

**SECTION 3.03. PURCHASE PRICE.** The aggregate purchase price for the Purchased Assets shall be Sixty Thousand Dollars (\$60,000.00) ("Purchase Price"), subject to the terms, adjustments and pro-rations provided herein. The Purchase Price shall be payable by the City to Kemple in immediately available funds at the Purchased Assets Closing.

The Purchase Price shall be reduced by Six Thousand One Hundred Sixty Dollars and 80/100 (\$6,160.80) which represents a partial refund to customers. The City shall assume the responsibility of providing the aforementioned partial refund to the customers of Kemple Water Co. in an amount not to exceed Six Thousand One Hundred Sixty Dollars and 80/100 (\$6,160.80). The refunds will be calculated as per Attachment "Kemple Water Co. Customer List".

## ARTICLE IV

### CONDITIONS PRECEDENT TO THE PURCHASED ASSETS CLOSING

#### SECTION 4.01. PROVISION OF INFORMATION BY KEMPLE.

(A) Kemple has gathered, and delivered to the City, the information described in Section 2.02 hereof.

(B) Kemple shall deliver any plans or specifications for the Utility System and other information related to the operation of the Utility System to the City for its review.

**SECTION 4.02. FINANCIAL DUE DILIGENCE.** The City has had the opportunity to examine the billing analysis/annual report and to cause to be prepared at its expense a due diligence investigation of the revenues of the Utility System by a City rate consultant, Finance Director or other agent selected by it. The City has relied upon its own financial due diligence investigation in entering into this Agreement.

#### SECTION 4.03. ENVIRONMENTAL ASSESSMENT.

(A) Kemple and the City agree that the City may direct and authorize, at the City's cost, a "Phase I" Environmental Site Assessment of any or all of the Real Property. The Environmental Site Assessment shall be in general accordance with the scope and limitations of the American Society for Testing and Materials Designation: E 1527-97 (Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment ("ESA") Process). Prior to conducting any environmental assessment other than a Phase I ESA, the City shall notify Kemple in writing of its desire to conduct additional environmental assessments or testing. Only if the City receives prior written approval from Kemple shall it be permitted to conduct any additional testing or assessment other than a Phase I ESA. Prior to performing any Phase II or additional ESA, the City shall provide a scope of work to Kemple, and Kemple shall have the

right to review and approve such scope of work, prior to any intrusive sampling. In the event the Phase II or additional ESA performed for the City identifies the presence of hazardous substances (as that term is defined in the Environmental Laws) in the soil or groundwater at levels required to be remediated under applicable Environmental Laws, the City shall provide the ESA report to Kemple. Kemple shall obtain the opinion of a qualified expert regarding an estimated cost to remediate such hazardous substances identified in the soil or groundwater as required by applicable Environmental Laws. Kemple shall be responsible for such remediation, at its expense; provided that, if the cost estimated for any remediation as set forth in this Section 4.04 exceeds \$5,000, either party shall have the option of (1) waiving this condition precedent to the Closing, (2) negotiating terms which are mutually satisfactory to the parties to permit the Purchased Assets Closing to continue, or (3) terminating this Agreement, thereupon the City and Kemple shall have no liability and no further obligations to each other under this Agreement.

(B) All ESAs are expected to be completed and delivered to the City and Kemple not less than thirty (30) days prior to the Closing.

**SECTION 4.05. SURVEY.** Kemple has provided the City with all known existing surveys of the Real Property to be conveyed to the City. The City shall have the option to order new or updated surveys of any or all Real Property being insured by the title insurance policies hereunder. Such new surveys shall be at the City's expense. Any such surveys shall (A) be received not less than ten (10) days prior to the Purchased Assets Closing and updated thereafter as required by the title insurer; (B) be satisfactory and sufficient for the title insurer to delete the standard exceptions of title insurance coverage concerning encroachments, overlays, boundary line disputes or any other adverse matter which would be disclosed by an accurate survey; (C) be certified as of the current date to the City, Kemple, the title insurer or any other parties requested

by the City; and (D) show the location of all improvements and easements. Material adverse matters (i.e., matters that materially interfere with the present use of the Real Property) disclosed by such surveys and disclosed to Kemple may be resolved by Kemple in its sole and absolute discretion so that such matters may be removed as an exclusion to coverage on the title insurance commitment, at Kemple's expense, prior to the issuance of any policy after the Closing. Nothing shall obligate Kemple to expend any monies to resolve such survey matters. If Kemple is unable or unwilling to resolve such material adverse matters prior to the Closing, the City shall have the option of: (1) waiving this condition precedent to the Closing or (2) terminating this Agreement, thereupon the City and Kemple shall have no liability and no further obligations to each other under this Agreement.

**SECTION 4.06. TITLE VERIFICATION.**

(A) The City at its discretion may obtain, and deliver copies to Kemple of, title insurance commitments for the Real Property to be conveyed for an ALTA form owner's title insurance policy from the Title Agent (the "Title Policy"). Subject to subsection (D) of this Section 4.06, any encumbrances or defects in title must be removed from any title insurance commitment prior to the Closing and the subsequent Title Policy issued free and clear of encumbrances, title defects, materialman's liens or other adverse matters, created or potentially created by Kemple, with the exception of: (1) taxes for the current year which are not yet due and payable, (2) the Permitted Exceptions, and (3) any encumbrance of or created by the City including any instruments evidencing debt executed by the City at the Closing.

(B) The estate or interests to be insured by the Title Insurance Policy shall consist of all Real Property identified as Parcel Id Nos. 01-26-21-0040-00000-00A0, and -1-26-21-0040-00000-00B0.



(C) At the Closing, or upon issuance of any Title Insurance Policy after the Closing, the owner's title insurance policy shall show marketable title to the insured estate or interests vested in the City. All charges and costs for the issuance of the owner's title insurance commitments and policy(ies) shall be paid by the City should the City elect to obtain said title insurance.

(D) Marketable title shall be determined according to applicable Uniform Title Standards adopted and endorsed by The Florida Bar Board of Governors and in accordance with law. If the title commitment reflects title exceptions other than the Permitted Exceptions, the City shall thereafter, within ten (10) days, notify Kemple in writing specifying the defects. Kemple shall have no more than twenty (20) days from receipt of notice within which (1) to remove the defects, (2) to provide notice that it intends to remove the defects, or (3) to provide notice that it disputes the defects. Kemple shall have thirty (30) days after receipt by Kemple of the City's notice, to eliminate the defects, which timeframe may extend beyond the Closing. Kemple may, at its option, eliminate such defects in a variety of ways including, without limitation: (1) purchasing all or a portion of the property interest in question; (2) providing an alternate property reasonably acceptable to the City; (3) commencing an eminent domain proceeding or other legal proceeding to acquire or clear title; or, (4) if the City agrees, reimbursing the City for its expenses in acquiring title to the property in an eminent domain proceeding. If Kemple or the City commences a legal proceeding to acquire or clear title, the time period to cure defects shall extend until a final determination is made in such proceeding or appeal thereof; provided Kemple shall use its commercially reasonable efforts to prosecute diligently to completion any such proceeding. In the event Kemple fails to cure any title defect

as provided herein, the City may require substitute property, or payment by Kemple of an amount equal to the fair market value of the property, or portion thereof.

(E) At its election, the City may search the Official Records of the City, County and the records of the Secretary of State for uniform commercial code financing statements evidencing a secured interest in the Purchased Assets other than the Real Property. Such search shall be at the City's expense. Any secured interests in the Purchased Assets other than Permitted Exceptions and those relating to Real Property must be identified by the City to Kemple not less than twenty (20) days prior to the Purchased Assets Closing and must be paid off, released or terminated at Kemple's expense provided that, the City's failure to identify shall not relieve Kemple of its obligation hereunder to convey the Purchased Assets free and clear of all liens or encumbrances, subject to the Permitted Exceptions.

**SECTION 4.07. TRANSFER OF PERMITS.** At the Closing, Kemple shall provide the City with the applications for the transfer of the permits and governmental approvals, including, but not limited to, the procedures referenced in Rule 62-4.120, Florida Administrative Code (1990), 40 C.F.R. § 122.63(d) (1998) and 47 C.F.R. § 73 (1998), if applicable, and shall use all reasonable efforts to obtain the transfer of such permits. The City shall timely apply for the transfer of all permits and governmental approvals and Kemple shall cooperate and provide all reasonably necessary assistance in this endeavor, including, but not limited to, execution at the Closing of the permit transfer applications. Upon the Closing, the City shall assume all obligations under the permits and governmental approvals necessary for the continued operation of the Utility System. The City and Kemple acknowledge that the transfer of permits cannot be effectuated until after the Closing of the transactions contemplated by this Agreement, and as

such shall constitute a post-Closing obligation of the parties until completed. All charges and costs for the transfer of permits shall be shared equally by Kemple and the City.

**SECTION 4.08. FRANCHISE UTILITY FILINGS.** Prior to the Closing, Kemple shall be in compliance with all franchise utility regulatory filing requirements and any other requirements of the Florida Public Service Commission.

**SECTION 4.09. DEADLINE TO CLOSE AND DISBURSE.** Subject to any extensions agreed to by the parties, if the Closing and disbursement to Kemple of the Purchase Price, subject to the terms, adjustments and prorations provided herein, do not occur on or before May 1, 2014, then Kemple or the City shall have the option of: (1) waiving this deadline or (2) terminating this Agreement, thereupon the City and Kemple shall have no liability and no further obligations to each other under this Agreement.

## ARTICLE V

### CLOSING PROCEDURES

**SECTION 5.01. DATES AND PLACE FOR CLOSING.** The Closing shall be held at the Office of Meridian Title, 37837 Meridian Ave., Ste. 101, Dade City Florida 33525, on or before April 29, 2014 ("Closing Date"), or as mutually agreed among the parties.

**SECTION 5.02. CLOSING.**

(A) At the Closing, Kemple shall also furnish any necessary assignments, estoppel letters, releases, satisfactions, terminations, and any corrective instruments.

(B) In order to secure title insurance coverage against the existence of material adverse matters recorded during the period of time between the effective date of the title insurance commitment and the date of recording of the documents creating the estate to be

insured, Kemple and the County agree that the closing agent for the Closing may also be the Title Agent.

(C) Kemple shall pay all Taxes and fees necessary for transfer, filing or recording the following documents affecting the transfer of the Purchased Assets to the City; these documents shall be in final form, together with any exhibits or appendices thereto:

(1) Special warranty deed for the conveyance of all Real Property;

(2) Assignment of Easements for all easements;

(3) Transfer, Assignment and Assumption Agreement covering all contracts, agreements, permits and approvals and other interests in the Purchased Assets;

(4) Bill of Sale and other documents of assignment and transfer, with full warranties of title, to all Purchased Assets, other than the real property;

(5) Non-foreign affidavit, no-lien affidavit, "gap" affidavit, waiver and release of lien or such other forms as are customarily required for issuance of the title insurance policy referenced herein; and

(6) Any affidavits, certificates, estoppel certificates, corrective instruments, releases, satisfactions or terminations necessary to close, including, but not limited to, those instruments identified by the title insurer insuring the Real Property.

### **SECTION 5.03. PURCHASED ASSETS CLOSING.**

(A) At the Purchased Assets Closing, Kemple shall furnish a certificate reaffirming Kemple's representations and warranties as set forth in this Agreement up to the Purchased Assets Closing Date, and a release of documents from the Escrow Closing.

(B) At the Closing, the City shall furnish the closing statement, a certificate reaffirming the City's representations and warranties as set forth in this Agreement up to the Closing Date, and a release of documents from the Escrow Closing.

(D) From time to time prior to and after the Closing, each party hereto shall, upon request of the other, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers or other documentation for (1) confirming deeds or correcting title in the name of the City or perfecting possession by the City of any or all of the Purchased Assets (other than the Real Property) in existence or use at the time of the Closing and particularly such Purchased Assets (other than the Real Property) not known to Kemple as of the date this Agreement is signed by Kemple, including the establishment of Easements of record, without resort to litigation, expenditure of monies or other extraordinary means, or (2) otherwise fulfilling the obligations of the parties hereunder. The parties acknowledge and agree that the rights and obligations pursuant to this Section shall survive the Closing Date.

**SECTION 5.04. PROPERTY TAXES.** Kemple shall be required to escrow through the Title Agent for payment to the Tax Collector of Pasco County an amount equal to the current ad valorem taxes, personal property taxes and assessments due (real and personal), prorated through the Purchased Assets Closing Date in accordance with Section 196.295, Florida Statutes. The City shall cooperate with Kemple in its effort to recover any taxes paid in excess of that due through the Closing Date. However, in no event shall the City be responsible for any ad valorem taxes, personal property taxes or assessments (real or personal) for the current year, which are not cancelled after the Closing Date.

**SECTION 5.05. ACCOUNTS RECEIVABLE; CUSTOMER DEPOSITS.**

Kemple hereby agrees to cooperate with the City to ensure an orderly transition of all of its customers with respect to billing and customer service activities including, but not limited to, working with the City on a compatible format for transfer of customer data, if reasonably practical. The parties agree that the City will be entitled to all customer billings with respect to water services for the period on or after the Closing Date, and Kemple will be entitled to all such billings prior to the Closing Date, such billings being considered an Excluded Asset under this Agreement. After the Closing, any payments received by the City or Kemple with respect to utility services provided utilizing the Purchased Assets shall belong to the City or Kemple as provided above. If such payment or the documentation relating thereto does not indicate whether such payment is for the period prior to or after Closing, the City and Kemple shall jointly determine whether the payment belongs to the City or Kemple. If either the City or Kemple receives a payment which under the terms of this Agreement properly belongs to the other, the party in receipt of such payment shall hold such payment in trust for the other party and shall turn the payment over to the other party upon receipt thereof without any right of setoff. Kemple shall be entitled to apply any and all customer deposits against all past due accounts prior to the Closing. Kemple shall refund all remaining customer deposits and accrued interest thereon through the Closing to Kemple's customers in the manner permitted by law.

**SECTION 5.06. PROFESSIONAL FEES; COSTS.** Each party shall be responsible for securing its own counsel for representation in connection with the negotiation of this Agreement, and all other matters associated with performance, termination or the Closings hereunder; unless otherwise specified herein, and each party shall be responsible for the payment

of the fees of its own attorneys, bankers, engineers, accountants, and other professional advisors or consultants in connection therewith.

**SECTION 5.07. RISK OF LOSS.** At all times prior to and through the Closing, Kemple shall maintain adequate insurance coverage for the cost of any repairs to the Purchased Assets that may be required by casualty damage. The risk of loss during the said period of time shall fall upon Kemple. The risk of loss shall pass to the City upon Closing.

## ARTICLE VI

### GENERAL PROVISIONS

**SECTION 6.01. RIGHT TO ENTER.** Prior to the Closing, the City shall have the right, at any reasonable time during normal business hours with twenty four (24) hours prior notice to Kemple, to enter upon Kemple's property to inspect the Purchased Assets and Kemple's records, in order to familiarize itself with day-to-day operations, to review the operational practices of Kemple, and to ensure compliance with any and all federal and state regulatory requirements; provided, however, that such access shall not be had or done in any such manner so as to unreasonably interfere with the Purchased Assets.

**SECTION 6.02. CONDUCT BETWEEN EXECUTION AND CLOSING.** After the date of execution of this Agreement until the Closing, Kemple shall:

(A) Continue to provide water to its current customers in the ordinary and usual manner;

(B) Comply with all legal requirements, contractual obligations and maintain the Utility System in the ordinary course of business, consistent with prior practice;

(C) Not, except in the ordinary course of business or as required by law, dispose of any of the Purchased Assets, without the prior written consent of the City, which consent shall not be unreasonably withheld and which shall be acted upon promptly by the City;

(D) Confer with the City prior to implementing operational decisions of a material nature which are not in the ordinary course of business or which may constitute an obligation or liability of the County following the Closing;

(E) Maintain all books and records relating to the Utility System in the ordinary course of business;

(F) Provide to the City copies of all known Easements of Kemple; and

(G) Correct the appendices hereto to accurately reflect the status of deeds, easements, equipment lists or other documents or document lists as may be agreed among the parties prior to the Closing Date.

Notwithstanding the foregoing, Kemple shall have the right until the, and in its sole and absolute discretion, to settle any or all disputes provided such settlement does not modify Utility System rates, fees, charges or revenue or materially modify the Purchased Assets.

**SECTION 6.03. APPLICABLE LAW; JURISDICTION AND VENUE.**

(A) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(B) The parties to this Agreement expressly consent to the jurisdiction of and agree that venue for any litigation arising under this Agreement shall be in the Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Pasco County, Florida.



**SECTION 6.04. NOTICE.**

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, or by courier service, charges prepaid, to the parties at the following addresses:

**To the City:** City Manager  
5335 8th St.  
Zephyrhills, FL 33542

with copies to: City Attorney  
5335 8th St.  
Zephyrhills, FL 33542

**To Kemple:** Richard & Christina Kemple  
37502 Marcliff Ter.  
Zephyrhills, Florida 33541

(B) Any written notice given to one person in subsection (A) of this Section shall also be copied and provided to all other persons identified in subsection (A) of this Section.

(C) The parties may, by notice in writing given to the others, designate any future or different addresses to which the subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand, or five (5) days after the date mailed.

**SECTION 6.05. ASSIGNMENT AND JOINDER.** Neither Kemple nor the City shall have the power or authority to assign this Agreement or any of their rights, duties or obligations hereunder to a third party, without the prior written consent of the other party. This Agreement shall be construed as solely for the benefit of the City and Kemple, and their successors by law, and no claim or cause of action shall accrue to or for the benefit of any other third party by reason hereof.

**SECTION 6.06. CITY LIABILITIES.** The City shall not be obligated to pay any liability arising out of or in any connection whatsoever with this Agreement from any funds except from the net revenues realized by the City after the Closing from its ownership and operation of the Utility System or the Purchased Assets. It is further agreed between the City and Kemple that this Agreement and any obligations arising in connection therewith, whether for payment of the Purchase Price, or for any claim of liability, remedy for breach or otherwise, shall not constitute a lien on the Utility System or any other property owned or operated by the County.

**SECTION 6.07. AMENDMENTS AND WAIVERS.** No amendment, supplement, modification or waiver of this Agreement shall be binding upon either party hereto unless executed in writing by such party. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

**SECTION 6.08. ENTIRE AGREEMENT.** This Agreement is the entire agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, pertaining to the subject matter hereof, and there are no warranties, representations or other agreements

between the parties in connection with the subject matter hereof, except as specifically set forth herein.

**SECTION 6.09. EFFECT OF TERMINATION.** In the event of the termination of this Agreement in accordance with its terms, this Agreement shall then become void and have no effect, with no liability on the part of any of the parties to this Agreement or their affiliates, except that nothing shall relieve a party from liability for any breach of this Agreement.

**SECTION 6.10. RADON GAS.** RADON IS NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON TESTING MAY BE OBTAINED FROM THE COUNTY PUBLIC HEALTH UNIT.

**SECTION 6.11. TRANSITION SERVICES.**


(A) The parties acknowledge and agree that the City will require a minimum period of sixty (60) days to prepare for an orderly and efficient transition of operations, customer service and billing activities to the City and, as such, the parties acknowledge and agree that beginning on the execution date of this Agreement, the City and Kemple will take all steps necessary and exert their respective commercially reasonable efforts, so as to create a seamless transition of such activities on or around the Closing Date.

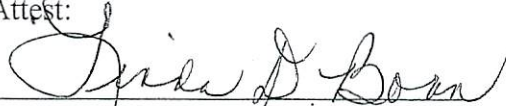
**SECTION 6.12. COMMISSION APPROVAL.**

(A) This Agreement is made contingent upon approval of the Florida Public Service Commission, as per F.S. 367.071.

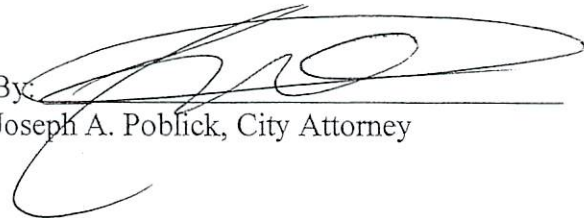
IN WITNESS WHEREOF, the City and Kemple have caused this Agreement to be duly executed and entered into on the date first above written.


ZEPHYRHILLS CITY COUNCIL  
ZEPHYRHILLS, FLORIDA

By:   
Lance A. Smith, City Council President

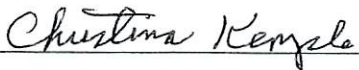
Attest:   
Linda D. Boan, City Clerk

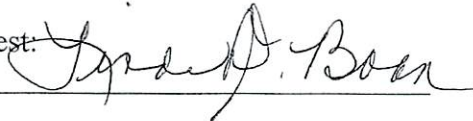
APPROVED AS TO FORM AND  
CORRECTNESS:

By:   
Joseph A. Pobllick, City Attorney

Richard Kemple  


Attest: 

Christina Kemple  


Attest: 

Kemple Water Co.

Richard Kemple  
By: Richard Kemple

Attest:

Lisa D. Boon

Kemple Water Co.

Christina Kemple  
By: Christina Kemple

Attest:

Lisa D. Boon



# CITY OF ZEPHYRHILLS

*"City of Pure Water"*

5335 Eighth Street • Zephyrhills, Florida 33542-4312

(813) 780-0000 • Fax (813) 780-0005

DANIEL W. BURGESS, JR.  
Mayor

CITY COUNCIL

LANCE A. SMITH  
Council President

CHARLES E. PROCTOR  
Vice President

KENNETH M. BURGESS,  
JR.

KENNETH V. COMPTON

JODI WILKESON

JAMES D. DRUMM  
City Manager

LINDA D. BOAN  
City Clerk

JOSEPH A. POBLICK  
City Attorney

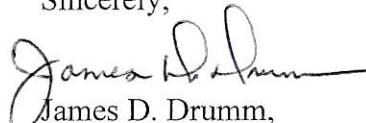
EXHIBIT "B"

March 25, 2014

To Florida Public Service Commission:

The City of Zephyrhills is purchasing the Kemple Water Company utility system. The City has obtained the most recent available income and expense statement, balance sheet, and statement of rate base. The City intends to take ownership on the 30<sup>th</sup> day of April of 2014.

Sincerely,

  
James D. Drumm,  
City Manager