

Control Number: 47283



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DOCKET NO. 47283

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION

APPLICATION OF RANCHLAND § PUBLIC UTILITY COMMISSION
PROPERTY OWNERS ASSOCIATION, §
INC. AND CITY OF KOUNTZE FOR §
SALE AND TRANSFER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN HARDIN COUNTY §
§ OF TEXAS

STATUS REPORT NO. 3

On September 22, 2017, the Commission issued Order No. 4 Approving Sale/Transfer of Ranchland Property Owners Association, Inc. Facilities to the City of Kountze (the "Order"). Pursuant to the Order the applicants must file an update regarding the status of the efforts to conclude the transaction and submit documents evidencing the transaction was consummated and customer deposits properly addressed.

On December 15, 2017, the Applicants closed on the transaction and executed the attached documents:

1. Purchase and Sale Agreement;
2. Bill of Sale;
3. Special Warranty Deed; and
4. Assignment Agreement.

Also attached are two additional documents:

1. Resolution from the City of Kountze authorizing and approving the Purchase and Sale Agreement; and
2. Secretary's Certificate and meeting minutes of Ranchland Property Owners Association approving the sale of the system.

Submitted on December 20, 2017.

Respectfully submitted,

GERMER PLLC

P.O. Box 4915

Beaumont, Texas 77704

(409) 654-6700 – Telephone

(409) 835-2115 – Facsimile

A handwritten signature in black ink, appearing to read "Kate K. Leverett", written over a horizontal line.

Kate K. Leverett

State Bar No. 24083292

kleverett@germer.com – Email

COUNSEL FOR THE CITY OF KOUNTZE

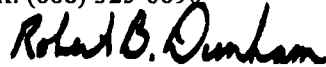
Dunham Hallmark, PLLC

4180 Delaware Street, Suite 301

Beaumont, Texas 77706

Phone: (409) 434-4185

Fax: (888) 325-0090

A handwritten signature in black ink, appearing to read "Robert B. Dunham", written over a horizontal line.

Robert Dunham

State Bar No. 06228000

rdunham@dunhamhallmark.com-Email

**COUNSEL FOR RANGLAND PROPERTY OWNERS
ASSOCIATION**

CITY OF KOUNTZE, TEXAS

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT BETWEEN RANCHLAND PROPERTY OWNERS' ASSOCIATION AND THE CITY OF KOUNTZE, TEXAS FOR A WATER SYSTEM LOCATED IN HARDIN COUNTY, TEXAS AND THE EXECUTION AND DELIVERY OF ALL INSTRUMENTS AND DOCUMENTS DISCUSSED IN THE PURCHASE AGREEMENT.

WHEREAS, the City and Ranchland Property Owner's Association (the "Association") desire to enter into a purchase agreement (the "Agreement"), attached hereto as **Exhibit A**, for a water system located in Hardin County, Texas area (the "Utility System" which Utility System distributes potable water and conducts other activities normally incident to such an operation to property owners in RANCHLAND COUNTRY, a rural residential development, in the B.B.B. & C.R.R. Section 311, Abstract No. 124, and in the Nannie R. Smith Survey, Abstract No. 630, Hardin County, Texas, according to the map or plat of record in Volume 3, Page 177, Plat Records of Hardin County, Texas (the "Service Area") within Hardin County, Texas;

WHEREAS, the Association operates the Utility System under Certificate of Convenience and Necessity No. 12945;

WHEREAS, the City is a municipal corporation and is authorized to provide for the purchase, construction, acquisition, ownership, operation, maintenance, repair, or improvement of all works, facilities, plants, equipment and appliance necessary to supply water within the Service Area and such other powers as provided under Chapter 552 of the Local Government Code;

WHEREAS, City desires to purchase and the Association desires to sell the Utility System at the price and in accordance with the terms, provisions, and conditions as set forth in this Agreement; and

WHEREAS, it is the opinion of both City and Association that it is in the best interest of the customers within the Service Area for the utility service to be provided by the City as a municipal corporation with the authority to set rates, to meet permit compliance as required by applicable governmental authorities, including the Texas Commission on Environmental Quality ("TCEQ") and the Texas Public Utilities Commission ("TPUC") and to operate the water service system within the regulations established by all governmental regulatory agencies specified in the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Kountze, Texas that:

Section 1. The City authorizes the execution of the Purchase and Sale Agreement between the City and the Association for a Utility System.

Section 2. The City shall, at Closing (as such term is defined in Section 3.1 of the Agreement), purchase from the Association and Association shall, at Closing, sell, assign, transfer and deliver to the City the assets and properties of Association listed in Article 1 of the Agreement associated with the Utility System.

Section 3. The City Council hereby finds, determines and declares that a sufficient written notice of the date, hour, place and subject of each meeting at which this Resolution was

discussed, considered or acted upon was given in the manner required by the Texas Open Meetings Act, as amended, and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves and confirms such notices and the contents and posting thereof.

PASSED AND APPROVED this 14th day of May, 2017

City of Kountze, Texas

By: Fred E. Will
Mayor

ATTEST:

Liz Wagner
City Secretary

(SEAL)

APPROVED AS TO FORM:

Kate Gencello
Legal counsel

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement is made and entered into as of this 15 day of December, 2017, (the "Agreement") by and between **RANCHLAND PROPERTY OWNERS' ASSOCIATION** (the "Seller") and the **CITY OF KOUNTZE, TEXAS** (the "Buyer").

PRELIMINARY STATEMENT

Seller is the sole owner and operator of a water system located in Hardin County, Texas area (the "Utility System") which Utility System distributes potable water and conducts other activities normally incident to such an operation to property owners in RANCHLAND COUNTRY, a rural residential development, in the B.B.B. & C. R.R. Section 311, Abstract No. 124, and in the Nannie R. Smith Survey, Abstract No. 630, Hardin County, Texas, according to the map or plat of record in Volume 3, Page 177, Plat Records of Hardin County, Texas (the "Service Area") within Hardin County, Texas.

Seller operates the Utility System under permits (with identification numbers herein described) issued to Seller by governmental regulatory agencies as follows:

CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 12945

Buyer is a municipal corporation and is authorized to provide for the purchase, construction, acquisition, ownership, operation, maintenance, repair, or improvement of all works, facilities, plants, equipment and appliance necessary to supply water within the Service Area and such other powers as provided under Chapter 552 of the Local Government Code.

Buyer desires to purchase and Seller desires to sell the Utility System at the price and in accordance with the terms, provisions, and conditions as set forth in this Agreement.

It is the opinion of both Seller and Buyer that it is in the best interest of the customers within the Service Area for the utility service to be provided by Buyer as a municipal corporation with the authority to set rates, to meet permit compliance as required by applicable governmental authorities, including the Texas Commission on Environmental Quality ("TCEQ") and the Texas Public Utilities Commission ("TPUC") and to operate the water service system within the regulations established by all governmental regulatory agencies herein specified.

Seller and Buyer hereby acknowledge that any and all exhibits referenced in this Agreement are attached to the Agreement and made a part of the Agreement for all purposes.

AGREEMENT

In consideration of the premises and the mutual covenants contained herein, it is understood and agreed to by and between Seller and Buyer as follows

ARTICLE I

1.1 Purchase of Utility System. Buyer shall, at Closing (as such term is defined in Section 3.1 hereof), purchase from Seller and Seller shall, at Closing, sell, assign, transfer and deliver to Buyer the assets and properties of Seller but only those relating to, and used in, the operation of the Utility System (collectively called the "Property"), as follows:

- (a) real property, together with improvements or fixtures thereon including water wells, water storage tanks and facilities more fully described in the draft deed attached to this Agreement as **Exhibit "A"** (the "Real Property");
- (b) all water lines and other appurtenances thereto presently installed in the Service Area (the "Utility Facilities") and easements incident to the use, operation, and maintenance of the Utility Facilities and the Utility System, including all easements or rights-of-way conveyed, reserved, given, granted, transferred or assigned to Seller by way of recorded plat, written easement, right-of-way-grant, or other matter of public record, or by unrecorded plat, conveyance or reservation (the "Easements");
- (c) all contracts and service agreements relating to the use or operation of the Utility System, including any written contracts to provide utility service to customers within the Service Area (the "Contracts");
- (d) files and records of the Utility System relating to the business and operation of the Utility System for a period of seven years preceding the Closing (the "Records");
- (e) all licenses, permits or other similar items relating to the Utility System which may be transferred to Buyer by this Agreement or by operation of law;
- (f) all equipment, machinery, vehicles, fixtures, furniture, storage buildings and facilities, and other personal property (the "Fixed Assets") as described in the bill of sale attached to this Agreement as **Exhibit "B,"** including any maintenance agreements and any warranties in effect as to the Fixed Assets;
- (g) all of the goods and inventory, including but not limited to inventory of pipe, valves, and other supplies necessary for the operation of the Utility System (the "Inventory") located at any location of Seller's business as of the Closing;
- (h) accounts receivable of Seller prorated only for the period and for income and expenses to the Closing relating to utility service charges invoiced to customers whether under Contracts or not, including those invoiced prior to the Closing;
- (i) all maps, plats, site plans, surveys, soil and sub-strata studies, plans and specifications, engineering plans and studies, and other plans, sketches, diagrams or studies of any kind which relate to the Utility System or the Utility Facilities in the possession of Seller, including any tracings and files which are the property of Seller;

(j) all rights in and to any roads, rights-of-way, ingress or egress easements relating to the Real Property, and all other rights of access thereto; and

(k) all other rights, privileges and appurtenances owned by Seller, reversionary or otherwise, and in any way relating to the Property (as defined above).

The term "Property" excludes any properties identified under Section 1.2 below.

1.2 Excluded Properties. The following properties of Seller are specifically excluded from the sale and transfer contemplated hereunder:

- (a) cash on hand or deposited in banks;
- (b) the records that relate to the operation of Seller as an owners association;
- (c) any licenses, permits and other similar items relating to the Utility System which cannot be transferred to Buyer by operation of law;
- (d) accounts receivable of Seller relating to the Utility System prorated for periods before Closing;
- (e) any dues or similar amounts and related powers of Seller arising from or related to its functions as an owners' association;
- (f) deposits paid by Seller with respect to utilities, whether arising from or related to the Utility System or otherwise; and
- (g) any assets not specifically identified in Section 1.1 above.

1.3 Conveyance Subject to Outstanding Indebtedness. At Closing, it is understood there shall be no indebtedness encumbering the Property.

ARTICLE II

2.1 Purchase Price. The purchase price which Buyer shall pay Seller for the Property shall be the Buyer assuming operation of and responsibilities for the Ranchland Property Owner's Association Water System. Seller and Buyer agree that the purpose of this Agreement is to provide for the orderly transfer of the Property to Buyer pursuant to the purchase by Buyer of the Utility System currently operated by the Seller.

ARTICLE III

3.1 Operation of Utility System Prior to Closing. Buyer and Seller agree that on and after Closing, Buyer shall operate the Utility System of the Seller. Buyer shall collect all revenues and pay all expenses from the operation of the Utility System and shall undertake in all matters to

operate, maintain, repair and conduct the business and operations of the Seller in the same manner as conducted by the Seller prior to Closing. Buyer shall undertake all steps as may be reasonably necessary in order to effect the purchase of the Utility System as of Closing and in furtherance of the agreement set forth in this Agreement.

3.2 Notices as to System Operation. Upon Closing, Buyer may notify any vendors or suppliers that it has assumed the operation of the utility system of Seller and has undertaken an agreement to acquire the Property of Seller. From and after Closing, Buyer shall be invoiced for all materials services and supplies after such date.

3.3 Cooperation with Utilities. Upon Closing, Seller and Buyer agree to cooperate in the transfer and revision of existing electrical utilities and provider accounts (with Entergy) as follows, effective upon Closing:

- a. One street light currently billed with the well pump account shall be transferred to the remaining accounts of Seller with such provider;
- b. The well pump account shall be transferred to and Buyer shall assume liability for such account, prorated to the day of Closing.

ARTICLE IV

4.1 Access to Records. Seller agrees to provide Buyer's representatives reasonable access, during normal business hours, to all Records and reports including, but not limited to, sales, use or excise tax reports, franchise tax reports, unemployment compensation tax reports, reports to the TCEQ and/or the TPUC, to the Texas Department of Health, to the Environmental Protection Agency, to the United States Army Corp of Engineers, and other reports, contracts, commitments and records relating to the Property and to furnish such persons with other information as Buyer reasonably may request or as further set forth herein. Also, Buyer's representatives shall have the right, at reasonable times, to examine and inspect (a) any item of the Property regardless of where the same shall be located; and (b) the maintenance records for the Property purchased.

ARTICLE V

5.1 Casualty Loss. Until Closing, all risk of loss to the Property shall be borne by the Seller. Upon and after Closing, Buyer shall assume all responsibilities for casualty loss and the maintenance of all casualty insurance. If, prior to Closing, the Property shall be damaged or destroyed by fire or other casualty, to a material extent, Buyer may either (a) terminate this Agreement, and this Agreement shall become null and void; or (b) close.

ARTICLE VI

6.1 The Closing. The closing for the transactions contemplated by this Agreement shall be held on December ____, 2017, at the offices of Buyer

6.2 Seller's Delivery of Instruments. At Closing, Seller shall (a) deliver to Buyer the following instruments and documents duly executed by Seller; and (b) take any and all further

action as shall be reasonably requested by Buyer to effectively invest in Buyer title to the Property as contemplated herein;

(a) a certified copy of resolutions adopted by the Board of Directors of Seller duly authorizing the execution and delivery of this Agreement and the execution and delivery of all instruments and documents contemplated herein, attested by the secretary or the assistant secretary of Seller;

(b) an instrument of assignment duly executed and acknowledged by Seller, assigning to Buyer all of Seller's rights, title and interest in the Contracts;

(c) originals of all Contracts with customers of Seller and copies of Contracts with suppliers of Seller (but only if and to the extent such originals are in the possession of Seller, otherwise, copies of such Contracts if in Seller's possession);

(d) within thirty (30) days after Closing, all books of account, records, files, documents and papers relating to the Utility System in Seller's possession, except minute books, stock ledgers and similar corporate instruments of Seller and excluding any books of account, records, files, documents and papers to be retained by Seller in accordance with Section 1.2(b) hereof;

(e) a Special Warranty Deed conveying fee simple title to the Real Property, Utility Facilities, and Easements subject to all restrictions, easements, and reservations of record, substantially in the form attached as Exhibit "A" to this Agreement;

(f) a duly executed Bill of Sale substantially in the form attached as Exhibit "B" to this Agreement, transferring to Buyer the Property; and

(g) such other instruments and documents of Seller as may reasonably be requested by Buyer.

6.3 Buyer's Assumption of Debt and Delivery of Instruments. At Closing, Buyer shall:

(a) a certified copy of resolutions adopted by the City Council of Buyer duly authorizing the execution and delivery of this Agreement and the execution and delivery of all instruments and documents contemplated herein, attested by the secretary or the assistant secretary of Buyer;

(b) agreement to assume Seller's obligation under the Contracts; and

(c) such other instruments and documents as may reasonably be requested by Seller.

6.4 Possession. At Closing, except as otherwise provided with respect to Records, Seller shall surrender to Buyer possession of the Property.

6.5 Costs and Expenses. All costs and expenses incurred to consummate this Agreement shall be borne by Buyer and Seller as follows:

- (a) Buyer and Seller shall each be solely responsible for its own legal, accounting and other professional services;
- (b) Seller shall be solely responsible for sales taxes, if any, arising because of the sale of the Property (or any item thereof) to Buyer;
- (c) Any and all other costs and expenses arising from the performance of this Agreement shall be borne by the party incurring such costs or expenses; and
- (d) Seller shall pay all real and personal property taxes levied or assessed against the Property for all tax years accruing and being due and payable prior to Closing. Buyer shall notify the appropriate governmental authorities from and after Closing of its entitlement to an exemption from taxation in accordance with 11.11 of the Texas Property Tax Code.

ARTICLE VII

7.1 Representations, Warranties and Covenants of Seller. Seller warrants and represents to Buyer and covenants and agrees that as of the date hereof and as of the date of the Closing:

- (a) Organization and Standing of Seller. Seller is a non-profit corporation organized, validly existing and in good requisite corporate power and authority to own or lease its properties and carry on its business in the manner in which such business is now being conducted, and is qualified to do business and is in good standing in the State of Texas.
- (b) Authority. Seller has all requisite power and authority to enter into and execute and deliver this Agreement and has taken (or will take) all necessary corporate action to authorize the execution and delivery of this Agreement and to consummate the transactions contemplated hereunder. Upon execution and delivery, this Agreement will constitute a valid and binding obligation of Seller enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally.
- (c) Description and Title to the Property. Section 1.1 and the exhibits referenced therein set forth all real and personal properties of Seller which are material to the continued operation of the Utility System. To the best of Seller's knowledge, Seller has (or will have at Closing) good title to all of the Property, free and clear of all liens, mortgages, pledges, encumbrances or charges and any debt, except those previously disclosed in writing to Buyer or which are of record in the Official Public Records of Hardin County, Texas.
- (d) Power to Transfer Real Property. All of the Real Property may be conveyed, assigned and transferred by Seller, upon consummation of the transactions contemplated herein without the consent or approval of any third party.

(e) Insurance. . Seller has disclosed to Buyer that Seller has no existing liability insurance.

(f) Status of Agreements and Contracts. Seller is not in material default under any contract, agreement or lease to which it is a party or to which it is subject in connection with the operation of the Utility System.

(g) Litigation. There are no material actions, suits, proceedings or governmental investigations pending or to the Seller's knowledge and belief threatened against Seller or to which the Property is subject which will impair the title to or create a lien on the Property.

(h) Parties in Possession. There are no parties in possession of any portion of the Real Property as lessees or tenants at sufferance.

(i) Access. To the best of Seller's knowledge, the Real Property has access to and from public highways, streets or subdivision roads and there is no pending or threatened proceeding which would impair or curtail such access.

(j) Condemnation. There are no pending condemnation or similar proceedings or assessment affecting the Real Property, or any part thereof, nor to the best knowledge and belief of Seller, is any such proceeding or assessment contemplated by any governmental authority.

(k) Compliance with Statutes and Regulations. Except as described in Article VI herein, to the best of Seller's knowledge, Seller has complied with and is not in default in any material respect under any laws, ordinances, requirements, regulations, order or decrees of any court, commission, board or any other administrative body or any applicable statutes or regulations of the State of Texas or of any municipality or governmental agency having jurisdiction in respect of the conduct of business activity sold hereunder including, but not limited to permits or approvals required from the TCEQ and/or the TPUC or other governmental body or agency having jurisdiction.

(l) Compliance with all Operation, Sampling and Testing Requirements. If prior to Closing, Buyer should determine that Seller has in any manner defaulted in its obligations to properly operate, sample or test the Utility System, Buyer may, upon notice to Seller, terminate this Agreement at any time prior to Closing.

(m) Business Records. All books, records, reports and financial statements disclosed to Buyer by Seller, including any provided to Buyer contain a record and account of the financial affairs of the business of Seller and truthfully, in all material respects, set forth all material liabilities, assets and other matters pertaining to the financial condition of the business of Seller.

7.2 Negative Covenants. From the date of this Agreement to the date of Closing, Seller shall not, without the prior consent of Buyer:

(a) enter into material transactions, incur any obligations or cancel, modify adversely, assign or involuntarily terminate or encumber any of the Contracts, in the effect thereof would

impair the ability of Seller to carry out and consummate the transactions contemplated herein;

(b) enter into any agreements with third parties for the sale of any of the Property;

(c) suffer or permit the creation of any new mortgage, conditional sales agreement, security interest, lease, lien, hypothecation, pledge, encumbrance, restriction, liability, claim or imperfection of title on the Real Property or with respect thereto; or

(d) allow to occur or exist any event of default by Seller under any contract, agreement, arrangement, commitment or understanding, which event of default if not cured in accordance with the terms thereof would have a materially adverse effect upon the business or operations of the Utility System.

ARTICLE VIII

8.1 Representations, Warranties and Covenants of Buyer. Buyer represents and warrants to Seller and covenants and agrees that as of the date hereof and as of the date of Closing:

(a) Organization and Standing of Buyer. Buyer is a municipal corporation duly organized and validly existing under the laws of the State of Texas and having all requisite power and authority to own or lease property and carry on the business of operating the Utility System in accordance with Chapter 552 of the Local Government Code of the State of Texas.

(b) Authority. Buyer has all requisite power and authority to enter into and execute and deliver this Agreement and has taken (or will take) all necessary action to authorize the execution and delivery of this Agreement and to consummate the transactions contemplated hereunder and to perform its obligation hereunder. Upon execution and delivery hereof, this Agreement will constitute a valid and binding obligation of Buyer, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the right of the creditors generally;

(c) Litigation. There are no material actions, suits, proceedings or governmental investigations pending or to Buyer's knowledge and belief threatened against Buyer which will impair Buyer's ability to consummate this Agreement.

(d) Non-Violation of Agreements. The consummation of the transactions contemplated herein will not violate any other agreement to which Buyer is a party or by which it may be bound.

(e) Compliance with Statutes and Regulations. To the best of its knowledge, Buyer has complied with and is not in default in any material respect under any laws, ordinances, requirements, regulations, order or decrees of any court, commission, board or any other administrative body or any applicable statutes or regulations of the State of Texas or of any

municipality or governmental agency having jurisdiction in respect to the conduct of its business.

ARTICLE IX

9.1 Conditions Precedent to Obligations of Buyer. Notwithstanding anything herein to the contrary, the performance of the obligations of Buyer hereunder is subject to:

- (a) Seller obtaining all permits, if required, from the TCEQ and/or TPUC (or any other applicable governmental authority required of a public water system;
- (b) the accuracy of the representations and warranties of Seller contained herein; and
- (c) the full performance by Seller of its respective covenants and agreements hereunder to be fulfilled prior to or concurrent with the Closing.

9.2 Conditions Precedent to Obligations of Seller. The performance of the obligations of Seller hereunder is subject to:

- (a) the accuracy of the representations and warranties of Buyer contained herein; and
- (b) the full performance by Buyer of its covenants and agreements to be fulfilled prior to or concurrent with the Closing.

ARTICLE X

10.1 Seller covenants and agrees with Buyer to warrant the well and pump against material defects in function occurring within thirty (30) days after Closing under this Agreement, provided closing occurs and all paperwork finalized and has been signed by December 15, 2017

ARTICLE XI

11.1 Successors. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of both Buyer and Seller.

11.2 Survival of Representations, Warranties and Indemnifications. Neither the acceptance of payments due nor the delivery of the Property hereunder shall constitute a waiver of any covenant, representation, warranty, agreement, obligation, or undertaking of Seller or Buyer contained herein, and the same shall, unless otherwise specifically provided herein, survive the Closing.

11.3 Non-assignable. This Agreement may not be assigned, transferred or conveyed by either party hereto to any person, corporation, partnership or other legal entity without the prior consent of the other party hereto.

11.4 Amendment or Waiver. This Agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof, and no consent required herein shall be effective unless evidenced by an instrument in writing duly executed by the party hereto sought to be charged with such waiver or consent.

11.5 Section Headings. The Article or Section headings herein are for convenience or reference only and do not form a part thereof and do not in any way modify, interpret or construe the intentions of the parties.

11.6 Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

11.7 Notices. Any notice required to be sent by either of the parties hereto to the other party shall in every case mean written notice, which shall be given either (a) by registered or certified United States mail, return receipt requested, to the last known address of the other party hereto, and the same shall be effective as of the date posted or (b) by personal delivery which shall be effective as of the date received. Until changed by notice hereunder, the addresses of the parties hereto shall be as follows:

SELLER: Ranchland Property Owners' Association
P.O. Box 1248
Kountze, Texas 77625

BUYER: City of Kountze
P.O. Box 188
Kountze, Texas 77625

11.8 Extension of Time, Waiver: Either Seller or Buyer, by notice to the other, may:

- (a) extend the time for the performance of any of the obligations of either party to the other;
- (b) waive any inaccuracies in the representations or warranties of the others contained herein or in any document delivered pursuant to this Agreement;
- (c) waive compliance with any of the covenants of the other contained herein; and
- (d) waive or agree to modify performance of any of the obligations of the other.

11.9 Gender. As used herein and as required by the context, the singular and plural shall include each other and any reference importing persons shall include partnerships, associations, corporation, trusts and other entities; the terms "herein", "hereof", and "hereunder" or other similar terms refer to this Agreement as a whole and not only to the particular sentence, paragraph, section or article in which any such term is used; and the word "party" refers, as appropriate, to either Buyer or Seller.

11.10 Validity. If any provision or condition herein or any document referred to herein shall be invalid, illegal or unenforceable under applicable law, the validity, legality and enforceability of the provision or condition in other instances and of the remaining provisions and conditions shall not in any way be affected.

11.11 Counterparts. This Agreement and any related documents may be executed in any number of counterparts, each of which when executed shall be deemed to be an original, but all such counterparts shall constitute but one and the same Agreement.

11.12 Conflicts. Buyer and Seller recognize and acknowledge that, as a part of this transaction, they are entering into a number of instruments which are referred to herein and that, notwithstanding anything to the contrary stated in such other instruments any conflicts arising between the provisions and conditions herein and the provisions and conditions of such other instruments, shall be governed by the provisions and conditions herein.

11.13 Venue. All obligations set forth herein are performable in Hardin County, Texas.

11.14 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties with respect to the transaction contemplated hereby and supersedes any and all prior discussions, agreements and understandings relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by either party which is not embodied in this Agreement or the written statements, certificates or other documents delivered pursuant hereto; neither party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not set forth herein.

11.15 Third Party Beneficiary. No provision herein shall create or give any third party any claim or right of action against Buyer or Seller except as may specifically be provided herein.

IN WITNESS WHEREOF, the duly authorized officers of Seller and Buyer have executed this Agreement and affixed their hands as of the date first above written.

SELLER:

RANCHLAND PROPERTY OWNERS'
ASSOCIATION

By: Judith B. Juster
President

ATTEST:

Andy G. Gue, Jr.
Secretary

BUYER:

CITY OF KOUNTZE, TEXAS

By: Fred E. Wilson
Mayor

ATTEST:

Kim Haynes
City Secretary

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

DATE: December 15, 2017

GRANTOR: RANCHLAND PROPERTY OWNERS' ASSOCIATION, a Texas non-profit corporation, whose address is: 180 Ranchland, Kountze, Texas 77625

GRANTEE: City of Kountze, Texas, whose address is: 1025 N. Pine, Kountze, Texas 77625

CONSIDERATION: The sum of Ten and 00/100 (\$10.00) Dollars and other good and valuable consideration.

PROPERTY:

Being 0.018 acre of land, more or less, in the B.B.B. & C. R.R. Section 311 Survey, Abstract Number 124 in Hardin County, Texas, said tract being out of Tract 16 of Ranchland Subdivision, a plat of said subdivision being unrecorded, and being out of that 80.00 acre tract of land conveyed to C. Bert Dickens in deed recorded in Volume 819, Page 494 of the Deed Records of Hardin County, Texas.

BEGINNING at a ½ inch iron rod set for the northeast corner of this tract, same being the northeast corner of said Tract 16 and the northwest corner of Tract 17 of said subdivision, and being in the north line of said 80.00 acre tract and north line of said B.B.B. & C.R.R. Section 311, and being located South 89°11'12" West a distance of 350.16 feet from a 4 inch iron pipe filled with concrete found for the northeast corner of said Section 311 and said 80.00 acre tract;

THENCE South 01°16' 50" East with the east line of said Tract 16 and west line of said Tract 17 a distance of 21.00 feet to a ½ inch iron rod set for the southeast corner of this tract;

THENCE South 89°11' 12" West a distance of 37.00 feet to a ½ inch iron rod set for the southwest corner of this tract;

THENCE North 01°06' 50" West a distance of 21.00 feet to a ½ inch iron rod set for the northwest corner of this tract, being in the north line of said Tract 16, Section 311 and 80.00 acre tract;

THENCE North 89°11'12" East with the north line of said Tract 16, Section 311 and 80.00 acre tract a distance of 37.00 feet to the place of BEGINNING.

Said tract of land herein described contains 0.018 acre of land, more or less.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

This conveyance is made subject to all encumbrances, restrictions, easements, covenants, and conditions of record, and subject to prior conveyances or reservations of minerals and/or royalties, of record in said county, affecting said property; and subject to all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, if any, but only to the extent that they are still in effect, relating to said property.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty and further subject to the covenants and conditions set out below, grants, sells, and conveys the Property and associated water lines and taps, together with the privileges and appurtenances thereto belonging, to Grantee forever to Grantee, together with all and singular the rights and appurtenances thereto in any wise belonging (including any and all rights to enforce sanitary control easements benefitting the Property, to the extent such rights are assignable), to have and to hold it and such appurtenances and privileges to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, but only when the claim is one by, through, or under Grantor, and not otherwise, and no warranty is given as to any matter identified as part of any reservations from and exceptions to conveyance and warranty.

The Property is conveyed by Grantor and accepted by Grantee subject to the following covenants and restrictions, that shall be a covenant running with the land and that bind and benefit the Property for the benefit of any of Tracts 3 through and including 31, Ranchland Country, a subdivision in Hardin County, Texas, according to the map of record in Vol. 3, page 177, Map Records of Hardin County, Texas ("Ranchland Country"), and this covenant may be enforced by Grantor or by any owner of any such Tracts: the Property is to be used solely for the provision of water to such Tracts in Ranchland Country (and additional properties, if any, authorized by governmental authorities having jurisdiction to approve such additions); Grantee agrees to continue to provide such water and to repair, operate and maintain the water system conveyed to Grantee, all in accordance with all applicable governmental requirements and in a good, sanitary, and safe manner.

Grantee expressly assumes and agrees to pay all property taxes and standby fees for the property for the year 2017.


When the context requires, singular nouns and pronouns include the plural.

RANCHLAND PROPERTY OWNERS'
ASSOCIATION, a Texas non-profit corporation

By Judy B. Jaster
Judy B. Jaster, President

ACCEPTED AND AGREED
BY GRANTEE:

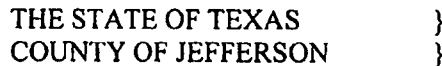
City of Kountze, Texas

By: 
Its: City Administrator

BEFORE ME, the undersigned authority, on this day personally appeared Judy B. Jaster, President of RANCLAND PROPERTY OWNERS' ASSOCIATION, a Texas non-profit corporation,

to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, on behalf of and as the act and deed of said RANGLAND PROPERTY OWNERS' ASSOCIATION.

Natalie Grohke
NOTARY PUBLIC, STATE OF TEXAS



BEFORE ME, the undersigned authority, on this day personally appeared Roderick Hutto, City Administrator of City of Kountze, Texas, a Texas municipality,

to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, on behalf of and as the act and deed of said City of Kountze.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS 15th DAY OF December, 2017.



Kala Gohlke
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO

PREPARED IN THE LAW OFFICES OF:

ROBERT B. DUNHAM (dcs)
DUNHAM HALLMARK, PLLC
4180 DELAWARE, SUITE 301
BEAUMONT, TEXAS 77706

Bill of Sale

Date: December 15, 2017

Seller: RANCHLAND PROPERTY OWNERS' ASSOCIATION, a Texas non-profit corporation

Seller's Mailing Address: ^{P.O. Box 1248}
~~180 Ranchland~~, Kountze, Texas 77625

Buyer: City of Kountze, Texas

Buyer's Mailing Address: P.O. Box 188, Kountze, Texas 77625

Consideration: Assumption of Water operations

Transferred Properties: See Exhibit "A" attached hereto and incorporated herein for all intents and purposes.

Seller, for the Consideration and subject to the same Reservations from Transfer and the Exceptions to Transfer and Warranty as are reflected in the Special Warranty Deed of even date herewith from Seller as Grantor to Buyer as Grantee, sells, transfers, and delivers the Transferred Properties to Buyer, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Buyer and buyer's heirs, successors, and assigns forever. Seller binds Seller and Seller's heirs and successors to warrant and forever defend all and singular the Transferred Properties to Buyer and Buyer's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Seller but not otherwise, except also that as to the Reservations from Transfer and the Exceptions to Transfer and Warranty there is no warranty.

As a material part of the Consideration for this sale, Seller and Buyer agree that Buyer is taking the Transferred Properties "AS IS" and that there are no representations, disclosures, or express or implied warranties. Buyer has not relied on any information other than Buyer's inspection.

When the context requires, singular nouns and pronouns include the plural.

Seller:

RANGLAND PROPERTY OWNERS' ASSOCIATION,
a Texas non-profit corporation

By: Judith B. Jester

Judith B. Jester, President

Buyer:

City of Kountze, Texas

By: Roberts Jett

Its: City Administrator

EXHIBIT "A"

[illegible]

STATE OF TEXAS

§

COUNTY OF HARDIN

§

CERTIFICATE OF CORPORATE RESOLUTION

I, Sandy Etns, Secretary of RANCHLAND PROPERTY OWNERS'

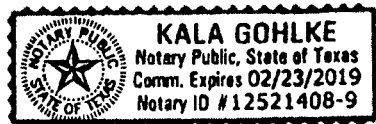
ASSOCIATION, a Texas non-profit corporation (the "Corporation"), do hereby certify that the attached Exhibit "A" is a true and correct copy of Resolutions adopted by the Members and Board of the Corporation on May 19, 2016, which Resolutions have not been altered, amended or rescinded.

RANCHLAND PROPERTY OWNERS' ASSOCIATION, a
Texas Corporation

BY:

A. J. Etns, Secretary

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS 15 DAY OF
December, 2017.



NOTARY PUBLIC, STATE OF TEXAS

Kala Gohlke

EXHIBIT "A" TO CERTIFICATE OF RESOLUTION

I. At the last Special Meeting in May 2015, the Board was authorized by a membership vote "to contract with Kelly Brewer of Water Necessities Inc. or any other acceptable purchaser with terms no less favorable to RPOA than \$1000/tap, less expenses". Since we received notice on 3-4-16 from Water Necessities that their offer to buy the system was being retracted after almost a year of negotiations, the Board has pursued other avenues. Other companies that have been contacted are not interested in our system due to size, lack of meters, and low water rates. At this time we have only one offer: Josh our current contract operator has said he will pay \$500 for the system.

Since this is the only deal we have and there is no interest within RPOA to participate in the operation, the Board recommends selling the system to Josh or any other reasonable buyer we can find. Tom made a motion that "The RPOA Board be allowed to dispose/sell the Ranchland water system by the most judicious option available, regardless of price, as long as the buyer is a reputable company or individual."

Discussion on the motion included:

- With 15 connections paying \$50/month ~ \$750/month, our system isn't a big money maker, esp. since expenses are deducted from that (elec. to run the pumps, chemicals, reporting...)
- Tom pointed out that water rates will probably go up, regardless of who we sell it to. The PUC will regulate how much they can go up, but everyone agrees that the current rate is low.
- Tom pointed out that another avenue besides selling the system is available which would be forming a Water Supply Corp., but that would require increased participation because that corporation would require a Board of its own.
- Ronnie Teel pointed out that everyone is burnt out with the system and we should sell it.

Ronnie Teel seconded Tom's motion and the vote was unanimously "for" selling in accordance with the motion.

ASSIGNMENT AGREEMENT

This Assignment Agreement (the "Agreement") is made and executed effective as December 15, 2017 by and between Ranchland Property Owners' Association (the "Seller") and the City of Kountze, Texas (the "Buyer").

RECITALS

WHEREAS, Seller is the sole owner and operator of a water system located in Hardin County, Texas area (the "Utility System") which Utility System distributes potable water and conducts other activities normally incident to such an operation to property owners in RANCLAND COUNTRY, a rural residential development, in the B.B.B. & C. R.R. Section 311, Abstract No. 124, and in the Nannie R. Smith Survey, Abstract No. 630, Hardin County, Texas, according to the map or plat of record in Volume 3, Page 177, Plat Records of Hardin County, Texas (the "Service Area") within Hardin County, Texas.

WHEREAS, Seller operates the Utility System under permits (with identification numbers herein described) issued to Seller by governmental regulatory agencies as follows: CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 12945

WHEREAS, Buyer is a municipal corporation and is authorized to provide for the purchase, construction, acquisition, ownership, operation, maintenance, repair, or improvement of all works, facilities, plants, equipment and appliance necessary to supply water within the Service Area and such other powers as provided under Chapter 552 of the Local Government Code.

WHEREAS, Buyer desires to purchase and Seller desires to sell the Utility System at the price and in accordance with the terms, provisions, and conditions as set forth in this Agreement and the Purchase and Sale Agreement of even date herewith.

WHEREAS, It is the opinion of both Seller and Buyer that it is in the best interest of the customers within the Service Area for the utility service to be provided by Buyer as a municipal corporation with the authority to set rates, to meet permit compliance as required by applicable governmental authorities, including the Texas Commission on Environmental Quality ("TCEQ") and the Texas Public Utilities Commission ("TPUC") and to operate the water service system within the regulations established by all governmental regulatory agencies herein specified.

WHEREAS, Seller wishes to assign any and all Contracts (as defined in the Purchase and Sale Agreement between Seller and Buyer, such definition being incorporated for the purpose of this Agreement);

WHEREAS, Seller and Buyer acknowledge and agree that except for the assignment as herein provided, all other terms, conditions, obligations and payments due under the Purchase and Sale Agreement are ratified and affirmed.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ASSIGNMENT

Seller hereby assigns, transfers and conveys all of its rights, obligations, title, interest and liabilities in and to the Contracts, attached hereto if any in writing, to Buyer. Buyer hereby accepts such assignment and assumes all of Seller's rights, obligations, title, and liabilities in and to the Contracts, whether such rights, obligations, title, interest or liabilities arose before or after the date of this Agreement.

EXECUTED effective December 15, 2017.

**RANCHLAND PROPERTY OWNERS'
ASSOCIATION**

CITY OF KOUNTZE, TEXAS

By: Judith B. Gaster
Its: President

By: Roderis Hott
Its: City Administrator