

Control Number: 46077



Item Number: 36

Addendum StartPage: 0

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PUBLIC UTILITY COMMISSION
FILING CLERK

January 31, 2017

Via Hand Delivery

Public Utility Commission
Attn: Filing Clerk
1701 N Congress
P.O. Box 13326
Austin, Texas 78711-3326

Re: Notice of Wholesale Water Supply Contract

Dear Public Utility Commission:

On behalf of Brushy Creek Municipal Utility District (the "District") and in accordance with 16 TAC §24.15, enclosed please find a certified copy of the wholesale water supply contract between the District and Aqua Texas, Inc. In accordance with the submission requirements of the rule, please note the following information regarding the contract:

1. Amount of Water Supplied:
 - a. Not to exceed 130 acre-feet per annum;
 - b. Not to exceed 240 connections;
 - c. Not to exceed 16,000 gallons per hour; and
 - d. Not to exceed 480 gallons per minute.
2. Term of the Contract: 40 years
3. Consideration:
 - a. Initial Minimum Monthly Charge-- \$4,7500 per month; and
 - b. Initial Volume Charge-- \$2.12 per 1,000 gallons.
4. Purpose of Use: Domestic water service
5. Location of Use: Brushy Bend Subdivision (depicted in Exhibit "A" to Contract)
6. Source of Supply: The wholesale water supply furnished by the District under the contract originates from two sources: (i) raw water purchased by the District from the Brazos River Authority, which is diverted by the District from Lake Georgetown; and (ii) groundwater produced by the District from its municipal wells.

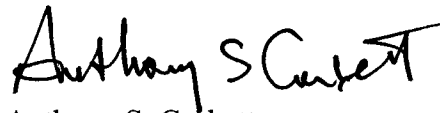
January 31, 2017

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7. Point of Delivery: The point of delivery of wholesale water service is the master meter located near the northeast corner of the Brushy Bend Subdivision, as specifically identified on Exhibit "A" to the Contract.
8. Limitations on the Reuse of Water: Per Section 2.10 of the Contract, the wholesale water service is restricted to the purchaser and the wholesale service area.
9. Disclosure of any Affiliated Interests Between the Parties: None.
10. Other Conditions or Agreements Relating to the Contract: All terms, conditions and agreements relating to the Contract are set forth in the Contract.

If you have any questions regarding this submission, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Anthony S. Corbett". The signature is written in a cursive, flowing style.

Anthony S. Corbett

cc: Mike Petter (Via Email)
Geoff Kirshbaum (Via Email)

CERTIFICATE

THE STATE OF TEXAS

§

COUNTY OF WILLIAMSON

§

§

I, the undersigned General Manager of Brushy Creek Municipal Utility District hereby certify as follows:

1. The Board of Directors of Brushy Creek Municipal Utility District convened in a regular meeting in the Board Room at the Brushy Creek Municipal Utility District Community Center, 16318 Great Oaks Drive, Round Rock, Texas, on the 8th day of October, 2015, and the roll was called of the duly constituted officers and members of the Board, to wit:

Rebecca Tullos	President
Russ Shermer	Vice-President
Kim Filiatrault;	Secretary
Shean Dalton	Treasurer
Donna Parker	Assistant Secretary/Treasurer

and all of said persons were present, thus constituting a quorum. Whereupon, among other business, the following was transacted at the meeting: a written

WHOLESALE WATER SERVICES AGREEMENT BETWEEN BRUSHY CREEK MUNICIPAL UTILITY DISTRICT AND AQUA TEXAS, INC.

was introduced for the consideration of the Board of Directors. It was then duly moved and seconded that the Contract be approved, and, after due discussion, the motion, carrying with it the approval of the Contract, prevailed and carried unanimously.

2. A true, full and correct copy of the aforesaid Wholesale Water Services Agreement adopted at the meeting described in the above is attached to and follows this Certificate; approval of the Contract has been duly recorded in the Board's minutes of the meeting; the persons named in the above and foregoing paragraph were the duly chosen, qualified and acting officers and members of the Board as indicated therein; each of the officers and members of the Board was duly and sufficiently notified officially and personally, in advance, and notice was posted and given more than 72 hours in advance, of the time, place and purpose of the aforesaid meeting in accordance with applicable law, including Chapter 551, Texas Government Code, as amended, and that the Contract would be considered for approval at the meeting; and each of the officers and members consented, in advance, to the holding of the meeting for such purpose.

SIGNED AND SEALED the 31st day of January, 2017.

(SEAL)

A handwritten signature in black ink, appearing to read "Mike Petter", written over a horizontal line.

Mike Petter, General Manager

**WHOLESALE WATER SERVICES AGREEMENT
BETWEEN BRUSHY CREEK MUNICIPAL UTILITY DISTRICT
AND AQUA TEXAS, INC.**

This WHOLESALE WATER SERVICES AGREEMENT (this "**Agreement**") is made and entered into by and between BRUSHY CREEK MUNICIPAL UTILITY DISTRICT, a conservation and reclamation Customer created and functioning under Article 16, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code ("**District**") and the AQUA TEXAS, INC. dba AQUA TEXAS, a Texas corporation ("**Customer**").

RECITALS

1. District owns and operates water supply, storage, treatment, transmission and distribution facilities which have been designed to serve the needs of its customers in Williamson County, Texas (collectively, the "**District System**").
2. District and Customer, a retail public utility furnishing retail water service, have entered into a contract pursuant to which District has agreed to transfer, sell and convey to Customer certain retail water utility transmission and distribution assets that serve within the "Brushy Bend" area of the District, and Customer has agreed to purchase such assets from District;
3. In connection with its acquisition of the retail water utility transmission and distribution assets purchased from District, Customer desires to obtain wholesale water services from District, and District desires to provide wholesale water service to Customer.
4. Customer will be responsible for construction of all improvements necessary to receive and deliver the potable water provided by District under this Agreement from the Delivery Point, as defined herein, to the Customer's utility system to allow the Customer to supply retail potable water service to the Customer's customers within the Wholesale Service Area, as defined herein.
5. District and Customer now desire to execute this Agreement to evidence the agreement of District to provide Wholesale Water Services, as more fully defined herein, to Customer under the conditions described in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Customer agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions of Terms. In addition to the terms otherwise defined in the above recitals or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below.

"Agreement" means this agreement.

"Annual Water Supply Commitment" means quantity of maximum annual quantity of Wholesale Water Services to be made available by District to Customer for the Wholesale Service Area under this Agreement. The Annual Water Supply Commitment shall be 130 acre-feet per annum, to be calculated on a calendar year basis.

"Assets Purchase Agreement" means the "Assets Purchase Agreement" executed by District and Customer providing for the sale and conveyance of certain public water system infrastructure assets by District to Purchase.

"AWWA" means the American Water Works Association.

"BRA" means the Brazos River Authority.

"BRA Participation Agreement" means that certain agreement entitled "Participation Agreement With Respect to Williamson County Raw Water Line" pursuant to which District is obligated to pay to BRA a pro rata share of the debt service, operation and maintenance, equity, management and other costs associated with the Williamson County Raw Water Line, as may be amended from time to time.

"BRA System Agreement" means that certain agreement entitled "System Water Supply Agreement Between the Brazos River Authority and Brushy Creek Municipal Utility District" setting forth the terms and conditions pursuant to which BRA agrees to make available, and District agrees to pay for, surface water from the Brazos River Basin system, as may be amended from time to time.

"Commencement Date" means the date of commencement of Wholesale Water Services by District to Customer, which date shall correspond to the effective date of closing the sale of the Brushy Bend water system assets by District to Customer under the Assets Purchase Agreement. Except as otherwise agreed by the Parties, the Commencement Date shall be the same as the Effective Date.

"Connection Limit" means the cumulative number of customer service connections within the Wholesale Service Area, which shall not exceed 240.

"Costs of the District System" means all of District's costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining and operating the District System, including, without limiting the generality of the foregoing, the costs of reasonable water losses within the District System as well as the costs of property, costs under the BRA Participation Agreement and the BRA System Agreement, interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks,

valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the District System in accordance with the policies of the District's Board of Directors. The term "Costs of the District System" shall also include any costs incurred by the District associated with providing Wholesale Water Services to Customer during the initial five (5) year period after the Commencement Date in which the District's wholesale rates and fees are fixed, and which are not recovered through such rates and fees, including costs of additional capacity made available to new customers within the Wholesale Service Area. Notwithstanding the foregoing, because District is providing Wholesale Water Services to Customer and retail potable water service to other customers from the District System, the term "Costs of the District System" shall not include retail billing and customer service costs or any costs properly attributable to the provision of retail potable water service for facilities not used and useful by District for the provision of service to the Wholesale Service Area from the District System, such as costs of retail distribution lines, and individual retail customer service lines.

"Customer" means Aqua Texas, Inc. dba Aqua Texas.

"Customer System" means the Customer's water transmission, distribution and delivery systems that provide service to the Customer's retail customers required to extend service to the Wholesale Service Area from Customer's side of the Delivery Point. The Customer System shall be owned, operated and maintained by Customer and shall not include the Master Meter or any facilities on District's side of the Delivery Point.

"Delivery Point" means the point at which District will deliver treated water to Customer under this Agreement, which shall be the location of the existing Master Meter, as depicted on **Exhibit A**.

"District" means Brushy Creek Municipal Utility District or its successor.

"District Service Area" means the service area for the District System, together with such other service areas as may be added by District in the future.

"District System" means the facilities owned and operated by District, together with all extensions, expansions, improvements, enlargements, betterments and replacements to provide retail or wholesale water services to District's customers in the District Service Area. The District System shall include the Delivery Point Improvements, but shall not include the Customer System and, for purposes of this Agreement, does not include any facilities used by District solely to provide retail potable water service, such as costs of retail distribution lines and related valves, pressure reducing devices, pressure boosting facilities and improvements; retail meters and taps and individual retail customer service lines.

"District Water Conservation and Drought Contingency Plan" means, collectively, the District Water Conservation Plan and the District Drought Contingency Plan, as may be amended by the District Board of Directors from time to time.

"Effective Date" means the date this Agreement has been executed by both Customer and District.

"Emergency" means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of District. The term includes Force Majeure and acts of third parties that cause the District System to be unable to provide the Wholesale Water Services agreed to be provided herein.

"Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than District or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

"Master Meter" means the existing master meter and related equipment located at the Delivery Point which shall measure the quantity of Wholesale Water Service provided by District pursuant to this Agreement.

"Minimum Monthly Charge" means the monthly charge by the District to the Customer for the provision of Wholesale Water Service by the District to the Wholesale Service Area as described in Sections 4.01 and 4.03(b) below.

"TCEQ" means the Texas Commission on Environmental Quality or its successor agency.

"Volume Charges" means the monthly charge assessed by the District to the Customer for the provision of Wholesale Water Service to the Wholesale Service Area determined by the volume of water delivered to the Wholesale Service Area as measured by the Master Meter and as described in Sections 4.01 and 4.03 herein.

"Wholesale Water Services" means the diversion of raw water under the BRA System Agreement and the production of groundwater from District's municipal groundwater wells, the transmission of such untreated water supplies to District's water treatment plant, the treatment of the water into potable form, and the transmission of potable water to the Delivery Point.

"Wholesale Service Area" means the territory more particularly described or depicted in **Exhibit B** attached hereto which consists of the real property located within the "Brushy Bend" area.

Section 1.02 Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II
PROVISION OF WHOLESALE WATER SERVICES

Section 2.01 Wholesale Water Services. District agrees to provide Wholesale Water Services to Customer for the Wholesale Service Area in accordance with the flow limitations and other terms and conditions of this Agreement.

Section 2.02 Customer Responsible for Retail Connections. Customer will be solely responsible for providing retail water service within the Wholesale Service Area. Customer shall not provide or sell water received under this Agreement to any entity, private or public, other than the Customer's retail customers located within the Wholesale Service Area. Customer will be solely responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement, for the applicable provisions of the District Service Rules and Policies, and for the proper and lawful application of Customer's policies and regulations governing connection to the Customer System.

Section 2.03 Secondary Source.

(a) The Parties agree that as of the Commencement Date, the sole source of water to Customer for the Wholesale Service Area is Wholesale Water Services furnished by the District. Notwithstanding the foregoing, the Wholesale Water Services shall not be the exclusive source of potable water supply to Customer, and Customer may elect, in its sole discretion, to secure additional or alternative water supplies for the Wholesale Service Area at any time. The Customer shall be solely responsible for securing any such alternative or additional water supplies. The Parties mutually acknowledge and agree that it is their intent for Customer to be solely responsible for compliance with TCEQ's minimum capacity rules.

(b) District, by entering into this Agreement with Customer, does not confer upon Customer, and Customer, as a result of this Agreement, shall never have or claim, any interest in any water owned or controlled by District.

Section 2.04 Title to and Responsibility for Water; Delivery Point.

(c) Title to the water diverted, treated and transported to Customer by District under this Agreement shall remain with District at all times until it reaches the Delivery Point. At the Delivery Point, title, control and dominion of the water shall pass to the Customer.

(d) Customer shall be solely responsible for conveying water from the Delivery Point to the Customer's intended places of use within the Wholesale Service Area.

Section 2.05 Quantity and Pressure.

(a) Subject to the terms of this Agreement, upon completion of construction by the Customer of the Customer Improvements and Delivery Improvements, District agrees to provide Wholesale Water Services in a quantity up to, but not in excess of: (i) the Annual Water Supply Commitment; (ii) the Connection Limit; (iii) a maximum daily flow rate of 400,000 gallons per day; (iv) a maximum hourly rate of 16,000 gallons per hour; and (v) a maximum instantaneous flow rate of 480 gallons per minute. The Parties agree that the water supply shall be delivered at the Delivery Point at a minimum pressure of 35 psi under normal operating conditions, and

Customer shall be solely responsible for ensuring that the water service furnished to its customers meets minimum pressure and other regulatory requirements applicable to public water systems established by TCEQ rules.

(b) District reserves the right to install, at its expense, flow restriction devices within the District System or at the Delivery Point if necessary in order to restrict the flow of water to Customer to the specified levels. All costs and expenses incurred by District in connection therewith, shall qualify as Costs of the District System. District shall provide Customer not less than 3 day prior written notice of its intention to do so.

(c) This Agreement shall not be construed as any guarantee or representation by District that the Wholesale Water Services furnished by District to the Customer will be sufficient for fire protection purposes, and the District expressly disclaims any such responsibility. This provision shall not be construed as an acknowledgment by either party that the Brushy Bend Water System was designed to provide flows that are sufficient for fire service.

(d) Customer, at any time and upon first giving District three hundred sixty five (365) days prior written notice, may reduce the Annual Water Supply Commitment. The written notice furnished by Customer to District shall specify the reduced Annual Water Supply Commitment. In the event of any such reduction, District's obligation to provide Wholesale Water Services shall be reduced accordingly; and District's maximum daily, hourly and instantaneous delivery obligations shall be reduced accordingly.

Section 2.06 Excess Consumption.

(a) If at any time the Annual Water Supply Commitment, the District shall deliver written notice to Customer. Customer shall have a period of thirty days from receipt of the notice to develop and implement a plan to address the cause of the exceedance. If the quantity of Wholesale Water Service again exceeds the Annual Water Supply Commitment within any calendar year within five (5) years of the first exceedance, then unless Customer obtains an alternative source of water service to meet its excess service requirements, District may exercise any of the following remedies, as determined in the sole and absolute discretion of District:

- (1) District may terminate this Agreement to be effective as of a date not less than 365 days after issuance of notice of termination by District to Customer, in which event Customer shall be solely responsible for securing an alternative water supply for the Wholesale Service Area, and District's obligation to provide Wholesale Water Service to Customer shall terminate on the effective date of termination;
- (2) District may pursue any remedy available at law or in equity as a result of Customer's breach; or
- (3) District may elect to acquire and develop additional wholesale water capacity at the sole cost and expense of Customer. In the event of such election, District shall calculate the cost of acquiring an additional water supply, which may include the construction of new groundwater well facilities, the purchase of additional water under the BRA System Agreement (if available) or the purchase of wholesale water service from

another purveyor. In such an event, District shall provide six months' written notice of the improvements and costs required to develop additional wholesale water service capacity, and District's method of financing the cost. Unless Customer obtains an alternative source of water service to meet its excess capacity requirements, Customer will be obligated to pay such costs (or, if the improvements will be designed to serve customers in addition to Customer, a pro rata share of such costs) on or before the expiration of such six-month period. The cost of any improvements required under this Section will include all reasonable and necessary costs of planning, designing, constructing and permitting, and any and all other costs in connection with, the required improvements and securing additional water supplies.

Section 2.07 Quality of Water Delivered to Customer. The water delivered by District at the Delivery Point shall be potable water of a quality conforming to the requirements of any applicable federal or state laws, rules, regulations or orders, including requirements of the TCEQ applicable to water provided for human consumption and other domestic use. Each party agrees to provide to the other party, in a timely manner, any information or data regarding this Agreement or the quality of treated water provided through this Agreement as required for reporting to the TCEQ or other state and federal regulatory agencies. Customer shall be solely responsible for the quality of water once it passes through the Delivery Point, including any degradation of water quality.

Section 2.08 Maintenance and Operation; Future Construction. District shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the District System, including the Master Meter, in good working condition and shall promptly repair any leaks or breaks in the District System. Customer shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the Customer System in good working condition and shall promptly repair any leaks or breaks in the Customer System.

Section 2.09 Rights and Responsibilities in Event of Leaks or Breaks. Customer shall be responsible for paying for all water delivered to it under this Agreement at the Delivery Point even if such water passed through the Delivery Point as a result of leaks or breaks in the Customer System. In the event a leak, break, rupture or other defect occurs within the Customer System that could either endanger or contaminate the District System or prejudice District's ability to provide water service to its other customers, District, after providing reasonable notice to Customer and an opportunity for consultation, shall have the right to take reasonable, appropriate action to protect the public health or welfare of the District System or the water systems of District's customers including, without limitation, the right to restrict, valve off or discontinue service to Customer until such leak, break, rupture or other defect has been repaired.

Section 2.10 Wholesale Service Commitment Not Transferable. District's commitment to provide Wholesale Water Services is solely to Customer and solely for the Wholesale Service Area. Customer may not assign or transfer in whole or in part its right to receive Wholesale Water Services without District's prior written approval. Notwithstanding the foregoing, the District reserves the right to provide wholesale water service to other properties, as may be amended from time to time. It shall be a material breach of this Agreement for Customer to provide retail (or wholesale) water service to any lands outside the Wholesale Service Area with water furnished by District under this Agreement. In the event of such breach, Customer agrees

that District may terminate this Agreement, or pursue any other right or remedy available at law or in equity, if Customer does not terminate the service connection within 30 days of receipt of written notice from District.

Section 2.11 Conservation and Drought Planning. Customer, by signing below, certifies that it has adopted a water conservation plan and a drought contingency plan in compliance with TCEQ rules, 30 Texas Administrative Code, Chapter 288, and that the provisions of such plans are at least as stringent as the provisions of the District Water Conservation and Drought Contingency Plan. Any curtailment, prohibitions, or restrictions on watering in effect for District retail customers must be applied to retail customers of Customer in the Wholesale Service Area.

Section 2.12 Plumbing Regulations. To the extent District and Customer have the authority, both covenant and agree to adopt and enforce adequate plumbing regulations with provisions for the proper enforcement thereof, to ensure that neither cross-connection nor other undesirable plumbing practices are permitted, including an agreement with each of their respective water customers that allows it to inspect individual water facilities prior to providing service to ensure that no substandard materials are used and to prevent cross-connection and other undesirable plumbing practices.

Section 2.13 Curtailment of Service.

(a) The Parties agree that if water service is curtailed by District to other customers of the District System, District may impose a like curtailment, with notice to Customer, on Wholesale Water Services delivered to Customer under this Agreement. District will impose such curtailments in a nondiscriminatory fashion. Similarly, in the event of any curtailment of water supply to, or imposition of restrictions upon, District under the BRA System Agreement, including restrictions imposed under the Brazos River Authority's Drought Contingency Plan, Water Conservation Plan or similar measures, then a corresponding percentage reduction in the quantity of Wholesale Water Service available to Customer under this Agreement, shall automatically apply.

(b) The Parties agree that they will not construe this Agreement to prohibit District from curtailing service completely in the event of a maintenance operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an Emergency circumstance. The Customer acknowledges and agrees that the District's provision of Wholesale Water Services under this Agreement is subject to applicable provisions of the District Water Conservation and Drought Contingency Plan, and to the availability of raw water under the BRA System Agreement. District will provide reasonable notice of planned maintenance to Customer that is anticipated to materially impact Wholesale Water Services so that Customer can provide reasonable prior notice of potential disruptions to its customers.

Section 2.14 Cooperation During Maintenance or Emergency. Customer will reasonably cooperate with District during periods of Emergency or required maintenance. If necessary, upon prior notice, Customer will operate and maintain the Customer System at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 2.15 Right of Entry. Customer agrees to provide District the right of entry and access to the Customer System at all reasonable times upon prior notice in order to inspect those

facilities, to investigate the source of operational or maintenance problems or for preventive purposes intended to detect, minimize, or avert operational or maintenance problems, or for any other purpose reasonably related to the provision of Wholesale Water Service.

Section 2.16 Agreement Conditioned on Closing of Sale. Customer and District acknowledge and agree that this Agreement is to be executed and effective upon the Closing for the sale of certain infrastructure assets of District to Customer under the Assets Purchase Agreement. In the event the asset sale does not occur in accordance with the Assets Purchase Agreement, this Agreement shall not be executed and shall not take effect.

ARTICLE III

CONSTRUCTION OF IMPROVEMENTS AND METERING PROVISIONS

Section 3.01 Master Meter. The District shall be responsible for ownership, operation, maintenance and repair of the Master Meter.

Section 3.02 Master Meter Accuracy; Calibration.

(a) The Master Meter shall be calibrated each calendar year by the District, and the costs associated with such calibration shall qualify as Costs of the District System. The District shall provide not less than 48 hours prior written notice of each such calibration, and a representative of the Customer may be present to observe each calibration.

(b) In the event any question arises at any time as to the accuracy of the Master Meter, but not more than a frequency of once per consecutive 12-month period without mutual consent of both parties, then the Master Meter shall be tested by District promptly upon demand of Customer. The expense of such test shall be borne by Customer if the Master Meter is found to be within AWWA and manufacturer's standards of accuracy for the type and size of meter and by District if the Master Meter is found to not be within AWWA and manufacturer's standards for the type and size of meter.

(c) If, as a result of any test, the Master Meter is found to be registering inaccurately (in excess of AWWA and manufacturer's standards for the type and size of meter), the readings of the Master Meter shall be corrected at the rate of their inaccuracy for any period which is definitely known or agreed upon and District shall pay for the testing or, if no such period is known or agreed upon, the shorter of:

- (1) a period extending back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the date of the test;
or
- (2) a period extending back one-half of the time elapsed since the last previous test;

and the records of the readings, and all payments which have been made on the basis of such readings, shall be adjusted accordingly.

ARTICLE IV
RATES AND CHARGES

Section 4.01 Wholesale Water Rates, Fees and Charges.

(a) Effective as of the Commencement Date, Customer will pay District for the Wholesale Water Service provided under this Agreement based on the following rates, charges and fees for the Wholesale Water Service:

- 1) Minimum Monthly Charge, which initially shall be \$4,750.00 per month; and
- 2) Volume Charge, which initially shall be \$2.12 per one thousand (1,000) gallons of water.

(b) The rates, fees and charges set forth above shall remain in effect for a period of five (5) years after the Commencement Date regardless of whether the District's Board of Directors amends its rates, charges and fees for water it supplies during such 5 year period.

Section 4.02 Amendment of Wholesale Rates, Fees and Charges, Notice to and Review by Customer.

(a) Upon completion of the five year period that rates, charges and fees are in effect pursuant to Section 4.01, District may amend the Minimum Monthly Charge and the Volume Charge from time to time as approved by the District Board of Directors.

(b) District will provide Customer with at least two (2) months prior written notice of any increases to the Minimum Monthly Charge or the Volume Charge, which may not take effect until completion of the five year period that rates, charges and fees are in effect pursuant to Section 4.01. Written notice shall include the proposed new charges, and an updated cost of service study.

(c) Customer will have the right to inspect and copy, at its expense, District's books and records to verify any statement, billing, charge, computation or demand made to Customer by District. District agrees to make all such information available to Customer for inspection and copying with reasonable promptness during normal business hours.

Section 4.03 Volume Charge, and Minimum Monthly Charge.

(a) The Minimum Monthly and Volume Charge shall be calculated by District in accordance with standard AWWA principles for wholesale service; shall be just, reasonable, and non-discriminatory; and shall be based on Costs of the District System.

(b) District will measure water flows monthly based on monthly readings of the Master Meter. The total of these amounts multiplied by the Volume Charges will be used by District to compute the monthly bill for the Volume Charge as provided in Section 5.02 below.

(c) Upon the commencement of delivery of potable water, Customer will commence payment to the District of the Minimum Monthly Charge and Volume Charge.

(d) If the amount of water delivered to Customer at the Delivery Point in any calendar year exceeds the Annual Water Supply Commitment, as determined by the Master Meter, then Customer agrees to pay an amount of money equal to the rate determined by the Board of Directors of District to then be in effect for use of water in amounts in excess of the Annual Water Supply Commitment during the previous calendar year. Purchaser acknowledges and agrees that the initial volumetric rate in effect as of the Effective Date of this Agreement applicable to consumption in excess of the Annual Water Supply Commitment is \$8.00 per 1,000 gallons.

Section 4.04 Customer Water Rates and Charges. During the term of this Agreement and subject to any required regulatory approvals, Customer will fix and collect rates and charges for retail water service that are sufficient, together with any other revenues available to Customer, to produce the amount necessary to operate, repair, and maintain the Customer System, and to pay the cost of Wholesale Water Service from District. Customer will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

Section 4.05 Verification of Customer Connections. Customer will make available for inspection and copying during regular business hours, at District's expense, all records for retail connections to the Customer System. In addition, District will have the right to inspect the Customer System at any time, at District's sole expense, after giving Customer written notice of its intention to inspect and allowing the opportunity for Customer to be present, to verify the type and amount of retail connections made or the condition of the Customer System and Customer will provide lawful access to District for this purpose. Customer shall not be required to provide proprietary business information developed for Customer's internal use. Records that are prepared to demonstrate compliance with applicable governmental regulations, or that identify the type of retail connections within the Wholesale Service Area and the amount of consumption by each customer in such area, shall not be considered to be proprietary.

ARTICLE V WHOLESALE BILLING METHODOLOGY; REPORTS AND OTHER RELATED MATTERS

Section 5.01 Monthly Statement. For each monthly billing period, District will forward to Customer a bill providing a statement of the total Minimum Monthly Charge and Volume Charges owed by Customer for Wholesale Water Service provided to Customer during the previous monthly billing period. Customer will pay District for each bill submitted by District to Customer by check or bank-wire on or before thirty (30) days from the date of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to District's administrative office at 16318 Great Oaks Drive, Round Rock, Texas. If payments will be made by bank-wire, Customer shall verify wiring instructions. Payment must be received at District's administrative office or bank by the due date in order not to be considered past due or late. In the event Customer fails to make payment of a bill within said thirty (30) day period, Customer shall pay in addition District's then-current late payment charges on the unpaid balance of the invoice.

Section 5.02 Monthly Billing Calculations. District will compute the Minimum Monthly Charge and Volume Charge included in the monthly billing for Wholesale Water Service on the basis of monthly readings of the Master Meter. The total of these amounts multiplied by the

wholesale water rates, set from time to time by the District Board of Directors, will be used to compute the monthly bill for the Volume Charge.

Section 5.03 Effect of Nonpayment. With respect to monthly billings, if District has not received payment from Customer for charges authorized pursuant to this Agreement by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, District will notify Customer of such delinquency in writing, if Customer or its assignee fails to make payment of the delinquent billing within 30 calendar days from the date of transmittal of such written notice of delinquency from District, then District may, at its discretion, terminate Wholesale Water Services to Customer until payment is made or exercise any other remedy available at law or in equity. Any delinquent payments shall also be subject to any late payment fees or similar charges adopted by the Board of Directors of the District from time to time.

Section 5.04 Protests, Disputes or Appeals. Nothing in this Agreement is intended to limit, impair or prevent any right of Customer to protest, dispute or appeal with respect to rate making, the establishment of fees and charges or any other related legal or administrative proceedings affecting services or charges to the Customer under this Agreement.

Section 5.05 Additional Required Notices. Customer shall provide to District by June 1 of every year during the term of this Agreement a report setting forth: (i) the total number of retail water service connections within the Wholesale Service Area as of April 1 of the same year; (ii) the service address for each connection; and, (iii) the total number of new retail water service connections to the Customer System during the prior annual period ending April 1 of the same year.

ARTICLE VI REGULATORY COMPLIANCE

Section 6.01 Agreement Subject to Applicable Law. The Agreement will be subject to all valid rules, regulations, and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them. District shall be solely responsible for regulatory compliance associated with the District System, and Customer shall be solely responsible for regulatory compliance associated with the Customer System.

ARTICLE VII TERM, TERMINATION, DEFAULT, REMEDIES

Section 7.01 Term and Termination. This Agreement shall become effective upon the Effective Date and shall extend for a term of forty (40) years unless terminated earlier as provided herein.

Section 7.02 Default.

(a) In the event Customer shall default in the payment of any amounts due to District under this Agreement, or in the performance of any material obligation to be performed by Customer under this Agreement, then District shall give Customer at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, District shall have the right to temporarily limit Wholesale Water Services to Customer under this Agreement pending cure of

such default by Customer and also to pursue any remedy available at law or in equity, pending cure of such default by Customer.

(b) In the event District shall default in the performance of any material obligation to be performed by District under this Agreement, then Customer shall give District at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, the Customer shall have the right to pursue any remedy available at law or in equity, pending cure of such default by District.

Section 7.03 Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that District's undertaking to provide and maintain the services of the District System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, District agrees, in the event of any default on its part, that Customer shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of Customer's obligations could not be adequately compensated in money damages alone, Customer agrees in the event of any default on its part that District shall have available to it the equitable remedy of specific performance in addition to any other legal or equitable remedies that may also be available to District. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees.

ARTICLE VIII GENERAL PROVISIONS

Section 8.01 Assignability. Assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned. Provided, however, that Customer may assign this Agreement to Aqua Texas, Inc. or to another wholly owned subsidiary of Aqua America, Inc. by simply providing written notice of such assignment to District within thirty (30) days after the effective date of such assignment. Such notice must include evidence of an assumption of all rights, duties and obligations of Customer hereunder by the assignee, the effective date of such assignment and assumption, and the notice address for the assignee. Any attempted assignment that is not undertaken in accordance with the foregoing requirements shall be null and void.

Section 8.02 Amendment. This Agreement may be amended or modified only by written agreement duly authorized by Customer and District and executed by duly authorized representatives of each.

Section 8.03 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 8.04 Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding its subject matter, and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding the subject matter.

Section 8.05 Applicable Law. This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 8.06 Venue. All obligations of the Parties created in this Agreement are performable in Williamson County, Texas, and venue for any action arising under this Agreement will be in Williamson County, Texas.

Section 8.07 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 8.08 Duplicate Originals. This Agreement may be executed in duplicate originals each of equal dignity.

Section 8.09 Notices. Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other party shown below:

Customer:

Aqua Texas, Inc.
Robert L. Laughman, President
1106 Clayton Lane, Suite 400W
Austin, Texas 78723

District:

Brushy Creek Municipal Utility District
Attn: General Manager
16318 Great Oaks Drive
Round Rock, Texas 78681

Notices shall be deemed received on the date of hand delivery or within three days of deposit in first-class mail.

Section 8.10 Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 8.11 Force Majeure. If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

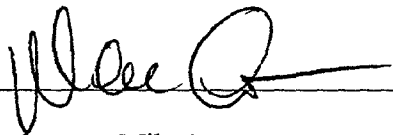
Section 8.12 Authority of Parties Executing Agreement, Validity. By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that he or she has the authority to execute the document in the capacity shown on this document. Each of the parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 8.13 Exhibits. The following exhibits are attached to and incorporated into this Agreement for all purposes:

- Exhibit A** Delivery Point
- Exhibit B** Wholesale Service Area
- Exhibit C** Service Connection Addresses within Wholesale Service Area

Section 8.14 Effective Date. This Agreement will be effective from 12:01 a.m. December 29, 2016.

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT

By: _____

Printed name: Mike Petter

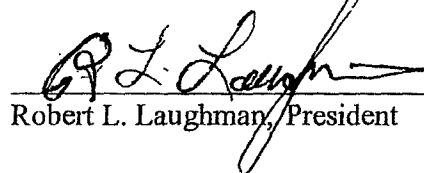
Its: General Manager

Date: December 16, 2016

AQUA TEXAS, INC. dba AQUA TEXAS



By:


Robert L. Laughman, President

Date: December 16, 2016

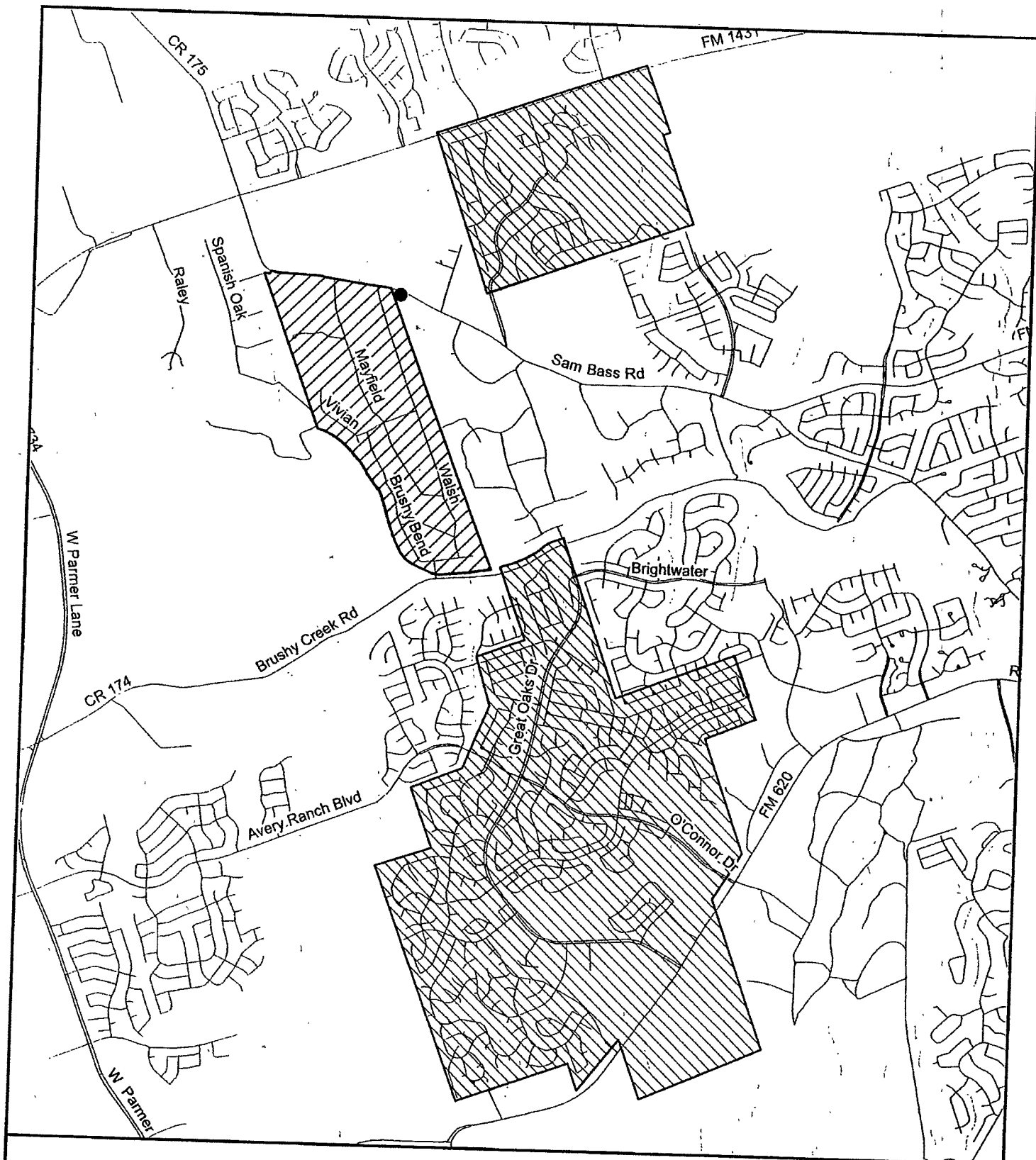




Exhibit A

Delivery Point Location Map

- Delivery Point / Existing Master Meter Location
-  Brushy Bend Park Subdivision Service Area
-  Retained Brushy Creek MUD Service Area

Map by: S. Burt
 Date created: November 7, 2015
 Project: Delivery Point Location.mxd



0 1,500 3,000
 Feet

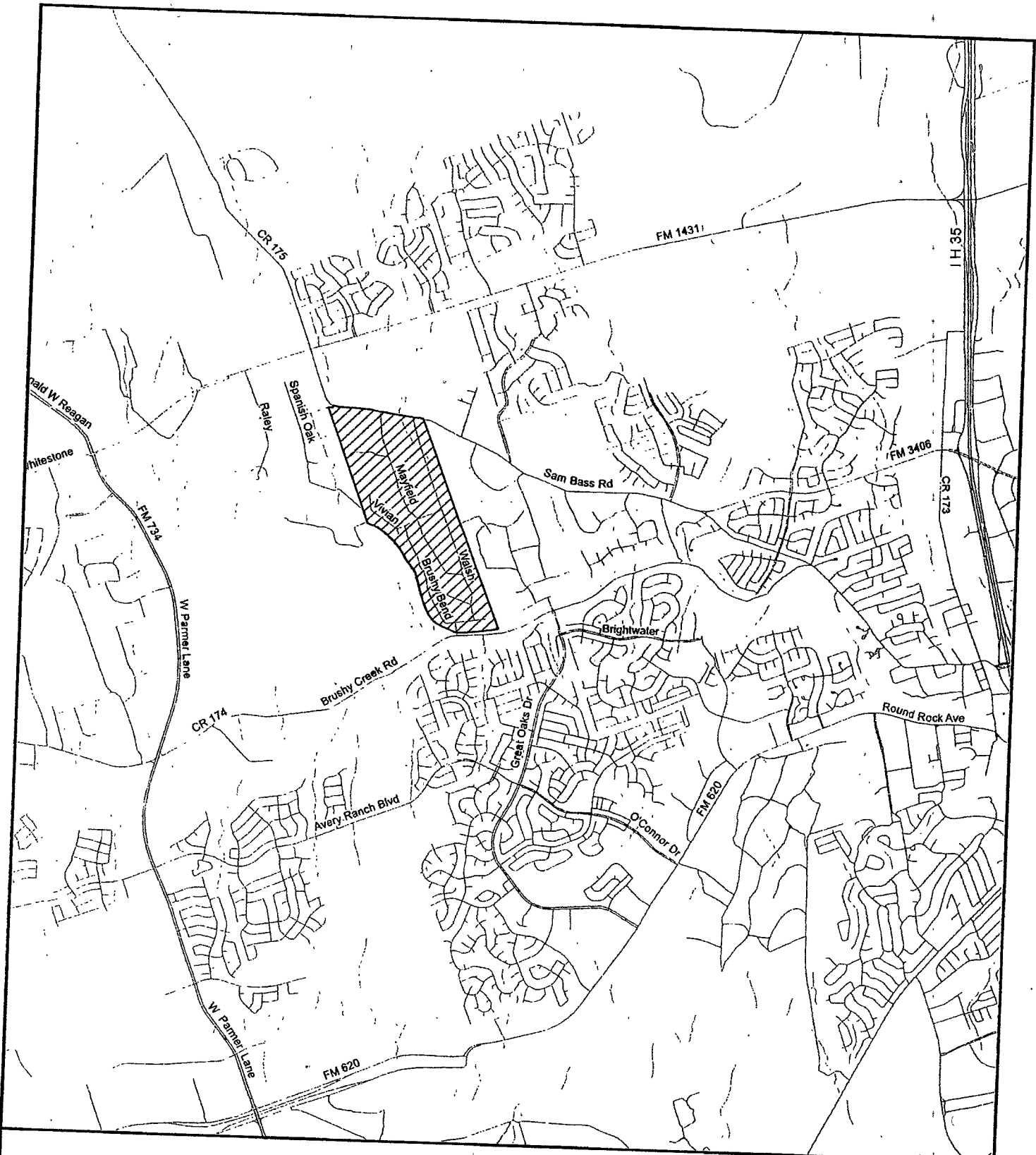


Exhibit B

Aqua Texas, Inc. d/b/a Aqua Texas
To Transfer a Portion of Brushy Creek MUD, CCN No. 11773
in Williamson County



Proposed Area to Transfer

Map by: S. Burt
Date created: November 4, 2015



0 2,000 4,000
Feet

EXHIBIT C - Service Connection Addresses within Wholesale Service Area

[illegible]

WHOLESALE WATER SERVICES AGREEMENT BETWEEN BRUSHY CREEK MUNICIPAL UTILITY DISTRICT
AND AQUA TEXAS, INC.

[illegible]

WHOLESALE WATER SERVICES AGREEMENT BETWEEN BRUSHY CREEK MUNICIPAL UTILITY DISTRICT
AND AQUA TEXAS, INC.

[illegible]

WHOLESALE WATER SERVICES AGREEMENT BETWEEN BRUSHY CREEK MUNICIPAL UTILITY DISTRICT
AND AQUA TEXAS, INC.

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