

MEMORANDUM OF UNDERSTANDING

By and Between

AQUA TEXAS, INC. and WIMBERLEY VOLUNTEER FIRE DEPARTMENT/HCESD #4

WHEREAS, Aqua Texas, Inc. (hereinafter "Aqua Texas") owns and operates water distribution systems ("Systems") within the Wimberley Volunteer Fire Department/HCESD #4 (hereinafter "WVFD") service area;

WHEREAS, Aqua Texas and WVFD mutually acknowledge and agree that Aqua Texas does not provide fire protection or suppression service, that Aqua Texas' Systems are not designed for such uses and may not always be capable of supplying water in sufficient capacity for fire fighting;

WHEREAS, the TCEQ Rate Tariff applicable to Aqua Texas states that Aqua Texas, "is not required by law and does not provide fire prevention or fire fighting services. [Aqua Texas] therefore does not accept liability for fire-related injuries or damages to persons or property caused or aggravated by the availability (or lack thereof) of water or water pressure (or lack thereof) during fire emergencies."

WHEREAS, WVFD wishes to utilize water from the Systems;

WHEREAS, WVFD and Aqua Texas acknowledge and agree that Aqua Texas will allow WVFD to utilize the System on an as is, where is basis;

WHEREAS, Flush Valves (hereinafter "Hydrants") in the Systems provide the best point of access for WVFD and Aqua Texas is willing to provide WVFD access to the Systems through those Hydrants upon the terms and conditions stated herein; and

WHEREAS, the Hydrants in the Systems are painted black and the parties wish to clarify certain confusion that has resulted from the passage of HB 1717, sometimes referred to as the Black Fire Hydrant Law;

NOW THEREFORE, it is hereby RESOLVED, UNDERSTOOD, and AGREED that:

1. WVFD may utilize Aqua Texas' Systems by refilling WVFD pumper trucks with soft suction in compliance with all regular rules, regulations, and procedures, including those of the Texas Commission on Environmental Quality. WVFD acknowledges and agrees that this Memorandum of Understanding shall not be construed as a warranty as to the suitability or availability of either the System or any Hydrant for fire suppression or that the Systems meet the requirements for fire suppression under HB 1717.
2. WVFD acknowledges that pressure testing for flows, fire protection and suppression activities may result in damages to Aqua Texas' Hydrants. WVFD is responsible and liable for any damage directly caused by its negligent operation of a Hydrant and/or the

taking of water for fire-fighting purposes. WVFD shall immediately notify Aqua Texas when such damage occurs.

3. Aqua Texas will make reasonable efforts to maintain Hydrants in good working order. However, Aqua Texas does not warrant any particular performance standard, and **shall not be liable to WFVD or any third party** for the failure of any Hydrant, or the distribution system, to deliver any particular level of water flow during an emergency.
4. In the event that Aqua Texas and WVFD are able to obtain approval to do so from TCEQ, Aqua Texas will keep the body of all Hydrants painted black, but will paint the top portion (normally referred to as the bonnet) as shown below:

Estimated Gallons Per Minute (GPM)	Color
1000 GPM or Greater	Green
500 GPM to 1000 GPM	Yellow
< 500 GPM	Red

WVFD and Aqua Texas acknowledge and agree that painting a cap in the manner noted above does not warrant that such flows will always be available through that Hydrant and that variables in usage within the Systems may at times reduce the flow rate. If a Hydrant lacks a bonnet the entire device shall be painted black.

WVFD and Aqua Texas further acknowledge and agree that Aqua Texas shall have no obligation to perform pressure testing of any Hydrant. WVFD may test or assess the flows that may be available at Hydrants within the Systems, upon prior notice to Aqua Texas of no less than twenty-four hours. Aqua Texas shall have the right to have one or more Aqua Texas representatives present during such tests or assessments.

5. Aqua Texas will exercise reasonable efforts to mark a Hydrant that is temporarily out of service or under construction by covering it with a black tarp or colored bag labeled "Out of Order."
6. The WVFD will supply a monthly Water Usage Statement to Aqua Texas for water used while testing for flows and/or during an emergency for the sole purpose of assisting Aqua Texas in accounting for water supply losses. This Water Usage Statement shall be provided to the local Aqua Texas office by the 5th day of every month. WVFD acknowledges that reports of such usage are needed by Aqua to account for groundwater withdrawal to its regulatory agency.
7. The WVFD will not be charged for use of Aqua Texas' water supply used by WVFD in connection with testing or fire suppression.
8. Either party to this Memorandum of Understanding may terminate this Memorandum of Understanding at any time, with or without cause.

9. Termination shall be by written notice provided a minimum of thirty (30) days in advance of the date of termination.
10. Termination is the sole remedy for breach of any and all obligations under this Memorandum of Understanding, whether any such obligation is express or implied. No third party rights are created under this Agreement.
11. This Memorandum of Understanding is the sole agreement between the parties. No modification of this Memorandum of Understanding will be of any force or effect whatsoever unless such modification shall be in writing and signed by both parties.
12. The signatories hereto represent and affirm that each has full authority to execute this Memorandum of Understanding on behalf of the party indicated below.

EXECUTED AND AGREED TO in duplicate originals by the parties hereto.

Date: 20th day of November, 2008.

WIMBERLEY VOLUNTEER FIRE DEPARTMENT

By: Carroll Gehr
(print name: Carroll Czichos)
Title: Chief

AQUA TEXAS, INC.

By: Robert L. Laughman
(print name: Robert L. Laughman)
Title: President