

ORDINANCE NO. 2023-12-13-01

AN ORDINANCE GRANTING AQUA TEXAS, INC., THE NON-EXCLUSIVE RIGHT TO USE AND OCCUPY RIGHTS-OF-WAY WITHIN THE CITY OF WOODCREEK FOR THE CONSTRUCTION AND OPERATION OF WATER AND WASTEWATER UTILITY SYSTEMS; PRESCRIBING CONDITIONS GOVERNING THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR COMPENSATION THEREFOR; PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC, AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WOODCREEK, TEXAS, THAT:

Section 1. Definitions.

1.1. For the purposes of this Ordinance, when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined in this Section 1 shall be given their common and ordinary meaning.

1.2. For the purposes of this Ordinance, the following words, terms, phrases and their derivations shall have the meaning given in this Section 1.2.

1.2.1. “City” shall mean the City of Woodcreek, Texas, a municipal corporation and a political subdivision of the State of Texas.

1.2.2. “City Council” shall mean the governing body of the City.

1.2.3. “City Manager” shall mean the City Manager of the City or his/her authorized designate, or, absent such office being existent and occupied, the Mayor of the City.

1.2.4. “City Secretary” shall mean the City Secretary of the City of Woodcreek.

1.2.5. “Company” shall mean Aqua Texas, Inc., a corporation authorized to transact and actually transacting business in the State of Texas, its legal representatives, successors, lessees, and assigns.

1.2.6. “Customer” shall mean any person or organization billed for water or wastewater service whether used by him or her, or by others.

1.2.7. “Gross Receipts” shall mean the total amount collected by Company, its affiliates, subsidiaries, or parent, for all services provided by Company to Customers within the City. Gross Receipts shall not include taxes or regulatory charges on services

furnished by the Company that are imposed directly upon any Customer by the State, City, or other governmental unit and collected by the Company on behalf of the governmental units.

1.2.8. “Public Utility Easement” shall mean those easements held, owned, or otherwise controlled by the City, with terms, conditions, or limitations that are consistent with the construction or maintenance of a water or wastewater system.

1.2.9. “Public Right-of-Way” shall mean the surface of, and the space above and below any and all present and future public streets, avenues, sidewalks, highways, boulevards, drives, roads, bridges, alleys, lanes, viaducts, Public Utility Easements, and all other public roadways within the City, and any highways, county roads, or other public roadways for which the City has an agreement or contract to control, regulate, or maintain, as they now exist or may be hereafter constructed, or extended within the corporate limits of the City.

1.2.10. “PUC” shall mean the Public Utility Commission of Texas or its successor agency.

1.2.11. “System” shall mean all interrelated collection and distribution lines, equipment, treatment facilities, and other appurtenances located within the City that are used or necessary for the transmission and distribution of water and collection of wastewater and its treatment to/for Customers in the City. For the purposes of this Franchise, the Company’s water and the wastewater systems are one utility and are not separated.

1.2.12. “TCEQ” shall mean the Texas Commission on Environmental Quality or its successor agency.

1.2.13. “Wastewater Utility System” shall mean the system of pipes, pumps, equipment, and treatment facilities owned by Company located and/or metered within the City that are necessary and useful to providing wastewater collection and treatment services to Customers within the City, together with all land, property, and assets used by Company for the purposes of providing such utility services within the City.

1.2.14. “Water Utility System” shall mean the system of pipes, lines, pumps, equipment, and wells owned by Company located and/or metered within the City that are necessary and useful to providing potable water to Customers within the City, together with all land, property, and assets used by Company for the purposes of providing such utility services within the City.

## Section 2. Grant of Franchise.

2.1. There is hereby granted to Company the right, privilege and franchise to construct, extend, maintain, and operate its Water and Wastewater Utility Systems in, along, under, and across the present and future Public Rights-of-Way. All of the Company’s work, activity, and undertakings within the Public Rights-of-Way shall be subject to the terms and provisions of this

Franchise and all applicable and valid ordinances and regulations of the City directing and controlling the management of the Public Rights-of-Way and public works within the City.

2.2. The Company shall be allowed to operate and maintain all lines existing on the effective date of this Franchise within City parks, greenbelts, and similar property, or then existing on land hereinafter designated as a City park, but shall not undertake a replacement of such lines or install new lines within said parks, greenbelts, or similar properties without the permission of the City Council. Permission shall not be unreasonably withheld. Nothing herein shall be construed as preventing Company from acting to repair or replace any component of the System requiring emergency repairs, i.e., to prevent loss of life, damage to property, or to address a service outage.

2.3. The term of this Franchise shall be for a period of five (5) years from the date of the completion of the term of the previous franchise on January 12, 2020, and shall continue in effect for two (2) succeeding five (5) year period unless terminated by one of the Parties in writing at least six (6) months prior to the conclusion of such five (5) year period; provided that this Franchise shall not be or become effective unless accepted by the Company as provided in Section 8 hereof and until adoption by the City of the Franchise Fee.

2.4. The Company shall not transfer this Franchise nor any rights and privileges granted herein without the written approval of the Council expressed by ordinance. Such approval shall not be unreasonably withheld.

2.5. Nothing contained in this Franchise shall be construed as granting any exclusive franchise or right.

2.6. Notwithstanding any other term or provision of this Franchise, Company shall not be entitled or permitted to place any treatment plant or facility above ground on any land owned or held by the City; and no above-ground facilities, pumps, or equipment shall be placed upon any land, property, or Public Right-of-Way owned or controlled by City without the express permission of the City Council.

2.7 Notwithstanding anything set out in this Agreement to the contrary, nothing within this Agreement shall be construed as preventing Company from contesting the validity of any City ordinances or regulations, as an admission that any such ordinance or regulation is enforceable, or that a particular City ordinance or a regulation is applicable to the Company or its activities. Further, nothing in this Agreement shall be construed as imposing a contractual obligation on the Company to comply with any ordinance or regulations.

### Section 3. Use of Public Right-of-Way.

3.1. In the operation and maintenance of its Water and Wastewater Utility Systems in the Public Right-of-Way, the Company shall not conflict with existing water pipes, sewers, electric power lines, telephone lines, cable television lines, or other authorized installations. All work done in said Public Rights-of-Way by the Company shall be done with reasonable diligence and without unnecessary inconvenience to the public or individuals. The Company shall use the Public Rights-of-Way in accordance with all applicable and valid City ordinances, as the same may be amended from time to time.

3.2. The Company shall not place any replacement or extension to its Water or Wastewater Utility Systems where the same will obstruct or interfere with motor vehicle traffic (other than a reasonably necessary temporary obstruction), or any existing television cable, electric, water, drainage, sewer, or telephone facilities, traffic control signalization, street lights, fire lines, communications lines, or any known or then planned use of the property by the City. The Systems shall be located, installed and maintained so that none of the facilities thereof shall unreasonably endanger the lives of persons, unreasonably interfere with any public improvements the City may deem proper to make, or unnecessarily obstruct the free use of the Public Rights-of-Way, easements, or public property.

3.3. The Company shall repair all excavations and work sites by the Company in compliance with any applicable and legally valid City rules and regulations as soon as reasonably possible under the circumstances; provided that in any event the area of excavation or work shall be, at minimum, repaired and replaced to as good or better condition as existed prior to the start of the work by Company, and the Company shall be responsible for the cost and expense of maintaining the repair and work for one (1) year. During the one-year maintenance period, the Company shall remedy any repairs by the Company that, in the reasonable opinion of the City, is in appreciably worse condition than the area surrounding the restoration site. For this one-year maintenance period, Company or Company's Contractor shall provide a Performance Bond benefitting the City for an amount of 100% of the restoration of the surface of any street, alley, or public water within the Public Rights-of-Way. The surety for a Performance Bond shall meet the requirements of Texas law.

#### Section 4. Relocation of Facilities.

4.1. The City reserves the right to lay, and permit be laid, any City-owned facilities or other improvements, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The City also reserves the right to change in any manner any Public Right-of-Way and City-owned utility lines, storm sewers, drainage basins, drainage ditches, and other City facilities.

4.2. The Company shall comply with the applicable and legally valid provisions of Chapter 92, Woodcreek City Code, with regard to relocation of its facilities from the Public Rights-of-Way.

4.3. Whenever any public works project requiring the relocation or removal of Company's Water or Wastewater Utility Systems is funded, in whole or in part, with federal or state highway monies, if federal or state law provides compensation for utility adjustments, the City shall request that compensation be provided to the Company by the funding authority. If the City receives such requested utility adjustment compensation, it shall deliver same to the Company.

4.4. If the City abandons any Public Rights-of-Way in which Company has facilities, the City will determine whether it is appropriate to maintain a Public Utility Easement on behalf of Company at such location. If the City determines that Company's facilities need to be removed, Company shall promptly do so at its expense. If the abandonment is undertaken at the request of

a third party, such abandonment shall be conditioned on the party to whom the Public Rights-of-Way is abandoned reimbursing Company for all removal or relocation expenses. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

#### Section 5. Franchise Fee.

5.1. The Public Rights-of-Way used by the Company in the operation of its Water and Wastewater Utility Systems are valuable public properties acquired and maintained by the City at great expense to its taxpayers, without which the Company would be required to invest in right-of-way costs and acquisitions. In order to compensate the City for the use of the valuable public properties, the Company shall pay to the City a Franchise Fee in the amount of three percent (3%) annually of the Company's total Gross Receipts collected from Customers within the City, subject to Paragraph 5.6, below.

5.1.1. The Franchise Fee shall be payable quarterly to the City, with payments being due on February 15, May 15, August 15, and November 15 of each year during the term hereof. Each payment shall be based upon the Company's Gross Receipts during the preceding calendar quarter, and shall constitute payment for the rights and privileges granted hereunder for said calendar quarter.

5.1.2. The Franchise Fee shall be in lieu of any and all other City-imposed rentals or compensation or franchise, license, privilege, instrument, occupation, excise, or revenue taxes or fees, and all other exactions or charges (except ad valorem property taxes, special assessments for local improvements, city sales tax, and such other charges for utility services imposed uniformly upon persons, firms or corporations then engaged in business within the City).

5.1.3. Interest on late payments shall be calculated in accordance with the interest rate for customer deposits established by the PUC in accordance with the Texas Utilities Code, Section 183.003, as amended, for the time period involved.

5.1.4. With each payment required herein, the Company shall furnish to the City a statement indicating the derivation and calculation of such payment. Additionally, the Company shall file annually with the City Secretary, no later than four (4) months after the end of the Company's fiscal year, a statement of revenues attributable to the operations of the Company within the City.

5.2. Should the City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay any such licenses, charges, fees, rentals, easement or franchise taxes or charges.

5.3. For purposes of verifying the correct calculation of each payment of Franchise Fees by the Company, the City may conduct an annual audit or other inquiry in relation to such payments. The City may, if it sees fit, upon reasonable notice to the Company, have the books

and records of the Company examined annually by representatives of the City to ascertain the correctness of the reports agreed herein to be filed. Audits under this Agreement may not extend beyond a period of five years.

5.3.1. The Company shall make reasonably available to the City's representative during the Company's regular business hours and upon reasonable notice, such personnel and records as the City may, in its reasonable discretion, request in order to complete such audit, and shall make no charge to the City.

5.3.2. If as the result of any City audit, Company is refunded/credited for an overpayment or pays the City for an underpayment of the franchise fee, such refund/credit or payment shall be made promptly.

5.3.3. If, as a result of a subsequent audit or inquiry, initiated within two (2) years of an audit or inquiry that resulted in Company making a payment to the City due to an underpayment of the Franchise Fee of more than 5%, Company makes another payment to the City due to an underpayment of the Franchise Fee of more than 5%, the City may immediately treat this underpayment as late payment and charge interest as provided herein from the time the payment should have been made to City.

5.3.4. The Company shall assist the City in its review by responding to all reasonable requests for information pursuant to this Paragraph 5.3 no later than thirty (30) days after receipt of a request.

5.3.5. The City's right to conduct an audit of Franchise Fee payments by Company under the prior franchise granted by Ordinance No. 00-62 shall not be extinguished by the agreement of the parties to enter into this new franchise agreement, but shall survive the expiration or termination of said agreement.

5.3.6 In the event the City conducts more than one audit within a calendar year, the City shall reimburse Company for expenses incurred by Company in cooperating with such audit. For purposes of clarification, but not limitation, such reimbursement obligation includes reimbursing company for the time spent by Company's employees cooperating with any such audit request.

5.3.7 City and Company shall have the right to review the results of any audit conducted under this Paragraph 5.3, including the underlying material relating to the audit, and to challenge the results of the audit. Such challenge, if it cannot be resolved between the Parties, shall be subject to a third-party dispute resolution process reasonably agreed between the Parties.

5.4. If Company provides confidential or proprietary information to the City, Company shall be solely responsible for identifying such information with markings calculated to bring the City's attention to the proprietary or confidential nature of the information. The City agrees to maintain the confidentiality of any non-public information obtained from Company so designated to the extent allowed by law. The City shall not be liable to Company for the release of any information the City is required to release by law. City shall provide notice to Company of any request for release of information marked by Company as proprietary or confidential prior to

releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes Company's proprietary or confidential information, the City will notify the Texas Attorney General of the proprietary or confidential nature of the document(s). The City also will provide Company with a copy of this notification, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information. This paragraph shall not be construed as requiring Company to provide any confidential or proprietary information to the City.

5.5 City shall, within 90 days of final approval and submission to the Texas Comptroller of Public Accounts, give the Company notice of annexations and disannexations of territory by City, which notice shall include a map and addresses, if known. Upon receipt of said notice, the Company shall promptly initiate a process to reclassify affected customers into the City limits, not later than 60 days after receipt of notice from City. The annexed areas added to the City limits will be included in future franchise payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, the Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise payments. In no event shall Company be required to add premises for the purpose of calculating franchise payment prior to the earliest date that the same premises are added for purposes of collecting sales tax.

5.6 The Parties recognize that the City must adopt the Franchise Fee by and through adoption of this Ordinance, which the City shall do within thirty (30) days of the Company's acceptance of the Franchise pursuant to Section 8.

#### Section 6. Insurance.

6.1. In addition to the insurance requirements provided in Chapter 92 of the Woodcreek Code of Ordinances, the Company shall also maintain throughout the term of the Franchise property damage coverage, general liability insurance, and automobile liability insurance for any vehicles owned or operated by Company, with an insurance company licensed to do business in the State of Texas and acceptable to the City, insuring against claims for liability and damages for the benefit of the City.

6.1.1. Property damage coverage insurance under this section shall be a minimum of Five Million and No/100 Dollars (\$5,000,000).

6.1.2. Automobile liability insurance under this section shall at a minimum have limits of \$500,000 for bodily injury for each person and \$1,000,000 for each occurrence, and property damage of \$250,000 for each occurrence.

6.1.3. General liability insurance under this section shall be a minimum of Five Million and No/100 Dollars (\$5,000,000) for the protection of the public in connection with:

6.1.3.1. Liability to persons or damages to property, in any way arising out of or through the acts or omissions of Company, its servants, agents or employees, or to which Company's negligence shall in any way contribute;

6.1.3.2. Arising out of any claim or invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation;

6.1.3.3. Arising out of Company's operations and relationships with any independent contractor or subcontractor.

6.1.4. The Company shall maintain throughout the term of the Franchise the requisite statutory workers' compensation insurance and a minimum of \$100,000 employer's liability insurance.

6.2. The Company will require its contractors and subcontractors to maintain, at their sole cost and expense, the following:

6.2.1. A minimum of one million dollars (\$1,000,000) each occurrence or each accident general liability and automobile liability insurance throughout the course of work performed; and

6.2.2. Statutory workers compensation benefits in accordance with the regulations of the State of Texas or state of jurisdiction, as applicable. The minimum limits for employers' liability insurance will be five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, and five hundred thousand dollars (\$500,000) policy limit bodily injury by disease.

6.2.3. Company shall provide to the City upon request proof of its contractors' and subcontractors' compliance with these insurance requirements.

6.3. A certificate of Insurance reflecting the insurance policy, or policies, obtained by the Company in compliance with this section, shall be filed and maintained with the City Secretary during the term of the Franchise. The Company shall immediately advise the City Council of any significant litigation, actual or potential, that may develop and would affect this insurance.

6.4. All insurance policies maintained pursuant to this Franchise shall contain the following conditions by endorsement:

6.4.1. The City shall be an additional insured and the term "owner" and "City of Woodcreek" shall include all authorities, boards, bureaus, commissions, divisions, departments, and offices of the City and the individual members, officers, employees and agents thereof in their official capacities and/or while acting on behalf of the City;



6.4.2. Each policy shall require that thirty (30) days prior to a cancellation or material change in policies, a written notice thereof shall be delivered to the City Manager by registered mail;

6.4.3. Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect the Company and the City and shall be primary coverage for all losses covered by the policies;

6.4.4. The policy clause "Other Insurance" shall not apply to the City where the City is an insured on the policy;

6.4.5. Companies issuing the insurance policies shall not have recourse against the City for payment of any premiums or assessments.

Section 7. Indemnification and Hold Harmless. The Company agrees to indemnify, defend, and save harmless the City, its agents officers and employees, against and from any and all claims by or on behalf of any person, firm, corporation or other entity, arising from the Company's Water and/or Wastewater Utility System(s), or arising from any act of negligence of the Company, or any of its agents, contractors, servants, employees or licensees, and from and against all costs, counsel fees, expenses and liabilities incurred in or about any such claim or proceeding brought thereon, and from any and all claims arising from any breach or default on the part of the Company in the performance of any covenant or agreement on the part of the Company to be performed pursuant to the terms of this Franchise. The City shall promptly notify the Company of any claim or cause of action that may be asserted against the City relating to or covering any matter against which the Company has agreed, as set forth above, to indemnify, defend, and save harmless the City. The Company reserves the right, but not the obligation, to employ such attorneys, expert witnesses, and consultants as it deems necessary to defend against the claim or cause of action. In the event the Company and the City are codefendants in a suit, the Company may be granted the right to take total or partial lead responsibility for the defense of any claim or cause of action upon express written approval of the City Attorney. In the event that the City is in control, either totally or partially, of such defense, the Company shall pay all expenses incurred by the City in providing the defense. It is understood that it is not the intention of either the City or the Company to create any liability, right, or claim for the benefit of third parties, and this Franchise is intended and shall be construed for the sole benefit of the City and the Company.

Section 8. Acceptance of Franchise by Company and City Adoption of Franchise Fee.

8.1. This Franchise shall become effective when both (i) the Franchise has been accepted by the Company as follows: (a) the Company shall execute a written acceptance on the letterhead of the Company in the form and content set forth in Section 8.2; and (b) the Company shall, within thirty (30) days from the final adoption of this Ordinance, file with the City Secretary a properly executed acceptance that complies in every respect with this Section 8.1 and the wording of Section 8.2; and (ii) the City has adopted the Franchise Fee. When this Franchise has been accepted by the Company strictly in conformance with Sections 8.1 and 8.2 and the City has adopted the Franchise Fee in this Ordinance, this Franchise shall be a duly executed contract by and between the City and the Company.

8.2. The Company shall, if it elects to accept this Franchise, give written notice of acceptance to the City Secretary within thirty (30) days from the date of this Ordinance. Such acceptance shall be typed or printed on the letterhead of the Company and, with the blank spaces appropriately completed, shall be as follows:

(insert date of letter)

The City of Woodcreek  
41 Champions Circle  
Woodcreek, Texas 78676-3327

ATTENTION: City Secretary

Aqua Texas, Inc., (the “Company”), acting by and through the undersigned officer who is acting within his official capacity and authority, hereby accepts the franchise to operate Water and Wastewater Utility Systems within the City of Woodcreek (the “City”) as said franchise is set forth and provided in Ordinance No. \_\_\_\_ (the “Ordinance”). The Company agrees the Franchise was negotiated in good faith between Company and City and that the terms, provisions and conditions thereof are mutually accepted and constitute a valid contract between Company and City. The Company further agrees to be bound and governed by each term, provision, and condition of the Franchise, to accept and to give the benefits provided by the Franchise, and to perform each service and duty set forth and provided for in the Franchise in a business-like and reasonable manner and in compliance with the Franchise.

Aqua Texas, Inc.

By:

Name: Craig L. Blanchette

Title: President

Section 9. Default, Remedies, and Termination.

9.1. Events of Default. The occurrence, at any time during the term of this Franchise, of any one or more of the following events, shall constitute an Event of Default by Company under this Franchise:

(1) the failure of Company to pay any undisputed portion of the Franchise Fee on or before the due dates specified herein; or

(2) Company’s material breach or material violation of any of material terms, covenants, representations, or warranties contained herein, or Company’s failure to perform any material obligation contained herein; or

(3) failure to meet minimum standards as required by the State of Texas; or

(4) material misrepresentation of fact in the application for or negotiation of this Franchise; or

(5) conviction of any director, officer, employee, or agent of the Company of the offense of bribery or fraud connected with or resulting from the awarding of this Franchise; or

(6) material misrepresentation of fact knowingly made to the City with respect to or regarding Company's operations, management, revenues, services, or reports required pursuant to this Franchise.

## 9.2. Uncured Events of Default.

9.2.1. Upon the occurrence of an Event of Default that can be cured by the immediate payment of money to the City, Company shall have thirty (30) calendar days from receipt of written notice from the City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in Section 9.3.

9.2.2. Upon the occurrence of an Event of Default by Company that cannot be cured by the immediate payment of money to the City, Company shall have sixty (60) calendar days (or such additional time as may be agreed to by the City or as reasonably required by Company despite its best efforts in pursuing a cure) from receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in Section 9.3.

9.2.3. If the Event of Default is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section 9.3.

9.3. Remedies. The City shall notify Company in writing of an alleged Uncured Event of Default as described in Section 9.2, which notice shall specify the alleged failure with reasonable particularity. Company shall, within thirty (30) calendar days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or in a written response to the City either present facts and arguments in refuting or defending such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure. In the event that such cure is not forthcoming, City shall be entitled to exercise any and all of the following cumulative remedies:

(1) the commencement of an action against Company at law for monetary damages or civil penalties;

(2) the commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions, that as a matter of equity, are specifically enforceable; and

(3) the termination of this Franchise.

9.4. Remedies Not Exclusive. The rights and remedies of the City and Company set forth in this Franchise shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. The City and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by the City of any one or more of such remedies shall not preclude the exercise by the City, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this Section or any other provision of this Franchise, the City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this Section or under any other provision of this Franchise.

9.5. Termination. In accordance with and subject to the provisions of Section 9.3, this Franchise may be terminated upon thirty (30) business days' prior written notice to Company. The City shall notify Company in writing at least fifteen (15) business days in advance of the City Council meeting at which the question of termination shall be considered, and Company shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Company may have that are relevant to the proposed termination. The final decision of the City Council pursuant to the terms of this Franchise may be appealed by Company to any court or regulatory authority having jurisdiction. Upon timely appeal by Company of the termination of the Franchise, the effective date of such termination shall be when such appeal is withdrawn by Company or when an order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this Franchise shall remain in effect for all purposes. The City recognizes Company's right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission of Texas in accordance with the Texas Water Code.

9.6. Receivership and Bankruptcy. The City Council shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding, whether voluntary or involuntary, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, unless:

(1) Within one hundred twenty (120) days after their election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; or

(2) Such receiver or trustee, within one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise granted to the Company.

9.7. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by that party.

Section 10. Customer Service and Community Interaction.

10.1 The Company shall comply with all applicable and valid provisions of Chapter 52 of the City Code. In addition, the Company commits to provide customer service to the City customers in compliance with the customer service obligations set forth in the PUC regulations and the Company's tariff.

10.2 The Company shall provide the City a designated customer service representative, accessible to city officials and City staff, within 30 days of the date of the date City Council adopts this ordinance. The Aqua customer service representative will be available during normal business hours, Monday – Friday, by phone or email. The designated customer service representative will be in addition to employees available through the Aqua Customer Contact Center as well as the existing, customer-facing, employees working in the City of Woodcreek.

10.3 The Company shall provide the City within 30 days of the date of the date City Council adopts this ordinance a Company contacts list for access by city officials and city staff to be used in day-to-day activities of both parties in ensuring excellent customer service to residents of the City of Woodcreek. Such contact list will be updated as soon as reasonably possible as changes occur within the organization.

10.4 City and the Company shall promote to the best of their ability the incorporation of various aspects of One Water Concepts for all new development as well as rules, regulations, and legislation that promote sustainability and conservation of groundwater in the Wimberley Valley.

10.5 Per the City's request, Company shall meet with the City, or designee(s) as may be appointed, at least annually but no more frequently than once per quarter to discuss pending and future growth in the region on a schedule determined by the City. City shall schedule and host the reoccurring meetings. Nothing herein shall prevent Aqua from approaching the City to discuss a development or potential transaction in between scheduled sessions.

10.6 City and Company shall work together on initiatives and events that promote cooperation amongst the parties and enhance quality of life in the region.

10.7 Aqua will provide water service to City-owned facilities, structures, and plantings at no cost to the City. Such facilities will be limited to the already existing accounts at the time of this Agreement as detailed below:

- 000957765-0687110
- 000974512-0699546
- 000937497-0672071
- 000976059-0700920

The expenses incurred by the Company in providing service to the City accounts shall be recovered in retail rates charged to customers as approved by the PUC.

## Section. 11. Rates and Service.

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11.1 The City shall provide oversight and regulation of the Company's retail rates, services, and tariffs within the City's jurisdiction to the extent authorized by law. The City hereby expressly reserves the right, power, and authority to fully regulate and fix the rates and charges for the services of the Company to its consumers as provided by law. The Company may from time to time propose changes in its general rates by filing an application with the City Secretary for the consideration of the City Council. Within a reasonable time, consistent with law, the City Council shall afford the Company a fair hearing with reference to the application and shall either approve or disapprove the proposed changes or make such order as may be reasonable. The Company reserves all rights under state law to appeal any decision of the City Council, as allowed by law.

11.2 In order to ascertain any and all facts, the Mayor, City Council, or the City's agents shall have full power and authority to inspect, or cause to be inspected, the books of the Company, and to inventory and appraise, or cause to be inventoried and appraised, the property of the Company, and to compel, upon reasonable notice, the attendance of witnesses and the production of books and records.

11.3 The Company and City may, at any time during the term of this Franchise obtain expert assistance and advice in a proceeding before the City Council to determine fair, just, and reasonable rates to be charged by the Company to its consumers in the corporate limits of the City. The Company and City further agree that all reasonable expenses incurred by the Company, as approved by the City, as part of a rate proceeding before the City may be recovered from customers over a 12-month period as a surcharge, commencing on the date new rates take effect, to the retail rates charged to customers within the City's jurisdiction and that the City-incurred expenses shall be timely reimbursed to the City by the Company. The Company reserves all rights under state law to appeal any decision of the City Council, as allowed by law, and to seek recovery of its reasonable expenses incurred in the appeal proceeding.

## Section 12. Reservation of Powers

Except as otherwise provided in this Franchise, the City by the granting of this Franchise does not surrender or to any extent lose, waive, impair, or lessen the lawful powers, claims, and rights, now or hereafter vested in the City under the Constitution and statutes of the State of Texas and under the Ordinances of the City of Woodcreek or other applicable law, to regulate public utilities within the City and to regulate the use of the streets by the Company; and the Company by its acceptance of this Franchise agrees that, except as otherwise provided in this Franchise, all lawful powers and rights, whether regulatory or otherwise, as are or as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time and from time to time.

Section 13. Severability. If any section or provision of this Franchise shall, for any reason, be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the same shall not affect the validity hereof as a whole or any part or provision other than the part or parts held invalid or unconstitutional.

Section 14. Notice. Any notices required or desired to be given from one party to the other party shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

**CITY**

City Manager  
City of Woodcreek  
41 Champions Circle  
Woodcreek, TX 78676-3327

**COMPANY**

President  
Aqua Texas, Inc.  
1106 Clayton Lane, Suite 400W  
Austin, TX 78723

Upon request, Company shall provide the City with current contact information for the City's use in forwarding customer inquiries and complaints to Company.

Section 15. Captions and Headings. The use of captions or headings for the various sections of this Ordinance are for convenience of parties only and do not reflect the intent of the parties. The rule of interpretation to resolve ambiguities in a contract against the party drafting such contract shall not apply to this Franchise.

Section 16. No Suspension of Laws. The City retains and may exercise all of the governmental and police powers and all other rights and powers not directly inconsistent with the terms, conditions and provisions of this Franchise.

Section 17. Reliance. From and after the effective date of this Ordinance, the City and the Company shall be and are hereby authorized and entitled to act in reliance upon the terms, conditions and provisions of this Franchise and, subject thereto, the Company shall collect rates for service to the Customers based on schedule(s) filed by the Company with the City and approved as provided by law, operate and conduct its business and work within the City, and enjoy the benefits and privileges of this Franchise during the term hereof.

Section 18. General Ratification. Company and City hereby ratify, approve and confirm, all previous actions by the City and Company, their elected and appointed officers, agents and employees with respect to this Franchise, including, but not limited to, the consideration and scheduling of hearings and meetings with respect to the issuance of this Franchise, and the terms, provisions and conditions of this Franchise are hereby ratified, approved and confirmed.

Section 19. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose

of said meeting was given, as required by the Open Meetings Act, Chapter 551, Texas Government Code.

Section 20. Publication. The full caption of this Ordinance shall be published one (1) time in a weekly newspaper published within or in general circulation within the City and the expense of such publication shall be borne by the Company. This Ordinance shall take effect only upon its acceptance by the Company within the time and manner herein above provided. In the event this Franchise is not accepted by the Company this Franchise shall expire and be and become null and void at midnight on the thirtieth (30th) day after date hereof.

Section 21. Endorsements and Records. The City Secretary is hereby authorized and directed to make appropriate endorsements for the public records and convenience of the citizens over his or her official hand and the seal of the City and on the form provided at the conclusion of this Franchise of the date upon which this Ordinance is finally passed and adopted by the Council the date upon which the caption or notice of this Ordinance is published in the local newspaper, the date upon which this Ordinance shall expire if not first accepted by the Company, and, if the Company shall accept this Franchise, the date of such acceptance by the Company.

**PASSED AND APPROVED on this the 13th day of December, 2023, City of Woodcreek, Texas.**

By: \_\_\_\_\_  
*Jeff Rasco, Mayor*

PLACE  
CITY SEAL  
HERE

ATTEST:

\_\_\_\_\_  
*Suzanne J. Mac Kenzie, City Secretary*

APPROVED AS TO FORM:

\_\_\_\_\_  
*City Attorney's Office*