

CITY OF MUSTANG RIDGE
ORDINANCE #21-00398

AN ORDINANCE OF THE CITY COUNCIL OF MUSTANG RIDGE, TEXAS, GRANTING TO CAMINO REAL UTILITY, LLC, THE CONDITIONAL RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, OPERATE, AND MAINTAIN ITS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF MUSTANG RIDGE, TEXAS FOR THE TRANSPORTATION, PRODUCTION, PROVISION, DELIVERY, SALE, AND DISTRIBUTION OF WATER; PROVIDING FOR PAYMENT TO THE CITY OF MUSTANG RIDGE; CONTAINING OTHER PROVISIONS REGULATING THE FRANCHISE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Mustang Ridge (City) seeks to have sufficient and reliable potable water utility services provided to landowners within the City's municipal corporate boundaries as well as landowners within its extra-territorial jurisdiction; and

WHEREAS, BVRT Utility Holding Company, LLC (BVRT) is a Texas limited liability company that provides water and wastewater utility services in Texas; and

WHEREAS, BVRT has formed a wholly-owned subsidiary named Camino Real Utility Company, LLC (Company) for purpose of providing water, wastewater, and reclaimed water utility services to the Mustang Ridge area; and

WHEREAS, Company wishes to establish, own, and operate at its own cost and expense, a water production and distribution system; and furnish water service to users within the corporate limits of the City of Mustang Ridge; and

WHEREAS, the City and Company (collectively, Parties) desire to enter into a public-private partnership for the production and provision of water services within the boundaries of the City; and

WHEREAS, the Parties agree it is in the best interest of the Parties and the landowners in and around the City that the City have the flexibility to maintain a level of local control that suits the changing needs of the City; and

WHEREAS, the Parties further agree that BVRT's production and provision of potable water utility services, as allowed by the State of Texas and provided in a timely and cost-effective manner within the boundaries of the City, would likely constitute a practical and efficient method of providing a safe drinking water supply to the community.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSTANG RIDGE:

Section 1. GRANT OF NON-EXCLUSIVE FRANCHISE. Subject to the terms, conditions and provisions of this ordinance, the right, privilege and non-exclusive franchise is hereby granted to Camino Real Utility, LLC, hereinafter called "Company," to construct, install, extend, remove, replace, operate, and maintain its facilities within the Public Rights-of-Way of the City of Mustang Ridge, Texas for the transportation, production, provision, delivery, sale, and distribution of potable water within the corporate limits of the City of Mustang Ridge, as the same are now and as the same may from time to time be extended.

Section 2. DEFINITIONS.

- A. "City" shall mean the City of Mustang Ridge, Texas.
- B. "Company" shall mean Camino Real Utility LLC, a Texas limited liability company, and shall not mean any of its affiliates and subsidiaries who shall have no right, privilege, or franchise granted hereunder.
- C. "Facilities" shall mean pipes, pipelines, water mains, laterals, feeders, valves, meters, fixtures, vaults, force mains, pumps, tanks, connections, and attachments, and other instrumentalities and appurtenances, used in or incident to providing transportation, production, provision, distribution, supply, or sale of potable water and any other purposes for which potable water may now or hereafter be used.
- D. "Franchise" shall mean the City's grant of a non-exclusive franchise to the Company by and through this ordinance.
- E. "Public Rights-of-Way" shall mean the areas in, under, upon, over, across, and along any and all of the present and future Streets or streams now or hereafter owned or controlled by City.
- F. "Street" shall mean the surface and the space above and below any public street, road, highway, alley, bridge, sidewalk, or other public place or way.

Section 3. TERM OF FRANCHISE; RENEGOTIATION.

(a) The Initial Term of this Franchise shall expire ten (10) years from the Effective Date described in Section 24.

(b) The Company agrees to provide, no less than one (1) year before the expiration of the Initial Term, written notice of its intent to renew this Franchise for the second ten (10) year term (Second Term). At the end of the Initial Term, this Franchise shall be automatically renewed for the Second Term, unless:

1. the Company is in material default under the terms of this Franchise and written notice is given to the Company by the City; or
2. written notice of intent to terminate this Franchise at the expiration of the current term is given to the City by the Company; or
3. written notice of intent to renegotiate this Franchise at the expiration of the current term is given to the Company by the City.

(c) The Second Term of this Franchise shall expire ten (10) years after its effective date. The Company agrees to provide, no less than one (1) year before expiration of the Second Term, notice of its intent to renew this Franchise for a final ten (10) year term (Final Term). At the end of the Second Term, this Franchise shall be automatically renewed for the Final Term unless any of the events listed in (b)(1), (2), or (3) have occurred.

(d) Written notices by the City or the Company specified in Section 3(b)(2) or (3) must be provided no less than one (1) year before the expiration of the Initial Term or the Second Term, as applicable. Upon notice under Section 3(b)(2) or (3), this Franchise shall either be renegotiated or terminated at the end of the Initial Term or the Second Term, as appropriate. After renegotiation, this Franchise may include such other term as the parties may agree upon. The party that has provided notice of its intent to

terminate or renegotiate the terms of this Franchise may withdraw its request prior to the expiration of the Initial Term or Second Term of the Franchise, as appropriate, in which event the Franchise shall be renewed automatically except as otherwise provided in Section 3(b)(1) above.

(e) The Company shall not transfer this Franchise as part of a sale of stock or assets involving the Company and some or all of its divisions and subsidiaries without the prior written approval of the City Council expressed by ordinance, and such approval shall not be unreasonably withheld by City.

(f) The City may revoke this Franchise if the Company sells, transfers, conveys, or otherwise disposes of its rights or interests under this Franchise, or attempts to do so, without the Council's prior written consent. All rights and interests of the Company granted under this Franchise shall cease if this Franchise is revoked. A transfer in violation of this Section is void.

(g) The City may revoke this Franchise if the Company fails to obtain a contract, within 365 days after the Effective Date, for a firm source of water supply sufficient to meet the City's potable water needs during the term of the Franchise, as determined by the City in its sole discretion.¹ The City's ability to revoke the Franchise under this provision extends until two years after the Effective Date. All rights and interests of the Company granted under this Franchise shall cease if this Franchise is revoked and any payment(s) made by Company to City under Section 8 shall be nonrefundable.

(h) The Company may not assign this Franchise to evade fee payment.

(i) During either the Initial Term or any subsequent term, should either party determine that it is in its best interest to renegotiate all or some of the provisions of this Franchise, the other party agrees to enter into good faith negotiations. Said negotiations shall involve reasonable, diligent, and timely discussions about the pertinent issues and a resolute attempt to settle those issues. This obligation to engage in negotiations does not obligate either party to agree to an amendment of the Franchise as a result of such negotiations.

(j) If, as a result of renegotiation, City and Company agree to a change in a provision of this Franchise, the change shall become effective upon passage of an ordinance by the City in accordance with all applicable laws, and acceptance of the amendment by the Company. Company agrees to provide any and all information requested by City to assist in a determination of any changes in conditions, practices, or services provided by Company through use of the Public Rights-of-Way of the City.

Section 4. CONSTRUCTION AND MAINTENANCE OF FACILITIES. All Facilities installed by Company shall be of sound material and good quality and shall be laid so that they will not interfere with the artificial drainage of the City or its underground fixtures, or with navigation in or the natural drainage of any stream. All Facilities shall be installed in accordance with applicable Federal and State regulations and in the absence of such regulations in accordance with accepted industry practice. Within the Public Rights-of-Way, the location and route of the Facilities by the Company shall be subject to the reasonable and proper regulation, direction, and control of the City or the City official to whom such duties have been delegated. Such regulation shall include, but not be limited to, the right to require in writing to the extent provided in Section 15, the relocation of Company's Facilities at Company's cost

¹ Provided however, that the Parties hereby agree that a contract between the Guadalupe-Blanco River Authority (GBRA) and Camino Real Utility, LLC for an amount of water substantially equivalent to the amount identified by the GBRA/HDR Preliminary Feasibility Evaluation dated November 11, 2021 shall satisfy Company's requirement to obtain a firm source of water supply sufficient to meet the City's potable water needs during the term of the Franchise.

within the Public Rights-of-Way of the City whenever such relocation shall be reasonably necessary to accommodate the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. Company shall file and maintain at all times with the City the most current map or set of maps of the Facilities within the City.

Section 5. LICENSES, EASEMENTS, AND EMINENT DOMAIN.

(a) This Franchise shall constitute a permit to perform all work on Company's Facilities within the Public Rights-of-Way and to park vehicles in the Streets and other Public Rights-of-Way. Company and contractors performing work for Company shall not be required to obtain any permits in addition to this Franchise or to pay any fee in addition to the franchise fee in order to perform work on Company's Facilities, or park within the Streets and other Public Rights-of-Way.

(b) Company and its contractors shall give City reasonable notice of the dates, location, and nature of all work to be performed on its Facilities within the Public Rights-of-Way. However, for work involving open trenching, boring, cutting, excavating and the like in, under, upon, over, across, or along paved Streets, Company shall provide the City written notice of the scope and duration of the work, if practical, at least twenty (20) days prior to the start date of construction. Such notice shall include the necessary maps, site and civil drawings, and traffic control plans, if applicable. In the event Company determines there is an emergency, Company may act without any prior notice, but shall provide notice to the City as soon as practicable.

(c) Company shall not engage in the removal, retirement, abandonment, replacement, extension or installation of Facilities involving open trenching, excavating, boring, cutting, and the like in, under, upon, over, across, or along paved Streets, alleys, public way or place or any Public Rights-of-Way without prior written consent of City, which shall be promptly granted if Company can demonstrate that there is no reasonable alternative method of performing such work.

(d) The City shall grant as necessary a license for Company to use any City easements in furtherance of Company's obligations under this Franchise. Upon request by Company, and if necessary and allowed by law, the City may, at its discretion, use its power of eminent domain to obtain the easements necessary for Company to provide the services described herein. To the extent the City's use of eminent domain power is exercised under this Franchise, City hereby declares such exercise of power to be for a municipal public use for the purpose of providing public potable water utility service. All legal fees, expert fees, costs, and other expenses associated with any eminent domain proceeding, including a lawsuit or other proceeding challenging the City's use of eminent domain authority, shall be borne by Company at Company's sole expense; but if paid or otherwise advanced by the City, Company shall reimburse the City for same within thirty (30) days of request.

Section 6. STREETS TO BE RESTORED TO GOOD CONDITION. The surface of any Street, alley, or public way or place within the Public Rights-of-Way disturbed by Company shall be restored to the same or better condition by Company within a reasonable time after the completion of the work. Company shall ensure the quality of the restoration workmanship for one (1) year following the completion of the restoration. During the one-year maintenance period, the Company shall remedy any area repaired by the Company that, in the reasonable opinion of the City, is in appreciably worse condition than the area surrounding the restoration site.

If the City determines that the Company's work in the Streets or Public Rights-of-Way has created an imminent threat to the health and safety of the public, the City shall endeavor to make verbal

contact with the Company to communicate the need for the Company to immediately remedy such condition. If the contact attempt is unsuccessful or if the Company is unable to respond in the timeframe required by the City, the City may take actions necessary to make the area safe and secure until such time as the Company can respond. The Company shall reimburse the City the full amount of the documented time, materials, and equipment costs incurred by the City to remedy the condition. This provision authorizes the City, under the described circumstances, to take steps such as covering open excavations for the purpose of making the construction area safe within road or shoulder areas or to remove excavated material blocking drainage ways; but it does not authorize City personnel to perform work directly on Facilities not owned by the City.

Section 7. QUALITY OF SERVICE. Company's potable water operations, Facilities, and service furnished under this Franchise shall at all times be in compliance with any and all potable water permits or authorizations issued by the Public Utility Commission, Texas Commission on Environmental Quality or other applicable agency, and all applicable State and Federal rules, laws, and regulations. Company shall furnish the grade of service to its customers as provided by its rate schedules and shall maintain its system in reasonable operating condition during the continuance of this Franchise.

Section 8. FRANCHISE FEE PAYMENT TO THE CITY. Since the Streets, Public Rights-of-Way, and public easements to be used by the Company in the operation of its system within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and since the grant to the Company of the use of said Streets, Public Rights-of-Way, and public easements is a valuable property right, and since the City will incur costs in regulating and administering the Franchise, the Company shall, throughout any and all terms of this Franchise, pay to the City quarterly a sum of money equal to the greater of (a) \$12,500.00 (Minimum Payment), or (b) four percent (4%) of the Company's gross receipts for the preceding calendar quarter received by the Company from the sale of potable water within the corporate limits of the City (Percentage Fee). The franchise fees hereunder shall be calculated for the calendar quarters ending March 31, June 30, September 30, and December 31 and shall be payable on or before the fifteenth day of May, August, November, and February following the quarter for which payment is made, beginning with the first such date following the Effective Date of this Franchise and each August 15th, November 15th, February 15th, and May 15th thereafter. The franchise fees defined in this Franchise are a reasonable and necessary operating expense of the Company and may be fully recovered by Company by collection from its potable water customers in the City, by applying for or revising Company's rate schedules, assessing an additional charge to the monthly bills of its potable water customers within the City, or in any legal manner approved by the City; provided however that for any quarter for which Company makes a Minimum Payment under this Section, Company shall only be entitled to recover from its retail water customers the Percentage Fee for said quarter.

Each time payment under this Section is made, the Company shall deliver to the City a summary statement indicating the derivation and calculation of the payment. Upon receipt of the above amount of money, the City Secretary shall deliver to the Company a receipt for such amount. If any payment due date required herein falls on a weekend or bank holiday, payment shall be made on or before the close of business of the first working day after the payment due date. In the event any quarterly payment is made after 5:00 p.m. on the date due, the Company shall pay to the City a late payment charge of the greater of: (a) \$100, or (b) simple interest at 10% annual percentage rate of the total amount past due.

Company shall be allowed to fund, in its rate base, a reserve account to provide for an orderly accumulation of funds necessary for payment of the franchise fees to the City.

Section 9. ANNEXATIONS BY CITY. This Franchise shall extend to and include any and all territory that is annexed by the City during any term of this Franchise. Within sixty (60) days from the receipt of notice from the City of any such annexation, the Company shall assure that any and all customers within such annexed territory are included and shown on its accounting system as being within the corporate limits of the City of Mustang Ridge. After such sixty (60) day period the payment provisions specified in Section 8 of this Franchise shall apply to gross receipts from the sale of potable water received by the Company from customers located within such annexed territory.

Section 10. REIMBURSEMENT TO CITY FOR CERTAIN ACTS. Upon written request by Company, and if necessary and allowed by law, City may, at its discretion and by ordinance adopted by the City Council, exercise the rights provided under Texas Water Code § 13.255. City may notify another retail public utility that provides water or sewer service to all or part of the area within the corporate limits of the City of Mustang Ridge pursuant to a certificate of convenience and necessity that City desires and intends to provide retail utility service to the area using the franchised services of Company. Following notice, City may agree in writing with the current holder of the Certificate of Convenience and Necessity (Existing CCN Holder) that all or part of the area may be served by Company as a franchised utility. Company shall be a party to the agreement. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. The executed agreement shall be filed with the Public Utility Commission of Texas.

If an agreement is not executed within 180 days after City, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if City desires and intends to provide retail utility service to the area using the franchised services of the Company, City, prior to providing service to the area, shall file an application with the Public Utility Commission to grant single certification to Company as a franchised utility.

All legal fees, expert fees, negotiation fees, mediation fees, and any costs or other expenses associated with any negotiation, contract, case, or mediation, alternative dispute resolution, or administrative proceeding arising under this Section, including a lawsuit or other proceeding challenging the City's actions under this Section, shall be borne by Company at Company's sole expense; but if paid or otherwise advanced by the City, Company shall reimburse the City for same within thirty (30) days of request.

Section 11. NON-EXCLUSIVE FRANCHISE. Nothing contained in this Franchise shall ever be construed as conferring upon the Company any exclusive rights or privileges of any nature whatsoever. The City reserves all rights to its property, including, without limitation, the right to grant additional franchises, easements, licenses, and permits to others to use the Public Rights-of-Way; provided that the City shall not grant any other franchise, license, easement, or permit that would unreasonably interfere with Company's permitted use under this Franchise.

Section 12. COMPLIANCE, REMEDIES, FORFEITURE, AND TERMINATION.

- (a) In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to declare this Franchise forfeited and to terminate the Franchise and all rights and privileges of the Company hereunder in the event of a material breach of its terms and conditions.
- (b) A "material breach" by the Company shall include, but not be limited to, the following:

1. Failure on more than three (3) occasions to pay when due the franchise fee prescribed by Section 8 hereof;
 2. Failure to pay a single installment of the franchise fee in full (including late payment charges) within thirty (30) days after the due date, in the absence of a bona fide dispute communicated to the City in writing on or before the due date of the applicable franchise fee installment;
 3. Failure to make a timely payment requested by the City under Sections 5, 6, 17, or 20 of this Franchise;
 4. Failure abide by Section 7;
 5. Material misrepresentation of fact in the application for or negotiation of this Franchise; or
 6. 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 to the Company.
- (c) The foregoing shall not constitute a material breach if the violation occurs without fault of the Company or of its employees or occurs as a result of circumstances beyond Company's control. Company shall not be excused by mere economic hardship or by malfeasance or the malfeasance of its directors, officers, or employees.
- (d) In the event the Company by act or omission commits a material breach or violates any term, condition or provision of this Franchise, the City shall notify the Company in writing of such violation. Should the Company fail or refuse to correct any such violation within thirty (30) days from the date of City's notice, the City may take under consideration the issue of termination of the Franchise. Any such termination and cancellation shall be by ordinance adopted by the City Council. The City shall cause to be served upon the Company, at least twenty (20) days prior to the date of such a Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Council is to consider. The City shall provide the Company an opportunity to be heard by City Council regarding such proposed action before any such action is taken. If the Council determines that the violation by the Company was the fault of the Company and within Company's control, the Council may declare the Franchise of the Company forfeited and terminated, or the Council may grant to Company a period of time for compliance.
- (e) The rights and remedies of City and Company set forth herein shall be in addition to, and not in limitation of, any other rights and remedies provided at law or in equity and City's exercise of any particular remedy shall not constitute a waiver of its rights to exercise any other remedy.

Section 13. 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 Mustang Ridge 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 14. INDEMNITY. THE COMPANY, ITS SUCCESSORS AND ASSIGNS, SHALL PROTECT AND HOLD THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "THE CITY") HARMLESS AGAINST ANY AND ALL CLAIMS OR DEMANDS FOR DAMAGES TO ANY

PERSON OR PROPERTY BY THE POTABLE WATER DISTRIBUTION SYSTEM, OR IN ANY WAY GROWING OUT OF THE RIGHTS GRANTED BY THIS FRANCHISE, EITHER DIRECTLY OR INDIRECTLY, OR BY REASON OF ANY ACT, NEGLIGENCE, OR MALFEASANCE OF THE COMPANY OR THE CONTRACTORS, AGENTS, OR EMPLOYEES OF THE COMPANY OR ITS SUCCESSORS AND ASSIGNS, AND SHALL REFUND TO THE CITY ALL SUMS WHICH THE CITY MAY BE ADJUDGED TO PAY ON ANY SUCH CLAIM, OR WHICH MAY ARISE OR GROW OUT OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED OR BY THE ABUSE THEREOF, AND THE COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND ON ACCOUNT OF ALL DAMAGES, COSTS, EXPENSES, ACTIONS, AND CAUSES OF ACTION THAT MAY ACCRUE TO OR BE BROUGHT BY A PERSON, PERSONS, COMPANY, OR COMPANIES AT ANY TIME HEREAFTER BY REASON OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED, OR OF THE ABUSE THEREOF.

Section 15. RELOCATION OF FACILITIES. The Company shall, upon written request of the City, relocate its Facilities within Public Rights-of-Way at Company's own expense, exclusive of Facilities installed for service directly to City, whenever such shall be reasonably necessary on account of the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. City shall bear the costs of all relocations of Facilities installed for service directly to City and of any relocation of other Facilities requested by City for reasons other than the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by the City of City utility lines or drainage facilities.

Section 16. GOVERNMENTAL FUNCTION. All of the regulations and activities required by this Franchise are hereby declared to be governmental and for the health, safety, and welfare of the general public.

Section 17. RECORDS AND REPORTS. (a) Books of Account. The Company shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise. All such books of accounts and records shall be kept at the company's principal office in San Antonio, Texas.

(b) Access by City. The books of the Company shall at all reasonable times be subject to inspection under this Section by the duly authorized representatives of the City, subject to the City providing ten (10) days' prior written notice to the Company of its intent to conduct such inspection. The City may conduct an audit or other inquiry or may pursue a cause of action in relation to the payment of the franchise fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than five (5) years before the commencement of such audit, inquiry, or pursuit of a cause of action. An expense incurred by the City for audit or review of Company records for the purpose of the operation of this Franchise shall be paid by the Company. 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 the attendance of witnesses and the production of books and records.

(c) Interest on Overpayments. (1) If the City identifies, as a result of a franchise fee compliance review, amounts owed by the Company from prior periods or prior underpayments, then the Company

shall pay simple interest on such amounts at 10% annual percentage rate of the total amount past due. Said interest shall be payable on such sums from the date the initial payment was due until it is paid and shall not be billed to customers, (2) Amounts due Company for past overpayments shall not include interest.

Section 18. EASEMENT. In consideration for the compensation set forth in Section 8, City agrees that if City sells, conveys, or surrenders possession of any portion of the Public Right-of-Way that is being used by Company pursuant to this Franchise, City, to the maximum extent of its right to do so, shall first grant Company an easement for such use and the sale, conveyance, or surrender of possession of the Public Right-of-Way shall be subject to the right and continued use of Company.

Section 19. INSURANCE. The Company will maintain the following levels of insurance: \$1,000,000 for Commercial General Liability; \$1,000,000 for Automobile; and \$500,000 for Workers Compensation/Employer Liability. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by the Company in accordance with sound accounting and risk-management practices. A current certificate shall be provided to the City upon request. The Company shall be responsible for paying all self-insurance retention and insurance deductibles associated with the payment of any claim arising from activities conducted under this Franchise.

Section 20. RATES AND SERVICES. The City may provide oversight and regulation of the Company's retail rates, services, and tariffs within the City's jurisdiction. 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.

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 the attendance of witnesses and the production of books and records.

The Company agrees that the City may, at any time during the term of this Franchise, at the expense of the Company, obtain expert assistance and advice in determining fair, just, and reasonable rates to be charged by the Company to its consumers in the corporate limits of the City, and in determining the extent to which the Company is complying with the terms and conditions of this Ordinance. The Company agrees to pay reasonable expenses in connection therewith, or reimburse the City for the same, which expense the Company shall be entitled to recover through rates and tariffs.

Section 21. ACCEPTANCE. The Company shall, within thirty (30) days following the final passage and approval of this Ordinance and Franchise, file with the City Secretary of the City of Mustang Ridge either 1) a written statement signed in its name and behalf in the following form or 2) this document duly executed below by the Managing Member of the Company:

“To the Honorable Mayor: and City Council of the City of Mustang Ridge, Texas:

Read in full and passed and adopted on first reading at a regular meeting of the City Council of Mustang Ridge, Texas, on the 13th day of December, 2022 and approved by the Mayor.



APPROVED:

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

MAYOR OF THE CITY OF
MUSTANG RIDGE, TEXAS

ATTEST:

A handwritten signature in black ink, appearing to read "Christine Lopez", is written over a horizontal line.

CITY SECRETARY OF MUSTANG RIDGE, TEXAS

THE STATE OF TEXAS §

§

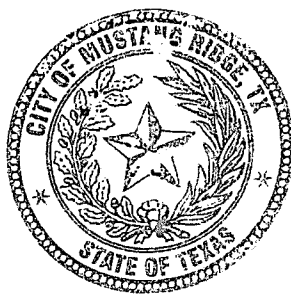
COUNTIES OF CALDWELL & HAYS §

I, the duly appointed, qualified and acting City Secretary of Mustang Ridge, Texas, do hereby certify that the above and foregoing ordinance was read on first reading at a regular meeting of the City Council of said Mustang Ridge, Texas, held on the 13th day of December, 2021; that written notice of the date, place and subject of said meeting was posted on a bulletin board located at a place convenient to the public in the City Hall for at least 72 hours preceding the day of said meeting; that the Mayor David Bunn, and 3 Council members:

- 1. Dennis Dorsett
- 2. Gabriel Vallejo
- 3. Moraima Duran
- 4. _____
- 5. _____

were present at said meeting and acted as the Council throughout; that the same has been signed and approved by the Mayor and is duly attested by the City Secretary; and that the same has been duly filed with the City Secretary and recorded by the City Secretary in full in the books for the purpose of recording the ordinances of the City of Mustang Ridge, Texas.

EXECUTED under my hand and the official seal of the City of Mustang Ridge, Texas at said City, this 13th day of December, 2021.



Christina Sorey

City Secretary

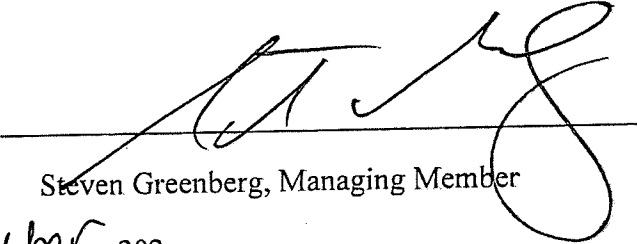
City of Mustang Ridge, Texas

[SEAL]

Camino Real Utility LLC, and its successors and assigns, hereby accept the attached Franchise and agree to be bound by all of its terms and provisions.”

CAMINO REAL UTILITY LLC

By:


Steven Greenberg, Managing Member

Dated this 13th day of December, 2022

Section 22. SEVERABILITY. If any provision, section, subsection, sentence, clause, or phrase of this Franchise is for any reason held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portions of this Franchise shall not be affected thereby, it being the intent of the City in adopting this Franchise that no portion hereof or provision hereof shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation and, to this end, all provisions of this ordinance are declared to be severable.

Section 23. NOTICES. Every notice, order, petition, document, or other direction or communication to be served upon the City or the Company shall be deemed sufficiently given if sent by registered or certified mail, return receipt requested. Every such communication to the Company shall be sent to:

Camino Real Utility LLC
1918 Summerwood Dr.
San Antonio, TX 78232

With a copy to:

Randall B. Wilburn
Barton Benson Jones PLLC
745 E. Mulberry Ave., Suite 550
San Antonio, TX 78212

Every such communication to the City or the City Council shall be sent to:

City Administrator, City of Mustang Ridge
12800 U.S. Hwy 183 S
Mustang Ridge, Texas 78610-9407

With copies to:

Wes Ritchie
Rash Chapman, LLP
9433 Bee Cave Rd., Bldg. 1, Suite 225
Austin, Texas 78733

Ben Mathews
Mathews & Freeland, LLP
8140 North Mopac Expy, Bldg. 4, Suite 240
Austin, Texas 78759

Section 24. PUBLICATION, PASSAGE AND EFFECTIVE DATE. This Franchise shall take effect and be in force from and after the first day of the month following thirty days after receipt by City of the Company's acceptance filed pursuant to Section 21 (Effective Date).

Section 25. COMPLIANCE WITH CITY ORDINANCES. This Franchise, the rights granted hereby, and the operations and activities performed by Company pursuant hereto shall be subject to applicable ordinances of the City of Mustang Ridge, Texas. Except to the extent otherwise expressly provided herein, the Franchise and rights granted hereby and the operations and activities performed by Company pursuant hereto, shall be subject to all valid ordinances and regulations of the City insofar as such ordinances and regulations (a) unless in compliance with Section 12 herein, do not shorten the term hereof or terminate, abrogate, or materially and adversely affect the Franchise and right granted to Company hereby, (b) do not conflict with or are not inconsistent with the terms and provisions contained in this ordinance, (c) do not modify, preempt, or cause Company to violate the terms of a tariff approved by the Public Utility Commission of Texas, Public Utility Commission of Texas Rules, or the Texas Water Code, or (d) do not unreasonably regulate the Company's operations and activities in the City Rights-of-Way. All such conflicting or inconsistent ordinances are hereby repealed to the extent of such conflict or inconsistency.