

Ordinance No. 2024-03
Village of Salado
County of Bell
State of Texas
May 2, 2024

WATER FRANCHISE FEE

AN ORDINANCE OF THE VILLAGE OF SALADO, TEXAS GRANTING MUSTANG SPRINGS UTILITY, LLC CERTAIN POWERS, LICENSES, PRIVILEGES AND FRANCHISE TO OPERATE AND MAINTAIN A WATER UTILITY SYSTEM WITHIN THE VILLAGE; TO USE THE STREETS, AVENUES, EASEMENTS, RIGHT-OF-WAY, ALLEYS, HIGHWAYS, SIDEWALKS, AND BRIDGES IN SAID VILLAGE; PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS; PROVIDING FOR THE PAYMENT TO THE VILLAGE OF A PERCENTAGE OF ITS TOTAL BILLED WATER USAGE; PROVIDING FOR ACCEPTANCE; AND PROVIDING FOR CERTAIN RELATED MATTERS.

WHEREAS, Mustang Springs Utility, LLC ("MSU") intends to construct, own, and operate a water and wastewater utility and to deliver water and wastewater service within the Village of Salado (the "Village"); and

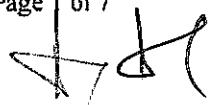
WHEREAS, The Village has entered into a Development Agreement with Kerby Ventures, LLC ("Developer"), which requires the Developer and any of its successors and assigns to construct water and wastewater utility systems; and

WHEREAS, the Board of Aldermen believes it is in the best interest of the Village to offer MSU a franchise on the terms and conditions set forth in this ordinance:

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE VILLAGE OF SALADO, TEXAS, THAT:

Section 1: Definitions. For the purpose of this ordinance, the following words, terms, phrases, and their derivations shall have the meaning given to this Section 1.

- 1.1 "Village" shall mean the Village of Salado, Texas, a municipal corporation in the State of Texas.
- 1.2 "MSU" shall mean the Mustang Springs Utility LLC, a Texas company authorized to transact and actually transacting business in the State of Texas, its legal representatives, successors, lessees, and assigns.
- 1.3 "Consumer" or "Customer" shall mean any person or organization receiving and using water and wastewater utility service from the MSU.
- 1.4 "Board of Aldermen" and "Aldermen" shall mean the governing body of the Village.



- 1.5 "Distribution system" shall mean all interrelated lines, equipment, pumps, and other appurtenances used or necessary for the transmission and distribution of water to consumers or customers in the Service Area.
- 1.6 "Collection System" shall mean all interrelated lines, equipment, lift stations, and other appurtenances used or necessary for the collection and transportation of sewage from consumers or customers in the Service Area to a wastewater treatment plant owned and operated by MSU.
- 1.7 "Developer" shall mean Kerby Ventures, LLC and any successors and assigns as defined in the Development Agreement.
- 1.8 "Development Agreement" shall mean the Development Agreement between the Village and Kerby Ventures, LLC.
- 1.9 "Franchise" shall mean this Ordinance, and all rights and obligations established herein or as it may be amended.
- 1.10 "Total Billed Water Usage" is the total amount of fee billed to consumers.
- 1.11 "Public easement" shall mean those easements held, owned, or controlled by the Village, the terms, conditions, or limitations upon which are not inconsistent with the construction or maintenance of a water distribution and transmission system or a wastewater collection system.
- 1.12 "Service Area" shall mean the same land subject to the Development Agreement consisting of 1,105.6 acres of land located at 1717 Mustang Creek Road, and more particularly described in Exhibit A to the Development Agreement, and annexed into the corporate boundaries of the Village, as may be expanded by approval of the Board of Alderman.
- 1.13 "Service line" shall mean lines directly connected to MSU's distribution and collection systems and used to convey water therefrom to the customer meter or to convey sewage away from customers to the WWTP.
- 1.14 "Sewage" shall mean untreated waterborne domestic waste collected from all consumers through the Collection System.
- 1.15 "Street" or "Alley" shall mean a publicly dedicated or maintained right-of-way, a portion of which is open to use by the public for vehicular travel.
- 1.16 "Water" shall mean potable drinking water.
- 1.17 "Wastewater" shall mean untreated domestic waterborne waste collected by MSU through the Collection System for transportation to, and treatment by, the WWTP.
- 1.18 "WWTP" shall mean the wastewater treatment plant owned and operated by MSU within the Service Area.



Section 2: Grant of Franchise.

- 2.1 To the extent allowed by law, there is hereby granted to MSU an exclusive franchise to maintain, construct, equip, extend, replace, alter and otherwise establish and operate in the Service Area, as constituted as of the effective date of this ordinance, or as may hereafter be constituted, works, systems, plants, distribution lines, collection lines, and all related facilities necessary or appropriate to sell, distribute, convey or otherwise conduct, serve, supply and furnish the inhabitants in the Service Area, and to the Village, whenever the Village may desire to contract therefore, water and wastewater service in the Service Area, and said MSU is hereby granted passage and right-of-way in, under, along and across the streets, avenues, easements, right-of-way, alleys, highways, sidewalks, bridges and other structures and places in the Service Area, as it now or hereafter may exist, for every and any such service, use, effect, and lawful purpose as herein mentioned; provided that all work, activity and undertakings by MSU shall be subject to the terms and provisions of the Franchise and the continuing exercise by the Village of its governmental and police powers; and provided further that nothing herein shall be construed to require or authorize MSU to exceed any rights granted herein or by state or federal law.
- 2.2 The construction, maintenance, and operation of the system and property of MSU within the Village shall be subject to this Franchise and the ordinances and regulations adopted by the Aldermen from time to time in the exercise of the Village's police and regulatory powers.
- 2.3 If MSU elects to transfer this Franchise, the Village shall have the first right of refusal to purchase the Distribution and Collection Systems from MSU. If the Village declines to purchase the Distribution and Collection Systems from MSU, MSU may transfer this Franchise and the rights and privileges granted herein with the written approval of the Aldermen expressed by Ordinance. Such approval shall not be unreasonably withheld.

Section 3: Term. The initial term of this Franchise shall be for five (5) years from the date of latest day of execution on the signature page. Thereafter, this Franchise shall automatically renew for additional five (5) year terms until modified in writing by the Village and MSU.

Section 4: Termination. MSU shall have the right to terminate this franchise, upon which termination the Village shall have the first right of refusal to purchase the Distribution and Collection Systems from MSU. If the Village declines to purchase the Distribution and Collection Systems from MSU, MSU may execute an agreement with a third-party utility and successor under which MSU shall dedicate the Distribution System and Collection Systems to the third-party utility and continue operating and maintaining the Distribution System and Collection System on behalf of the third-party utility. Upon termination under this Section unless the Systems are purchased by the Village, all customers of MSU existing at the time of Termination shall become customers of the third-party utility.

Section 5: Use of Streets and Easements. MSU is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this Franchise, provided the same do not conflict with existing electric power lines, telephone lines, cable television lines



and other authorized installations, and provided that all work done in said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and other structures and places and public grounds by MSU shall be done with reasonable diligence and without unnecessary inconvenience to the public or individuals.

Section 6: **Work by the Village and Others.** The Village reserves the right to lay, and permit to be laid, cable television, telephone, electric, and other lines, cables and conduits, 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 any street, alley, highway, easement or public place occupied by MSU so long as it performs in accordance with TCEQ regulations and state law. The Village shall be liable to MSU only for any damage to the MSU's lines, equipment, or appurtenances of MSU, the producing cause of which is the negligence of the Village, its employees or subcontractors doing work for the Village. Damage caused to MSU as a result of work done by persons other than the Village, its employees, or its sub-contractors shall be corrected through payment to MSU by the responsible person. Removal and relocation expenses incurred by MSU shall be reimbursed by the person for whom the removal or relocation is made.

Section 7: **Modification and Relocation of Facilities.**

- 7.1 If, during the period of this Franchise, the Village shall elect to alter or change the grade or alignment of any street, alley or other public right-of-way, or any water pipe, wastewater pipe, or any overhead or underground structure within the corporate limits or the extraterritorial jurisdiction of the Village, so as to conflict with the Collection System, Distribution System, or equipment and appurtenances of MSU, MSU shall remove or relocate, as necessary, all of its facilities, equipment, and appurtenances necessary at MSU's expense. Schedules for this work shall be developed by designated representatives of MSU and the Village. If such representatives cannot agree on the schedules, MSU's acting engineer, after consultation with the Village, shall establish a schedule. This schedule shall provide for a minimum of thirty (30) days between the time the schedule is furnished to MSU and the time that any specific work to be done by MSU covered in the schedule is to begin.
- 7.2 Whenever any such public works project is funded, in whole or in part, with federal or state highway monies, if federal or state law provides compensation for utility adjustments, the Village shall request that compensation be provided to MSU by the funding authority. If the Village receives such requested utility adjustment compensation, it shall deliver same to MSU.

Section 8: **Service to be Provided by MSU.**

- 8.1 Service may be provided by means of transmission and distribution lines, equipment, and appurtenances in the streets, alleys, easements, and other public rights-of-way. MSU shall not place its transmission or distribution lines, equipment, and appurtenances where the same will obstruct or interfere with motor vehicle traffic, or any existing television cable, electric, drainage, sewer or telephone facilities, traffic control signalization, street lights, fire lines or communication lines.



- 8.2 MSU shall furnish service consistent with the requirements and intent of this Franchise and its "service regulations" as now or hereafter adopted by MSU; provided that consistent with such regulations, MSU shall provide water service to all areas of the Village and within the Service Area.
- 8.3 MSU's system and appurtenances shall be located, installed, and maintained so that none of the facilities shall unreasonably endanger the lives of persons, unreasonably interfere with any public improvements the Village may deem proper to make, or unnecessarily obstruct the free use of the streets, alleys, bridges, easements, or public property.
- 8.4 MSU shall repair all excavations and work sites by MSU in compliance with any applicable Village rules and regulations; provided that in any event the area of excavation or work shall be, at minimum, repaired and replaced to as good or better condition.

Section 9: MSU Rules and Regulations.

- 9.1 MSU's rates, rules and regulations shall be and remain in effect as adopted and amended from time to time by MSU; subject to the right of the Village to regulate any such rate, rule or regulation to the fullest extent allowed by law.
- 9.2 MSU shall be entitled to require from each and every customer to make such deposits and payments as required by MSU, and to comply with the rules and regulations adopted by MSU.

Section 10: Franchise and Rental Fees.

- 10.1 The streets, rights-of-way, and public easements to be used by MSU in the operation of its system within the boundaries of the Village as such boundaries exist as of the effective date of this ordinance, are valuable public properties acquired and maintained by the Village at great expense to its taxpayers, without which MSU would be required to invest in right-of-way costs and acquisitions, and since the Village will incur costs in regulating and administering this Franchise, MSU shall through the term of this Franchise pay to the Village four percent (4%) billed on the total water usage fee collected from customers located within the Village for the duration of the Franchise. The fee shall be paid quarterly payable on or before the 15th day of the month following the end of the quarter, and the fee shall be based upon the total number of users as of July 15 of the previous year. For example, the franchise fee for the quarter ending June 30th shall be paid by July 15th.
- 10.2 The franchise fee shall be in lieu of any and all other Village imposed rentals or fees for the franchise, license and privilege of occupying the Village streets, and any excise or revenue taxes or fees and all similar rentals or taxes (except as and when applicable ad valorem property taxes, special assessments for local improvements, village sales tax, and such other charges for utility services imposed uniformly upon persons, firms or corporations then engaged in business within the Village) upon or relating to the business, revenue, franchise, transmission and distribution lines, installations and systems, fixtures, and other facilities of MSU and all other property of MSU and its activities, or any part thereof, in the Village which relate to the operations of MSU's Collection System or Distribution System.

Section 11: Expansion of Service Area

MSU may, from time to time, expand the Service Area to adjacent properties and developments and extend retail water and sewer service to all facilities and customers in the expanded Service Area with approval by the Board of Alderman. Any land or property included in a Service Area expansion shall first be voluntarily annexed into the Village's corporate boundaries. Upon approval by the Board of Aldermen of any Service Area expansion, the Franchise shall include the expanded Service Area and all rights, privileges, and duties of MSU shall continue for the expanded Service Area.

Section 12: Insurance Provided by MSU.

MSU shall maintain throughout the term of this Franchise property damage coverage, general liability insurance, automobile liability insurance, and worker compensation insurance, with an insurance company, or companies, licensed to do business in the State of Texas insuring against claims for liability and damages; provide that MSU may in its continuing discretion provide all required coverage by a funded self-insured program.

Section 13: Indemnification and Hold Harmless.

MSU agrees to defend, indemnify, and hold harmless the Village, 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 MSU's Distribution System, Collection System, or operations within the Village, or arising from any act of negligence of MSU, or any of its agents, contractors, servants, employees or licensees. It is understood that it is not the intention of either the Village or MSU to create any liability, right or claim for the benefit of third parties and this Franchise is intended and shall be construed of the sole benefit of the Village and MSU.

Section 14: General Provisions.

MSU shall supply the Village with a map or maps showing the probable location(s) of the Collection System and Distribution System to be constructed by MSU after the date of this Franchise. Upon the completion of construction of any part or portion of the Collection System or Distribution System, or any addition thereto, within the Village, MSU shall provide the Village with a map showing the location of such water line, pipe, or facility.

Section 15: Severability.

If any section, paragraph, subdivision, clause, part, or provision hereof shall be adjudged invalid or unconstitutional the same shall not affect the validity hereof as a whole or any part or provision other than the part of parts held invalid or unconstitutional.

Section 16: Governing Law.

This Franchise shall be construed in accordance with the Constitution and laws of the State of Texas. Nothing in this Franchise is intended to expand upon the authorities or rights of either the Village or MSU according to the Constitution and laws of the State of Texas. Nothing in the



Franchise shall be construed as a waiver by either party of its authority or rights as provided by the Constitution of the State of Texas.

Section 17: 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 18: 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 Village. This ordinance shall take effect only upon its acceptance by MSU. In the event this Franchise is not accepted by MSU this ordinance shall expire and become null and void.

READ, PASSED, AND ADOPTED THIS 2nd DAY OF May, 2024.

VILLAGE OF SALADO, TEXAS



Michael Coggins, Mayor

ATTEST:



Debra Bean, Village Secretary

AGREED TO THIS 13th DAY OF May, 2024.

MUSTANG SPRINGS UTILITY, LLC



Signature

Printed Name: James Kerley