

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL COOPERATION AGREEMENT FOR THE UNDERGROUND CONVERSION OF EXISTING OVERHEAD DISTRIBUTION LINES WITH THE CITY OF CORINTH, TEXAS, A TEXAS HOME-RULE MUNICIPAL CORPORATION, FOR THE REMOVAL OF OVERHEAD FACILITIES AND THE INSTALLATION OF UNDERGROUND FACILITIES OPERATED BY DENTON MUNICIPAL ELECTRIC LOCATED BETWEEN N. CORINTH ST. AND CORINTH PKWY; PROVIDING FOR THE EXPENDITURE OF FUNDS NOT TO EXCEED THREE HUNDRED TWO THOUSAND, SIX HUNDRED AND FIFTY-FOUR AND 00/100 DOLLARS (\$302,654.00); PROVIDING FOR REIMBURSEMENT TO THE CITY OF DENTON FOR CONVERTING THE OVERHEAD FACILITIES TO UNDERGROUND; PROVIDING AN EFFECTIVE DATE.

WHEREAS, City of Denton (“DENTON”) and City of Corinth (“CORINTH”) are local governmental entities organized under the laws of the State of Texas, and both of whom have the authority to perform the services set forth in this Agreement individually, and who mutually desire to enter into an interlocal cooperation agreement, as provided for in Chapter 791 of the Texas Government Code in order to maximize the benefits to the citizens of DENTON and CORINTH to be derived from each taxpayer dollar expended; and

WHEREAS, CORINTH desires that DENTON, by and through its wholly owned electric utility Denton Municipal Electric (“DME”), convert and move existing overhead electric facilities within its easement alongside the Denton Branch Rail-Trail to underground facilities, generally located in the vicinity of Interstate Highway 35E, from Corinth Parkway northwest to just beyond N. Corinth Street, and relocate them to underground electric facilities within that same easement (hereinafter, the “Project”); and

WHEREAS, in accordance with the current DME Electric Service Standards adopted by the Denton City Council, DME has made due allowance for offsets in the cost of design, materials and construction of this conversion as aid in construction, as well as system betterment due to the modernization and improved reliability and serviceability of its electric facilities at this location, such that both parties have agreed upon a negotiated fixed cost of \$302,654 that CORINTH will pay upon completion of the Project; and

WHEREAS, DENTON is willing to enter into this Agreement to provide services and materials relating to conversion of the Project’s overhead electric facilities to underground electric facilities; and

WHEREAS, CORINTH is willing to enter into this Agreement with DENTON to pay a negotiated rate reflecting the costs associated with the services and materials relating to conversion of the Project’s overhead electric facilities to underground electric facilities, after application of offsets and allowances described before; and

WHEREAS, CORINTH, by Ordinance of its City Council approving this Agreement, has

given specific written approval for entering into this Agreement with DENTON;

THE COUNCIL OF THE CITY OF DENTON HEREBY  
ORDAINS:

SECTION 1. The recitations contained in the preamble of this ordinance are incorporated herein by reference as findings of the City Council.

SECTION 2. The City Council approves and authorizes the City Manager, or designee, to execute and deliver the interlocal cooperation agreement for the underground conversion of existing overhead distribution lines as shown on Exhibit A, attached hereto and made a part hereof.

SECTION 3. The City Manager, or designee, is hereby authorized to expend funds in an amount not to exceed Three Hundred Two Thousand, Six Hundred and Fifty-Four and 00/100 Dollars (\$302,654.00).

SECTION 4. The City Council approves and authorizes the City Manager, or designee, to take such additional actions as the City Manager, or designee, determines to be necessary and advisable to continue to effectuate the purpose, terms, and conditions of the Agreements.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

SECTION 6. City Council hereby authorizes Denton Municipal Electric to relocate overhead facilities at the expense of the City of Corinth for \$302,654.

SECTION 7. This Ordinance shall become effective immediately upon its passage and approval.

[Signatures to appear on the following page.]

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The ordinance was passed and approved by the following vote [ \_\_\_ - \_\_\_ ]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: Benjamin N. Samples, A.A.

**EXHIBIT A**  
(Interlocal Cooperation Agreement)



**NOW THEREFORE**, DENTON and CORINTH, for and in consideration of the premises and the mutual covenants set forth in this Interlocal Cooperation Agreement, and pursuant to the authority granted by the governing bodies of each of the parties hereto, in accordance with Tex. Gov't Code §791.011(d)(1), do hereby AGREE as follows:

**ARTICLE 1  
INCORPORATION OF PREAMBLES**

All matters and recitations stated in the preamble to this Agreement are true and correct and are hereby incorporated by reference into the provisions of this Agreement for all purposes.

**ARTICLE 2  
PURPOSE OF AGREEMENT.**

The purpose of this Agreement is, as designated in the preamble, to evidence the agreement of DENTON and CORINTH, wherein DENTON provides for the conversion of the overhead electric lines to underground electric lines as described in this PROJECT.

**ARTICLE 3  
TERM OF AGREEMENT**

This Agreement shall be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024 and shall continue in force and effect until all requirements are satisfied. Time is of the essence. The parties may each elect to terminate this Agreement, as permitted under the provisions of Article 4 hereunder, except that the terms of the indemnification and the hold harmless provisions contained within Article 8 hereunder shall survive such termination.

**ARTICLE 4  
TERMINATION OF AGREEMENT**

This Agreement terminates upon the first to occur of the following events:

- A. By the mutual written agreement of DENTON and CORINTH; or
- B. By either party, if a party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within sixty (60) days after written notice by the non-defaulting party to the defaulting party.

**ARTICLE 5  
CONSIDERATION TO BE PAID BY CORINTH TO DENTON**

The consideration to be paid or afforded by CORINTH to DENTON pursuant to the terms of this Agreement, is as follows:

- A. CORINTH agrees to pay the DENTON the negotiated sum of \$302,654, in consideration for services rendered by DENTON/DME for the construction and furnishing of materials used in moving the overhead electric facilities and for the installation of underground electric facilities at the Project, less allowable offsets as referenced in the recitals. CORINTH agrees to pay the sum of \$302,654 in payments to DENTON. CORINTH will

make up to five (5) progress payments to DENTON as services hereunder are performed and completed by DME. Payments for materials required by DME to perform and complete the services shall be made by CORINTH to DENTON when ordered by DENTON. Payments made by CORINTH for the services of DME will be made within the 80-day estimated completion period; however, this time period for payments made by CORINTH to DENTON may be extended for the same time as services are extended by DME.

- B. The services to be performed by DME shall be scheduled no later than thirty (30) working days after the effective date of this Agreement. Once services begin and construction has commenced, the estimated completion of the services is eighty (80) working days. Should additional days be required by DME for completion of the services, DME shall notify CORINTH in writing of the additional days required for completion of the services. CORINTH agrees there shall be no penalties for construction that exceeds 80 days; however, inasmuch as the benefit to CORINTH lies only in the removal of DENTON's overhead facilities after conversion to underground, CORINTH may retain up to 20% of the contracted amount until all existing overhead structures have been finally removed and restored to match the adjacent grade.
- C. DENTON agrees to provide DME staffing, equipment, and material necessary for the good and workman-like moving of the electric facilities at the Project.
- D. CORINTH shall pay for the services of DME to DENTON from current revenues available to CORINTH.

## **ARTICLE 6 CONSIDERATION BY DENTON**

The consideration to be afforded by DENTON to CORINTH for the term of this Agreement, is as follows:

- A. DENTON shall take all steps to facilitate and timely complete DENTON's movement and conversion of the existing overhead electric facilities at the Project to underground electric facilities.
- B. DENTON shall provide CORINTH with the name, phone number, and e-mail address of DME's representative who shall timely respond to any questions and/or concerns regarding electric services that CORINTH has during the pendency of the Project.
- C. DENTON shall perform its activities with respect to the Project in accordance with the DME Electric Service Standards adopted by the Denton City Council.

## **ARTICLE 7 FORCE MAJEURE**

Events of Force Majeure shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto government action (unless caused by acts or

omissions of the party), fires, explosions, rain or other weather delays, floods, strikes, slowdowns or work stoppages.

## **ARTICLE 8 INDEMNIFICATION/LIABILITY**

**THE PARTIES AGREE TO BE RESPONSIBLE EACH FOR THEIR OWN NEGLIGENT ACTS OR OMISSIONS, OR OTHER TORTIOUS CONDUCT IN THE COURSE OF PERFORMANCE OF THIS AGREEMENT WITHOUT WAIVING ANY SOVEREIGN IMMUNITY, GOVERNMENTAL IMMUNITY, OR OTHER DEFENSES AVAILABLE TO THEM UNDER FEDERAL OR STATE LAW. THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT EACH PARTY HAS BY OPERATION OF LAW. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, IN OR TO ANY THIRD PERSONS OR ENTITIES. ALL PARTIES AGREE THAT ANY SUCH LIABILITY OR DAMAGES OCCURRING DURING THE PERFORMANCE OF THIS AGREEMENT CAUSED BY THE JOINT OR COMPARATIVE NEGLIGENCE OF THE PARTIES OR THEIR EMPLOYEES, AGENTS OR OFFICERS, SHALL BE DETERMINED IN ACCORDANCE WITH THE COMPARATIVE RESPONSIBILITY LAWS OF THE STATE OF TEXAS. DENTON ACKNOWLEDGES THAT CORINTH IS PROHIBITED BY ARTICLE III, SECTION 52 AND ARTICLE XI, SECTION 7 OF THE CONSTITUTION OF THE STATE OF TEXAS FROM INDEMNIFYING IT OR ANY OTHER THIRD PARTY FOR DAMAGES ARISING UNDER THIS AGREEMENT.**

## **ARTICLE 9 GOOD FAITH NEGOTIATION AND DISPUTE RESOLUTION**

The parties may agree to settle any disputes under this Agreement by submitting their dispute to non-binding mediation. No alternate dispute resolution arising out of or relating to this Agreement involving one party's disagreement may include the other party to the disagreement without the other's approval.

## **ARTICLE 10 ASSIGNABILITY/CONSENT**

Except as otherwise provided herein, or except as may be hereafter determined by the parties, no party to this Agreement may sell, assign, or transfer its interest in this Agreement, or any of its right, duties, or obligations hereunder, without the prior written consent of the other party. Whenever the consent or the approval of a party is required herein, such party shall not unreasonably withhold, delay, or deny such consent or approval.

## **ARTICLE 11 NOTICE**

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be by personal delivery; sent by registered mail or certified mail; sent by electronic mail; or by U.S. Mail, return receipt requested, postage prepaid to:



**DENTON:** Office of the City Manager  
City of Denton, Texas  
215 East McKinney  
Denton, Texas 76201

**CORINTH:** Office of the City Manager  
City of Corinth, Texas  
3300 Corinth Parkway  
Corinth, Texas 76208

Notice shall be deemed to have been received on the date of receipt as shown on the return receipt or other written evidence of receipt.

## **ARTICLE 12 MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed. The parties further agree that the provisions of this Article will not be waived unless as herein set forth.

## **ARTICLE 13 SAVINGS/SEVERABILITY**

In the event that any one or more of the provisions hereof contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

## **ARTICLE 14 GOVERNING LAW AND VENUE**

This Agreement shall be construed under and governed by, and in accordance with the laws of the State of Texas, and all obligations of the parties hereto, created by this Agreement are performable in Denton County, Texas. Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas.

## **ARTICLE 15 ENTIRE AGREEMENT**

This Agreement and the exhibits attached thereto, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement. No amendment, modification, cancellation or alteration of the terms of this Agreement shall be binding on any party hereto unless the same is in writing, dated subsequent to the date hereof, and is duly authorized and executed by the parties hereto.

**ARTICLE 16  
WAIVER OF TERMS AND CONDITIONS**

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

**ARTICLE 17  
AUTHORITY OF PARTIES**

This Agreement is made by and entered into by the duly-authorized officials of each respective governmental entity.

**ARTICLE 18  
CAPTIONS**

The captions contained in this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

**ARTICLE 19  
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and constitute one and the same instrument.

**IN WITNESS WHEREOF**, the City of Denton, Texas has caused this Agreement to be executed in two original counterparts, by its duly-authorized and empowered City Manager; and the City of Corinth, Texas has caused this Agreement to be executed by its duly-authorized and empowered Mayor on this, the \_\_\_\_\_ day of \_\_\_\_\_, 2024, to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF DENTON, TEXAS**  
A Texas Municipal Corporation

By: \_\_\_\_\_  
SARA HENSLEY, CITY MANAGER

ATTEST:  
LAUREN THODEN, CITY SECRETARY

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

**CITY OF CORINTH, TEXAS**

\_\_\_\_\_  
Scott Campbell, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Lana Wylie, Corinth City Secretary

## **EXHIBIT A – SCOPE OF SERVICES BY DENTON (DME)**

### **Scope of Work for the overhead to underground conversion of existing DME facilities between N Corinth St and Corinth Pkwy**

#### **Corinth OH to UG Conversion**

##### **The scope of the underground conversion is to include the following:**

- Installation of underground facilities to replace the overhead facilities along the Denton Katy Trail from N Corinth St to Corinth Pkwy
- Removal of DME overhead facilities along the Denton Katy Trail from N Corinth St to Corinth Pkwy

##### **Denton Municipal Electric will be responsible for the following:**

- Installation of conduit, cable, and pull boxes to convert the existing overhead electric facilities to underground.
- Removal of DME overhead facilities once DME's underground facilities are installed and operational and all

