

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION (“DENTON”) PROVIDING FOR, AUTHORIZING, AND APPROVING THE EXECUTION BY THE CITY MANAGER OF THE POWER PURCHASE AGREEMENT (“PPA”) BETWEEN DENTON AND YELLOW VIKING DEVELOPMENT ONE, LLC (“YELLOW VIKING”); AUTHORIZING THE ACCEPTANCE AND APPROVAL BY THE CITY MANAGER OF THE LETTER OF CREDIT, OR OTHER CREDIT SUPPORT ISSUED ON BEHALF OF YELLOW VIKING, FURTHER SECURING THE OBLIGATIONS OF YELLOW VIKING TO DENTON FOR THE BENEFIT OF DENTON; APPROVING THE EXECUTION OF SUCH OTHER AND FURTHER RELATED DOCUMENTS DEEMED NECESSARY TO EFFECTUATE THE TRANSACTIONS ALLOWED UNDER THIS AGREEMENT BY THE CITY MANAGER, WHICH ARE INCIDENT TO OR RELATED TO THE PPA; FINDING THAT THAT THE PURCHASE OF CAPACITY AND ENERGY MADE BY DENTON UNDER THE TERMS OF THE PPA ARE IN THE PUBLIC WELFARE; AUTHORIZING THE EXPENDITURE OF FUNDS; DETERMINING THAT SPECIFIC INFORMATION CONTAINED IN DOCUMENTS INVOLVED IN THIS TRANSACTION PERTAIN TO A “COMPETITIVE ELECTRIC MATTER” AS SET FORTH UNDER THE PROVISIONS OF §551.086 AND §552.133 OF THE TEXAS GOVERNMENT CODE, AS AMENDED; ALLOWING THE PUBLIC TO INSPECT AND REPRODUCE THE PPA AS REDACTED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Denton is a home-rule city and a Texas municipal corporation governed by the constitution and laws of the State of Texas (“State”); and

WHEREAS, in accordance with the provisions of §551.086 of the Texas Government Code, after due notice of the public meeting was provided as required by law, the PPA between Denton and Yellow Viking (hereafter the “Transaction”) was submitted for final consideration of the Denton Public Utilities Board on April 8, 2024; a majority of the Public Utilities Board (“PUB”), a “Public Power Utility Governing Body” as defined by State law, convened in open and closed meetings as permitted by law, and discussed, considered, and deliberated the Transaction; and thereafter in its open meeting proceeded to take final action and recommend to the City Council that the Transaction by and between Denton and Yellow Viking be recommended by a vote of ____ () in favor to none (0) oppose, in substantially the form of the PPA presented to it; being a majority vote of all PUB members present; and

WHEREAS, in accordance with the provisions of §551.086 of the Texas Government Code, after due public notice being given, the City Council of Denton (the “City Council”), a “Public Power Utility Governing Body” as defined by State law, convened in open and closed meeting as permitted by law, and discussed, considered, and deliberated the Transaction, the subject of this ordinance, in closed and open meeting of the City Council on April 16, 2024, after receiving a legal opinion of counsel that the Transaction is a proper item for consideration in its open and closed meeting, which item involves competitive electric matters, including business and commercial information, which if disclosed, would give advantage to its competitors or prospective competitor; and

WHEREAS, the City Council has further determined and finds that several of those documents to be entered into by and between Denton and Yellow Viking specifically the PPA, and all other documents which are related thereto as from time to time may be executed by Denton and Yellow Viking, in connection therewith; should be excepted from public disclosure, as permitted by the provisions of §552.133 of the Texas Government Code, as documents that are reasonably related to a competitive electric matter, the disclosure of which documents would provide an advantage to the competitors or prospective competitors of Denton Municipal Electric (“DME”); and

WHEREAS, the City Council has further determined that it is in the public interest that it should exercise its right under Texas Government Code to lawfully safeguard and keep certain of these documents in the preceding paragraph sealed, as they are competitive documents which contain competitive electric and financial information; and

WHEREAS, the City Council finds that there is no divestiture, sale, or other disposition of the property of any utility of Denton, and therefore that no public election is required pursuant to the Charter of Denton; and

WHEREAS, the City Council finds that said Transaction involves DME purchasing from Yellow Viking replacement power and energy requirements for a contractual term of fifteen years from the Project’s Commercial Operation Date, as provided in the said PPA; and that such Transaction involves Denton’s acquisition of reliable, cost-effective replacement solar power and energy from Yellow Viking, and

WHEREAS, the City Council finds and concludes that a diversified portfolio of renewable energy resources is prudent considering the ever-changing present circumstances; and that Denton, through its electric utility, DME, provides 100% renewable energy to meet the demands of the customers of DME; and

WHEREAS, the City Council finds that the Transaction provided by this ordinance, will not impair the ability of Denton to comply with the provision of any of its utility revenue bonds, as amended, which are issued and outstanding; and

WHEREAS, Denton desires to enter into such other arrangements in support of the PPA with Yellow Viking, which are incident and related to the said PPA, and to take such additional actions as the City Manager, or their designee, shall determine to be necessary and advisable to consummate and effectuate the matters set forth herein; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS

SECTION 1. The recitations contained in the above preamble are incorporate herewith and are considered to be a part of this ordinance.

SECTION 2. The City Council hereby approves and authorizes the City Manager and the City Secretary, to execute and attest respectively, the PPA, by and between Denton and Yellow Viking, under the terms and condition set forth in Exhibit “A”, attendant with all Exhibits attached thereto, and made part hereof, with such ancillary instruments, changes and additions which are in substantial compliance with said PPA, as the City Manager, or their designee, may approve, and consummate the execution and delivery thereof on behalf of Denton, by or at the direction of the City Manager, or their designee.

SECTION 3. The City Council, as further security for Yellow Viking’s performance of this Transaction, hereby approves and authorizes the City Manager and the City Secretary, and their respective designees, to approve and accept the irrevocable non-transferable standby Letter(s) of Credit furnished to Denton by Yellow Viking, in accordance with the PPA, said Letter(s) being drawn upon a commercial bank within the United States, on behalf of Denton, as additional credit protection, under the terms and conditions being contained in substantially the form as set forth in said agreements, with such amendments, changes, and additions as the City Manager, or their designee, may approve, and approval and acceptance thereof on behalf of Denton by or at the direction of the City Manager, or their designee, shall constitute such approval.

SECTION 4. The City Council hereby approves and authorizes the City Manager and the City Secretary, and their respective designees, to execute and attest respectively, all other documents which are incident and related to the PPA referenced herein, and to take such additional actions as the City Manager, or their designee, shall determine to be necessary and advisable to effectuate the matters set forth above.

SECTION 5. The City Council, the Mayor, the City Manager, the City Attorney, or their designees, and each of them individually hereby, is authorized and empowered to perform all such acts and obligations as required with respect to the PPA described herein.

SECTION 6. The Mayor, the City Manager, the City Attorney, or their designees, and each of them individually hereby, is authorized, empowered, and directed to negotiate, deliver, and perform all such acts and things, and to sign all such documents, certificates, contracts, assignments, licenses, leases, agreements, directions, instruments, and statements, each together with such amendment, changes and additions thereto as Mayor, the City Manager, the City Attorney, or their respective designees, shall determine to be necessary or advisable to effectuate the matters set forth herein. Any such determination to be conclusively evidenced by the taking or causing to be taken of such action, or the execution and delivery of any such document, certificate,

agreement, license, lease, direction, instrument or statement by the Mayor, the City Manager, the City Attorney, or their designee is authorized.

SECTION 7. All prior action taken by the Mayor, the City Manager, the City Attorney, or their designees in furtherance of the foregoing matters, are hereby ratified, confirmed, approved and authorized in all respects as of the dates and times such actions were taken.

SECTION 8. Immediately following the execution and delivery of the documents described as the PPA and all Guaranties and Letter(s) of Credit which are incident to such PPA, as provide in this ordinance, the City Secretary is hereby directed to seal and maintain said documents in their custody and control, as documents excepted from public disclosure under the provision of §552.133 of the Texas Government Code (the “Public Power Exception”); unless otherwise lawfully ordered to disclose such documents.

SECTION 9. This ordinance shall be open for public inspection. However, all Exhibits and Attachments which are appended to this ordinance, including without limitation, the Power Purchase Agreement, and all Guaranties and Letter(s) of Credit incident to such PPA, shall not be produced for public inspection, but shall be sealed, as provided for in Section 8 above.

SECTION 10. The expenditure of funds as provided for in this ordinance is hereby authorized.

SECTION 11. This ordinance shall become effective immediately upon its passage and approval.

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

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

Digitally signed by Marcella Lunn
DN: dc=com, dc=cityofdenton,
dc=codad, ou=Department Users
and Groups, ou=General
Government, ou=Legal,
cn=Marcella Lunn,
email=Marcella.Lunn@cityofdent
on.com
Date: 2024.04.03 14:23:25 -05'00'