

ORDINANCE NO. _____

AN ORDINANCE APPROVING A DISCRETIONARY SERVICES AGREEMENT BETWEEN THE CITY OF DENTON AND ONCOR ELECTRIC DELIVERY SERVICES COMPANY, LLC FOR THE REARRANGEMENT OF ONCOR ELECTRIC FACILITIES IN CONFLICT WITH THE PLANNED IMPROVEMENTS OF THE CURRENT MAYHILL ROAD PROJECT, RANGING FROM MCKINNEY STREET NORTH TO RUSSELL NEWMAN BOULEVARD; PROVIDING FOR THE PAYMENT OF TWO HUNDRED AND FORTY EIGHT THOUSAND FOUR HUNDRED THIRTY-SEVEN DOLLARS (\$248,437.00); AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton (“City”) is presently undertaking the Mayhill Road Widening & Improvements project CCSJ: 0918-46-246, constituting the widening of a two lane rural road to a four lane urban section from US Highway 380 (University Drive) to North of Edwards Road (the “Project”); and

WHEREAS, Oncor Electric Delivery Services Company, LLC (“Oncor”) has existing electric infrastructure that is in direct conflict with the City’s planned road improvements; and

WHEREAS, Oncor’s conflicting electric infrastructure is located in preexisting easements owned by Oncor, therefore necessitating that the costs for rearrangement of said infrastructure be borne by the City; and

WHEREAS, the City and Oncor desire to enter into a Discretionary Services Agreement (the “Agreement”) to provide for the rearrangement of Oncor’s conflicting electric infrastructure; and

WHEREAS, the City Council finds the transaction contemplated by the Agreement is in the best interest of the citizens of the City of Denton; NOW, THEREFORE;

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

SECTION 1. The recitals and findings contained in the preamble of this ordinance are expressly incorporated herein.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Agreement, for and on behalf of the City of Denton, Texas, said Agreement being attached hereto and incorporated herein as Exhibit “A,” and to complete the actions further contemplated thereby, including the expenditure of funds.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY:  _____

**Tariff for Retail Delivery Service
Oncor Electric Delivery Company LLC**

6.3 Agreements and Forms

Applicable: Entire Certified Service Area
Effective Date: September 21, 2009

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6.3.5 Discretionary Service Agreement

WR # 3202549

Transaction ID: 4574

This Discretionary Service Agreement ("Agreement") is made and entered into this _____ day of _____, 2017, by Oncor Electric Delivery Company LLC ("Oncor Electric Delivery Company" or "Company"), a Delaware limited liability company and distribution utility, and _____ City of Denton _____ ("Customer"), a _____ Municipality _____, each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties". In consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. **Discretionary Services to be Provided** -- Company agrees to provide, and Customer agrees to pay for, the following discretionary services in accordance with this Agreement.

The Customer agrees to pay \$248,437 for Company WR 3202549 to relocate facilities along the Mayhill Road North project. The Company work locations are at E. McKinney ST. and N. Mayhill Road, Mills road and North Mayhill Rd., and Russell Newman Blvd. and North Mayhill Rd.. It is proposed to clear cut and/or trim vegetation, provide traffic control, install 13 poles, remove various poles, replace 1195ft of 24kv 3 phase circuit, make various transfers of Company facilities, and switch electrical feeds as required.

2. **Nature of Service and Company's Retail Delivery Service Tariff** -- Any discretionary services covered by this Agreement will be provided by Company, and accepted by Customer, in accordance with applicable Public Utility Commission of Texas ("PUCT") Substantive Rules and Company's Tariff for Retail Delivery Service (including the Service Regulations contained therein), as it may from time to time be fixed and approved by the PUCT ("Company's Retail Delivery Tariff"). During the term of this Agreement, Company is entitled to discontinue service, interrupt service, or refuse service initiation requests under this Agreement in accordance with applicable PUCT Substantive Rules and Company's Retail Delivery Tariff. Company's Retail Delivery Tariff is part of this Agreement to the same extent as if fully set out herein. Unless otherwise expressly stated in this Agreement, the terms used herein have the meanings ascribed thereto in Company's Retail Delivery Tariff.

3. **Discretionary Service Charges** -- Charges for any discretionary services covered by this Agreement are determined in accordance with Company's Retail Delivery Tariff. Company and Customer agree to comply with PUCT or court orders concerning discretionary service charges.

4. **Term and Termination** -- This Agreement becomes effective upon acceptance by Customer and continues in effect until 12-15-17. Termination of this Agreement does not relieve Company or Customer of any obligation accrued or accruing prior to termination.

5. **No Other Obligations** -- This Agreement does not obligate Company to provide, or entitle Customer to receive, any service not expressly provided for herein. Customer is responsible for making the arrangements necessary for it to receive any further services that it may desire from Company or any third party.

6. **Governing Law and Regulatory Authority** -- This Agreement was executed in the State of Texas and must in all respects be governed by, interpreted, construed, and enforced in accordance with the laws thereof. This Agreement is subject to all valid, applicable federal, state, and local laws, ordinances, and rules and regulations of duly constituted regulatory authorities having jurisdiction.

7. **Amendment** -- This Agreement may be amended only upon mutual agreement of the Parties, which amendment will not be effective until reduced to writing and executed by the Parties. But changes to applicable PUCT Substantive Rules and Company's Retail Delivery Tariff are applicable to this Agreement upon their effective date and do not require an amendment of this Agreement.

8. **Entirety of Agreement and Prior Agreements Superseded** -- This Agreement, including all attached Exhibits, which are expressly made a part hereof for all purposes, constitutes the entire agreement and understanding between the Parties with regard to the service(s) expressly provided for in this Agreement. The Parties are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof not set forth or provided for herein. This Agreement replaces all prior agreements and undertakings, oral or written, between the Parties with regard to the subject matter hereof, including without limitation _____, and all such agreements and undertakings are agreed by the Parties to no longer be of any force or effect. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein, which agreements are unaffected by this Agreement.

9. **Notices** -- Notices given under this Agreement are deemed to have been duly delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, to:

(a) If to Company:

Oncor
C/O Gary Wilson
115 W. 7th St., Ste# 625
Fort Worth, Texas 76102



**Tariff for Retail Delivery Service
Oncor Electric Delivery Company LLC**

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(b) If to Customer:
City of Denton
Chad Allen
901 Texas St., Ste. A
Denton, Tx. 76209

The above-listed names, titles, and addresses of either Party may be changed by written notification to the other.

10. **Invoicing and Payment** -- Invoices for any discretionary services covered by this Agreement will be mailed by Company to the following address (or such other address directed in writing by Customer), unless Customer is capable of receiving electronic invoicing from Company, in which case Company is entitled to transmit electronic invoices to Customer.

City of Denton
Chad Allen
901 Texas St., Ste A
Denton, Tx. 76209

If Company transmits electronic invoices to Customer, Customer must make payment to Company by electronic funds transfer. Electronic invoicing and payment by electronic funds transfer will be conducted in accordance with Company's standard procedures. Company must receive payment by the due date specified on the invoice. If payment is not received by the Company by the due date shown on the invoice, a late fee will be calculated and added to the unpaid balance until the entire invoice is paid. The late fee will be 5% of the unpaid balance per invoice period.

11. **No Waiver** -- The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered to waive the obligations, rights, or duties imposed upon the Parties.

12. **Taxes** -- All present or future federal, state, municipal, or other lawful taxes (other than federal income taxes) applicable by reason of any service performed by Company, or any compensation paid to Company, hereunder must be paid by Customer.

13. **Headings** -- The descriptive headings of the various articles and sections of this Agreement have been inserted for convenience of reference only and are to be afforded no significance in the interpretation or construction of this Agreement.

14. **Multiple Counterparts** -- This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

15. **Other Terms and Conditions** --

(i) Customer has disclosed to Company all underground facilities owned by Customer or any other party that is not a public utility or governmental entity, that are located within real property owned by Customer. In the event that Customer has failed to do so, or in the event of the existence of such facilities of which Customer has no knowledge, Company, its agents and contractors, shall have no liability, of any nature whatsoever, to Customer, or Customer's agents or assignees, for any actual or consequential damages resulting from damage to such undisclosed or unknown facilities.

(ii) City of Denton agrees that payment shall be made within 30 days of the date the project is completed or the date the invoice is received, whichever is later.

(iii) The Discretionary Service Charges provided in this agreement are for Oncor Electric Delivery facilities only and do not include any charges related to the relocation of any facilities owned by a franchised utility, governmental entity, or licensed service provider (Joint User). The customer must contact all Joint Users and make arrangements to have their facilities transferred or relocated. Oncor Electric Delivery cannot complete the relocation/removal of facilities outlined in this agreement until Joint User(s) remove their facilities attached to Oncor Electric Delivery Poles.

(iv) The Company will process for permitting with the City of Denton and if any part of the proposed construction is denied or modified then this agreement will be renegotiated. The City of Denton agrees to resolve all Oncor and Denton Municipal Electric distribution and transmission conflicts prior to signing this agreement. The charges noted in this agreement are based on a cleared construction route being provided by the customer.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized representatives.

Oncor Electric Delivery Company LLC

James C. Chase
Signature

James C. Chase

Printed Name

Distribution Major Design Manager

Title

August 3, 2017

Date

City of Denton

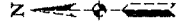
Signature

Printed Name

Title

APPROVED AS TO FORM:
CITY ATTORNEY
CITY OF DENTON, TEXAS
BY: [Signature]





245+13 68'RT.

REMOVE EXISTING POLE
INSTALL 55'C-3 WOOD POLE
IN EXISTING ONCOR AERIAL LINE

EXISTING ONCOR AERIAL LINE

242+63 68'RT.

REMOVE EXISTING POLE
INSTALL 65'C-3 WOOD POLE
IN EXISTING ONCOR AERIAL LINE

NOTE:
CLEAR & TRIM TREES AS NEEDED

REMOVE POLES

INSTALL DOWN GUY

MILLS RD.

MILLS RD. STA. 9+81.76
MAYHILL RD. STA. 242+26.09

INSTALL 55'C-3 WOOD POLE
& DOWN GUY IN EASEMENT

INSTALL 55'C-3 WOOD POLE
IN EASEMENT

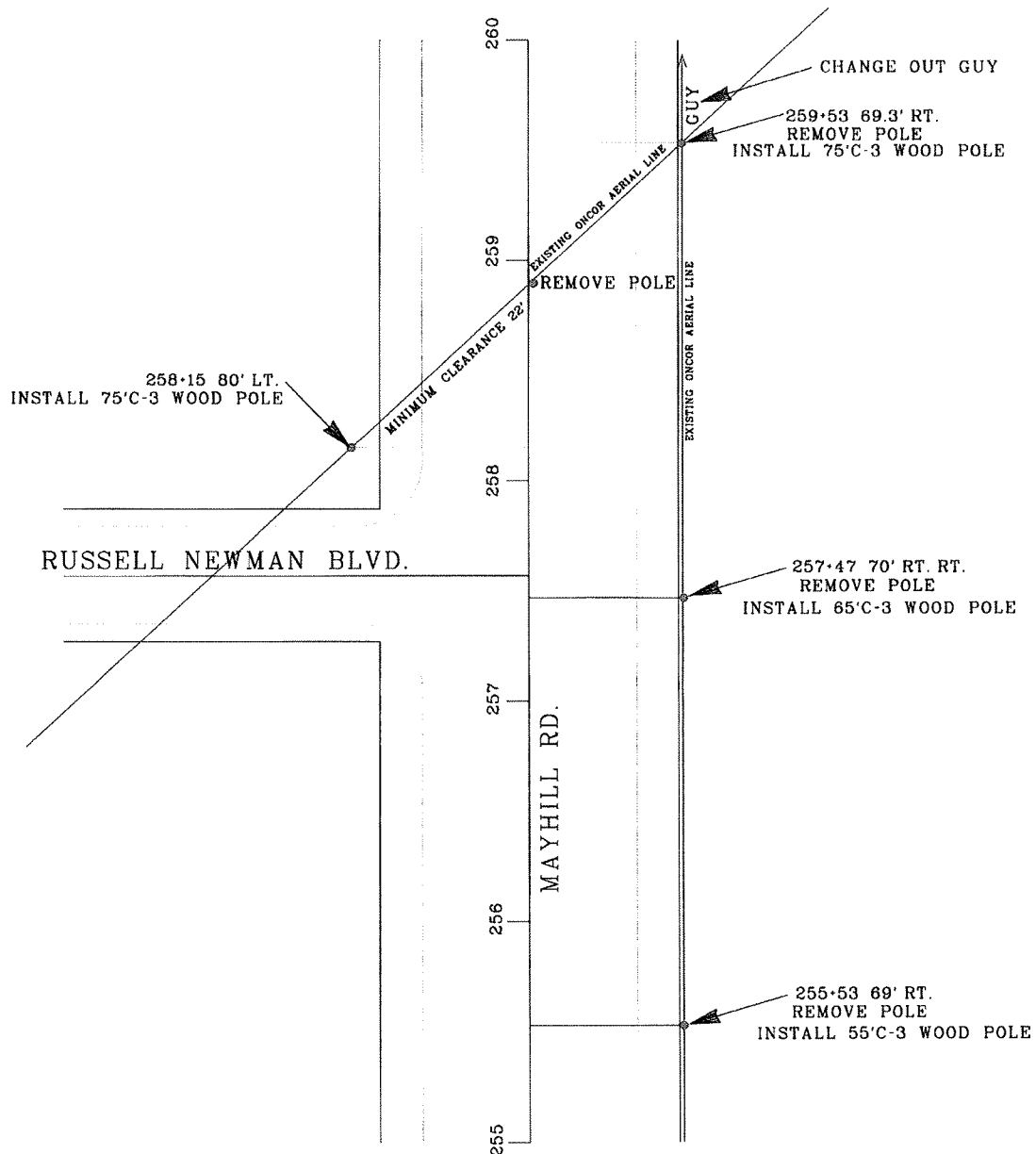
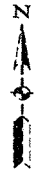
INSTALL 65'C-3 WOOD POLE
& DOWN GUY IN EASEMENT

INSTALL 55'C-3 WOOD POLE
IN EASEMENT

INSTALL 55'C-3 WOOD POLE
& DOWN GUY IN EASEMENT

SHEET 1 OF 3

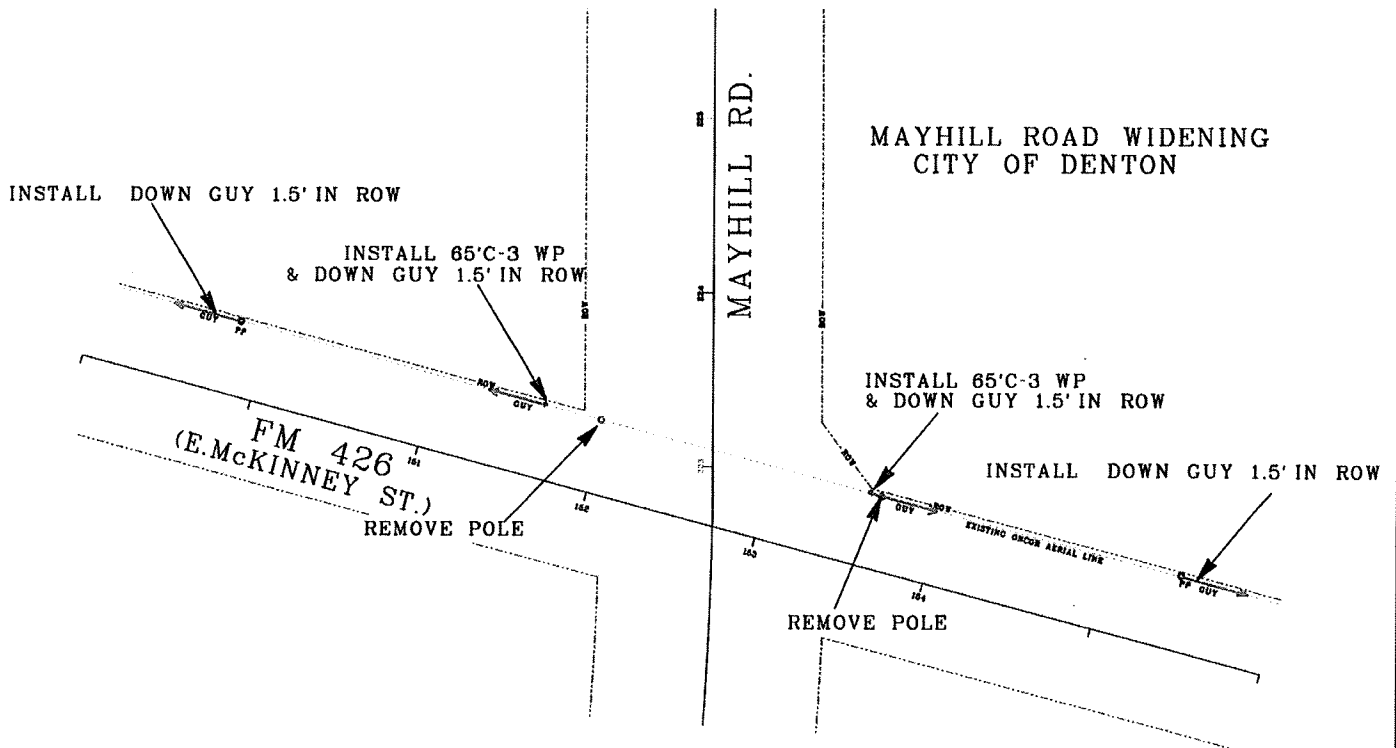
Oncor Electric Delivery Company LLC
CITY OF DENTON CONSTRUCTION PERMIT
WR*3202549, CP2017-103



NOTE:
CLEAR & TRIM TREES AS NEEDED

SHEET 2 OF 3

Oncor Electric Delivery Company LLC
CITY OF DENTON CONSTRUCTION PERMIT
WR*3202549, CP2017-103



22' MINIMUM ROAD AND GROUND CLEARANCE

SHEET 3 OF 3

Oncor Electric Delivery Company LLC
CITY OF DENTON CONSTRUCTION PERMIT
WR#3202549, HW23017-004