

RESOLUTION NO. 22-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT FOR SUCH PURPOSES WITH ONCOR ELECTRIC DELIVERY COMPANY, LLC (“ONCOR”), FOR THE CONSTRUCTION AND OPERATION OF AN ELECTRICAL FACILITY ON APPROXIMATELY THREE ACRES OF REAL PROPERTY (THE “PROPERTY”) OWNED BY THE CITY AND LOCATED AT 925 MCKENZIE ROAD IN THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, AND THE ACQUISITION OF THE PROPERTY FROM THE CITY BY ONCOR; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, AND ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (the “**City**”), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to Oncor Electric Delivery Company, LLC (the “**Company**”), for the construction and operation of an electrical facility (“**Substation**”) on McKenzie Road, Mesquite, Texas, and for Oncor to provide to the City surveying and land clearing services (the “**Agreement**”); and

WHEREAS, the proposed Substation will be located on approximately three acres of real property as more particularly described and/or depicted in Exhibit A to the Agreement, and generally located at 925 McKenzie Road, City of Mesquite, Dallas County, Texas (the “**Substation Property**”) and Oncor will acquire the Substation Property from the City with the City also granting the Company temporary access to said Substation across other City property and the Substation being served by a transmission easement to be granted by the City across other City property (“**Company Easements**”); and

WHEREAS, the Substation Property and property to contain the Company Easements are located within Reinvestment Zone No. 12, City of Mesquite, Texas (IH-20 Business Park) (the “**TIRZ**”), development of the Substation is included in the project plan and reinvestment zone financing plan for the TIRZ, and Section 272.001(b)(6) of the Texas Local Government Code

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provides the authority for the City to convey the Substation Property and Company Easements to the Company without complying with the general notice and bidding requirements applicable to municipal sales of real property; and

WHEREAS, the City would like to grant certain economic development incentives to the Company pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City has determined that a grant of funds to the Company will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The facts, findings, and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 3. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 4. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 5. That the City Manager is hereby authorized to: (i) finalize and execute the Agreement; and (ii) take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the Agreement, including but not limited to those necessary to the acquisition from the City and by the Developer of the Substation Property and Company Easements.

SECTION 6. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term, or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 6 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council’s legislative functions.

SECTION 7. That the sections, paragraphs, sentences, clauses, and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph, or section of this Resolution should be declared invalid, illegal, or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality, or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal, or unenforceable provision had never been included in this Resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 15th day of May 2023.

DocuSigned by:
Daniel Aleman Jr.
 D999585317D142B...
 Daniel Alemán, Jr.
 Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

DocuSigned by:
Sonja Land
 C2518095973F46A...
 Sonja Land
 City Secretary

DocuSigned by:
David Paschall
 666E1889120843A...
 David L. Paschall
 City Attorney

EXHIBIT A

**City of Mesquite, Texas
And
Oncor Electric Delivery Company LLC**

**Chapter 380 Economic Development
Program and Agreement**

(to be attached)

**CITY OF MESQUITE, TEXAS
AND
ONCOR ELECTRIC DELIVERY COMPANY LLC**

**CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the “**Agreement**”) is made and entered into by and between the **CITY OF MESQUITE, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “**City**”), and **ONCOR ELECTRIC DELIVERY COMPANY LLC**, a Delaware limited liability company (hereinafter referred to as the “**Company**”), for the purposes and considerations stated below:

WHEREAS, to meet increased demands for power and ensure continued electrical service reliability in the fast-growing southeastern part of the City, which will promote local economic development and stimulate business and commercial activity in the area and throughout the City, the Company covenants and agrees to construct or cause to be constructed and thereafter to operate an electrical facility (hereinafter referred to as the “**Substation**”) on an approximately 2.8604 acre tract of land in the JP Anderson Survey, Abstract No. 1, City of Mesquite, Dallas County, Texas, owned by the City, as more generally described and depicted in *Exhibit A* of this Agreement, and having a street address of 925 McKenzie Road, Mesquite, Texas 75181 (hereinafter referred to as the “**Substation Property**”), with access to said Substation Property being provided through public rights-of-way, the Substation being served by a 100 foot wide transmission easement, as generally described and depicted in *Exhibit C* of this Agreement, and access to the transmission easement being defined at a later time as described in this Agreement (“**Company Easements**”); and

WHEREAS, Company has advised the City that a contributing factor that will encourage Company to construct and operate the Substation is an agreement with the City to incentivize its construction and operation; and

WHEREAS, in accordance with the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended, and by Ordinance No. 4579, the City Council previously established the IH-20 Business Park Reinvestment Zone Number Twelve, City of Mesquite, Texas (the “**Zone**”) to promote development or redevelopment in the Zone pursuant to Ordinance No. 4579, approved by the City Council of the City on July 2, 2018; and

WHEREAS, on July 6, 2021 and by Ordinance No. 4876, the City Council enlarged the boundaries of the Zone; and

WHEREAS, on May 15, 2023 and by Ordinance No. 5023, the City Council adopted an amended Project and Finance Plan for the Zone (“**Zone Project Plan**”) which includes construction of the Substation and conveyance of the Substation Property and the Company Easements, and the Substation Property is located within the Zone; and

WHEREAS, Section 272.001(b)(6) of the Texas Local Government Code provides the authority for the City to convey the Substation Property and Company Easements to the Company without complying with the general notice and bidding requirements applicable to municipal sales of real property; and

WHEREAS, the Company desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code, an incentive to Company to construct and operate the Substation on the Substation Property; and

WHEREAS, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Mesquite, Texas; and

WHEREAS, the City has determined that a grant of funds to the Company through the conveyance of real property will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Mesquite, Texas; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Company; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Company agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date of this Agreement, and shall continue thereafter until **December 31, 2024**, unless terminated sooner under the provisions hereof. In the event this Agreement is not fully executed within sixty (60) days after approval by the City Council of the City of Mesquite, Texas, then this Agreement shall be null and void, and shall have no effect on either Party. This Agreement may be terminated by the City if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement, or any part thereof, invalid, illegal or unenforceable.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, which are incorporated herein by reference.
- (b) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a final Certificate of Occupancy for buildings to be benefited by the Substation issued by the City after the construction of the Substation in accordance with this Agreement and in compliance with the City’s building, health, safety, fire and other codes.
- (c) **City.** The word “City” means the City of Mesquite, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is 1515 N. Galloway, Mesquite, Texas 75149.
- (d) **City Easement.** The words “City Easement” mean the utility easement owned and/or being acquired by City generally described and depicted in *Exhibit B*. City agrees to provide a final metes and bounds legal description of the City Easement area, which exact location shall be agreeable between the Parties.
- (e) **City Improvements.** The words “City Improvements” mean those improvements made by Company on the City Easement as described in Section 4 of this Agreement.
- (f) **City Regulations.** The words “City Regulations” mean all ordinances, rules, regulations, standards and zoning of the City, as may be amended from time to time, including, without limitation, City codes, design standards, engineering standards, engineering design manual, drainage requirements, uniform and international building and construction codes duly adopted by the City, all of which Company agrees will be applied to development of the Substation under this Agreement only.
- (g) **Commence Construction or Commencement of Construction.** The words “Commence Construction” or “Commencement of Construction” mean with respect to the Substation

that (i) all engineering designs have been prepared and all approvals thereof required by applicable governmental authorities have been obtained to begin construction, (ii) all necessary permits to begin construction have been issued by the applicable governmental authorities, if applicable, and (iii) grading has commenced.

- (h) **Company Easements or Easement.** The words “Company Easements” is defined in the first whereas clause of this Agreement. The words “Company Easement” shall refer to one of the foregoing easements as applicable.
- (i) **Completion of Construction or Complete Construction** shall mean with respect to the Substation that the Company has completed installation of all facilities and any additional improvements to be installed as part of the Substation.
- (j) **Company.** The word “Company” means Oncor Electric Delivery Company LLC, a Delaware limited liability company, whose address for the purposes of this Agreement is 1616 Woodall Rodgers Freeway, Dallas, Texas 75202-1234.
- (k) **Economic Development Incentive.** The words “Economic Development Incentive” mean the amount payable by City to Company provided in Section 6(b) of this Agreement.
- (l) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and Company.
- (m) **Environmental Laws.** The words “Environmental Laws” mean all environmental laws, rules and regulations with respect to health, the environment, and endangered species and wetlands including, without limitation, (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601, et. seq.), as amended; (b) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, et. seq.), as amended; (c) the Endangered Species Act (16 U.S.C. §1531, et seq.), as amended; (d) the Hazardous Materials Transportation Act (49 U.S.C. § 5101, et. seq.), as amended; (e) the Clean Air Act of 1974 (42 U.S.C. § 7401, et. seq.), as amended; (f) the Clean Water Act, (33 U.S.C. §1251, et. seq.), as amended; (g) the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), as amended; (h) Chapter 361 of the Texas Health & Safety Code, as amended; (i) the Texas Water Code, as amended; (j) the Texas Natural Resource Code, as amended; (k) the Texas Solid Waste Disposal Act, as amended; and (l) all other federal, state and local laws, statutes, ordinances, rules, and regulations now existing and those promulgated in the future, as amended, that regulate the use, storage, treatment, generation, disposal, transportation, discharge, release, threatened release and/or remediation of Hazardous Substances as those terms and similar terms are defined or used in applicable Environmental Laws.
- (n) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (o) **Force Majeure Delay.** The words “Force Majeure Delay” shall mean any act of God

(including weather delays beyond historic weather patterns, earthquake, fire, mechanical failure of equipment, disease and the like), labor strike or work stoppage or slowdown (including failure of building inspectors to reasonably process approvals that cause work stoppage), material shortages, sabotage, war, riot, pandemic (including the COVID-19 pandemic, to the extent of any delays resulting from the same that were not reasonably foreseeable as of the date hereof) moratorium, or governmental action or inaction or any other act of any third Party that reasonably prevents or delays an action from being taken through no fault of Company. Notwithstanding the foregoing, in no event will “Force Majeure Delay” include a governmental order that prevents Company or its contractors or subcontractors from proceeding with the construction of the Substation or City Improvements, as a result of the failure to comply with City Regulations by the Company, its contractors or subcontractors. “Force Majeure Delay” shall not include: (1) any financial or economic hardship; (2) insufficiency of funds; (3) changes in market or economic conditions; (4) any default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the Company; or (5) any delay of the general contractor or any subcontractor, vendor or supplier of Company, except for delay(s) as a result of any act or event defined herein as “Force Majeure Delay.”

- (p) **I-20 Business Park.** The words “I-20 Business Park” mean the area depicted in *Exhibit D*.
- (q) **Impositions.** Imposition shall mean all taxes, assessments, impact fees, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authorities, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or any property or any business owned by the Company.
- (r) **Maximum Lawful Rate.** The words “Maximum Lawful Rate” mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).
- (s) **Party or Parties.** The term "Party" means either the City or Company, and the term “Parties” mean the City and Company.
- (t) **Substation.** The word “Substation” means the electrical facility as described in the first whereas clause of this Agreement.
- (u) **Substation Property.** The words “Substation Property” mean the property defined in the first whereas clause of this Agreement.
- (v) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

- (w) **Zone.** The word “Zone” means the IH-20 Business Park Reinvestment Zone Number Twelve, City of Mesquite, Texas, created pursuant to Ordinance No. 4579, approved by the City Council of the City on July 2, 2018, as amended.
- (z) **Zone Project Plan.** The words “Zone Project Plan” is defined in the fifth whereas clause of this Agreement.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF COMPANY.

The Company covenants and agrees with City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(a) Acquisition of the Substation Property and Company Easements.

- (1) **Purchase and Sale.** To incentivize Company to enter into this Agreement, construct and operate the Substation and perform its covenants herein, and subject to the terms and conditions set forth herein, and provided (a) Company has timely performed its covenants and obligations under this Agreement, (b) no Company Event of Default then exists, or no event exists which, but for notice the lapse of time or both, would constitute a Company Event of Default, (c) this Agreement is not terminated pursuant to a right herein, and (d) the sale of the Substation Property and Company Easements to Company is reasonably necessary to implement the Zone Project Plan, the City agrees to sell the Substation Property and Company Easements to the Company and Company agrees to purchase the Substation Property and Company Easements from the City for a purchase price of **four hundred thirty-six thousand and one hundred dollars and No/100** (\$436,100.00), which is the fair market value of the Substation Property and Company Easements and all of which shall be funded by an economic development grant from the City, which sale and purchase shall be pursuant to V.T.C.A., Local Government Code § 272.001(b)(6) and pursuant to the terms herein.
- (2) **Survey and Title Policy.** Company shall at its sole expense obtain a survey and title policy from a title company mutually agreeable to Company and City in connection with the closing of the purchase of the Substation Property and Company Easements.
- (3) **Closing and Closing Costs.** Unless this Agreement is sooner terminated as provided herein, the closing of the purchase of the Substation Property and Company Easements shall take place at the offices of the City or at a title company mutually acceptable to City and Company at 10:00 a.m., local time, on or before June 30, 2023, or such earlier or later time and date as the Parties may mutually agree. At the closing, the City shall deliver a Special Warranty Deed, substantially in the form of Exhibit E, to Company transferring the Substation Property to Company, subject to the terms and conditions provided herein, and shall deliver the Company Easements, on a form mutually acceptable to the Parties, consistent with the terms

of this Agreement. Company will provide final metes and bounds legal description exhibits for the Company Easements prior to the closing on the Substation Property, which final locations for such Company Easements will be agreeable between the Parties before closing. City and Company shall each be responsible for all costs and expenses incurred by or on behalf of such Party in connection with the sale and purchase of the Substation Property and Company Easements, including such Party's attorney's fees. City and Company represent and warrant to each other that they have not and will not work with any broker relative to the sale and purchase of the Substation Property and Company Easements and that no brokerage commission is or will be due and payable in connection with the sale and purchase of the Substation Property and Company Easements by the City to Company.

- (4) Deed and Easements. Pursuant to the execution and approval of appropriate sale and title transfer documents, the City will transfer the Substation Property and Company Easements to Company as provided in this Agreement. The purpose of the conveyances is to facilitate and incentivize the construction and operation of the Substation as provided in the Zone Project Plan, and such transfer documents shall contain such terms, provisions and conditions as are acceptable to the City including, without limitation, the conveyances by the City to Company shall be "**AS IS, WHERE IS**" and "**WITH ALL FAULTS**," contain such disclaimers of representations and warranties, express and implied, as the City deems advisable, and generally in the form attached hereto as *Exhibit E*. City agrees to provide Company an access easement to the transmission easement, on a form mutually agreeable between the Parties, included as part of the Company Easements, and the Parties agree to work collaboratively together and with developers of the I-20 Business Park to define the exact location for access in a manner that will insure Company has adequate access to its transmission facilities, as determined in Company's sole discretion.

The Company Easements shall provide for (i) the right of the City to place a sewer main within the transmission Company Easement provided at least minimum 17 foot separation is maintained between the sewer main and the outer edge of the transmission facility structures' foundations, which distance will be measured between the nearest outer surface of the City sewer pipe and the nearest outside edge of the closest Company transmission facility structure foundation after final design, and (ii) City will have the right to access the City Easement over the Company Easements. City agrees that the City Easement will include an obligation whereby the City must design any facilities installed in the City Easement to be traffic-rated, including for the use of heavy construction equipment, recognizing that Company will likely use the City Easement for access along the transmission easement, including Company's right to construct any road necessary to provide access over the City Easement. After the transmission line is installed and operating, City agrees to contact Company before installing and when maintaining the sewer line within Company's easement boundary.

(5) **Disclaimer of Representations and Warranties; Release; Waiver, Covenants and Agreements.**

- (5.1) **Disclaimer of Representations and Warranties.** City makes no representation or warranty, express or implied, or arising by operation of law or otherwise, with respect to any matter concerning the Substation Property and Company Easements, including, without limitation, the following: (i) title; (ii) habitability, marketability, merchantability, or suitability or fitness for a particular purpose or use; (iii) the nature and condition of the Substation Property and Company Easements including, without limitation, water, drainage and grading, soil and geology, zoning, annexation, extraterritorial jurisdiction and other zoning and jurisdictional issues, location of cemeteries, utility availability or hook-up, easement rights, flood plains (or portions of the Substation Property in a flood plain) and the costs and requirements of same, access to streets, costs of utilities, location of curb cuts and median breaks in streets, sewage facilities (including, without limitation, availability or non-availability of appropriate water and sewer capacity) or other governmental rights or obligations; (iv) the completeness, accuracy or approval of permits, surveys, plats, preliminary plats, pollution abatement plans, subdivision plans or reports; (v) tax consequences; (vi) the compliance of all or any part of the Substation Property and Company Easements with applicable Environmental Laws; (vii) the existence of asbestos, oil, arsenic, petroleum or chemical liquids or solids, liquid or gaseous products or Hazardous Substances as those terms and similar terms are defined or used in applicable Environmental Laws; (viii) the nature and extent of access to rights-of-way or utilities, availability of permits to access rights-of-way or utilities on the Substation Property and Company Easements, other property owned by City, or any property owned by third Parties; (ix) easements, mineral interests, encumbrances, licenses, reservations, conditions or other similar matters; (x) compliance with any law, ordinance or regulation of any governmental entity or body; and/or (xi) claims, demands, or other matters relating to any restrictive covenants encumbering the Substation Property or Company Easements. The Parties agree the sale will be made on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis. The Parties agree the warranties and covenants set forth in § 5.023 of the Texas Property Code do not apply to the sale and purchase and that any warranties arising at common law or implied as a result of § 5.023 of the Texas Property Code, as amended, or any successor statute, shall be excluded and excepted from the deed. Company represents, covenants and agrees that prior to the execution of this Agreement that Company has performed, or has had performed on Company's behalf, all surveys, engineering reports, geotechnical studies, soils tests, environmental

tests, and all other studies, tests, inspections and investigations of the Substation Property and Company Easements as Company has determined was necessary or desirable in order for Company to make its decision whether to purchase the Substation Property and Company Easements. Company acknowledges that Company has had the full, complete and unfettered right to inspect the Substation Property and Company Easements to Company's satisfaction and that the purchase price is in part based upon the fact that the sale of the Substation Property and Company Easements by the City to Company shall be without warranty or representation. Company agrees to rely only upon the Company's own investigations, assessments and inspections as to the condition of the Substation Property and Company Easements, or Company's own decision not to inspect any matter and Company agrees that it is not relying on any representation, warranty, statement or non-assertion of City or City's officers, agents, representatives, employees, consultants, or independent contractors in making Company's decision to purchase the Substation Property and Company Easements. COMPANY ACKNOWLEDGES THAT THE CITY HAS NOT MADE AND IS EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE, CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE SUBSTATION PROPERTY AND COMPANY EASEMENT.

- (5.2) **Release.** CITY SHALL NOT BE LIABLE TO COMPANY FOR ANY LATENT OR PATENT DEFECTS OF THE SUBSTATION PROPERTY OR COMPANY EASEMENTS OR FOR ANY ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITION AFFECTING THE SUBSTATION PROPERTY OR COMPANY EASEMENTS INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN THIS SUBSECTION, AND COMPANY, AND ANYONE CLAIMING BY, THROUGH OR UNDER COMPANY, HEREBY FULLY RELEASES CITY AND EACH CITY RELATED PARTY FROM ANY AND ALL CLAIMS AGAINST CITY AND EACH CITY RELATED PARTY FOR ANY COSTS, LOSSES, LIABILITIES, DAMAGES, EXPENSES, DEMANDS, ACTIONS OR CAUSES OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF THE SUBSTATION PROPERTY OR COMPANY EASEMENTS OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING THE SUBSTATION PROPERTY OR COMPANY EASEMENTS, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN THIS SUBSECTION AND ANY

ALLEGED NEGLIGENCE OF CITY OR ANY CITY RELATED PARTY. THIS COVENANT RELEASING CITY AND EACH CITY RELATED PARTY SHALL BE SET FORTH IN THE DEED AS A COVENANT RUNNING WITH THE SUBSTATION PROPERTY AND COMPANY EASEMENTS AND SHALL BE BINDING UPON COMPANY, COMPANY'S SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF THE SUBSTATION PROPERTY OR COMPANY EASEMENTS.

- (5.3) **Waiver.** AFTER CONSULTATION WITH AN ATTORNEY OF COMPANY'S OWN SELECTION AND WITH RESPECT TO THE SALE AND PURCHASE OF THE SUBSTATION PROPERTY AND COMPANY EASEMENTS, COMPANY HEREBY VOLUNTARILY WAIVES COMPANY'S RIGHTS, IF ANY, UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, § 17.41 ET. SEQ., BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS.
- (6) Covenant and Agreement of Company. Company represents and warrants to City that Company is acquiring the Substation Property and Company Easements for construction and operation of the Substation, has knowledge and experience in financial and business real estate matters that enable Company to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement terms which make the limitations of Company's recourse against City acceptable. Company acknowledges that the limitations of Company's recourse against City as set forth herein is a material part of the consideration for the execution and delivery of the Substation Property deed and Company Easements by the City and is an integral part of the basis of the bargain between the City and Company relating to the sale by the City and the purchase by the Company of the Substation Property and Company Easements.
- (7) Taxes. Company shall be responsible for and shall pay all taxes assessed against the Substation Property and Company Easements from and after the date of closing on the purchase of the Substation Property and Company Easements. This provision shall expressly survive the closing of the purchase of the Substation Property and Company Easements.
- (8) Failure to Purchase the Substation Property or Company Easements. If Company does not close on the acquisition of the Substation Property or Company Easements on or before June 30, 2023, or such other date upon which the Parties may agree, in accordance with the terms and conditions set forth herein, then Company's right to purchase the Substation Property and Company Easements will automatically and immediately terminate without notice.

- (9) **Return of Substation Property or Payment.** Should Company not timely Commence Construction or Complete Construction of the Substation as required herein, Company shall, as selected by the City, either: (i) convey back to the City the Substation Property at no cost to the City and free and clear of all liens and in substantially the same condition as when it was conveyed to Company, with a special warranty deed in substantially the same form as *Exhibit F*; or (ii) pay the City \$3.00 per square foot for the Substation Property. In the event the City elects to consider exercising the option requiring Company to convey the Substation Property back to the City, City shall have ninety (90) days after providing Company notice of consideration of exercising this option in which to perform any and all investigations or studies City deems necessary or desirable to determine whether City desires to purchase the Substation Property (“**Inspection Period**”). In the event City elects to consummate purchase of the Substation Property, Company shall convey the Substation Property back to the City with the closing of the purchase and sale to occur within ninety (90) days after the expiration of the Inspection Period at such location as selected by City. Company shall convey the Substation Property to City free and clear of any and all Hazardous Substances as those terms and similar terms are defined or used in applicable Environmental Laws, if any, which arose during Company’s ownership of the Substation Property and which shall be remediated and abated by Company prior to the closing of the purchase and sale. At the City’s option, the closing date may be delayed by the City for a period of time city may determine is reasonable for Company to complete such remediation and abatement. Exercise of this option shall be in addition to any and all remedies available at law or in equity to City and City’s successors and assigns to enforce compliance with the terms and provisions herein, which shall run with the Substation Property. The City’s option to require Company to convey the Substation Property to the City shall be memorialized in a separate written instrument, such as an Option Agreement, and recorded in the official records of Dallas County as a part of the closing of the sale of the Substation Property to Company. The City shall provide to Company a recordable Release of such instrument within thirty (30) days of Company notifying the City in writing of Company’s Completion of Construction of the Substation. In the event City determines to exercise the option requiring Company to pay City \$3.50 per square foot for the Substation Property, Company shall make the payment to the City within ninety (90) days of City’s notice to the Company.
- (b) **Construction of Substation.** Company covenants and agrees to Commence Construction of the Substation by **October 1, 2023**, and Complete Construction of the Substation by **October 1, 2024**, both subject to a day-for-day extension for Force Majeure Delay. Company shall provide City with written notice of Completion of Construction of the Substation. In consideration of the agreement of the City to pay the Economic Development Incentive to the Company under the terms and subject to the conditions set forth in this Agreement, the Company agrees to construct an eight (8) foot tall, precast masonry wall on the Substation Property and surrounding the Substation, and the Parties

acknowledge this requirement is material to the City's agreement to grant the Economic Development Incentive and is a bargained for consideration between the Parties.

- (c) **Compliance with City Regulations** Excepting landscaping and screening standards which shall meet the requirements of this Subsection, Company covenants and agrees to construct the Substation in compliance with City Regulations. Company further covenants and agrees to enclose the Substation with a minimum eight-foot masonry screening wall.
- (d) **City Improvements.** Company covenants and agrees to (i) complete and provide to the City, on or before **June 30, 2023** and at no cost to the City, a survey of the City Easement, and (ii) to clear the City Easement of trees and brush to the same standards employed by Company to clear the Company Easement for its poles and wires that serve the Substation and in accordance with applicable City Regulations (the "**City Improvements**"). Company covenants and agrees to commence the City Improvements at the same time Company commences the clearing of the Company Easement for Company's poles and wires to serve the Substation. Notwithstanding the immediately foregoing commencement deadline, Company covenants and agrees to complete the City Improvements on or before **December 31, 2024**, which shall be evidenced by a letter of acceptance from the City. The deadlines provided in this Subsection are subject to a day-for-day extension for Force Majeure Delay.
- (f) **Relocation of facilities.** In the event it is determined by the City to realign or abandon, in whole or in part, McKenzie Road within the I-20 Business Park, Company agrees to timely relocate its facilities in the public right-of-way necessitated by any such realignment or abandonment and in accordance with the City's Rights-of-Way Rules and Regulations contained in the City's Code of Ordinances, Chapter 15, Article III. The Parties agree nothing in this Agreement, including this subsection, lessen or otherwise modify Company's duties and obligations imposed on Company by the City's Rights-of-Way Rules and Regulations. Further, if at any time in the future access to the Substation Property can no longer be provided from McKenzie Road, a public right-of-way, due to a road relocation, abandonment, or otherwise, City agrees that it will cooperate with Company and the adjacent property owner to provide to Company a permanent access easement to provide Company alternative access to the Substation Property at a location that is mutually satisfactory to Company and the adjacent property owner.
- (g) **Timely Payment of Impositions.** The Company covenants and agrees to timely pay to all Impositions in connection with the Substation, Company Easements and performance of the City Improvements.
- (h) **Performance.** Company covenants and agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City and Company.

SECTION 5. INSURANCE, INDEMNIFICATION AND BONDS

In connection with performing the City Improvements, Company covenants and agrees to the following:

- (a) **Insurance.** Company, an electric utility regulated by the Public Utility Commission of Texas (PUCT), represents that the PUCT has approved Company's liability insurance limits and overall insurance program. During the Term of this Agreement, Company shall maintain appropriate liability and worker's compensation coverages at levels consistent with other Texas and national utility providers.
- (g) **INDEMNIFICATION.** THE COMPANY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, THE CITY'S COUNCIL MEMBERS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL THIRD PARTY LIABILITIES, DAMAGES, CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES AND COSTS INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND LITIGATION EXPENSES, FOR PERSONAL INJURY (INCLUDING DEATH) OF ANY PERSON OR DAMAGE TO OR LOSS OF OTHER PROPERTY ARISING FROM ANY ACT OR OMISSION ON THE PART OF THE COMPANY AND COMPANY'S OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS AND ITS CONTRACTORS' AND SUBCONTRACTORS' OFFICERS, AGENTS AND EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THE PERFORMANCE OF THE CITY IMPROVEMENTS (EXCEPT WHEN SUCH THIRD PARTY LIABILITY, DAMAGES, CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES, OR COSTS ARISE FROM OR ARE ATTRIBUTED TO THE SOLE OR CONCURRENT NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE OR ANY ACTIONS OF ANY INDEMNITEE FOLLOWING COMPLETION OF PERFORMANCE OF THE CITY IMPROVEMENTS). NOTHING CONTAINED IN THIS SECTION SHALL CONSTITUTE A WAIVER OF ANY GOVERNMENTAL IMMUNITY OR DEFENSE AVAILABLE TO ANY INDEMNITEE UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE, COMPANY SHALL BE REQUIRED ON NOTICE FROM INDEMNITEE, TO DEFEND SUCH ACTION OR PROCEEDING AT COMPANY'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO INDEMNITEE. THE PROVISIONS OF THIS SECTION ARE NOT TO BE STRICTLY CONSTRUED, ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY THIRD PARTY. IF ANY PART OF THIS INDEMNITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THE REMAINING PORTION OF THIS INDEMNITY SHALL CONTINUE IN FULL FORCE AND EFFECT. THE PROVISIONS OF THIS SECTION SHALL EXPRESSLY SURVIVE THE EXPIRATION OR

TERMINATION OF THIS AGREEMENT, BUT ONLY UNTIL SUCH TIME AS THE EXPIRATION OF THE STATUTE OF LIMITATION FOR ANY CLAIMS ARISING HEREUNDER.

- (h) **Bonds.** For the work performed by Company on the City Easement, Company shall require its contractor(s) performing the work to obtain performance and payment bonds for the benefit of the City as required by Texas Government Code Chapter 2253.

SECTION 6. AFFIRMATIVE OBLIGATIONS OF THE CITY.

City covenants and agrees with Company that, while this Agreement is in effect, and provided Company has timely complied with its obligations under this Agreement, it shall comply with the following terms and conditions:

- (a) **Conveyance of the Substation Property and Company Easements.** The City covenants and agrees to convey to the Company the Substation Property and Company Easements for a fair market value purchase price of **four hundred thirty-six thousand and one hundred dollars and No/100 (\$436,100.00)** by **June 30, 2023**, or other date mutually agreed to by the Parties, which the City shall fund with the Economic Development Incentive. The City covenants and agrees to execute a real estate sales contract acceptable to the Company and City for the purchase and sale of the Substation Property and the Company Easements, including the access easement needed to access the transmission easement and any permanent access easement needed in the future in accordance with Section 4(f) of this Agreement, on terms mutually acceptable to the Parties. The City covenants and agrees the sale of the Substation Property and the related Company Easements are authorized by section 272.001(b)(6) of the Texas Local Government Code.
- (b) **Economic Development Incentive.** Provided (1) Company has performed its covenants and obligations under this Agreement, including but not limited to compliance with each and every provision of Sections 4 and 5 of this Agreement then applicable, (2) no Event of Default has occurred with respect to the Company and no event exists which, but for notice or the lapse of time or both, would constitute an Event of Default with respect to the Company, and (3) this Agreement is not terminated pursuant to a right herein, the City covenants and agrees to provide Company, subject to the annual appropriation of funds, an economic development grant in the amount of **four hundred thirty-six thousand and one hundred dollars and No/100 (\$436,100.00)** (the “**Economic Development Incentive**”). The City covenants and agrees, subject to the annual appropriation of funds, to pay Company said Economic Development Incentive at closing of the sale and purchase of the Substation Property and Company Easements. The grant of the Economic Development Incentive payable by the City to the Company is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City but is payable only from funds of the City authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380. The payment of the Economic Development Incentive is subject to the City’s appropriation of funds for such purpose to be paid in the budget year for which it is to be paid.

- (c) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Company and City.

SECTION 7. CESSATION OF ADVANCES.

If City has made any commitment to make any financial assistance to the Company, whether under this Agreement or under any other agreement, the City shall have no obligation to disburse any financial assistance specified in Section 6 of this Agreement if: (i) the Company becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 8. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Company or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Company or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Company and City is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the City by or on behalf of Company under this Agreement that is intentionally false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Company's insolvency, appointment of receiver for any part of Company's property, any assignment for the benefit of creditors of Company, any type of creditor workout for Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company is an Event of Default.
- (d) **Ad Valorem Taxes.** Company allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District is an Event of Default.

SECTION 9. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 8 of this Agreement, the non-defaulting Party shall give written notice to the other Party of any default, and the defaulting Party shall have thirty (30) days to cure said default. Should said default remain uncured, the non-defaulting Party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default.

City Remedies. In the event the Company defaults and is unable or unwilling to cure said default within the prescribed time period, then the City may exercise its remedies provided in Section 4(a)(9) of this Agreement. Specific performance is available to secure the exercise of these remedies. In the event the City elects money damages as its remedy, the damages past due and not paid following the required notice and cure period shall accrue interest at the lesser of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum beginning the day after expiration of the cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. The City shall further have the right to exercise all remedies available by law to collect any sums due by the Company to the City including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

Company Remedies. Upon the occurrence of a City default that has continued uncured beyond any applicable grace or cure period, Company shall have the right as its sole remedies to (a) terminate this Agreement by written notice to the City in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, (b) recover from the City the amount of any Economic Development Incentive then earned, owed and unpaid by the City as damages in accordance with the following provisions, (c) seek specific performance of the conveyance of the Substation Property and the Company Easements from City to Company. Specific performance is available to secure the exercise of these remedies. The City and Company acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement or otherwise to recover damages:

1. the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount of the Economic Development Incentive provided in Section 6(a) of this Agreement earned by the Company and owed and unpaid by City; and
2. the recovery of damages against the City shall not include attorneys' fees or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits.

SECTION 10. MUTUAL REPRESENTATIONS.

By execution hereof, each signatory warrants and represents that they have the requisite authority to execute this Agreement and the related documents and that the representations made herein, and in the related documents, are true and accurate in all respects.

SECTION 11. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Dallas County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other Party.
- (d) **Authority.** The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Company represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Company has the authority to sign this Agreement on behalf of the Company.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Entire Agreement.** This written agreement represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.
- (h) **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.
- (i) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the “**Notice**”) is effective when in writing and (i) personally delivered by a courier service or by a nationally recognized overnight delivery service with receipt requested, and addressed as follows, (ii) in addition to by email:

if to the City:

City of Mesquite, Texas
1515 N. Galloway
Mesquite, Texas 75149
Attn: City Manager
Phone Number: (972) 216-6293

E-mail: ckeheley@cityofmesquite.com

And copy to: City of Mesquite, Texas
1515 N. Galloway
Mesquite, Texas 75149
Attn: City Attorney
Phone Number: (972) 216-6272
E-mail: dpaschall@cityofmesquite.com

if to the Company: Oncor Electric Delivery Company LLC
777 Main Street, Suite 707
Fort Worth, Texas 76102
Attn: Burt Gonzales, Transmission ROW
Phone Number: (818) 215-6517
E-mail: Humberto.Gonzales@oncor.com

And copy to: Oncor Electric Delivery Company LLC
Attn: Oncor Legal
777 Main Street, Suite 745
Fort Worth, Texas 76102
Phone Number: (817) 215-5563
E-mail: Jessica.sangsvang@oncor.com

- (j) **Number and Gender.** Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.
- (k) **Right to Offset.** The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Company to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.
- (l) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (m) **Sovereign Immunity.** No Party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof, provided, however, that City agrees that it shall be subject to civil and commercial suit for any breach of contract obligations under this Agreement, and to the extent that City may be entitled to claim sovereign, governmental, or municipal immunity from any liability in such a civil or

commercial suit by Company for breach of this Agreement, City hereby agrees to waive such immunity.

- (n) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (o) **Waivers.** All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.
- (p) **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THE COMPANY AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.**
- (q) **Form 1295 Certificate.** The Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.
- (r) **Undocumented Workers Provision.** The Company certifies that Company does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Company is convicted of a violation under 8 U.S.C. § 1324a(f), Company shall repay the amount of any public subsidy provided under this Agreement to Company plus six percent (6.0%), not later than the 120th day after the date the City notifies Company of the violation.
- (s) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Company is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Company verifies that Company does not boycott Israel and will not boycott Israel during the Term of this Agreement.

- (t) **Iran, Sudan and Foreign Terrorist Organizations.** If § 2252.153 of the Texas Government Code is applicable to this Agreement, by signing below Company hereby represent, verify and warrant that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a “foreign terrorist organization” as defined in § 2252.151 of the Texas Government Code.
- (u) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Company is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (v) **Report Agreement to Comptroller’s Office.** City covenants and agrees to report this Agreement to the State Comptroller’s office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).
- (w) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Company employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the Company represents that: (1) the Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Company will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.
- (x) **Energy Boycott.** Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Company employs at least ten (10) or more full-time employees and this Agreement has value of at least \$100,000 or more that is paid wholly or partly from public funds of the governmental entity, the Company represents that the Company: (i) does not boycott energy companies; and (ii) will not boycott energy companies during the Term of the Agreement.
- (y) **Reservation of Legislative Authority.** Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the City Council’s legislative authority or discretion.
- (z) **Provision of Documentation.** Company will deliver to the City within thirty (30) days after written request, copies of such invoices, payment records and other documentation as the City may reasonably request to confirm compliance by the Company with its covenants in this Agreement.

- (aa) **No Partnership or Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.
- (bb) **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.
- (cc) **No Acceleration.** All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.
- (dd) **No Third-Party Beneficiaries.** The Parties to this Agreement do not intend to create any third-Party beneficiaries of this Agreement. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No person who is not a Party to this Agreement may bring a cause of action pursuant to this Agreement as a third-Party beneficiary.
- (ee) **Remedies Cumulative.** The Parties hereby agree that each right and remedy of the Parties provided for in this Agreement shall be cumulative.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed.

CITY:

CITY OF MESQUITE, TEXAS,
A Texas home-rule municipality

DocuSigned by:

Cliff Keheley

76B2EEBD9F6142E...

Cliff Keheley
City Manager

ATTEST:

DocuSigned by:

Sonja Land

C2518095973F46A...

Sonja Land
City Secretary
DS



APPROVED AS TO LEGAL FORM:

DocuSigned by:

David Paschall

666E18891208434...

David L. Paschall
City Attorney

COMPANY:

ONCOR DELIVERY COMPANY LLC
a Delaware limited liability company,

DocuSigned by:

Jose Omar Alvarez

By: B085B7927C6F4F7...

Jose Omar Alvarez

Title: Attorney in Fact 5/19/2023

Date Signed: _____

Exhibit A

Substation Property General Depiction

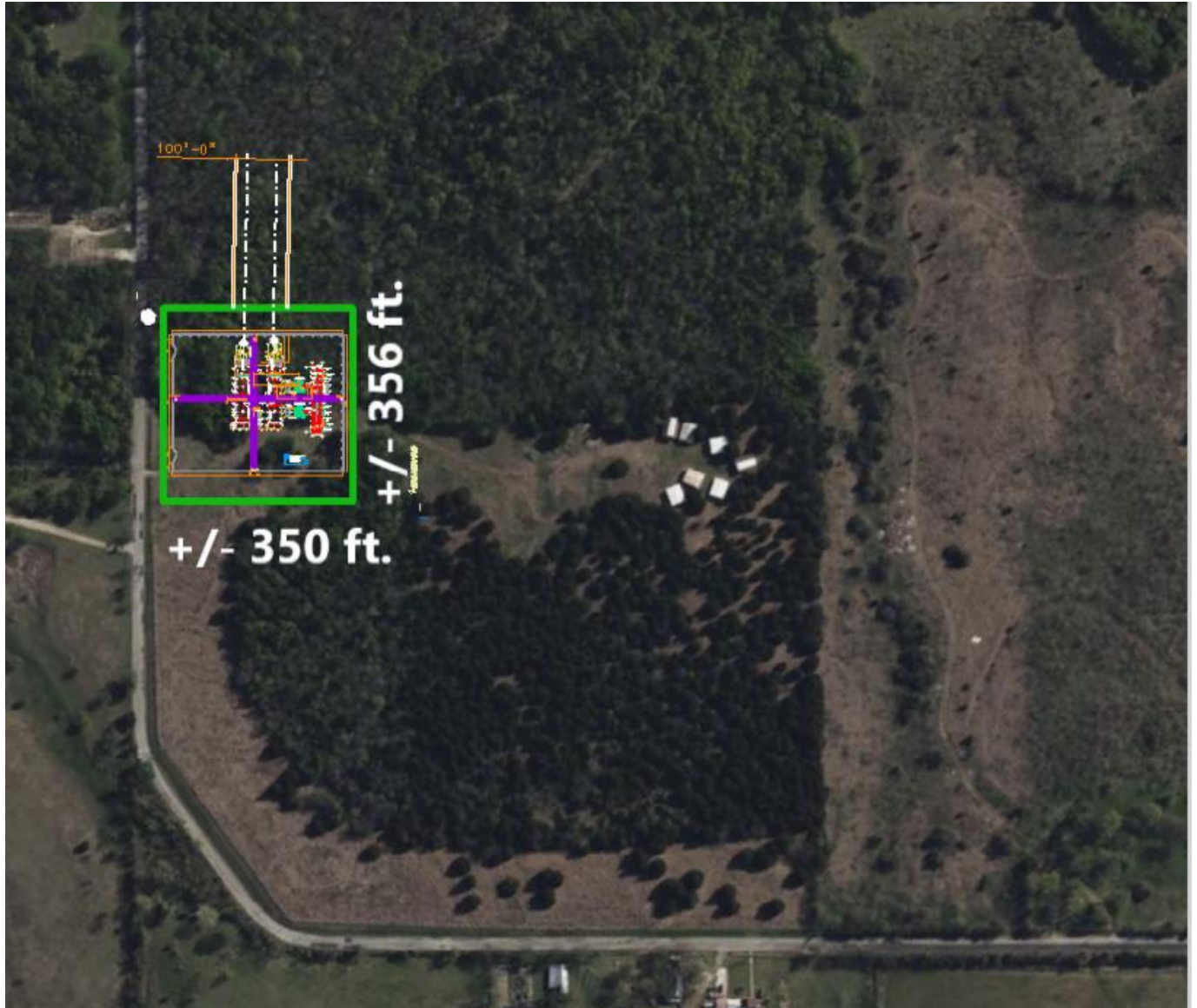


Exhibit B

City Easement General Depiction



Exhibit C

Transmission Easement General Depiction

TRANSMISSION LINE EASEMENT

Tracts 25, 23, and 21 of the JP Anderson Survey, Abstract 1, City of Mesquite, Dallas County, Texas

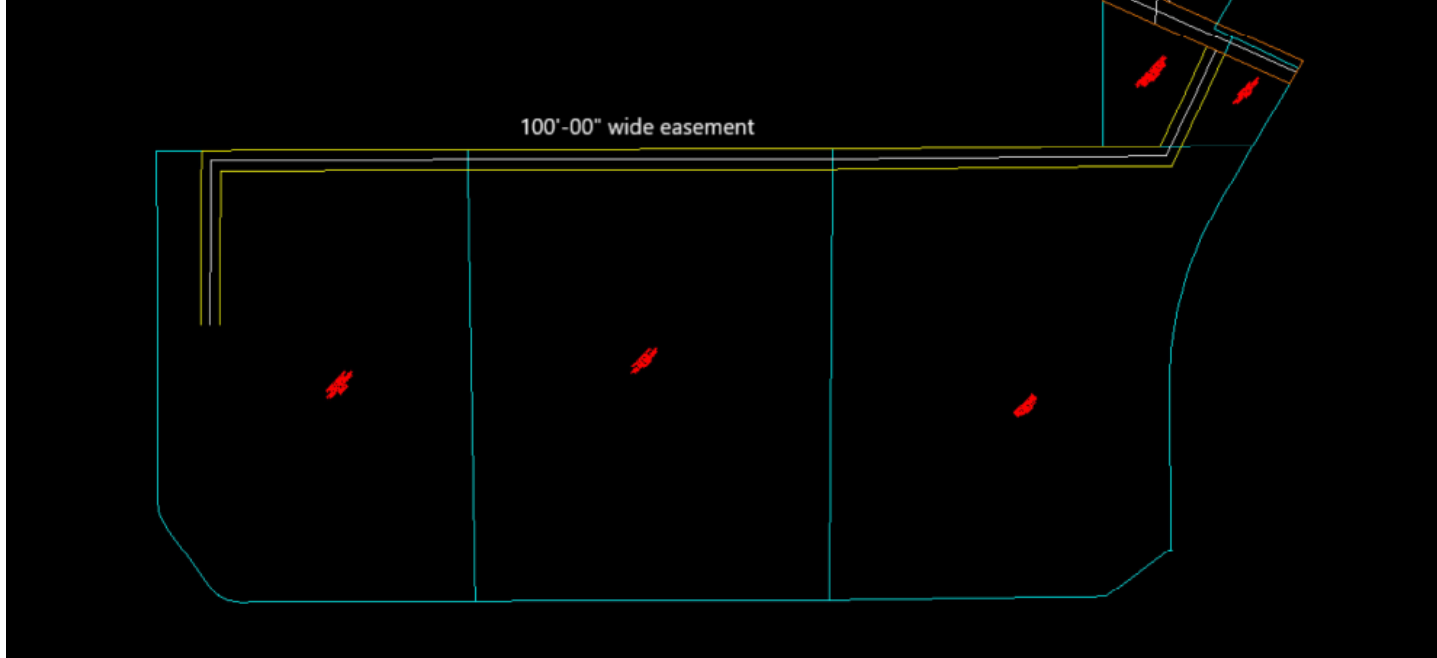


Exhibit D

I-20 Business Park General Depiction

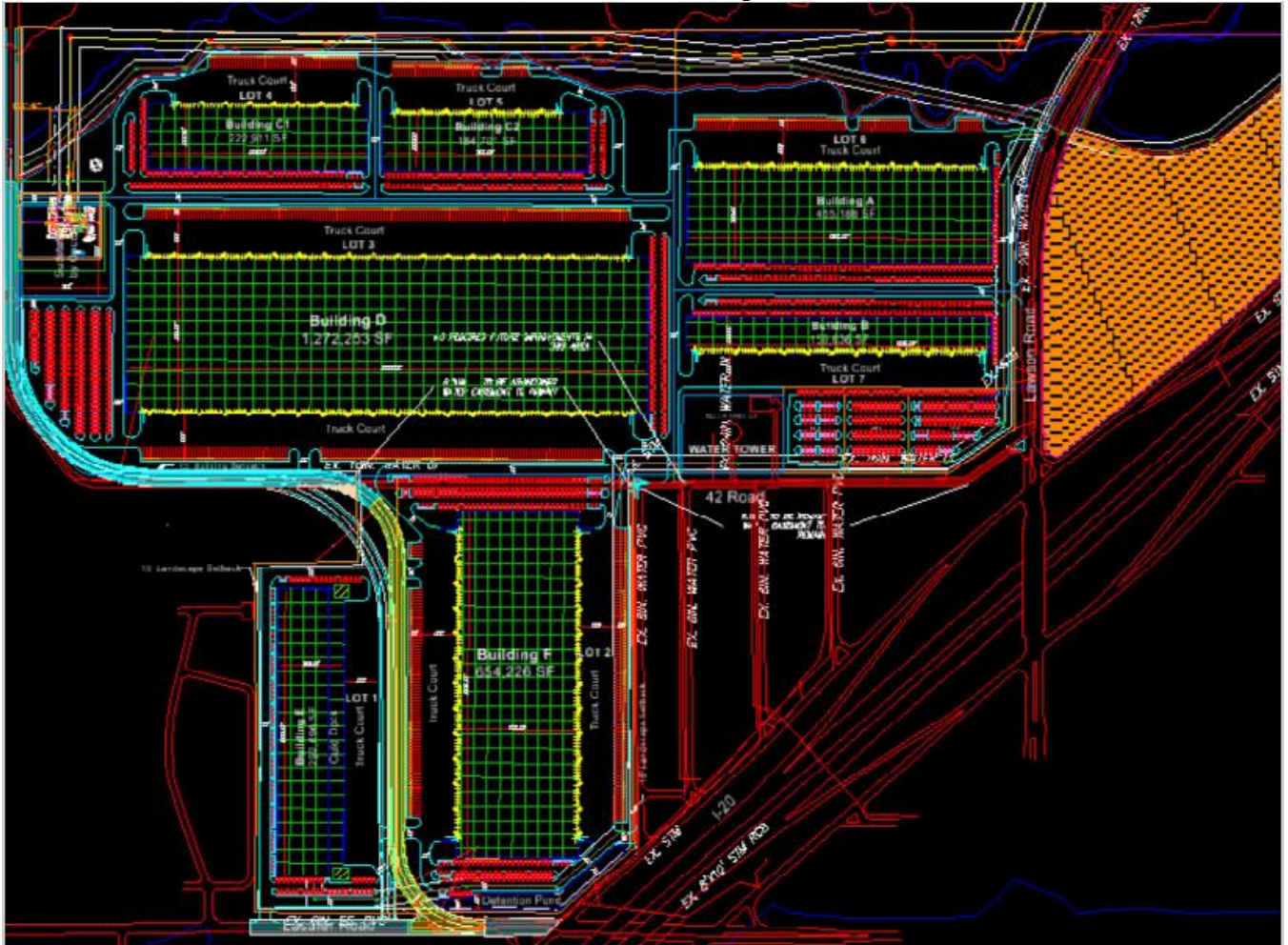


EXHIBIT E
FORM OF SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
§ KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF DALLAS §

THIS SPECIAL WARRANTY DEED (“**Deed**”) is made as of the ____ day of _____, 2023 (the “**Effective Date**”), by the **City of Mesquite, Texas**, a Texas municipal corporation (hereinafter referred to as “**Grantor**”), and Onco Electric Delivery Company LLC, a Delaware limited liability company (hereinafter referred to as “**Grantee**”), whose mailing address is 1616 Woodall Rodgers Freeway, Dallas, Texas 75202-1234.

FOR AND IN CONSIDERATION of \$10.00 and other good and valuable consideration to Grantor in hand paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantor has SOLD, CONVEYED, and GRANTED, and by these presents does hereby SELL, CONVEY, and GRANT, unto Grantee, its successors and assigns, subject to the Permitted Exceptions (defined below), that certain real property in Dallas County, Texas, which is described in **Exhibit 1** attached hereto and incorporated herein by reference (the “**Property**”), together with any improvements located in, on, or under the Property.

Grantor expressly reserves and excepts from this conveyance to Grantee, for Grantor and Grantor’s heirs, successors and assigns, all of Grantor’s right, title and interest, in and to (i) all of the oil, gas and other minerals and (ii) all of the oil royalty, gas royalty and royalty in casinghead gas, gasoline and royalty in other minerals, in and under the Property, PROVIDED HOWEVER, that Grantor shall not have the right to produce, drill for or mine such minerals on or from the surface of the Property or from the surface of any other premises unless same is at least one hundred (100) feet under the surface of the Property (the “Mineral Estate Reservation”).

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anyway belonging unto Grantee, its successors and assigns, forever; and Grantor does hereby bind Grantor and Grantor’s heirs, successors, executors and assigns, to WARRANT AND FOREVER DEFEND, all and singular the Property unto the Grantee, Grantee’s successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise; provided, however that this conveyance is made by Grantor and accepted by Grantee subject to: (a) all of the title exceptions revealed in or by the recorded documents and other matters listed on **Exhibit 2** attached to and

incorporated in this Deed by reference, to the extent the same are valid, subsisting, and affect the Property (the “**Permitted Exceptions**”); (b) all standby fees, taxes and assessments by any taxing authority for the current and all subsequent years, and all liens securing the payment of any of the foregoing; and the Mineral Estate Reservation.

IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, AND EXCEPT FOR THE SPECIAL WARRANTY OF TITLE, THE REPRESENTATIONS AND THE OTHER WARRANTIES SET FORTH IN THIS DEED AND GRANTOR’S REPRESENTATIONS, WARRANTIES, AND COVENANTS EXPRESSLY SET FORTH IN THE “PURCHASE AND SALE AGREEMENT” DATED _____, 2023 BETWEEN GRANTOR, AS SELLER, AND GRANTEE, AS PURCHASER, RELATING TO THE SALE AND CONVEYANCE OF THE PROPERTY (THE “**EXPRESS WARRANTIES**”), GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, GRANTOR DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS OR THE UNITED STATES, AND ANY REGULATIONS ADOPTED PURSUANT THERETO, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Grantee accepts the Property in its present AS-IS, WHERE-IS condition WITH ALL FAULTS, subject to the Express Warranties.

Grantor does hereby represent and warrant that there are no liens, attachments or other encumbrances which will affect the title or right of the Grantor to convey the Property to the Grantee.

EXECUTED AND DELIVERED to be effective as of the Effective Date.

GRANTOR:

CITY OF MESQUITE, TEXAS,
A Texas home-rule municipality

Cliff Keheley
City Manager

ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary

David L. Paschall
City Attorney

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

This instrument was acknowledged before me on the ____ day of _____, 2023, by _____, as the _____ of the City of Mesquite, a Texas home-rule municipality on behalf of said City.

Notary Public, State of Texas

AFTER RECORDING, PLEASE RETURN TO:

**Oncor Electric Delivery Company LLC
Attn: Laura DeLaPaz (13)
777 Main Street, Suite 707
Fort Worth, Texas 76102**

EXHIBIT "1"

LEGAL DESCRIPTION

EXHIBIT "2"

PERMITTED EXCEPTIONS

(To be inserted)