



CITY OF PLANO COUNCIL AGENDA ITEM

| | | | | |
|--|----------------------------------|---|--|-----------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 8/11/2014 | | |
| Department: | | Office of Policy and Government Relations | | |
| Department Head | | Mark Israelson | | |
| Agenda Coordinator (include phone #): Nancy Rodriguez X7510 | | | | |
| CAPTION | | | | |
| <p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Escrow Agreement by and between the City of Plano, Texas, and Oncor Electric Delivery Company, LLC related to a dispute regarding alley relocation costs pursuant to the franchise agreement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p> | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: 2013-14 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 250,000 | 0 | 250,000 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | -250,000 | 0 | -250,000 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(S): ENERAL FUND | | | | |
| <p>COMMENTS: This Resolution approves an Escrow Agreement by and between the City and Oncor Electric Delivery Company, LLC, of up to \$250,000 from the General Fund.</p> <p>STRATEGIC PLAN GOAL: Approving this Resolution relates to the City's goal of Financially Strong City with Service Excellence.</p> | | | | |
| SUMMARY OF ITEM | | | | |
| <p>This Resolution approves an Escrow Agreement by and between the City of Plano, Texas, and Oncor Electric Delivery Company, LLC, of up to \$250,000.</p> | | | | |
| List of Supporting Documents: Agenda Item, Resolution, Agreement | | | Other Departments, Boards, Commissions or Agencies | |
| | | | | |

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Escrow Agreement by and between the City of Plano, Texas, and Oncor Electric Delivery Company, LLC related to a dispute regarding alley relocation costs pursuant to the franchise agreement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, a dispute has arisen between the Parties regarding cost allocation for relocation of Oncor's facilities related to the City's alley widening and/or straightening projects ("Projects") pursuant to the current Franchise Agreement between the Parties (the "Dispute"); and

WHEREAS, the City Council has been presented a proposed Escrow Agreement by and between the City of Plano, Texas and Oncor Electric Delivery Company, LLC, to address issues related to the Projects pending resolution of the Dispute; a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas, and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED this the 11th day of August, 2014.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

**ESCROW AGREEMENT
ONCOR ELECTRIC FACILITY RELOCATION
COST ALLOCATION
CITY OF PLANO ALLEY PROJECTS**

This Escrow Agreement (the “Agreement”) is made by and between Oncor Electric Delivery Company LLC (“Oncor”) and The City of Plano, Texas (the “City”). Hereinafter, Oncor and the City may be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

Whereas, a dispute has arisen between the Parties regarding cost allocation for relocation of Oncor’s facilities related to the City’s alley widening and/or straightening projects (“Projects”) pursuant to the current Franchise Agreement between the Parties (the “Dispute”); and

Whereas, the Parties have entered into this Agreement pending (1) the entry of a final and non-appealable judgment in *City of Richardson v. Oncor*, Cause No. DC-12-12696, formerly pending in the 134th Judicial District Court for Dallas County, Texas, and presently on appeal to the Fifth Court of Appeals in Dallas, Texas (the “Lawsuit”), which involves similar disputed issues, or (2) the approval and execution of a new Franchise Agreement by the Parties.

Now, therefore, for and in consideration of the promises and agreements contained herein, the Parties agree as follows:

1. Oncor will continue to perform and pay for the cost of relocating Oncor facilities for Projects in an amount not to exceed \$250,000 during the pendency of this Agreement.
2. The City will establish an interest-bearing escrow account with the financial institution of its choice no later than ten business days after the Parties’ execution of this Agreement (the “Escrow Account”). The City will deposit money into the Escrow Account in amounts equal to the cost of relocating Oncor facilities on a Project-by-Project basis up to, but

not exceeding, \$250,000 total, with such deposit(s) to be made no later than ten business days after Oncor provides the City with an invoice for the relocation costs. If the cost of relocating Oncor facilities for Projects exceeds \$250,000, the City will timely reimburse Oncor for the cost of all such relocations in excess of \$250,000 during the pendency of this Agreement.

3. The City initially will pay all costs associated with the establishment and maintenance of the Escrow Account. Oncor will reimburse the City for one-half of such costs promptly after it receives from the City a copy of each invoice from the financial institution for such costs. The money in the Escrow Account will be distributed as follows on the 75th day after the entry of a final, non-appealable judgment in the Lawsuit or on the 10th business day after this Agreement's termination pursuant to Paragraph 4 below:

a. To Oncor, if Oncor prevails in the Lawsuit on a substantive basis (e.g., Section 37.101(c) of the Public Utilities Code or Oncor's "Tariff for Retail Delivery Service" require the City of Richardson to pay relocation costs or the term "street" does not include an "alley" and, accordingly, Oncor is not required to pay such costs) and not on a procedural basis (e.g., the City of Richardson's summary judgment evidence was inadequate, untimely, or improper). Notwithstanding anything to the contrary in this Section 3.a of this Agreement: (i) Oncor shall not recover from the Escrow Account more than its actual costs for Projects during the pendency of this Agreement and paid for by Oncor, and (ii) any funds in the Escrow Account in excess of actual costs spent by Oncor for Projects, including interest accrued on the escrow funds during the pendency of this Agreement, shall be returned to the City.

b. To the City, if the City of Richardson prevails in the Lawsuit on a substantive basis (e.g., Section 37.101(c) of the Texas Utilities Code or the common law require Oncor to pay relocation costs or the term "street" includes an "alley" and, accordingly, Oncor is

required to pay such costs) and not on a procedural basis (e.g., Oncor's summary judgment evidence was inadequate, untimely, or improper).

c. To Oncor, if neither Oncor nor the City of Richardson prevails on a substantive basis in the Lawsuit, unless: (1) otherwise agreed in writing by the Parties; or (2) within 60 days after the entry of a final, non-appealable judgment in the Lawsuit, the City files a lawsuit against Oncor regarding the Dispute. If the City files such a lawsuit and Oncor is awarded a judgment that includes monetary relief, such monetary award shall be paid to Oncor first from the Escrow Account after the judgment in the case is final and non-appealable. Otherwise, the funds in the Escrow Account shall be returned to the City after the judgment is final and non-appealable. As used in this Paragraph 3.c, "monetary relief" shall mean the amount of any damages, interest, attorneys' fees, or court costs awarded in the judgment. The parties further agree that neither of them shall receive a double recovery of damages in such a lawsuit and that neither of them will seek a double recovery of damages in such a lawsuit.

d. To Oncor, if this Agreement terminates upon the approval and execution of a new Franchise Agreement between the Parties as set forth in Paragraph 4 below, unless: (1) otherwise agreed in writing by the Parties; or (2) within 60 days after the Agreement's termination, the City files a lawsuit against Oncor regarding the Dispute. If the City files such a lawsuit and Oncor is awarded a judgment that includes monetary relief, such monetary award shall be paid to Oncor first from the Escrow Account after the judgment in the case is final and non-appealable. Otherwise, the funds in the Escrow Account shall be returned to the City after the judgment is final and non-appealable. As used in this Paragraph 3.c, "monetary relief" shall mean the amount of any damages, interest, attorneys' fees, or court costs awarded in the judgment. The parties further agree that neither of them shall receive a double recovery of

damages in such a lawsuit and that neither of them will seek a double recovery of damages in such a lawsuit.

e. Any statutes of limitations regarding any issues arising out of, or relating to, the Dispute are tolled during the pendency of this Agreement.

4. Upon the earlier of the entry of final, non-appealable judgment in the Lawsuit or the approval and execution of a new Franchise Agreement between the Parties, this Agreement shall automatically terminate and be of no further force and effect, provided, however, that (a) the tolling of statute of limitations provided in Paragraph 3.e above and any cause of action for this Agreement's breach shall survive this Agreement's termination, and (b) the funds in the Escrow Account shall be distributed as provided in Paragraph 3 above.

5. Except with respect to the handling of the cost of relocating Oncor facilities for Projects, nothing in this Agreement shall be deemed to alter, modify, supersede, or replace the terms of the current Franchise Agreement between the Parties.

6. This Agreement may not be assigned without the express written consent of the non-assigning Party.

7. This Agreement may only be amended by the mutual written agreement of the Parties.

8. Any notice or invoice required or permitted to be delivered hereunder shall be deemed received three days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:

City of Plano, Texas
Attention: City Manager
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

With a copy to:

City of Plano, Texas
Attention: City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for Oncor:

Oncor Electric Delivery Company, LLC
Attn: Howard V. Fisher
1616 Woodall Rogers Freeway, Suite 6065
Dallas, Texas 75202

9. The Parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue for any lawsuit arising out of, or relating to, this Agreement shall be in a Texas state district court for Collin County, Texas.

10. The existence and the terms of this Agreement shall not be admissible for any purpose in any lawsuit other than one relating to this Agreement's interpretation or breach.

11. Each Party acknowledges that it (a) was represented by counsel of its choosing in the negotiation of this Agreement, and (b) is relying solely on its own judgment and advice of its counsel in entering into and executing this Agreement and not on any statements or representations of the other Party or its counsel.

12. Each Party represents that the person signing this Agreement on its behalf has duly authorized by the Party to do so.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of August __,
2014.

ONCOR ELECTRIC DELIVERY COMPANY LLC

By: _____
Its: _____

THE CITY OF PLANO, TEXAS

By: _____
Bruce D. Glasscock, CITY MANAGER

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY