

**ORDINANCE NO. 3789-11-20**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY, LLC, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO USE PUBLIC RIGHTS-OF-WAY OF THE CITY OF ALLEN, TEXAS, FOR THE PURPOSES OF CONSTRUCTING AND OPERATING AN ELECTRIC DISTRIBUTION AND TRANSMISSION SYSTEM; SETTING FORTH TERMS AND CONDITIONS TO GOVERN THE FRANCHISE; PROVIDING A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDE FOR AN EFFECTIVE DATE.**

**WHEREAS**, on February 25, 2014, the City of Allen, Texas, approved an extension of the Franchise granted to Oncor Electric Delivery Company, LLC (“Oncor”), successor in interest to TXU Electric Delivery Company, until July 31, 2019, with automatic additional six (6) months periods of renewal thereafter following the July 31, 2019, expiration date of the Franchise until terminated by either party; and,

**WHEREAS**, Oncor thereafter accepted that extension of the Franchise; and,

**WHEREAS**, the City Council of the City of Allen hereby finds that it is to the mutual advantage of both the City and Oncor to enter into a new Franchise establishing the conditions under which Company will operate in the City and establishing a term of twenty (20) years for said Franchise; and,

**WHEREAS**, pursuant to Article 8 the City’s Charter, the City Council hereby determines that a grant of a Franchise pursuant to this Ordinance is in the best interest and will inure to the benefit of the City and its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:**

**SECTION 1. Definitions.** For the purpose of this ordinance the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- 1.1 “City” shall mean the City of Allen, Texas, and includes the territory that currently is or may in the future be included within the boundaries of the City.
- 1.2 “Oncor” or “Company” shall mean Oncor Electric Delivery Company, LLC, its successors and permitted assigns.
- 1.3 “Effective Date” shall be as provided for in Section 17.
- 1.4 “Electric Distribution and Transmission System”, “Facility”, “Facilities”, “facility” or “facilities” shall mean all or any part of Company’s system of electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for the Company’s exclusive use), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof.
- 1.5 “Franchise” shall mean this Ordinance and Company’s acceptance thereof as the non-exclusive

permission granted to Company to use the Public Rights-of-Way for its Electric Distribution and Transmission System and Company's acceptance thereof on the terms herein stated.

- 1.6 **“Franchise Fee” or “Franchise fee”** shall mean the total Franchise fees due from Company as set forth in Section 7, herein.
- 1.7 **“Additional Cost”** shall mean cost of all non-standard facilities, including undergrounding facilities offset by any applicable allowance as provided for in Oncor's Tariff approved by the Public Utility Commission of Texas.
- 1.8 **“Public Right-of-Way”** means the present and future streets, alleys, highways, public utility easements, public ways and other public property or property interests of the City. The term includes the area on, below, and above the surface of the Public Right-of-Way. The term applies regardless of whether the Public Right-of-Way is paved or unpaved.
- 1.9 **“Public Utility Commission of Texas” or “PUC”** shall mean the Texas Public Utility Commission or its successor agency.
- 1.10 **“Right-of-Way Management Ordinance”** shall mean Ordinance No. 1950-6-01 codified as Article III of Chapter 13 of Code of Ordinances as amended.

## **SECTION 2. Grant of Authority.**

- 2.1 **Permission.** Subject to the terms and conditions herein, City hereby grants Company the non-exclusive right, privilege and Franchise to erect, construct, extend, install, maintain and operate an Electric Distribution and Transmission System in, over, under, along and across the Public Rights-of-Way. Oncor may not use any portion of its Electric Distribution and Transmission System in the City's Public Rights-of-way for any purpose other than the delivery of electric service (or in the support of Oncor's Distribution and Transmission System), including renting, licensing or otherwise sharing use of facilities with third parties, including third parties receiving electric service, without first entering into a separate agreement with the City for Oncor ancillary service. Company agrees to notify other persons, firms, or corporations that desire to attach facilities to Oncor's Electric Distribution and Transmission System located within the City that they have a responsibility to obtain all legally required franchises, licenses, waivers, consents, easements, rights of way, and permits needed to construct and operate its equipment within the City. However, in no event is Company responsible or liable to City or any other person or entity if the persons, firms, or corporations that desire to attach to Oncor's Electric Distribution and Transmission System fails to obtain anything required by City. City may at any time request a list of persons or corporations who have a contract to attach facilities to Company equipment within the City limits, and Company shall provide such information within a reasonable time after the City's request.
- 2.2 **Non-Exclusive Use.** This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation. Any Franchise granted by the City to any other person, firm, or corporation shall not unreasonably interfere with this Franchise.
- 2.3 **Area of the City Affected.** This Franchise shall extend to and include any and all territory that is within the corporate limits of the City that have been certificated to Company by the PUC. Additionally, this Franchise shall extend to any and all territory that is annexed by the City during the term of this Franchise and certificated to Company by the PUC. In the event of disannexation, this Franchise shall be reduced to the territory that continues to be in the City.
- 2.4 **City's Rights in Public Rights-of-Way.** Company acknowledges that by this Franchise it obtains no rights to, or further use of, the Public Rights-of-Way other than those expressly granted herein.

Company further acknowledges and accepts at its own risk that consistent with this Agreement the City may use Public Rights-of-Way in which Company's Electric Distribution and Transmission System is located in a manner inconsistent with Company's use of such Public Rights-of-Way. The City reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater, and other pipe lines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. Company's Facilities shall be erected so as not to unreasonably interfere with traffic over Public Rights-of-Way. The City also reserves the right to change in any manner any Public Rights-of-Way, including but not limited to any curb, sidewalk, highway, alley, public way, street, utility line, storm sewer, drainage basin, drainage ditch, and the like. City shall provide Company with at least thirty (30) days' notice when requesting Company to relocate Facilities and shall specify a new location for such Facilities along the Public Rights-of-Way. Company shall, except in cases of emergency conditions or work incidental in nature, obtain a permit, if required by City ordinance, prior to performing work in the Public Rights-of-Way, except in no instance shall Company be required to pay fees or bonds related to its use of the Public Rights of Way, despite the City's enactment of any ordinance providing the contrary. City-requested relocations of Company facilities in the Public Rights-of-Way shall be at the Company's expense; provided however, if the City is the end use Retail Customer (customer who purchases electric power or energy and ultimately consumes it) requesting the removal or relocation of Company Facilities for its own benefit, or the project requiring the relocation is solely aesthetic/beautification in nature, it will be at the total expense of the City. Provided further, if the relocation request includes, or is for, the Company to relocate above-ground facilities to an underground location, City shall be fully responsible for the Additional Cost of placing the facilities underground.

If any other corporation or person (other than City) requests Company to relocate Company Facilities located in City Rights-of-Ways, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities. City may not request the Company to pay for any relocation which has already been requested, and paid for, by any entity other than City.

- 2.5 **Abandonment.** If City abandons any Public Rights-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-of-Way is abandoned requests the Company to remove or relocate its Facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.
- 2.6 **Compliance with Law and Continued Obligations.** Company's operations and activities within the Public Rights-of-Way in the City shall be subject to all City ordinances of general applicability, unless otherwise in conflict with any federal or state laws, rules, or regulations, or this franchise. The City shall endeavor to provide Company with reasonable notice and opportunity to review and comment upon any new or revised City laws, rules, or regulations that impact Company's use of the Public Rights-of-Way, but the failure to do so shall not affect the applicability of such laws, rules, or regulations to Company. Nothing herein shall be deemed a waiver, release or relinquishment of any right by either party to contest, appeal, or file suit with respect to any action or decision of the other party.
- 2.7 **Use of Poles and Ducts.** Oncor may permit the wires of the City to be attached to the poles or use of spare conduit in duct systems owned and maintained by Oncor, under separate agreement, upon

securing an Oncor “Pole Attachment/Duct Use” agreement which specifies the requirements and compensation for said use. Oncor does not warrant or guarantee there will be space made available on Oncor poles or spare conduits in Oncor duct systems for the City’s use. Oncor may require the City to furnish evidence of adequate insurance, provide indemnity covering Oncor as allowed by law, and provide adequate bonds covering the performance of the City or City’s contractor prior to attaching wires to Oncor’s poles and prior to City’s use of conduit in Oncor’s duct systems. Agreements for wires of the City to be attached to the poles or for use of spare conduit in duct systems maintained and owned by Oncor which are existing prior to this Franchise remain in effect according to the terms defined in such agreements.

- 2.8 **Use of City Owned Facilities, Structures, and Physical Plant.** Nothing contained in this Franchise shall be construed to require or permit any attachments to City owned facilities, structures or physical plant by Company for any purpose. If Company desires attachments to any City owned facility, structure, or physical plant for any equipment related to delivering any service through Company’s Electric Distribution and Transmission System, Company shall notify City and City shall authorize such attachment. If Company desires attachments to any City owned facility, structure, or physical plant for any equipment related to delivering any service other than electricity through Company’s Electric Distribution and Transmission System, then a further separate, non-contingent agreement shall be a prerequisite to such attachments or such use of any facility by Company. Agreements existing prior to this Franchise remain in effect according to the terms defined in such agreements.
- 2.9 **Company’s Need to Locate Facilities.** Company shall not install, construct or extend any Facilities in parks or other City–owned property that is not part of the Public Rights-of-Way without first obtaining the written approval of City.

**SECTION 3. Term of Franchise.** This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City within sixty (60) days after final passage and approval hereof by City. The right, privilege and franchise granted hereby shall expire on July 31, 2041, provided that, unless written notice of cancelation is given by either party hereto to the other not less than sixty (60) days before the expiration of this franchise agreement, it shall be automatically renewed for an additional period of six (6) months from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

**SECTION 4.** Company shall construct its facilities in conformance with the applicable provisions of the National Electrical Safety Code.

**SECTION 5. Liability Insurance.**

- 5.1 Company shall, at its sole cost and expense, obtain, maintain, or cause to be maintained, and provide, throughout the term of this Franchise, insurance in the amounts, types and coverages in accordance with the following requirements. Such insurance may be in the form of self-insurance to the extent permitted by applicable law or by obtaining insurance, as follows:
- A. Commercial general or excess liability on an occurrence or claims made form with minimum limits of five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate. This coverage shall include the following:
    - (1) Products/completed operations to be maintained for the warranty period.
    - (2) Personal and advertising injury.
    - (3) Contractual liability.
    - (4) Explosion, collapse, or underground (XCU) hazards.

- B. Automobile liability coverage with a minimum policy limit of one million dollars (\$1,000,000) combined single limit each accident. This coverage shall include all owned, hired and non-owned automobiles.
- C. Workers compensation and employer's liability coverage. Statutory coverage limits for Coverage A and five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, and five hundred thousand dollars (\$500,000) policy limit bodily injury by disease Coverage B employers' liability are required. Company must provide the City with a waiver of subrogation for worker's compensation claims.
- D. Company must name the City, which includes all authorities, commissions, divisions and departments, as well as elected and appointed officials, agents, and volunteers, as an additional insured under the coverage required herein, except Worker's Compensation Coverage. The certificate of insurance must state that the City is an additional insured.
- E. Company will require its contractors and subcontractors to maintain, at their sole cost and expense, a minimum of three million dollars (\$3,000,000) each occurrence or each accident general liability and automobile liability throughout the course of work performed. Also, contractors and subcontractors will be required to maintain statutory workers' compensation benefits in accordance with the regulations of the State of Texas or state of jurisdiction as applicable. The minimum limits for employers' liability insurance will be five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, five hundred thousand dollars (\$500,000) policy limit bodily injury by disease.

The Company will provide proof of its insurance in accordance with this Franchise within 30 days of the effective date of the Franchise and annually thereafter. Company will not be required to furnish separate proof when applying for permits.

## **SECTION 6. Indemnification and Liability for Damages.**

- 6.1 In consideration of the granting of this Franchise, Company shall, at its sole cost and expense, indemnify and hold the City, and its past and present officers, agents and employees harmless against any and all liability arising from suits, actions or claims regarding injury or death to any person or persons, or damages to any property arising out of or occasioned by the intentional and/or negligent acts or omissions of Company or any of its officers, agents, or employees in connection with Company's construction, maintenance and operation of Company's system in the City Public Rights-of-Way, including any court costs, reasonable expenses and reasonable defenses thereof.
- 6.2 This indemnity shall only apply to the extent that the loss, damage or injury is attributable to the negligence or wrongful act or omission of the Company or its officers, agents or employees, and does not apply to the extent such loss, damage or injury is attributable to the negligence or wrongful act or omission of the City or the City's officers, agents, or employees or any other person or entity. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of Company and the City.
- 6.3 In the event of joint and concurrent negligence or fault of both Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively between the City and Company in accordance with the laws of the state of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both Company and the City, responsibility for all reasonably necessary costs of defense shall be apportioned between the City and Company based upon the comparative fault of each.

6.4 In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City’s approval, which will not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of City’s written notice that City is invoking its right to indemnification under this franchise. If Company fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all reasonable defense costs incurred by City, except as otherwise provided in section 6.2 and 6.3.

**SECTION 7. Compensation to the City.**

7.1 **Franchise Fee.** In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Company shall pay to the City the following:

- A. A final quarterly payment was made by Company to City on or before August 1, 2020, for the basis period of April 1, 2020, through June 30, 2020, and the privilege period of May 1, 2021, through July 31, 2021, in accordance with the provisions in the previous franchise.
- B. As authorized by Section 33.008(b) of PURA, the original franchise fee factor calculated for the City in 2002 was 0.002794 (the “Base Factor”), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility’s point of delivery is located within the City’s municipal boundaries for determining franchise payments going forward.

Due to a 2006 agreement between Company and City, the franchise fee factor was increased to a franchise fee factor of 0.002934 (the “Current Factor”), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility’s point of delivery is located within the City’s municipal boundaries on an quarterly basis.

However, consistent with the 2006 agreement, should the Public Utility Commission of Texas at any time disallow Company’s recovery through rates of the higher franchise payments made under the Current Factor as compared to the Base Factor, then the franchise fee factor shall immediately revert to the Base Factor of 0.002794 and all future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.

Company shall make quarterly payments as follows:

| <u>Payment Due Date</u> | <u>Basis Period</u>      | <u>Privilege Period<br/>(Following Year)</u> |
|-------------------------|--------------------------|--|
| <u>November 1</u>       | <u>Jul. 1 – Sept. 30</u> | <u>Aug. 1 – Oct. 31</u>                      |
| <u>February 1</u>       | <u>Oct. 1 – Dec. 31</u>  | <u>Nov. 1 – Jan. 31</u>                      |
| <u>May 1</u>            | <u>Jan. 1- Mar. 31</u>   | <u>Feb. 1 – Apr. 30</u>                      |
| <u>August 1</u>         | <u>Apr. 1 – Jun. 30</u>  | <u>May 1- Jul. 31</u>                        |

1. The first quarterly payment hereunder shall be due and payable on or before November 1, 2020, and will cover the basis period of July 1, 2020, through September 30, 2020, and the privilege period of August 1, 2021 through October 31, 2021. If this franchise is not effective prior to the first quarterly payment date, Company will pay any payments due within 30 days of the effective date of this agreement. The final payment under this franchise is due on or before August 1, 2040, and covers the basis period of April 1, 2040, through June 30, 2040 and the privilege period of May 1, 2041, through July 31, 2041; and,
  2. After the final payment date of August 1, 2040, Company may continue to make additional quarterly payments in accordance with the above schedule. City acknowledges that such continued payments will correspond to privilege periods that extend beyond the term of this Franchise and that such continued payments will be recognized in any subsequent franchise as full payment for the relevant quarterly periods.
- C. A sum equal to four percent (4%) of gross revenues received by Company from services identified as DD1 through DD24 in Section 6.1.2 “Discretionary Service Charges,” in Oncor’s Tariff for Retail Delivery Service (Tariff), effective 1/1/2002, that are for the account and benefit of an end-use retail electric consumer. Company will, upon request by City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company’s current approved Tariff.
1. The franchise fee amounts based on “Discretionary Service Charges” shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year.
  2. The franchise fee amounts that are due based on “Discretionary Service Charges” shall be paid at least once annually on or before April 30 each year based on the total “Discretionary Service Charges”, as set out in Section 7.1.C, received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2021, and will be based on the calendar year January 1 through December 31, 2020. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2042 and will be based on the calendar months of January 1, 2041, through July 31, 2041.
  3. Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
  4. City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
  5. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.
  6. In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Company will not be required to continue payment of such franchise fees.

D. With each payment of compensation required in Section 7.1.A. & 7.1.B., Company shall provide City with a statement, executed by an authorized officer of Company or designee that provides at a minimum: i) the franchise basis period; ii) the total amount of kilowatt hours of electricity delivered by Company to retail customers whose consuming facility's point of delivery is located within the City's municipal boundaries during said franchise basis period; iii) the applicable franchise fee factor for said franchise basis period; and iv) total amount of compensation due during said franchise basis period.

With each payment of compensation required in Section 7.1.C., Company shall provide City with a statement, executed by an authorized officer of Company or designee that provides at a minimum: i) the franchise basis period; ii) total amount of gross revenues received by Oncor within the City's municipal boundaries for services identified in its "Tariff of Retail Delivery Service" as described in Section 7.1.C.; iii) the applicable payment rate for said franchise basis period; and iv) total amount of compensation due during said franchise basis period.

E. If either party discovers that Company has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined by mutual written agreement between the City and Company and the City shall be paid by Company within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the sole option of the City, either be refunded to Company by the City within thirty (30) days of such determination or offset against the next payment due from Company. Acceptance by either party of any payment due under this Section shall not be deemed to be a waiver by either party of any claim of breach of this Franchise, nor shall the acceptance by either party of any such payments preclude either party from later establishing that a larger amount was actually due or from collecting any balance due. Nothing in this Section shall be deemed a waiver by either party of its rights under law or equity.

F. Interest on late payments or reimbursement for overpayment shall be calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission of Texas in accordance with the Texas Utilities Code, Section 183.003, as amended for the time period involved.

G. No taxes, fees, or other payments by Company to the City, including, but not limited to, ad valorem taxes, shall reduce the Franchise Fees payable to City hereunder, except as agreed to by the City in Section 7.1.E.

## **SECTION 8. Accounting Matters.**

8.1 **Maintenance of Records.** Company shall keep accurate books of account at its principal office for the purpose of determining the amount due to the City under this Franchise

8.2 **Audit.** Pursuant to Section 33.008(e) of the Texas Utilities Code, the City may conduct an audit or other inquiry in relation to a payment made by Company less than two (2) years before the commencement of such audit or inquiry. The City may, if it sees fit, and upon reasonable notice to the Company, have the books and records of the Company examined by a representative of the City to ascertain the correctness of the reports agreed to be filed herein.

8.3 **Access to Records.** The Company shall make available to the auditor during the Company's regular business hours and upon reasonable notice, such personnel and records as the City may, in its reasonable discretion, request in order to complete such audit, and shall make no charge to the City therefore. The Company shall respond to all requests for information from City no later than thirty (30) days after receipt of a request.



- A. If as the result of any City audit, Company is refunded/credited for an overpayment, or pays the City for an underpayment, of the Franchise Fee, such refund/credit or payment shall be made pursuant to the terms established in Section 7.
  - B. If as a result of a subsequent audit, initiated within two years of an audit which resulted in Company making a payment to the City due to an underpayment of the franchise fee of more than 5%, Company makes another payment to the City due to an underpayment of the franchise fee of more than 5%, the City may immediately treat this underpayment as an Uncured Event of Default and exercise the remedies provided for in Section 11.
- 8.4 The City agrees to maintain the confidentiality of any non-public information obtained from Company to the extent allowed by law. City shall not be liable to Company for the release of any information the City is required by law to release. City shall provide notice to Company of any request for release of non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes Company's proprietary information, City will notify the Texas Attorney General of the proprietary nature of the document(s). The City also will provide Company with a copy of this notification, and thereafter Company is responsible for establishing that an exception under the Act allows the City to withhold the information.

**SECTION 9. Right of Renegotiation.**

- 9.1 Should either Company or the City have cause to believe that a material change in circumstances relating to the terms of this Franchise may exist, it may request, and the other party shall timely provide the requesting party a reasonable amount of information to assist in determining whether a material change in circumstances has taken place.
- 9.2 Should either party hereto determine that based on a material change in circumstances, it is in the best interest to renegotiate all or some of the provisions of this Franchise, then the other party agrees to enter into good faith negotiations. Said negotiations shall involve reasonable, diligent, and timely discussions about the pertinent issues and a resolute attempt to settle those issues. The obligation to enter into such negotiations does not obligate either party to agree to an amendment of any or all terms of the Franchise as a result of such negotiations. A failure to agree does not show a lack of good faith. If, as a result of renegotiation, the City and Company agree to a change in any or all provision an amendment of one or more provisions of this Franchise, the change shall become effective upon passage of an Ordinance by the City in accordance with the City Charter and the filing with the City Secretary of written acceptance of the amendment by Company.

**SECTION 10. Defaults.**

- 10.1 **Events of Default.** The occurrence, at any time during the term of the Franchise, of any one or more of the following events, shall constitute an Event of Default by Company under this Franchise:
- A. The failure of Company to pay the Franchise Fee on or before the due dates specified herein.
  - B. Company's material breach or material violation of any material terms, covenants, representations or warranties contained herein.
- 10.2 **Uncured Events of Default.**
- A. Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City, Company shall have thirty (30) calendar days from receipt of written notice

- from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided in Section 11.
- B. Upon the occurrence of an Event of Default by Company which cannot be cured by the immediate payment of money to City, Company shall have sixty (60) calendar days (or such additional time as may be agreed to by the City) from receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in Section 11.
  - C. If the Event of Default is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 11.

## **SECTION 11. Remedies.**

- 11.1 **Remedies:** The City shall notify the Company in writing of an alleged Uncured Event of Default as described in Section 10, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within thirty (30) business days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or in a written response to the City either present facts and arguments in refuting or defending such alleged failure. City, at its option, may agree to an extension of the time for Company to cure any Event of Default. In the event that Company does not cure an alleged Event of Default, City shall be entitled to exercise any and all of the following cumulative remedies:
- A. The commencement of an action against Company at law for monetary damages.
  - B. The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions that, as a matter of equity, are specifically enforceable.
  - C. The commencement of proceedings to seek revocation of Company's certificate of convenience and necessity to serve any or all of Company's service area located within the City of Allen.
  - D. The termination of this Franchise in accordance with the provisions of Section 12.
- 11.2 **Remedies Not Exclusive:** The rights and remedies of City and Company set forth in this Franchise shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this Section or any other provision of this Franchise, City shall not recover both liquidated damages and actual damages for the same violation, breach, or event of noncompliance.

**SECTION 12. Termination.** In accordance with the provisions of Section 11.1.D, this Franchise Agreement may be terminated upon thirty (30) business days' prior written notice to Company by City. City shall notify Company in writing at least fifteen (15) business days in advance of the City Council meeting at which the question of forfeiture or termination shall be considered, and Company shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Company may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction. Upon timely appeal by Company of the City Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or an order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this Franchise shall remain in effect for all purposes. The City recognizes Company's right

and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission in accordance with the Texas Utilities Code. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by that party.

**SECTION 13. Assignment.** The rights granted by this Franchise Agreement inure to the benefit of the Company and any parent, subsidiary, affiliate or successor entity now or hereafter existing. The rights shall not be assignable without the express written consent, by Ordinance, of the City Council of the City, unless otherwise superseded by state laws, rules, or regulations or Public Utility Commission of Texas action, and such consent by City shall not be unreasonably withheld or delayed, except the Company may assign its rights under this Franchise Agreement to a parent, subsidiary, affiliate or successor entity without consent, so long as such parent, subsidiary, affiliate or successor entity assumes all obligations of Company hereunder, and is bound to the same extent as Company hereunder. The Company shall give the City prior written notice within ninety (90) days in advance of any such assignment to a parent, subsidiary, affiliate or successor entity.

**SECTION 14. Notices.**

14.1 All notices required by this Franchise shall be in writing and delivered personally or transmitted (a) through the United States mail by registered or certified mail, postage prepaid or (b) by means of prepaid overnight delivery service addressed as follows:

If to the City:

**City of Allen**

Attn: City Manager's Office  
305 Century Parkway  
Allen, TX 75013

With a Copy to:

**Nichols, Jackson, Dillard, Hager & Smith, LLP**

1800 Ross Tower  
500 North Akard Street  
Dallas, TX 75201

If to Company:

**Oncor Electric Delivery Company LLC**

Attn: Regulatory Affairs  
1616 Woodall Rodgers Fwy. 6<sup>th</sup> floor  
Dallas, TX 75202-1234

14.2 **Date of Notices; Changing Notice Address.** Notices shall be deemed given: (a) upon receipt in the case of personal delivery; (b) three (3) business days after deposit in the mail; or (c) the next business day in the case of overnight delivery. From time to time, either party may designate another address for this purpose by written notice to the other party delivered in the manner set forth above.

**SECTION 15. Miscellaneous.**

15.1 **Amendment of Franchise Agreement.** This Franchise Agreement may not be amended except pursuant to an Ordinance adopted by the City Council and agreed to in writing by Company, with said written agreement being filed in the office of the City Secretary.

15.2 **Governing Law.** The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Franchise.

- 15.3 **Force Majeure.** In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by an act of God or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence and resulting delay.
- 15.4 **Criteria for Responses.** Responses by one party to requests from the other party must be given within a reasonable time to the extent not governed by this franchise or by applicable laws, rules or regulations.
- 15.5 **Waiver of Breach.** The waiver by either party of any breach or violation of any Provision of this Franchise shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other Provision of this Franchise.
- 15.6 All ordinances of the City of Allen, Collin County, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed; provided, however that all other provisions of said ordinances not in conflict with the provisions of this ordinance shall remain in full force and effect.
- 15.7 Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.
- 15.8 An offense committed before the effective date of this ordinance is governed by prior applicable laws, rules and regulations as previously amended, in effect when the offense was committed, and the former law is continued in effect for this purpose subject to any applicable statute of limitations.

**SECTION 16.** This Ordinance shall supersede any and all other franchises granted by the City to Company, its predecessors and assigns.

**SECTION 17.** This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City Secretary within thirty (60) days after final passage and approval of this Ordinance by the City Council.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 24<sup>TH</sup> DAY OF NOVEMBER 2020.**

**APPROVED:**

\_\_\_\_\_  
**Kenneth M. Fulk, MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
**Peter G. Smith, CITY ATTORNEY**  
 (PGS:11-17-20:TM 119180)

\_\_\_\_\_  
**Shelley B. George, TRMC, CITY SECRETARY**