

ORDINANCE NO. 23-2062

AN ORDINANCE GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY LLC, A NON-EXCLUSIVE ELECTRIC POWER FRANCHISE FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, AND USING AN ELECTRIC DELIVERY UTILITY SYSTEM IN THE CITY OF DENTON; PRESCRIBING THE RELATIONSHIP AND RELATIVE RIGHTS BETWEEN GRANTEE AND OTHERS WITH RESPECT TO CONSTRUCTION IN THE CITY AND LOCATION OF FACILITIES; PROVIDING FOR ENFORCEMENT OF THE FRANCHISE; PRESCRIBING THE DUTIES, RESPONSIBILITIES, AND RULEMAKING AUTHORITY OF THE CITY MANAGER AND THE CITY WITH RESPECT TO ADMINISTRATION OF THIS FRANCHISE; RESERVING TO THE GOVERNING BODY OF THE CITY THE RIGHT TO SET CHARGES AND RATES OF GRANTEE; REGULATING THE CONSTRUCTION WORK DONE BY THE GRANTEE IN THE CITY; ADDRESSING THE JOINT USE OF POLES, TRENCHES, AND DUCTS IN CERTAIN INSTANCES; ADDRESSING RELOCATION OF FACILITIES; PROVIDING FOR COMPENSATION TO THE CITY FROM THE GRANTEE FOR THE FRANCHISE PRIVILEGE; REQUIRING CERTAIN RECORDS AND REPORTS AND PROVIDING FOR INSPECTIONS AND PRESERVATION THEREOF; PROVIDING FOR ENFORCEMENT OF THE FRANCHISE; PROVIDING FOR ASSIGNMENT OF THE FRANCHISE; PROVIDING FOR INDEMNITY AND INSURANCE; PROVIDING FOR TERM, RENEWAL, EFFECTIVE DATE, AND ACCEPTANCE OF THIS FRANCHISE; ADDRESSING CONFORMITY WITH APPLICABLE LAWS, CITY CHARTER AND CITY CODE; PROVIDING FOR GOOD FAITH EFFORT; PROVIDING FOR THE REPEAL OF THE EXISTING FRANCHISE ORDINANCE NO. 2012-359 TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS PREDECESSORS AND ASSIGNS, AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Oncor Electric Delivery Company LLC desires to occupy the City of Denton's Public Rights-of-Way for the purpose of providing electric utility service within the City limits of the City of Denton; and

WHEREAS, the City of Denton contends a Franchise is required to be granted by the City of Denton before Oncor Electric Delivery Company LLC may occupy the Public right-of-way in the City of Denton, Denton County, Texas; and

WHEREAS Oncor Electric Delivery Company LLC acknowledges that, by this Franchise Agreement, it obtains no rights to, or further use of, the Public Rights -of -Way other than those expressly granted herein and also granted by state and federal laws, rules, and regulations, including any amendments thereto; and

WHEREAS, Oncor Electric Delivery Company LLC has made application with the City of Denton for the grant of a Franchise in compliance with the Denton City Code of Ordinances and the City of Denton Charter; and

WHEREAS, the City Council for the City of Denton finds that it is in the best interest of the public to authorize an ordinance for a non-exclusive electric power franchise to Oncor Electric Delivery Company LLC in the City's Rights-of-Way; and

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. GRANT OF AUTHORITY.

There is hereby granted to Oncor Electric Delivery Company LLC, its successors and assigns, (herein called "Company") the non-exclusive right, privilege, and franchise to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public utility easements, public ways ("Public Rights-of-Way" or "Rights-of-Way") of the City of Denton, Texas, (herein called "City"), electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines, telephone and communication lines, and other structures for Company's own use) ("System" or "Facilities") for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 14.

The franchise granted herein 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.

SECTION 2. CITY AUTHORITY: DELEGATION.

(a) The City Manager of the City of Denton or designee, if any ("City Manager"), is the principal City officer responsible for the administration of this franchise and shall oversee and review the operations of Company under this franchise. The City may delegate to the City Manager the exercise of any of the powers conferred upon the City by its charter or by law relating to supervising Company in the exercise of the rights and privileges herein conferred, including calculation of payments due to the City under this franchise or state law. The City Manager shall have the authority to make and publish, after notice to those affected and an opportunity to submit written comments, such rules and regulations necessary to carry out the duties and power conferred upon the City Manager.

(b) The governing body of the City reserves to itself exclusively the power to establish policy, and to fix and regulate the general charges, rates, and services of the Company, to the full extent that such power is provided in the charter, this franchise, and state law. The City Manager shall have the authority to make and publish, after notice to those affected and an opportunity to submit written comments, such rules and regulations as necessary to assist the governing body of the City in exercising its reserved powers.

(c) The City and the City Manager shall have full authority to administer this franchise and be kept fully informed as to all matters in connection with or affecting the construction, reconstruction, maintenance, operation, and repair of the properties of the Company's System within the City's Public Rights-of-Way. Irrespective of whether City retains original jurisdiction over the rates and services of Company, the City and the City Manager shall maintain full authority to administer this franchise and to oversee and review the operations of the Company pursuant to the terms of this franchise.

(d) The City Manager shall provide written notice to the Company of any designee contemplated by this section. The City Manager may limit, change, or revoke such designation at will by service of written notice to the Company. Such designation, limitation, change or revocation shall not be effective until service of written notice thereof on the Company, except those changes due solely to succession in office or position of a City officer or employee shall become effective immediately and the City shall serve written notice thereof on the Company within a reasonable time.

(e) In the event of sudden or unforeseen damage or malfunction of a portion of Company's Facilities that City believes creates a threat to life, health, or property, City may notify Company of the matter, and City and Company shall work together in good faith to eliminate any such actual threat, which may include Company determining to disconnect, disable, or de-energize its equipment.

(f) Poles, towers, and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways.

SECTION 3. REGULATION BY CITY & PLACEMENT OF COMPANY FACILITIES.

(a) Work done in connection with the construction, reconstruction, maintenance, repair or operation of the Company's System shall be subject to and governed by all applicable City, state, and federal ordinances, laws, rules, and regulations. To the extent that such City ordinances rules and regulations conflict with specific provisions of this Franchise, the Franchise provisions apply, to the extent allowed by law.

(b) Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal, or file suit with respect to any action or decision of the other party, including ordinances adopted by the City that Company believes are in violation of any federal, state, or local laws, rules, or regulations. The City will endeavor to provide Company notice and opportunity to review and comment upon proposed ordinances relating to City's Public Rights-of-Way.

(c) The governing body of the City may require Company from time to time to place certain facilities underground. If the governing body of the City so requires placement of facilities underground, adequate provision shall be made for City to compensate Company for the increased costs involved.

(d) In accordance with direction given by the authority of the governing body under the police and regulatory powers of the City, subject to other applicable laws, rules and regulations, the placement of poles and excavations and other construction in City Public Rights-of-Way by Company shall interfere as little as practicable with the use of the streets, sidewalks, and alleys. Company has the right to request review by any court or regulatory agency having jurisdiction of this or any actions concerning Company use of City's Public Rights-of-Way.

(e) Company shall construct its facilities in conformance with the applicable provisions of the National Electrical Safety Code.

SECTION 4. CONSTRUCTION AND MAINTENANCE: EXCAVATION.

(a) Company's operations and activities within the Public Rights-of-Way in the City shall be subject to all City ordinances of general applicability, including, but not limited to, Chapter 25, Right-of-Way Management, Denton City Code unless otherwise in conflict with any federal or state laws, rules, or regulations, or this franchise. 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 Oncor be required to pay fees or bonds related to these permits, licenses, or other approval processes required for placing Facilities in the Public Rights-of-Way. The City shall be notified as soon as practicable regarding work performed under emergency conditions and Company shall comply with the City's reasonable requirements for the restoration for the excavated area.

(b) City shall have the ability at any time to require Company to repair, remove or abate any Company distribution pole, wire, cable, or other distribution structure owned by Company that is determined to be unnecessarily dangerous to life or property. After receipt of notice, Company shall either cure said dangerous condition within a reasonable time or provide City with facts or arguments in refuting or defending its position that said condition is not a condition that is unnecessarily dangerous to life or property. In the event City finds that Company has not sufficiently addressed said dangerous condition by either of the aforementioned methods, City shall be entitled to exercise any and all of the following cumulative remedies:

1. The commencement of an action against Company at law for monetary damages.
2. The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions, which as a matter of equity, are specifically enforceable.

(c) The rights and remedies of City and Company set forth in this Ordinance 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 noncompliance, either under this Section or under any other provision of this Franchise.

(d) 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 common enemy 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.

(e) Company shall promptly restore to as good condition as immediately before Company working thereon, and to the reasonable satisfaction of the City, Public Rights-of-Way excavated by it.

SECTION 5. JOINT USE OF POLES, TRENCHES, AND DUCTS/CONDUITS.

Use of Poles and Ducts. Company 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 Company, under separate agreement, upon securing a Company "Pole Attachment/Duct Use" agreement which specifies the requirements and compensation for said use. Company does not warrant or guarantee there will be space made available on Company poles or spare conduits in Company duct systems for the City's use. Company may require the City to furnish evidence of adequate insurance, provide indemnity covering Company as allowed by law, and provide adequate bonds covering the performance of the City or City's contractor prior to attaching wires to Company poles and prior to City's use of conduit in Company 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 Company which are existing prior to this Franchise remain in effect according to the terms defined in such agreements.

SECTION 6. RELOCATION OF FACILITIES.

(a) The City reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipelines, 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 City's Public Rights-of-Way occupied by Company. The City also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines (or in the case of utility lines owned by Company, to require that change by Company), storm sewers, drainage basins, drainage ditches, and the like.

(b) City shall provide Company with at least thirty (30) days' notice when requesting Company to relocate facilities and shall determine with Company a new location for such facilities along City's 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

City's Public Rights-of-Way, except in no instance shall Company be required to pay fees or bonds related to its use of City's Public Rights-of-Way, despite the City's enactment of any ordinance providing the contrary. City-requested relocations of Company facilities in City's 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.

(c) If any other corporation or person (other than City) requests Company to relocate Company facilities located in City Rights-of-Way, 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. In the event that the governing body of the City authorizes someone other than the Company to occupy space within the Public Rights-of Way, such grant shall be subject to the rights herein granted or heretofore obtained by the Company. In the event that the governing body of the City shall close or abandon any Public Rights-of Way which contains existing facilities of the Company, any conveyance of land within such closed or abandoned Public Rights-of Way shall be subject to the rights herein granted or heretofore obtained by Company. Provided, that the Company may be ordered to vacate any land so conveyed if an alternate route is practicable and if the Company is reimbursed by the person to whom the property is conveyed for the reasonable costs of removal and relocation of facilities.

(d) 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.

SECTION 7. COMPENSATION.

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 on or before August 15, 2023 for the basis period of April 1, 2023 through June 30, 2023 and the privilege period of April 1, 2023 through June 30, 2023 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 0.002859 (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 0.003002 (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 a 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 0.002859 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</u>
November 15	Jul. 1 – Sept. 30	Jul. 1 – Sept. 30
February 15	Oct. 1 – Dec. 31	Oct. 1 – Dec. 31
May 15	Jan. 1 – Mar. 31	Jan. 1 – Mar. 31
August 15	Apr. 1 – Jun. 30	Apr. 1 – Jun. 30

1. The first quarterly payment hereunder shall be due and payable on or before November 15, 2023 and will cover the basis period of July 1, 2023 through September 30, 2023 and the privilege period of July 1, 2023 through September 30, 2023. 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 November 15, 2043 and covers the basis period

of July 1, 2043 through September 30, 2043 and the privilege period of July 1, 2043 through September 30, 2043; and

2. After the final payment date of November 15, 2043, 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 this section, received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2024 and will be based on the calendar year January 1 through December 31, 2023. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2044 and will be based on the calendar months of January 1, 2043 through September 30, 2043.
 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 by Section 7.(b), Company shall furnish to City a statement that provides the franchise basis period, the total amount of kilowatt hours of electricity delivered during the franchise basis period by the Company to retail customers whose consuming facility's point of delivery is located within the City's municipal boundaries, and the privilege period covered by the payment. The parties agree that any information exchanged or provided to the other party is true and correct to the best of their knowledge.
- (e) With each payment of compensation required by Section 7.(c), Company shall furnish to the City a statement reflecting the total amount of gross revenues received by Company within the City's municipal boundaries for services identified in its Tariff, Section 6.1.2, "Discretionary Service Charges," Items DD1 through DD24. The parties agree that any information exchanged or provided to the other party is true and correct to the best of their knowledge.

SECTION 8. RECORDS, REPORTS, AND INSPECTIONS.

- (a) The Company shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the Public Utility Commission of Texas, or as mutually agreed to by the City and Company. Should the Public Utility Commission of Texas cease to exist without a successor, the City retains the right to require the Company to maintain a system of accounts and forms of books and accounts and memoranda prescribed either by the Federal Energy Regulatory Commission or the National Association of Regulatory Utility Commissioners or the successor of either of these organizations as mutually agreed to by the City and Company.
- (b) The City shall have the right to, pursuant to Section 33.008(e) of the Texas Utilities Code, 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. City and Company may agree to a different timeframe. 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 franchise fee payments made under Section 7.
- (c) The City shall retain all of the investigative powers and other rights provided to the City by the charter, subject to state and federal laws, rules, and regulations.
- (d) Company will make available public reports it provides to the PUC, FERC, or SEC as City may reasonably require in the administration of this franchise and upon specific request by City.

SECTION 9. PRESERVATION OF RECORDS: LOCATION.

- (a) Company shall keep complete and accurate books of account and records of its business

and operations under and in connection with this Franchise at its principal office for the purpose of determining the amount due to the City under this Franchise.

(b) Pursuant to and for the period specified in Section 33.008(e) of the Texas Utilities Code and upon thirty (30) days prior written notice, the City may conduct an audit or other inquiry of the books and records of the Company to ascertain the correctness of the reports agreed to be filed herein. The Company shall make available to the City 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 any audit or inquiry under Section 9 of this Franchise, 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.

(c) If Company provides confidential or non-public information to the City, Company shall be solely responsible for identifying such information with markings calculated to bring the City's attention to the confidential or non-public nature of the information. 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 10. FRANCHISE AND OTHER VIOLATIONS.

Upon evidence being received by the governing body of the City that a violation of this franchise, City charter provision, or ordinance lawfully regulating Company in the furnishing of service hereunder is occurring or has occurred, it shall at once cause an investigation to be made. If the governing body of the City finds that such a violation exists or has occurred, it shall take the appropriate steps to secure compliance.

SECTION 11. TRANSFER AND ASSIGNMENT OF FRANCHISE.

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 written notice within ninety (90) days of any such assignment to a parent, subsidiary, affiliate or successor entity.

SECTION 12. INDEMNITY.

(a) 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.

(B) 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.

(C) 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 COSTS OF DEFENSE SHALL BE APPORTIONED BETWEEN THE CITY AND COMPANY BASED UPON THE COMPARATIVE FAULT OF EACH.

(D) 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 12.B AND 12.C.

SECTION 13. INSURANCE.

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 employers 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 insureds 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. In the event a claim exceeds the contractors' or subcontractors' insurance coverage, Company shall be responsible for covering any deficiencies between its contractors' or subcontractors' compliance with these insurance requirements.

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 14. TERM.

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 September 30, 2043 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 15. CONFORMITY TO CONSTITUTION, STATUTES, CHARTER, AND CITY CODE.

This ordinance is passed subject to the applicable provisions of the Constitution and Laws of the State of Texas, the Charter of the City, and the City Code. This franchise agreement shall in no way affect or impair the rights, obligations, or remedies of the parties under the Public Utility Regulatory Act of Texas, or other applicable laws, rules, or regulations or amendments thereto.

SECTION 16. GOOD FAITH EFFORT.

Company and City both agree to faithfully adhere to all applicable federal, state and City rules and regulations pertaining to non-discrimination, equal employment and affirmative action. Company and City also agree to continue in their commitment to maintain fairness and equality in the workplace and in its purchases of goods, equipment, and other services.

SECTION 17. RIGHT OF APPEAL.

Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest or appeal any action or decision of the other party made contrary to any federal, state or local laws, rules or regulations.

SECTION 18. REPEAL.

That Ordinance No. 2012-359, as amended, be and the same is hereby specifically repealed, as of the commencement date under Section 14 hereof. All other ordinances, rules, regulations, and agreements which in any manner relate to the regulation of or provision for electric utility services by Company within the City shall remain in full force and effect until and unless duly modified pursuant to applicable state law.

SECTION 19. EFFECTIVE DATE; AUTHENTICATION.

This ordinance shall take effect immediately from and after its passage and publication by City, and written acceptance by Company, said written acceptance to be filed by Company with the City within sixty (60) days after City's final passage and approval hereof, and it is accordingly so ordained.

SECTION 20. ACCEPTANCE OF FRANCHISE.

In order for this franchise to be effective, the Company shall, within sixty (60) days from the passage of this ordinance by City, file in the office of the City Secretary a written instrument signed and acknowledged by a duly authorized Company officer of Company's acceptance of this Ordinance.

City shall publish, and Company shall pay all publication expenses regarding notification of the accepted Franchise, which said publication shall be the full text of the adopted ordinance for a period of once per week for three (3) consecutive weeks.

SECTION 21. NOTICE TO PARTIES.

Notices required to be given under this franchise shall be deemed to be given when delivered in writing, personally to the person designated below, or when five days have elapsed after it is deposited in the United States Mail with registered or certified mail postage prepaid to the person designated below, or on the next business day if sent by Express Mail or overnight air courier addressed to the person designated below:

If to City:

City Manager
City of Denton
215 E. McKinney
Denton, Texas 76201

If to the Company:

Director, Regulatory Affairs
Oncor Electric Delivery Company LLC
1616 Woodall Rodgers Fwy,
Dallas, Texas 75202-1234

with a copy to:

City Attorney's Office
City of Denton
215 E. McKinney
Denton, Texas 76201

City or Company may change the position and/or addresses listed above by providing the other party with written notice of the change, with such change taking effect upon receipt of such notice.

SECTION 22. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable. If any portion of this Ordinance is declared illegal or unconstitutional by the valid final non-appealable judgment or decree of any court of competent jurisdiction, such illegality or unconstitutionality shall not affect the legality and enforceability of any of the remaining portions of this Ordinance.

It is hereby officially found that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted by City, all as required by law.

The motion to approve this ordinance was made by _____ and seconded by _____, the ordinance was passed and approved by the following vote [____-____]

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

PASSED AND APPROVED at a regular meeting of the City Council of Denton, Texas,
on this the _____ day of _____, 2023.

Mayor

The City of Denton

ATTEST:

City Secretary

STATE OF TEXAS §
COUNTY OF DENTON §
CITY OF DENTON §