

ORDINANCE NO. 2014-03-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO USE AND OCCUPY RIGHTS-OF-WAY WITHIN THE CITY OF MCKINNEY FOR THE CONSTRUCTION AND OPERATION OF AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM; PRESCRIBING CONDITIONS GOVERNING THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR COMPENSATION THEREFOR; PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC; AND PROVIDING FOR SEVERABILITY

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. GRANT OF AUTHORITY.

There is hereby granted to Oncor Electric Delivery Company LLC, its successors and assigns (herein called "Company"), the right, privilege and franchise ("Franchise") to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public places and public ways ("Public Rights-of-Way") of McKinney, Texas (herein called "City") an Electric Transmission and Distribution System ("System") consisting 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 its own non-commercial use), 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 11 of this Franchise. Upon reasonable request by the City, Company shall provide information to the City Council and shall attend City Council meetings to discuss Company's performance of its obligations and responsibilities under this Franchise.

Section 2. PURPOSE.

The provisions set forth in this ordinance represent the terms and conditions under which Company shall construct, operate, and maintain the System within the Public Rights-of-Way of the City. In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of

the Constitution and statutes of the State of Texas as the same may be amended, or any of its rights and powers under or by virtue of present or future ordinances of the City, except as may be set out herein. Company also retains all of its lawful authority and rights under the Public Utility Regulatory Act ("PURA") and any other applicable laws, rules, and regulations. Not included in this Franchise are any facilities (including any equipment attached in any way to Company's facilities, whether owned by Company or not) that provide data delivery, cable service, telephone service, and/or any other service or product not required by Company for, or in support of, the transmittal and delivery of electricity.

Section 3. **OPERATION, CONSTRUCTION AND MAINTENANCE OF ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM.**

- A. As required by McKinney Code of Ordinances, Company and its agents are required to obtain permits from the City for all excavations of the Public Rights-of-Way but Company will not be required to pay permitting fees, an annual Right-of-Way registration fee, or any other fee, save and except the Compensation described in Section 7 hereafter.
- B. Company's property and operations within the City Public Rights-of-Way shall be subject to such reasonable rules and regulations of the City as may be authorized by applicable law from time to time for the protection of the general public. 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. This Franchise shall in no way affect or impair the rights, obligations, or remedies of the parties under PURA, or other state or federal law, rules, or regulations. 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 may believe are contrary to any federal, state, or local law, rules, or regulations.
- C. Company shall construct its facilities in conformance with the applicable provisions of the National Electric Safety Code.
- D. Company shall cooperate with the City by providing reasonable information regarding the location of current and future overhead and underground wires and poles within the Public Rights-of-Way. Reproducible copies of available maps showing the

location of all overhead and underground wires and poles within the Public Rights-of-Way shall be furnished to the City Engineer upon request. The maps shall be provided in electronic digital format, if available.

- E. Company shall have the authority to trim trees or other natural growth overhanging any of Company's System so as to reasonably prevent branches from coming in contact with the Company's System. Company shall have in place a Vegetation Management Plan, including a Distribution Vegetation Management Program and Guidelines, and shall provide City with a current copy of same, upon request. If the City requests a current copy of any of the foregoing documents, release of such shall be pursuant to the same confidential protection process identified in Section 8.E of this Franchise. Company shall conduct its tree-trimming activities in accordance with i) its Vegetation Management Plan, as amended, and filed with the Texas Public Utility Commission under Substantive Rule 25.96(e), and ii) its related Distribution Vegetation Management Program and Guidelines, as amended by Company from time to time (current version dated effective December 12, 2013), and will address concerns or complaints with regard to its tree-trimming activities upon reasonable request. Except in emergency situations or in response to outages, and in accordance with Company Vegetation Management Guidelines, Company shall provide reasonable notice and opportunity to meet with affected property owners and the City prior to beginning planned Distribution tree-trimming activities.

Section 4. 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 any claim, lawsuit, or action brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's or any of its officers', agents', or employees' intentional and/or negligent acts or omissions in connection with Company's construction, maintenance, and operation of Company's System in the Public Rights-of-Way, including any court costs, expenses and 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 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, 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 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 Company and the City based upon the comparative fault of each.
- D. In fulfilling its obligations to defend and indemnify the City, Company shall have the right to select defense counsel, subject to the City's approval, which will not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of the City's written notice that the City is invoking its right to indemnification under this Contract. If Company fails to retain counsel within such time period, the 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 the City, except as otherwise provided in Sections 4.B and 4.C of this Franchise.

Section 5. LIABILITY 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:

- 1. 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:

- (a) Products/completed operations to be maintained for a warranty period of two (2) years;
 - (b) Personal and advertising injury;
 - (c) Contractual liability; and
 - (d) Explosion, collapse, or underground (XCU) hazards.
2. 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.
3. Workers compensation and employers liability coverage. Statutory coverage limits for Coverage A and five hundred thousand dollars (\$500,000.00) bodily injury each accident, five hundred thousand dollars (\$500,000.00) each employee bodily injury by disease, and five hundred thousand dollars (\$500,000.00) policy limit bodily injury by disease Coverage B employers' liability are required. Company must provide the City with a waiver of subrogation for workers compensation claims.
4. Company must name the City, which includes all authorities, commissions, divisions, and departments, as well as elected and appointed officials, agents, and volunteers, as additional insureds under the coverage required herein, except workers compensations coverage. The certificate of insurance must state that the City is an additional insured.
5. Company shall require its contractors and subcontractors to maintain, at their sole cost and expense, the following:
- (a) A minimum of three million dollars (\$3,000,000) each occurrence or each accident general liability and automobile liability insurance throughout the course of work performed; and
 - (b) Also, contractors and subcontractors shall 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 shall be 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.

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' insurance coverages and the amount of the claim. Company shall provide to the City upon request proof of its contractors' and subcontractors' compliance with these insurance requirements.

6. Company shall provide proof of insurance in accordance with this Franchise within thirty (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. NON-EXCLUSIVE FRANCHISE.

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.

Section 7. COMPENSATION TO THE CITY.

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 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:

1. A final quarterly payment will be made on or before April 1, 2014 for the basis period of October 1, 2013 through December 31, 2013 and the privilege period of October 1, 2014 through December 31, 2014 in accordance with the provisions in the previous franchise.
2. As authorized by Section 33.008(b) of PURA, the original franchise fee factor calculated for the City in 2002 was 0.002728 (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 the City the franchise fee factor was increased to a franchise fee factor of 0.002864 (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 in the future 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 0.002728 and all future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.

Payments to the City shall be made per the quarterly schedule as follows:

<u>Payment Due Date</u>	<u>Basis Period</u>	<u>Privilege Period (Following Year)</u>
July 1	Jan. 1 – Mar. 31	Jan. 1 – Mar. 31
October 1	Apr. 1 – Jun. 30	Apr. 1 – Jun. 30
January 1	Jul. 1 – Sept. 30	Jul. 1 – Sept. 30
April 1	Oct.1 – Dec. 31	Oct.1 – Dec. 31

(a) The first quarterly payment hereunder shall be due and payable on or before July 1, 2014, and will cover the basis period of January 1, 2014 through March 31, 2014 and the privilege period of January 1, 2015 through March 31, 2015. The final payment under this Franchise is due on or before April 1, 2023 and covers the basis period of October 1, 2022 through December 31, 2022 and the privilege period of October 1, 2023 through December 31, 2023.

(b) After the final payment date of April 1, 2023, Company may continue to make additional quarterly payments in accordance with the above schedule. The 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.

3. 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 its Tariff for Retail Delivery Service ("Tariff"), effective January 1, 2002, that are for the account and benefit of an end-use retail electric consumer. Company will, upon request by the City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company's current approved Tariff.
 - (a) The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e. from January through December 31 of each calendar year.
 - (b) 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 7.3, received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2014 and will be based on the calendar year January 1 through December 31, 2013. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2024 and will be based on the calendar year of January 1 through December 31, 2023.
 - (c) Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
 - (d) The 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.
 - (e) 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.

- (f) 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.
4. With each payment of compensation required by Section 7.2, Company shall furnish to the City a statement, executed by an authorized officer of Company or designee, providing the total kWh delivered by Company to each retail customer's point of delivery within the City and the amount of payment for the period covered by the payment.
 5. With each payment of compensation required by Section 7.3, Company shall furnish to the City a statement, executed by an authorized officer of Company or designee, reflecting the total amount of gross revenues received by Company from services identified in its "Tariff for Retail Delivery Service," Section 6.1.2, "Discretionary Service Charges," Items DD1 through DD24.
 6. 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 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.
 7. Interest on late payments 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 may be amended for the time period involved.
 8. The franchise fee payable to the City pursuant to Section 7.2, except as agreed to by Company and the City in Section 7.6, shall not be offset by any payment by Company to the City relating to ad valorem taxes.

Section 8. **ACCOUNTING MATTERS.**

- A. 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.
- B. The City may conduct an audit or other inquiry in relation to a payment made by Company in accordance with Section 33.008(e) of PURA. The City may, if it sees fit, upon reasonable notice to the Company, have the books and records of the Company examined by representatives of the City to ascertain the correctness of the reports agreed to be filed herein.
- C. 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.
 - 1. 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 Sections 7.6 and 7.7.
 - 2. If as a result of a subsequent audit, initiated within two (2) 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 12.C.
- D. The Company shall assist the City in its review by responding to all requests for information no later than thirty (30) days after receipt of a request.
- E. If Company provides confidential or proprietary information to the City, Company shall be solely responsible for identifying such information with markings calculated to bring the City's attention to the proprietary or confidential nature of the information. The City agrees to maintain the confidentiality of any non-public information obtained from Company so designated to the extent allowed by law. The City shall not be liable to Company for the release of any information the City is required to release by law. City shall provide notice to Company

of any request for release of information marked by Company as proprietary or confidential 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 or confidential information, the City will notify the Texas Attorney General of the proprietary or confidential 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 Texas Public Information Act allows the City to withhold the information.

Section 9. RIGHT OF RENEGOTIATION.

- A. Should either Company or the City have cause to believe that a change in circumstances relating to the terms of this Franchise may exist, it may request that the other party provide it with a reasonable amount of information to assist in determining whether a change in circumstances has taken place.
- B. Should either party hereto determine that based on a 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 engage in such negotiations does not obligate either party to agree to an amendment 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 a provision of the Franchise, the change shall become effective upon passage of an ordinance by the City in accordance with the City Charter and written acceptance of the amendment by Company.

Section 10. RELOCATION OF FACILITIES.

- A. The City reserves the right to lay, and permit to be laid, any City-owned facilities, such as stormwater, sewer, gas, water, wastewater and other pipe lines, cable, 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. The City also reserves the right to change in any manner any City-owned curb, sidewalk, highway, alley, public way, street, and City-owned utility lines, storm sewers, drainage basins, drainage ditches, and other City facilities.

- B. Upon request by the City, Company shall relocate its facilities at the City's expense, except as otherwise provided in Section 37.101(c) of PURA, which statutory provision currently states the governing body of a municipality may require an electric utility to relocate the utility's facility at the utility's expense to permit the widening or straightening of a street and which the City and Company agree includes the addition of any acceleration, deceleration, center or side turn lanes, and sidewalks (meaning sidewalks done in conjunction with widening or straightening of a street and including modifications to sidewalks required by the Americans with Disabilities Act for wheelchair ramps), provided that the City shall provide Company with at least thirty (30) days notice and shall specify a new location for such facilities along the Public Rights-of-Way of the street. Should Section 37.101(c) of PURA either be amended by the Legislature, or be interpreted by a court of competent jurisdiction in a final, non-appealable decision (in a case where Oncor was a party) to require Oncor to pay for facility relocations in situations other than to permit the widening or straightening of a street, Oncor will comply with the amended statute or court decision.
- C. When Company is required by the City to remove or relocate its poles, towers, conduits, cables, and other facilities to accommodate Public Right-of-Way improvements, and Company is eligible under federal, state, county, city or other local agencies or programs for reimbursement of costs and expenses incurred by Company as a result of such removal or relocation and such reimbursement is required to be handled through the City, Company's costs and expenses shall be included in any application by the City for reimbursement, if Company submits its cost and expense documentation to the City prior to the filing of the application. The City shall provide reasonable notice to Company of the deadline for Company to submit documentation of the costs and expenses of such removal or relocation to City.
- D. If the 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.

- E. If the City requires Company to adapt or conform its facilities, or in any manner to alter, relocate, or change its property to enable any entity other than the City to use, or use with greater convenience, said Public Rights-of-Way, Company shall not be bound to make such changes until such other entity shall have undertaken, with good and sufficient bond, to reimburse Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's property or facilities.

Section 11. **TERM.**

This ordinance shall become effective upon Company's written acceptance and execution hereof in accordance with Section 20 of this Franchise, said written acceptance to be filed by Company with the City within sixty (60) days after final passage by the City and approval hereof. The right, privilege and franchise granted hereby shall expire December 31, 2023; 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, it shall be automatically renewed for an additional period of five (5) years from such expiration date.

Section 12. **DEFAULT, REMEDIES AND TERMINATION.**

- A. Events of Default. The occurrence, at any time during the term of this Franchise, of any one or more of the following events, shall constitute an Event of Default by Company under this Franchise:
 - 1. The failure of Company to pay the franchise fee on or before the due dates specified herein.
 - 2. Company's material breach or material violation of any of material terms, covenants, representations or warranties contained herein or Company's failure to perform any material obligation contained herein.
- B. Uncured Events of Default.

1. 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 the 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 12.C.
2. Upon the occurrence of an Event of Default by Company which cannot be cured by the immediate payment of money to the 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 12.C.
3. 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 the City to exercise the remedies provided for in Section 12.C.

C. Remedies. The City shall notify Company, in writing, of an alleged Uncured Event of Default as described in Section 12.B, which notice shall specify the alleged failure with reasonable particularity. Company shall, within thirty (30) calendar 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 or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure. In the event that such cure is not forthcoming, 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, that as a matter of equity, are specifically enforceable; and
3. The termination of this Franchise.

- D. Remedies Not Exclusive. The rights and remedies of the City and Company set forth in this Franchise shall be in addition to, and not in limitation of, any other rights and remedies provided at law or in equity. The City and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by the City of any one or more of such remedies shall not preclude the exercise by the 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, the 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.
- E. Termination. In accordance with the provisions of Section 12.C, this Franchise may be terminated upon thirty (30) business days prior written notice to Company. The City shall notify Company in writing at least fifteen (15) business days in advance of the City Council meeting at which the questions 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 when such appeal is withdrawn or when 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 of Texas in accordance with the Texas Utilities Code.
- F. 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. **PUBLIC PURPOSE.**

All of the provisions contained in this ordinance are hereby declared to be for a public purpose, and are in the interests of the health, safety, and welfare of the general public.

Section 14. SEVERABILITY.

If any provision, section, subsection, sentence, clause or phrase of the ordinance is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the parties in adopting this Franchise that no provision hereof shall be inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to that end, all provisions of this ordinance are declared to be severable.

Section 15. NOTICE.

A. Any notices required or desired to be given from one party to the other party to this ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY

City Manager
City of McKinney
222 N. Tennessee St.
McKinney, TX 75069

COMPANY

Regulatory Affairs
Oncor Electric Delivery
Company LLC
1616 Woodall Rodgers Fwy,
6th floor
Dallas, TX 75202-1234

B. Upon request, Company shall provide the City with current contact information for the City's use in forwarding customer inquiries and complaints to Company.

Section 16. **ACCEPTANCE.**

In order to accept this Franchise, Company must file with the City Secretary its written acceptance of this Franchise within sixty (60) days after its final passage and approval by City.

Section 17. **FUTURE AMENDMENTS.**

This ordinance may be amended only by the mutual written agreement of the City and Company.

Section 18. **ORDINANCE PASSED AT PUBLIC MEETING.**

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, all as required by law.

Section 19. **EFFECTIVE DATE.**

If Company accepts this ordinance, by the filing of its written acceptance, this ordinance shall be effective as of April 1, 2014.

Section 20. **REPEAL.**

This ordinance shall supersede any and all other franchises granted by the City to Company, its predecessors and assigns.

FIRST PUBLIC HEARING CONDUCTED at a regular meeting of the City Council of McKinney, Texas, on this the 4th day of February, 2014.

SECOND PUBLIC HEARING CONDUCTED at a regular meeting of the City Council of McKinney, Texas, on this the 18th day of March, 2014.

TRAVIS USSERY
Mayor Pro-Tem

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK HOUSER
City Attorney