

ORDINANCE NO. 2024-06-_____

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 AN OPERATION OF AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM PRESCRIBING CONDITIONS GOVERNING THE POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS AND PUBLIC PROPERTY OF THE CITY OF MCKINNEY, TEXAS, PROVIDING FOR COMPENSATION THEREFOR, PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE, PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE, PROVIDING FOR THE REPEAL OF ALL EXISTING FRANCHISE ORDINANCES 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.

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 to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, easements held by the City to which the City holds the property rights in regard to use for utilities, public ways and other public property ("Public Rights-of-Way" or "Rights-of-Way") of the City of McKinney, 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), (herein called "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 12.
- 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, nor any of its rights and powers under or by virtue of present or future ordinances of the City, except as may be expressly set out herein. Company also retains all of its lawful authority and rights under the Public Utility Regulatory Act ("PURA") and any other applicable federal, state, and local 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 the Company or not, that provide data delivery, cable service, telephone service, or any other service or product not required by Company for, or necessary for the support of, the transmittal and delivery of electricity.
- Section 3. Traffic. Poles, towers and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways.
- Section 4. Public Rights-of-Way.
- (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, McKinney Code of Ordinances 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

permits from the City for all excavations of the Public Right-of-Way (if required by City ordinance) but Company will not be required to pay permitting fees, an annual Right-of-Way registration fee, or any other fee, related to the use of the Public Rights-of-Way, despite the City's enactment of any ordinance providing the contrary. Upon reasonable request by the City, Company shall provide information to the City and discuss Company's performance of its obligations and responsibilities under this franchise.

- (b) City shall have the ability at any time to require Company to repair, remove or abate any distribution pole, wire, cable, or other distribution structure 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.
- (c) Company's property and operations within the Public Rights-of-Way of the City shall be subject to such reasonable laws, 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 laws, 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.
- (d) Company's Facilities shall be erected so as not to unreasonably interfere with: 1) existing streets, alleys, highways, and sidewalks or with the existing vehicular and pedestrian traffic thereon; 2) existing gas, electric, or telephone fixtures; or 3) existing water hydrants or mains, drainage facilities or sanitary sewer facilities. When Company makes, or causes to be made, excavations, or places, or causes to be placed, obstructions in any Public Rights-of-Way, Company shall place, erect, and maintain barriers and lights to identify the location of such excavations or obstructions, all in accordance with the most recent edition of the Texas Manual on Uniform Traffic Control Devices and/or any applicable city, state or federal laws, rules or regulations that impact the Company's use of the Public Rights-of-Way.
- (e) The location of Company's Facilities in the Public Rights-of-Way shall be subject to the provisions of the City's Right-of-Way Construction and Permitting Procedures Manual that are not in conflict with applicable federal or state laws, rules, and regulations, and subject to approval by the Director of Public Works of City or the Director of Public Works designated representative (the "Director") prior to construction; provided however, said approval shall not be unreasonably withheld. This approval will be obtained through the City's permitting process (if required by City Ordinance). In the event of a conflict between the location of the proposed Facilities of Company and the locations of the facilities of City or other Public Rights-of-Way users which exist or have been authorized by the City, the Director shall resolve the conflict and determine the location of the respective facilities within the City's Public Rights-of-Way, subject to Company's right to request review of the matter by any court or regulatory agency having jurisdiction. To avoid a facilities

location conflict, the Director will designate a reasonable alternate location within the City's Public Rights-of-Way for Company's Facilities if a reasonable alternate location exists. In determining the location of Company's Facilities within the City, Company shall not interfere with then existing or planned (assuming City notifies Company in writing of the planned structures prior to Company installing its Facilities in the applicable area) above-ground and underground structures, equipment and facilities of the City, other utility franchisees (which have received a franchise from the City) and other persons (whether a natural person or business entity of any kind) who have received the City's consent to place and locate equipment or facilities within the Public Rights-of-Way.

- (f) Company shall provide complete information regarding the location of current and future overhead and underground wires and poles within the Public Rights-of-Way of the City. 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 Director of Public Works upon request. The maps shall be provided in electronic/digital format, if available, when requested by the City.
- (g) Company shall have in place a Vegetation Management Program, and shall provide City with a current copy of same, upon request. If the City requests a current copy of Company's Vegetation Management Guidelines, release of said guidelines shall be pursuant to the same confidential protection process identified in Section 10(e) of this Franchise. Company will endeavor to conduct its tree trimming activities in accordance with its Vegetation Management Guidelines and will promptly address concerns or complaints by City regarding its tree trimming activities upon request. Except in emergency situations or in response to outages, Company shall notify impacted property owners and the City prior to beginning planned Distribution tree trimming activities.

Section 5. Reservations; Use of 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. 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 line owned by Company, to require that change by Company), storm sewers, drainage basins, drainage ditches, 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. Company shall construct its Facilities in conformance with the applicable provisions of the National Electrical Safety Code. 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.

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 6. 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 Facilities 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, death 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, death 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 6(b) and 6(c).

Section 7. Insurance Coverage Required. 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 insured(s) 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, 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' 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 8. Franchise is Not Exclusive. 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.

Section 9. Consideration. 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 October 1, 2023 for the basis period of April 1, 2023 through June 30, 2023 and the privilege period of April 1, 2024 through June 30, 2024 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 0.002728 (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 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 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.

Company shall make quarterly payments as follows:

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

- (1) The first payment hereunder shall be due and payable on or before January 1, 2024 and will cover the basis period of July 1, 2023 through September 30, 2023 and the privilege period of July 1, 2024 through September 30, 2024. 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 April 1, 2043 and covers the basis period of October 1, 2042 through December 31, 2042 and the privilege period of October 1, 2043 through December 31, 2043; and
 - (2) After the final payment date of April 1, 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 Section 9(c), 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 year of January 1, 2043 through December 31, 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 9(b), 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.
- (e) With each payment of compensation required by Section 9(c), 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.
- (f) 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 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 the other party of any claim of breach of this Franchise, nor shall the acceptance by either party of any such payments preclude the other 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.
- (g) 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 Texas Utilities Code Section 183.003, as amended.
- (h) The franchise fee payable to the City pursuant to Section 9(b) hereunder, except as agreed to by Company and City in Section 9(f), shall not be offset by any payment by Company to the City relating to ad valorem taxes.

Section 10. Books; Records; Confidentiality.

- (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) 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.

- (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 therefore.
 - (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 Section 9.
 - (2) 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 13(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 the Company provides confidential or proprietary information to the City, the 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 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 11. Change in Circumstances.

- (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 this Ordinance, 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 12. Effective Date; 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 December 31, 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 13. Default; Remedies; Termination.

(a) Events of Default. The occurrence, at any time during the term of the Franchise Agreement, 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 material terms, covenants, representations or warranties 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 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 for in Section 13(c).
- (2) 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 13(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 City to exercise the remedies provided for in Section 13(c).

(c) Remedies. The City shall notify the Company in writing of an alleged Uncured Event of Default as described in Section 13(b), 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 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.
 - (3) 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.
 - (4) The termination of this Franchise.
- (d) The rights and remedies of City and Company set forth in this Franchise Agreement 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, City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance.
- (e) Termination. In accordance with the provisions of Section 13(c), this Franchise may be terminated upon thirty (30) business day's 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 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, subject to applicable statute of limitations. 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 14. Priority. This Ordinance shall supersede any and all other franchises granted by the City to Company, its predecessors and assigns.

Section 15. Severability; Headings or Titles; Partial Invalidity. The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable. The headings or titles of different sections and provisions

contained herein are intended only for convenience and shall not be used in interpreting the plain language of any section or provision of this Ordinance. 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.

Section 16. Notices.

- (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.

<u>CITY</u>	<u>COMPANY</u>
City Manager	Municipal Relations
City of McKinney	Oncor Electric Delivery Company LLC
222 N. Tennessee St.	1616 Woodall Rodgers Fwy, 6 th Floor
McKinney, TX 75069	Dallas, TX 75202-1234

Section 17. Acceptance of Franchise. In order to accept this franchise, Company must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City.

Section 18. Duly Noticed 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 by City, all as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE xxx DAY OF xxxx, 2024.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
TENITRUS BETHEL
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney