

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARROLLTON, 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 CARROLLTON 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 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; PROVIDING SEVERABILITY AND REPEALER CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

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

**SECTION 1.
GRANTING OF FRANCHISE**

There is hereby granted to Oncor Electric Delivery Company LLC, its successors and assigns ("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 ways and other public property ("Public Rights-of-Way") of Carrollton, Texas ("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 Company's 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 13. Upon a timely and reasonable request by City, Company shall provide information to the City Council, and attend City Council meetings to discuss Company's performance of its obligations and responsibilities under this Franchise.

**SECTION 2.
APPLICATION AND PRESERVATION OF RIGHTS**

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.
FRANCHISE SUBJECT TO ORDINANCES AND STATE LAW

- 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, unless otherwise in conflict with any federal or state law, rules, or regulations, or this franchise. As required by Carrollton Code of Ordinance, Company and its agents are required to register with the City and must provide details to City regarding underground infrastructure within Public Rights-of-Way in the City. Company must, 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). Company will not be required to pay permitting fees or an annual Right-of-Way registration fee, despite the City's enactment of any ordinance providing the contrary.
- B. 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.
- C. Company shall construct its facilities in conformance with the applicable provisions of the National Electrical Safety Code.
- D. 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 City Engineer upon request. The maps shall be provided in electronic/digital format, if available, when requested by the City.
- E. 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 9.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 with regard to its tree trimming activities upon request. Except in emergency situations or in response to outages, Company shall notify 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 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, 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 THE COMPANY AND THE CITY.**
- C. IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH THE COMPANY AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY BETWEEN THE CITY AND THE COMPANY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAVING ANY OF THE DEFENSES OF THE PARTIES UNDER TEXAS LAW. FURTHER, IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH THE 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 OBLIGATIONS 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 4.B AND 4.C.

- E. THIS SECTION SHALL SURVIVE THE REVOCATION, TERMINATION OR EXPIRATION OF THIS FRANCHISE, BUT ONLY WITH RESPECT TO SUITS, ACTIONS, OR CLAIMS BASED ON EVENTS OCCURRING DURING THE TERM OF THIS FRANCHISE.**

SECTION 5.
LIABILITY INSURANCE

- A. 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 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) 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 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 compensation coverage. The certificate of insurance must state that the City is an additional insured.
 5. Company will 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) 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.
6. The Company will 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.
- (a) The Company's contractors or subcontractors shall provide proof of their Insurance requirements as per Section 5.A.5 under this agreement whenever requested by City.
 - (b) In the event a claim exceeds the contractor's or subcontractor's insurance coverage, Company shall be responsible for covering any deficiencies in contractors' or subcontractors' insurance coverages.

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 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:

1. A final quarterly payment will be made on or before August 1, 2019 for the basis period of

April 1, 2019 through June 30, 2019 and the privilege period of May 1, 2019 through July 31, 2019 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 0.002695 (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 0.002830 (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 (PUC) 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 0.002695 as of the effective date of the PUC order 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:

Payment Due Date	Basis Period	Privilege Period
November 1	July 1 - Sept. 30	Aug. 1 - Oct. 31
February 1	Oct. 1 - Dec. 31	Nov. 1 - Jan. 31
May 1	Jan.1 - Mar. 31	Feb. 1 - Apr. 31
August 1	Apr. 1 – June 30	May 1 – July 31

- (a) The first quarterly payment hereunder shall be due and payable on or before November 1, 2019, and will cover the basis period of July 1, 2019 through September 30, 2019 and the privilege period of August 1, 2019 through October 31, 2019. The final payment under this Franchise is due on or before August 1, 2038 and covers the basis period of April 1, 2038 through June 30, 2038 and the privilege period of May 1, 2038 through July 31, 2038.
- (b) After the final payment date of August 1, 2038, 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.

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 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.
 - (a) 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.
 - (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, 2020, and will be based on the calendar year January 1, 2019 through December 31, 2019. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2039, and will be based on the months of January 1, 2038, through July 31, 2038.
 - (c) Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
 - (d) 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 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.
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 Texas Utilities Code Section 183.003, as amended.
8. The franchise fee payable to the City pursuant to Section 7.2. hereunder, except as agreed to by Company and City in Section 7.6., shall not be offset by any payment by Company to the City relating to ad valorem taxes.

SECTION 8. FAVORED NATIONS.

This Section applies only if, after the effective date of this Franchise Agreement, Company enters into a new municipal franchise agreement or renews an existing municipal franchise agreement with another municipality that provides for a different method of calculation of franchise fees for use of the public rights-of-way than the calculation under 33.008(b) of PURA, which, if applied to the City, would result in a greater amount of franchise fees owed the City than under this Franchise Agreement.

(a) City shall have the option to:

- (1) Have Company select, within 30 days of the City's request, any or all portions of the franchise agreement with the other municipality or comparable provisions that, at Company's sole discretion, must be considered in conjunction with the different method of the calculation of franchise fees included in that other franchise agreement; and
- (2) Modify this franchise to include both the different method of calculation of franchise fee found in the franchise agreement with the other municipality and all of the

other provisions identified by Company pursuant to Section 8(a)(1). In no event shall City be able to modify the franchise to include the different method of calculation of franchise fee found in the franchise agreement with the other municipality without this franchise also being modified to include all of the other provisions identified by Company pursuant to Section 8(a)(1).

(b) City may not exercise the option provided in Section 8(a) if any of the provisions that would be included in this franchise are, in Company's sole opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or City Charter.

(c) In the event of a regulatory disallowance of the increase in franchise fees paid pursuant to City's exercise of its option under this Section, then at any time after the regulatory authority's entry of an order disallowing recovery of the additional franchise fee expense in rates, Company shall have the right to cancel the modification of the franchise made pursuant to this Section, and terms of the franchise shall immediately revert to those in place prior to City's exercise of its option under this Section.

(d) Notwithstanding any other provision of this franchise, should the City exercise the option provided in Section 8(a), and then adopt any rule, regulation, ordinance, law, Code, or Charter of City that, in Company's sole opinion, is inconsistent with or in any manner contrary to the provisions included in this franchise pursuant to Section 8(a), then Company shall have the right to cancel all of the modifications to this franchise made pursuant to this Section and, effective as of the date of the City's adoption of the inconsistent provision, the terms of the franchise shall revert to those in place prior to City's exercise of its option under this Section.

(e) The provisions of this Section apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, such as the timing of such payments. The provisions of this Section do not apply to differences in the franchise fee factor that result from the application of the methodology set out in Section 33.008(b) of PURA or any successor methodology.

SECTION 9. 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 pursuant to the requirements under Section 33.008(e) of the Texas Utilities Code. The City may, if it sees fit and 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 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 Sections 7.6 and 7.7.
 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 14.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 so designated to the extent allowed by law. 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, 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 10. 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 11. 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, as deemed by City, in, across, along; over, or under a 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. The 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 Company's use of the Public Rights-of-Way, despite the City's enactment of any ordinance providing the contrary.
- B. Company shall construct its facilities in conformance with the applicable provisions of the National Electrical Safety Code.
- C. 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.
- D. 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.
- E. 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 12. TRANSFER AND ASSIGNMENT.

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

SECTION 13. 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 by the City and approval hereof. The right, privilege and franchise granted hereby shall expire July 31, 2038; provided that, unless written notice 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 twelve (12) 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 14. 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.

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 14.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 14.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 14.C.

C. Remedies. The City shall notify the Company in writing, of an alleged Uncured Event of Default as described in Section 14.B, which notice shall specify the alleged failure with reasonable particularity. The 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 City and Company set forth in this Franchise shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this Section or any other provision of this Franchise, City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this Section or under any other provision of this Franchise.

E. Termination. In accordance with the provisions of Section 14.C, this Franchise may be terminated upon thirty (30) business day's prior written notice to Company. 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 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. 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 15. 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. Company agrees to respond in no less than 30 days to a request for inspection by the City for items related to health and safety that are not considered by the City to be an emergency, including poles belonging to Company.

SECTION 16. 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 17. 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.

If to the Company:

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

If to the City:

City Manager
City of Carrollton
1945 E. Jackson Road
Carrollton, Texas 75006

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

SECTION 18. 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 19. FUTURE AMENDMENTS.

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

SECTION 20. 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 by City, all as required by law.

SECTION 21. REPEAL

This ordinance shall supersede any and all other franchises granted by the City to

Company, its predecessors and assigns.

SECTION 22.
EFFECTIVE DATE AND APPROVAL

If Company accepts this ordinance, by the filing of its written acceptance, this ordinance shall be effective as of the 6th day of September, 2019.

PASSED AND APPROVED THIS ____ day of _____, 2019.

City of Carrollton, Texas

By: _____
Kevin W. Falconer, Mayor

ATTEST:

Laurie Garber, City Secretary

Approved as to Form:

Approved as to Content:

Susan Keller, Assistant City Attorney

Bob Scott, Assistant City Manager