

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, AND PUBLIC WAYS AND OTHER PUBLIC PROPERTY OF ADDISON, TEXAS, PROVIDING FOR COMPENSATION THEREFOR, PROVIDING FOR PUBLICATION, 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, FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC, AND PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE.

WHEREAS, on February 22, 2005, the Town of Addison, Texas (the “Town” or “City”) adopted Ordinance No. 005-0100 which granted a non-exclusive franchise to Oncor Electric Delivery Company LLC, a Texas Corporation and its successors and assigns (“Oncor” or “Company”), an electric power franchise to use the present and future streets, avenues, alleys, roads, highways, sidewalks, easements, and public ways and other public property of the Town for the purposes of constructing and operating an electric distribution and transmission system and for delivering electricity to Town residents and businesses; and

WHEREAS, pursuant to such grant of authority, Oncor is now and has been engaged in the electric utility business in the State of Texas and the Town of Addison and, in furtherance thereof, has erected and maintained portions of its physical plant in the Town; and

WHEREAS, the current franchise authority granted by the Addison City Council was set to expire on July 31, 2019, and said franchise was extended by Ordinance No. 019-26, which was adopted on June 24, 2019; and

WHEREAS, the City Council of the Town of Addison hereby finds that it is to the mutual advantage of both the Town and Oncor to enter into a new franchise establishing the conditions under which Oncor will operate its system of electric power lines, with all necessary or desirable appurtenances for delivering such electric power including underground conduits, poles, towers, wires, transmission lines, and other structures, equipment, and facilities in the Town; and

WHEREAS, pursuant to Sections 2 and 6 of the City's Charter, the City Council hereby determines that a grant of this Ordinance is in the best interests and will inure to the benefit of the Town and its citizens.

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

SECTION 1. GRANT OF AUTHORITY.

- A. Subject to all the terms and conditions contained herein, the Town hereby grants Oncor a Franchise agreement with the non-exclusive right to construct, extend, maintain and operate in, along, under and across its Electric Distribution and Transmission System in the present and future public streets, alleys, highways, public utility easements, public ways and other public property (the "Public Rights-of-Way") of Town, including 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 Oncor's own use), (herein called "Facilities") for the purpose of delivering electricity to the Town, the inhabitants thereof, and persons, firms, and corporations beyond the corporate limits thereof, for the term set out in Section 8.
- B. Oncor must get written approval from the Town prior to installing Oncor facilities in a Town park or Town property other than public utility easements, streets, alleys, or highway Public Rights-of-Way.
- C. Oncor may not use any portion of its Electric Distribution and Transmission System in the Town's Public Rights-of-way for any purpose other than the delivery of electric service (or in the support of Oncor's Distribution and Transmission System), including renting, licensing or otherwise sharing use of facilities with third parties, including third parties receiving electric service, without first entering into a separate agreement with the Town for Oncor ancillary service; however, Oncor is hereby expressly permitted as required by Federal law to allow Telecommunication Companies (e.g. telephone, and cable) to attach to Oncor Facilities so long as Federal laws and Oncor requirements are met, which includes the allowed attachment fees.
- D. Subject to Subsection 1C above, Oncor agrees to notify other persons, firms, or corporations that desire to attach facilities to Oncor's Electric Distribution and Transmission System located within the Town that they have to obtain all legally required franchises, licenses, waivers, consents, easements, rights of way, and permits needed to construct and operate its equipment within the Town. However, in no event is Oncor responsible or liable to Town or any other person or entity if the persons, firms, or corporations that desire to attach to Oncor's Electric Distribution and Transmission System fails to obtain anything required by Town. Town may request a list of persons or corporations who have a contract to attach facilities to Oncor equipment within the City limits, and Oncor shall provide such information within a reasonable time after the Town's request.

SECTION 2. PLACEMENT OF FIXTURES.

- A. Poles, towers, and other structures shall be so erected as not to unreasonably interfere with, at the time said Facilities are installed: 1) present and planned (if City notifies Oncor of said plan prior to Oncor erecting or installing the Facilities in question) vehicular and pedestrian traffic over streets, alleys, highways, and sidewalks; 2) present and planned (if City notifies Oncor of said plan prior to Oncor erecting or installing the Facilities in question) gas, electric, or telephone fixtures; or 3) present and planned (if City notifies Oncor of said plan prior to Oncor erecting or installing the Facilities in question) water hydrants or mains, drainage facilities or sanitary sewer facilities.

All poles, towers and other structures must be reasonably required for Electric Distribution and Transmission purposes and not primarily for providing facilities for third-parties or other uses.

B. Oncor acknowledges that, by this Franchise Agreement, it obtains no rights to, or further use of, the Public Rights-of-Way other than those expressly granted herein and also granted by state and federal laws, rules, and regulations, including any amendments thereto. Oncor further acknowledges and accepts at its own risk, provided that Town has the legal authority for the use or uses in question, that Town may make use in the future of the Public Rights-of-Way in which the Electric Distribution and Transmission System is located and, in that event, Oncor shall only be entitled to compensation or reimbursement from Town as provided by Section 3 or any applicable state and federal laws, rules, and regulations including Tariffs and any amendments thereto.

C. Oncor must share trench space for cables or ducts with another person, firm, or corporation for the placement of cables or wires underground; provided, however, Oncor has no obligation to comply if said person, firm or corporation does not agree with Oncor's terms and requirements for sharing trench space including cost sharing of trench and including any required contract or agreement with Oncor. All terms and requirements for sharing trench space and any required contract or agreement therefrom must be reasonable as per industry standards and any Federal or State laws, rules, or regulations. Oncor may require another person, firm, or corporation to furnish evidence of adequate insurance and provide indemnity covering Oncor and adequate bonds covering the performance of the person, firm or corporation sharing the trench space. Oncor's requirement for such insurance and indemnity must be reasonable. Ducts, cables or wires shall be placed in trenches in compliance with applicable National Electrical Safety Code (NESC) requirements and in a manner that does not interfere with Oncor's cables and wires. Each person, firm, or corporation that is permitted to share Oncor trench space must acquire their own permits from the Town and must have any necessary Franchise, license, or contract as required by the Town; and Oncor's sole responsibility regarding this provision is the same responsibility as stated in Section 1.D of this franchise.

D. Oncor will cooperate with Town, regarding the selection of the location of poles, towers and other structures, provided, however, that the Town and Oncor recognize that Oncor must meet all legally imposed requirements and may avail itself of legally permitted procedures for determining the location of such facilities. Further, the parties recognize that Oncor may rely upon reasonable safety requirements in determining the appropriate location of such facilities.

Town may request a list of persons or corporations who have a contract to attach facilities to Oncor equipment within the City limits, and Oncor shall provide such information within a reasonable time after the Town's request.

SECTION 3. CONSTRUCTION, MAINTENANCE, OPERATION AND RELOCATION.

A. In constructing, maintaining and operating the Electric Distribution and Transmission System, Oncor shall act in a good and workmanlike manner.

B. Use of the Public Rights-of-Way by Oncor shall be governed by the Town's Charter, ordinances, rules and regulations and state and federal laws, rules and regulations, including the NESC and any amendments thereto. Nothing in this Agreement shall prohibit Oncor from asserting a claim before the Addison City Council, another regulatory agency, or a court having jurisdiction to contest any requirements of the Town's Charter, ordinances, rules and regulations that Oncor believes is unconstitutional, conflicts with this Franchise agreement, or conflicts with any other state and federal laws, rules, and regulations or any NESC standard adopted by Oncor.

C. The Town 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 Oncor. The Town also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, and the like.

D. Town-requested relocations of Oncor Facilities in the Public Rights-of-Way shall be at Oncor's expense; provided however, if the Town is the end use Retail Customer (customer who purchases electric power or energy and ultimately consumes it) requesting the removal or relocation of Oncor Facilities for its own benefit, or the Town's project requiring the relocation is solely aesthetic/beautification in nature, it will be at the total expense of the Town.

E. Town shall provide Oncor with at least thirty (30) days' notice when requesting Oncor to relocate Facilities and shall specify a new location for such Facilities along the Public Rights-of-Way. Oncor shall proceed to relocate Facilities without unreasonable delay. Provided further, if the relocation request includes, or is for, Oncor to relocate above-ground facilities to an underground location, Town shall be fully responsible for the additional cost of placing the facilities underground.

F. If any other corporation or person (other than Town) requests Oncor to relocate Oncor Facilities located in Public Rights-of-Ways, Oncor shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse Oncor for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Oncor's Facilities. Town may not request Oncor to pay for any relocation which has already been requested, and paid for, by any entity other than Town. The Town shall never be liable for such reimbursement, due to Oncor, from such other corporation or person.

G. Oncor shall, except in cases of emergency conditions or work incidental in nature, obtain a permit, if required by Town Ordinance, prior to performing work in the Public Rights-of-Way, except in no instance shall Oncor be required to pay fees or bonds related to these permits, licenses, or other approval processes required for placing Facilities in the Public Rights-of-Way.

H. If Town abandons any Public Rights-of-Way in which Oncor has Facilities, such abandonment shall be conditioned on Oncor's right to maintain its use of the former Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to

reimburse Oncor for all removal or relocation expenses if Oncor 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 Oncor to remove or relocate its Facilities and Oncor 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 Public Rights-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

I. Oncor may permit the wires of the Town to be attached to the poles or use of spare conduit in duct systems owned and maintained by Oncor, under separate agreement, upon securing an Oncor "Pole Attachment/Duct Use" agreement which specifies the requirements and compensation for said use. Oncor does not warrant or guarantee there will be space made available on Oncor poles or spare conduits in Oncor duct systems for the Town's use. Oncor may require the Town to furnish evidence of adequate insurance, provide indemnity covering Oncor, and provide adequate bonds covering the performance of the Town or Town's contractor prior to attaching wires to Oncor's poles and prior to Town's use of conduit in Oncor's duct systems.

J. Oncor shall have in place Vegetation Management Guidelines, and shall provide Town with a current copy of same, upon request. If the Town requests a current copy of Oncor's Vegetation Management Guidelines, release of such shall be pursuant to the same confidential protection process identified in Section 9.E of this Franchise. Oncor shall conduct its tree-trimming activities in accordance with its Vegetation Management Guidelines, including as amended by Oncor from time to time, and will address concerns or complaints with regard to its tree-trimming activities upon reasonable request by the Town. Except in emergency situations or in response to outages, and in accordance with Oncor Vegetation Management Guidelines, Oncor shall notify affected property owners and the Town prior to beginning planned Distribution tree-trimming activities within City limits.

K. Town shall have the ability at any time to require Oncor to repair, remove or abate any distribution pole, wire, cable, or other distribution structure in Town's Public Rights-of-Way that is determined to be unnecessarily dangerous to life or property. After receipt of notice, Oncor shall either cure said dangerous condition within a reasonable time, or provide Town with facts defending its position that said condition is not a condition that is unnecessarily dangerous to life or property. In the event Town finds that Oncor has not sufficiently addressed said dangerous condition by either of the aforementioned methods, Town shall be entitled to immediately exercise the remedies in Section 11.

SECTION 4. INDEMNITY.

A. IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, ONCOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE TOWN, ITS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL SUITS, ACTIONS OR CLAIMS OF INJURY TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY 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 ONCOR'S INTENTIONAL AND/OR NEGLIGENT ACTS OR OMISSIONS IN CONNECTION WITH ONCOR'S OPERATIONS; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY DETERMINED BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM THE SOLE NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF THE TOWN, ITS OFFICERS, AGENTS AND EMPLOYEES. IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH ONCOR AND THE TOWN, 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 TOWN 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 ONCOR AND THE TOWN, RESPONSIBILITY FOR ALL COSTS OF DEFENSE SHALL BE APPORTIONED BETWEEN THE TOWN AND ONCOR BASED UPON THE COMPARATIVE FAULT OF EACH.

- B. In fulfilling its obligation to defend and indemnify Town, Oncor shall have the right to select defense counsel, subject to Town's approval, which will not be unreasonably withheld. Oncor shall retain defense counsel within seven (7) business days of Town's written notice that Town is invoking its right to indemnification under this Contract. If Oncor fails to retain Counsel within such time period, Town shall have the right to retain defense counsel on its own behalf, and Oncor shall be liable for all defense costs incurred by Town, except as set out in Section 4.A.

SECTION 5. LIABILITY INSURANCE.

Oncor 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 basis 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 the warranty period or two years, whichever is less.
 - b. Personal and advertising injury.
 - c. Contractual liability.
 - 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 employer's liability coverage. Statutory coverage limits for Coverage A and five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand (\$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. Oncor must provide the Town with a waiver of subrogation for worker's compensation claims.
4. Oncor must name the Town, which includes all authorities, commissions, divisions and departments, as well as elected and appointed officials, agents, and volunteers, as an additional insured under the coverage required herein, except Worker's Compensation Coverage. The certificate of insurance must state that the Town is an additional insured.
5. Oncor will require its contractors and subcontractors to maintain, at their sole cost and expense, a minimum of three million dollars (\$3,000,000) each occurrence or each accident general liability and automobile liability throughout the course of work performed. Also, contractors and subcontractors will be required to maintain statutory workers' compensation benefits in accordance with the regulations of the State of Texas or state of jurisdiction as applicable. The minimum limits for employers' liability insurance will be five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, five hundred thousand dollars (\$500,000) policy limit bodily injury by disease.
6. Oncor will provide proof of insurance in accordance with this Franchise Agreement within 30 days of the effective date of the Franchise Agreement and annually thereafter. Oncor 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 Town from granting other privileges and franchises to any other person, firm, or corporation. This Franchise Agreement does not establish any priority for the use of the Public Rights-of-Way by Oncor or by any present or future recipients of franchise agreements, franchisees, or other permit holders.

SECTION 7. PAYMENTS TO TOWN.

A. In consideration of the grant of said right, privilege and franchise by the Town 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 Town may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the Town is authorized to levy

and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Oncor shall pay to the Town the following:

1. A final quarterly payment was made on or before May 1, 2020, for the privilege period of February 1, 2021 through April 30, 2021 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 Town in 2002 was 0.002544 (the “Base Factor”), multiplied by each kilowatt hour of electricity delivered by Oncor 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 Oncor and the Town (the Agreement to Resolve Outstanding Franchise Issues between Oncor and the Steering Committee of Cities) the franchise fee factor was increased to a franchise fee factor of 0.002671 (the “Current Factor”), multiplied by each kilowatt hour of electricity delivered by Oncor 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 Oncor’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 0.002544.

B. Oncor shall make quarterly pre-pay payments as follows:

Payment Due Date	Basis Period (period immediately prior to Payment Due Date)	Privilege Period (period immediately following Payment Due Date)
August 1	April 1 – June 30	May 1 – July 31
November 1	July 1 – September 30	August 1 – October 31
February 1	October 1 – December 31	November 1 – January 31
May 1	January 1 – March 31	February 1 – April 30

1. The first quarterly payment hereunder shall be due and payable on or before August 1, 2020, and will cover the basis period of April 1, 2020, through June 30, 2020, and the privilege period of May 1, 2021, through July 31, 2021. **If this Franchise Agreement is not effective prior to the first quarterly payment date, Oncor will pay any payments due within 30 days of the effective date of this agreement.** The final payment under this Franchise Agreement is due on or before May 1, 2039, and covers the basis period of January 1, 2039, through March 31, 2039, and the privilege period of February 1, 2040, through April 30, 2040.

2. After the final payment date of May 1, 2039, Oncor may continue to make additional quarterly payments in accordance with the above schedule unless the parties enter into a new franchise. Town acknowledges that such continued payments will correspond to privilege periods that extend beyond the term of this Franchise Agreement and that such continued payments will be recognized in any subsequent Franchise as full payment for the relevant quarterly periods.

C. Oncor shall additionally pay a sum equal to four percent (4%) of gross revenues received by Oncor 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. Oncor’s obligation to pay on services identified as DD1 through DD24 will continue even if Tariff modifications have been made that have subdivided certain portions of DD1 through DD24 into multiple services with their own numbered charges (e.g. SD charges) or have renumbered the charge, provided that the service is encompassed within the original agreed-to types of Discretionary Service Charges, and further provided that if any service has been removed from Oncor’s approved Tariffs, then no payment is due. Oncor will, upon request by Town, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Oncor’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 7C, received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2021 and will be based on the calendar year January 1 through December 31, 2020. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2041 and will be based on the calendar months of January 1, 2040, through April 30, 2040.
3. Oncor may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
4. Town agrees: (i) to the extent the Town 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 Town 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 Town will take an affirmative position of support for the 100% recovery of such franchise fees by Oncor; and (iii) in the event of an appeal of any such regulatory proceeding in which the Town has intervened, the Town will take an affirmative position

of support in any such appeal for the 100% recovery of such franchise fees by Oncor.

5. Town 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 Oncor.
6. In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Oncor will not be required to continue payment of such franchise fees.

D. With each payment of compensation required in Section 7.A. and 7.B., Oncor shall furnish to the Town a statement that provides the franchise basis period, the total amount of kilowatt hours of electricity delivered during the franchise basis period by Oncor to retail customers whose consuming facility's point of delivery is located within the City's municipal boundaries, and the privilege period covered by that payment.

E. With each payment of compensation required in Section 7.C., Oncor shall furnish to the Town a statement reflecting the total amount of gross revenues received by Oncor within the City's municipal boundaries for services identified in its "Tariff of Retail Delivery Service" as described in Section 7.C.

F. Should any payment due date required by this Franchise Agreement fall on a weekend or declared bank holiday, payment shall be delivered to the Town no later than the close of business on the working day prior to any specifically required due date contained within this Franchise Agreement.

G. If either party discovers that Oncor has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined by mutual agreement between the Town and Oncor and the Town shall be paid by Oncor within thirty (30) calendar days of such determination. Any overpayment by Oncor to the Town through error or otherwise will, at the option of the Town, either be refunded within thirty (30) days of discovery or be offset against the next payment due from Oncor. Acceptance by either party of any payment due under this Section shall not be deemed to be a waiver by either party of any breach of this Franchise Agreement, 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 laws, rules, regulations, or equity.

H. 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 including any amendments thereto.

I. The franchise fee payable to the Town pursuant to Section 7.A., except as agreed to by Oncor and the Town in Section 7.G, shall not be offset by any payment by Oncor to the Town relating to ad valorem taxes.

J. This subsection applies only if, after the effective date of this Franchise Agreement, Oncor 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 Town, would result in a greater amount of franchise fees owed to the Town than under this Franchise Agreement.

1. Town shall have the option to:
 - (a) Have Oncor select, within 30 days of the Town's request, any or all portions of the franchise agreement with the other municipality or comparable provisions that, at Oncor'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
 - (b) 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 Oncor pursuant to Section 7.J.1.(a). In no event shall Town 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 Oncor pursuant to Section 7.J.1.(a).
2. Town may not exercise the option provided in Section 7.J.1 if any of the provisions that would be included in this Franchise are, in Oncor's sole reasonable opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or City Charter.
3. In the event of a regulatory disallowance of the increase in Franchise fees paid pursuant to Town'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, Oncor 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 Town's exercise of its option under this Section.
4. Notwithstanding any other provision of this Franchise Agreement, should the Town exercise the option provided in Section 7.J, and then adopt any rule, regulation, ordinance, law, Code, or Charter of Town that, in Oncor's sole reasonable opinion, is inconsistent with or in any manner contrary to the provisions included in this Franchise pursuant to Section 7.J., then Oncor shall have the right to cancel all of the modifications to this Franchise Agreement made pursuant to this Section and, effective as of the date of the Town's adoption of the inconsistent provision, the terms of the Franchise shall revert to those in place prior to Town's exercise of its option under this

Section.

5. 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 8. ACCEPTANCE & TERM.

This Ordinance and Franchise Agreement shall become effective upon Oncor's written acceptance hereof, said written acceptance to be filed by Oncor with the Town within sixty (60) days after final passage and publication by Town as required by City Charter. Oncor will pay the reasonable expense for publishing the full text of this Franchise Ordinance in the official newspaper of the Town of Addison, once a week for four (4) consecutive weeks, in compliance with the requirements of the City Charter. The right, privilege and franchise granted hereby shall expire on April 30, 2040; provided that, unless written notice of cancellation 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 cancelled by written notice given not less than sixty (60) days before the expiration of any such renewal period. This agreement, however, will terminate no later than 25 years from its effective date.

SECTION 9. ACCOUNTING MATTERS.

- A. Maintenance of Records. Oncor shall keep accurate books of account at its principal office for the purpose of determining the amount due to the Town under this Franchise Agreement.
- B. Audit. Pursuant to Section 33.008(e) of the Texas Utilities Code, the Town may conduct an audit or other inquiry in relation to a payment made by Oncor less than two (2) years before the commencement of such audit or inquiry. The Town may, if it sees fit, and upon reasonable notice to Oncor, have the books and records of Oncor examined by a representative of Town to ascertain the correctness of the reports agreed to be filed herein.
- C. Access to Records. Oncor agrees to cooperate in such audit and shall provide responses to inquiries within thirty (30) calendar days of a written request, unless otherwise agreed to by the Town and Oncor. Oncor shall make available to the auditor during Oncor's regular business hours and upon reasonable notice, such personnel and records that the Town may, in its reasonable discretion, request in order to complete such audit, and shall make no charge to the Town therefore.
- D. Refunds/Credits.
 1. If as the result of any Town audit, Oncor is refunded/credited for an overpayment or pays the Town for an underpayment of the Franchise Fee, such refund/credit or payment shall be made pursuant to the terms established in

Sections 7.B and 7.C.

- A. If, as a result of a subsequent audit, initiated within two years of an audit which resulted in Oncor making a payment to the Town due to an underpayment of the Franchise Fee of more than 5%, Oncor makes another payment to the Town due to an underpayment of the Franchise Fee of more than 5%, the Town may immediately treat this underpayment as an Uncured Event of Default and exercise the remedies provided for in Section 11.C.

E. If Oncor provides confidential or proprietary information to the Town, Oncor shall be solely responsible for identifying such information with markings reasonably calculated to bring the Town's attention to the proprietary or confidential nature of the information. The Town agrees to maintain the confidentiality of any non-public information obtained from Oncor so designated to the extent allowed by law. When a court or regulatory agency (other than Town) order requires the Town to release non-public information, Town shall provide notice to Oncor prior to releasing the information so as to allow Oncor adequate time to pursue available remedies for protection. If the Town receives a request under the Texas Public Information Act that includes Oncor's proprietary information, Town will notify the Texas Attorney General of the proprietary nature of the document(s). The Town shall also provide Oncor a copy of the official notification in writing, and thereafter Oncor is responsible for establishing that an exception under the Act allows the Town to withhold the information. If the Texas Attorney General requires release, the Town has no liability to Oncor for such release.

SECTION 10. RIGHT OF RENEGOTIATION.

A. Should either Oncor or the Town 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 Agreement, 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 to 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 Town and Oncor agree to a change in a provision of this Ordinance, the change shall become effective upon passage of an ordinance by the Town in accordance with the City Charter and written acceptance of the amendment by Oncor.

SECTION 11. DEFAULT, REMEDIES, AND 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 Oncor under this Franchise:

1. The failure of Oncor to pay the payments required in Section 7 on or before the due dates specified herein.
2. Oncor'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 Town, Oncor shall have thirty (30) calendar days from receipt of written notice from Town of an occurrence of such Event of Default to cure same before Town may exercise any of its rights or remedies provided for in Section 11.C.
2. Upon the occurrence of an Event of Default by Oncor which cannot be cured by the immediate payment of money to Town, Oncor shall have sixty (60) calendar days (or such additional time as may be agreed to by the Town) from receipt of written notice from Town of an occurrence of such Event of Default to cure same before Town may exercise any of its rights or remedies provided for in Section 11.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 Town to exercise the remedies provided for in Section 11.C.

C. Remedies. The Town shall notify Oncor in writing of an alleged Uncured Event of Default as described in Section 11.B, which notice shall specify the alleged failure with reasonable particularity. Oncor shall, within thirty (30) business days after receipt of such notice or such longer period of time as the Town may specify in such notice, either cure such alleged failure or in a written response to the Town 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, Town shall be entitled to exercise any and all remedies as allowed by law.

The rights and remedies of Town and Oncor 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. Town and Oncor understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by Town of any one or more of such remedies shall not preclude the exercise by Town, 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, Town shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this Section or under any other provision of this Franchise.

D. Termination. In accordance with the provisions of Section 11.C, this Franchise may be

terminated upon thirty (30) business day's prior written notice to Oncor by Town. Town shall notify Oncor in writing at least fifteen (15) business days in advance of the Town Council meeting at which the question of forfeiture or termination shall be considered, and Oncor shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Oncor 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 Oncor 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 Town recognizes Oncor'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.

SECTION 12. ASSIGNMENT. The rights granted by this Franchise Agreement inure to the benefit of the Oncor 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 Town, unless otherwise superseded by state laws, rules, or regulations or Public Utility Commission of Texas action, and such consent by Town shall not be unreasonably withheld or delayed, except Oncor 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 Oncor hereunder, and is bound to the same extent as Oncor hereunder. Oncor shall give the Town written notice within ninety (90) days of any such assignment to a parent, subsidiary, affiliate or successor entity.

SECTION 13. SUPERSEDEANCE. This Ordinance shall supersede any and all other Franchises granted by the Town to Oncor, its predecessors and assigns.

SECTION 14. SEVERABILITY CLAUSE. The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable. If any portion of this Ordinance is declared illegal or unconstitutional by the valid final non-appealable judgment or decree of any court of competent jurisdiction, such illegality or unconstitutionality shall not affect the legality and enforceability of any of the remaining portions of this Ordinance.

SECTION 15. NOTICE. 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.

Town
City Manager
Town of Addison
5300 Belt Line Road
Dallas, TX 75254

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

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

SECTION 16. SAVINGS CLAUSE. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action, claims or penalties under any such prior Ordinance by either party, subject to applicable statute of limitations.

SECTION 17. PUBLIC HEARINGS. 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 Town, all as required by law.

SECTION 18. GOVERNING LAW AND VENUE. This Franchise Ordinance shall be construed and governed by the laws of the State of Texas. Town and Oncor agree that venue for any action between the Town and Oncor concerning this Ordinance will be filed in the state of Texas.

PASSED AND APPROVED the 1st reading at a regular meeting of the City Council of Addison, Texas, on this the 23rd day of June, 2020.

PASSED AND APPROVED the 2nd and final reading at a regular meeting of the City Council of Addison, Texas, on this the ____ day of _____, 2020.

Joe Chow, MAYOR

ATTEST:

Irma Parker, CITY SECRETARY

APPROVED AS TO FORM:

Brenda McDonald, CITY ATTORNEY