

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, CORRECTING ORDINANCE NO. 4740 WHICH GRANTED ONCOR ELECTRIC DELIVERY COMPANY, LLC, ITS SUCCESSORS AND ASSIGNS, THE NONEXCLUSIVE RIGHT TO USE AND OCCUPY RIGHTS-OF-WAY WITHIN THE CITY OF MESQUITE FOR THE CONSTRUCTION AND OPERATION OF AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM, AND WHICH WAS APPROVED BY THE MESQUITE CITY COUNCIL AFTER READINGS ON OCTOBER 21, 2019, NOVEMBER 4, 2019, AND NOVEMBER 18, 2019; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Oncor Electric Delivery Company, LLC (“Oncor”) and its predecessors, TXU Electric Company, Texas Utilities Electric Company and Texas Power & Light Company, have operated under a franchise to distribute electricity within the City of Mesquite since 1960, and have used the public rights-of-way for that purpose; and

WHEREAS, in anticipation of the expiration of the City’s franchise with Oncor, City staff and outside counsel at Lloyd Gosselink Rochelle & Townsend, P.C., worked with Oncor representatives (“the Parties”) and renegotiated the terms and conditions of the franchise, granting to Oncor, its successors and assigns, the nonexclusive right to use and occupy rights-of-way within the City of Mesquite for the construction and operation of an electric transmission and distribution system; and

WHEREAS, in compliance with Article III, Section 18 of the City of Mesquite Charter and after readings at three regular, public meetings of the City Council on October 21, 2019, November 4, 2019, and November 18, 2019, the City Council unanimously approved the franchise upon the determination that the franchise (1) provides for adequate compensation to be paid to the City; (2) secures efficiency of public service at reasonable rates; and (3) maintains the property devoted to the public service in good repair throughout the term of the franchise; and

WHEREAS, after City Council approval on November 18, 2019, the Parties discovered an error in numbering of the franchise ordinance, brought about by computer autoformatting, in Section 7 of the franchise agreement, and that renumbering created unintended changes to internal cross references in the document, which unintended changes create incongruities not made known to the City Council; and

WHEREAS, neither the City Council nor Oncor intended this inadvertent change in the document and all parties agree that the document should be corrected to comport with the intentions and agreement of the Parties; and

WHEREAS, the City Council finds that it is in the public interest to correct Section 7 of Ordinance No. 4740 to accurately reflect the intent of the City Council and Oncor.

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

SECTION 1. Section 7 of Ordinance No. 4740 is corrected to read as follows:

“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:

- A. A final quarterly payment will be made on or before October 10, 2019, for the basis period of May 1, 2019, through July 31, 2019, and the privilege period of July 1, 2019, through September 30, 2019, in accordance with the provisions in the previous franchise; and

As authorized by Section 33.008(b) of PURA, the original franchise fee factor calculated for the City in 2002 was 0.002879 (the "Base Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries for determining franchise payments going forward.

Due to a 2006 agreement between Company and the City the franchise fee factor was increased to a franchise fee factor of 0.003023 (the "Current Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries on a quarterly basis.

However, consistent with the 2006 agreement, should the Public Utility Commission of Texas at any time in the future disallow Company's recovery through rates of the higher franchise payments made under the Current Factor as compared to the Base Factor, then the franchise fee factor shall immediately revert to the Base Factor of 0.002879 and all future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.

Company shall make quarterly payments as follows:

<u>Payment Due Date</u>	<u>Basis Period</u>	<u>Privilege Period</u>
January 10	Aug. 1 - Oct. 31	Oct. 1 - Dec. 31
April 10	Nov. 1 - Jan. 31	Jan. 1 - Mar. 31

July 10	Feb. 1 - Apr. 30	Apr. 1 - Jun. 30
October 10	May 1 - Jul. 31	Jul. 1 - Sept. 30

- B. The first quarterly payment hereunder shall be due and payable on or before January 10, 2020, and will cover the basis period of August 1, 2019, through October 31, 2019, and the privilege period of October 1, 2019, through December 31, 2019. 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 October 10, 2039, and covers the basis period of May 1, 2039, through July 31, 2039, and privilege period of July 1, 2039, through September 30, 2039; and

After the final payment date of October 10, 2039, 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 its Tariff for Retail Delivery Service ("Tariff"), effective January 1, 2002, that are for the account and benefit of an end-use retail electric consumer. 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. Company will, upon request by the City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company's current approved Tariff.

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, 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, 2040, and will be based on the calendar months of January 1, 2039, through September 30, 2039.

3. Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
  4. The City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Company; and (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
  5. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.
  6. In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Company will not be required to continue payment of such franchise fees.
- D. With each payment of compensation required by Section 7.A and 7.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 7.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 the City within thirty (30) days of such determination or offset against the next payment due from Company. Acceptance by either party of any payment due under this Section shall not be deemed to be a waiver by either party of any claim of breach of this Franchise, nor shall the acceptance by either party of any such payments preclude either party from later establishing that a larger amount was actually due or from collecting any balance due. Nothing in this Section shall be deemed a waiver by either party of its rights under law or equity.

- 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 the Texas Utilities Code, Section 183.003, as amended for the time period involved.
- H. The franchise fee payable to the City pursuant to Section 7.A and 7.B, except as agreed to by Company and the City in Section 7.F, shall not be offset by any payment by Company to the City relating to ad valorem taxes.”

SECTION 2. The entire franchise ordinance, including the corrections to Section 7, is set out in attached Exhibit A, which is incorporated herein for all purposes.

SECTION 3. This ordinance shall take effect upon Oncor’s written acceptance in accordance with the terms of the franchise.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 6th day of January 2020.

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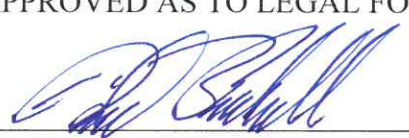
Bruce Archer  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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Sonja Land  
City Secretary



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David L. Paschall  
City Attorney



ORDINANCE NO. 4740, AS CORRECTED.

AN ORDINANCE OF THE CITY OF MESQUITE, 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 MESQUITE 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 THEREFORE; PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC; AND PROVIDING FOR SEVERABILITY.

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

SECTION 1. GRANT OF AUTHORITY.

There is hereby granted to Oncor Electric Delivery Company LLC, its successors and assigns (herein called "Company"), the right, privilege and franchise ("Franchise") to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public places and public ways ("Public Rights-of-Way") of the City of Mesquite, Texas (herein called "City") an Electric Transmission and Distribution System ("System") consisting of electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for Company's own use), for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms, and corporations beyond the corporate limits thereof, for the term set out in Section 11 of this Franchise. Upon reasonable request by the City, Company shall provide information to the City Council and shall attend City Council meetings to discuss Company's performance of its obligations and responsibilities under this Franchise.

Company shall not install, construct or extend any Facilities in parks or other City-owned property other than public utility easements, streets, alleys or highways without first obtaining written approval from City.

SECTION 2. PURPOSE.

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

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

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

- A. Use of the Public Rights-of-Way by Oncor shall be governed by National Electrical Safety Code (NESC), and applicable local, state and federal laws, rules and regulations, including any amendments thereto. Nothing in this agreement shall prohibit Oncor from asserting a claim before the Mesquite City Council, another regulatory agency, or a court having jurisdiction to contest any requirements of the City's Public Rights-of-Way Management Ordinance that Oncor believes is unconstitutional, conflicts with this Franchise agreement, or conflicts with any other local, state and federal laws, rules, and regulations including the NESC.
- B. The City shall endeavor to provide Company with reasonable notice and opportunity to review and comment upon any new or revised City laws, rules, or regulations that impact Company's use of the Public Rights-of-Way, but the failure to do so shall not affect the applicability of such laws, rules, or regulations to Company. This Franchise shall in no way affect or impair the rights, obligations, or remedies of the parties under PURA, or other state or federal law, rules, or regulations. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal, or file suit with respect to any action or decision of the other party, including ordinances adopted by the City that Company may believe are contrary to any federal, state, or local law, rules, or regulations.
- C. Company shall cooperate with the City by providing reasonable information regarding the location of current and future overhead and underground wires and poles within the Public Rights-of-Way. Reproducible copies of available maps showing the location of all overhead and underground wires and poles within the Public Rights-of-Way shall be furnished to the City Engineer upon request. The maps shall be provided in electronic digital format, if available.
- D. 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 program, release of such shall be pursuant to the same confidential protection process identified in Section 8.E of this Franchise. Company will conduct its tree-trimming activities in accordance with its vegetation management guidelines, amended by Company from time to time, and will address concerns or complaints with regard to its tree-trimming activities

upon reasonable request by the City. Except in emergency situations or in response to outages, and in accordance with Company vegetation management guidelines, Company shall notify affected property owners and the City prior to beginning planned distribution system tree-trimming activities.

SECTION 4.      INDEMNITY.

- A. In consideration of the granting of this Franchise, Company shall, to the fullest extent permissible under applicable law, and 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 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 sections 4.B and 4.C.



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: 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 of two (2) years.
  - (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 workers compensation claims.
- D.      Company must name the City, which includes all authorities, commissions, divisions, and departments, as well as elected and appointed officials, agents, and volunteers, as an additional insureds under the coverage required herein, except workers compensations 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 insurance 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. 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 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:

- A. A final quarterly payment will be made on or before October 10, 2019, for the basis period of May 1, 2019, through July 31, 2019, and the privilege period of July 1, 2019, through September 30, 2019, in accordance with the provisions in the previous franchise; and

As authorized by Section 33.008(b) of PURA, the original franchise fee factor calculated for the City in 2002 was 0.002879 (the "Base Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries for determining franchise payments going forward.

Due to a 2006 agreement between Company and the City the franchise fee factor was increased to a franchise fee factor of 0.003023 (the "Current Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries on a quarterly basis.

However, consistent with the 2006 agreement, should the Public Utility Commission of Texas at any time in the future disallow Company's recovery through rates of the higher franchise payments made under the Current Factor as compared to the Base Factor, then the franchise fee factor shall immediately revert to the Base Factor of 0.002879 and all future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.

Company shall make quarterly payments as follows:

<u>Payment Due Date</u>	<u>Basis Period</u>	<u>Privilege Period</u>
January 10	Aug. 1 - Oct. 31	Oct. 1 - Dec. 31
April 10	Nov. 1 - Jan. 31	Jan. 1 - Mar. 31
July 10	Feb. 1 - Apr. 30	Apr. 1 - Jun. 30
October 10	May 1 - Jul. 31	Jul. 1 - Sept. 30

- B. The first quarterly payment hereunder shall be due and payable on or before January 10, 2020, and will cover the basis period of August 1, 2019, through October 31, 2019, and the privilege period of October 1, 2019, through December 31, 2019. 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 October 10, 2039, and covers the basis period of May 1, 2039, through July 31, 2039, and privilege period of July 1, 2039, through September 30, 2039; and

After the final payment date of October 10, 2039, 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 its Tariff for Retail Delivery Service ("Tariff"), effective January 1, 2002, that are for the account and benefit of an end-use retail electric consumer. 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. Company will, upon request by the City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company's current approved Tariff.

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, 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, 2040, and will be based on the calendar months of January 1, 2039, through September 30, 2039.
  3. Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
  4. The City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Company; and (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
  5. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.
  6. In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Company will not be required to continue payment of such franchise fees.
- D. With each payment of compensation required by Section 7.A and 7.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 7.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 the City within thirty (30) days of such determination or offset against the next payment due from Company. Acceptance by either party of any payment due under this Section shall not be deemed to be a waiver by either party of any claim of breach of this Franchise, nor shall the acceptance by either party of any such payments preclude either party from later establishing that a larger amount was actually due or from collecting any balance due. Nothing in this Section shall be deemed a waiver by either party of its rights under law or equity.
- 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 the Texas Utilities Code, Section 183.003, as amended for the time period involved.
- H. The franchise fee payable to the City pursuant to Section 7.A and 7.B, except as agreed to by Company and the City in Section 7.F, shall not be offset by any payment by Company to the City relating to ad valorem taxes.

SECTION 8.     ACCOUNTING MATTERS.

- A. Company shall keep accurate books of account at its principal office for the purpose of determining the amount due to the City under this Franchise.
- B. 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 Sections 7.F, 7.G. and 7.H.
  - 2. If as a result of a subsequent audit, initiated within (2) years of an audit which resulted in Company making a payment to the City due to an



underpayment of the franchise fee of more than 5%, Company makes another payment to the City due to an underpayment of the franchise fee of more than 5%, the City may immediately treat this underpayment as an Uncured Event of Default and exercise the remedies provided for in Section 12.C.

- D. The Company shall assist the City in its review by responding to all requests for information no later than thirty (30) days after receipt of a request.
- E. 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 marked by Company as proprietary or confidential prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes Company's proprietary or confidential information, the City will notify the Texas Attorney General of the proprietary or confidential nature of the document(s). The City also will provide Company with a copy of this notification, and thereafter Company is responsible for establishing that an exception under the Act allows the City to withhold the information.

#### SECTION 9. RIGHT OF RENEGOTIATION.

- A. Should either Company or the City have cause to believe that a change in circumstances relating to the terms of this Franchise may exist, either party 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 this 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 within 60 days after passage and approval by City.

#### SECTION 10. RELOCATION AND ABANDONMENT 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, communications

and other pipe lines, cable, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The City also reserves the right to change in any manner any City-owned curb, sidewalk, highway, alley, public way, street, and City-owned utility lines, storm sewers, drainage basins, drainage ditches, and other City facilities. City shall provide Company with at least thirty (30) days' notice when requesting Company to relocate facilities. 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. Upon reasonable request by the City, Company shall provide information to the City regarding the status of a relocation request.

- B. 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.
- C. If any other corporation or person (other than the City) requests Company to relocate Company Facilities located in City's Public Rights-of-Way, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities. City may not request the Company to pay for any relocation that has already been requested, and paid for, by any entity other than City.
- D. If the City abandons any Public Rights-of-Way in which Company has facilities, such abandonment shall be subject to the provisions of the Code of the City of Mesquite, and applicable policies. If the City elects to abandon Public Rights-of-Way, City shall determine whether it is appropriate to retain a public utility easement in the Public Right-of-Way for use by Company. If City determines, in its sole discretion, that the continued use of the Public Right-of-Way by Company is compatible with the abandonment of the Public Right-of-Way, then in consideration of the compensation set forth in Section 7, and to the maximum extent of its rights to do so, City shall grant Company an easement for such use, and the abandonment of the Public Right-of-Way shall be subject to the right and continued use of Company. If the party to whom the Public Rights-of-Way is abandoned requests the Company to remove or relocate its facilities and

Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

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

#### SECTION 11. TERM.

This ordinance shall become effective upon Company's written acceptance and execution hereof in accordance with Section 16 of this Franchise, said written acceptance to be filed by Company with the City within sixty (60) days after final passage and approval by City. The right, privilege and franchise granted hereby shall expire September 30, 2039 provided that, unless written notice of cancelation is given by either party hereto to the other not less than sixty (60) days before the expiration of this Franchise, it shall be automatically renewed for an additional period of 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. Such renewals may not extend the term of this Franchise beyond thirty (30) years.

#### SECTION 12. 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 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 12.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 12.C.
3. If the Event of Default is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 12.C.

C. Remedies. The City shall notify the Company, in writing, of an alleged Uncured Event of Default as described in Section 12.B, which notice shall specify the alleged failure with reasonable particularity. 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 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. 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 12.C, this Franchise may be terminated upon thirty (30) business days 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. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by that party.

#### SECTION 13. PUBLIC PURPOSE.

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

#### SECTION 14. SEVERABILITY.

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

#### SECTION 15. NOTICE.

Any notices required or desired to be given from one party to the other party to this ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by



courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY

City Manager  
City of Mesquite  
1515 N. Galloway Avenue  
Mesquite, TX 75149

COMPANY

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

City Attorney  
City of Mesquite  
1515 N. Galloway Avenue  
Mesquite, TX 75149

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

SECTION 16. ACCEPTANCE.

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

SECTION 17. FUTURE AMENDMENTS.

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

SECTION 18. ORDINANCE PASSED AT PUBLIC MEETING.

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

SECTION 19. EFFECTIVE DATE.

This ordinance shall become effective upon the date Company's written acceptance hereof, is filed with the City Secretary as described in Section 16, above.

SECTION 20. EFFECT ON PRIOR FRANCHISE.

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

PASSED AND APPROVED on the first reading at a regular meeting of the City Council of Mesquite, Texas, on this the 21st day of October 2019.

PASSED AND APPROVED on the second reading at a regular meeting of the City Council of Mesquite, Texas, on the 4th day of November 2019.

PASSED AND APPROVED ON the third and final reading at a regular meeting of the City Council of Mesquite, Texas, on the 18th day of November 2019.

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Bruce Archer  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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Sonja Land  
City Secretary

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David L. Paschall  
City Attorney