

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS AND PUBLIC PROPERTY OF THE CITY OF MANSFIELD, TEXAS, PROVIDING FOR COMPENSATION THEREFOR, 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, PROVIDING FOR PUBLICATION; AND PROVIDING FOR AN EFFECTIVE DATE

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

**SECTION 1.
GRANT OF AUTHORITY**

A. There is hereby granted to Oncor Electric Delivery Company LLC, its successors and assigns (herein called "Company"), the limited right, privilege and franchise to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, easements held by the City to which the City holds the property rights in regard to use for utilities, public ways and other public property ("Public Rights-of-Way" or "Rights-of-Way") of the City of Mansfield, Texas (herein called "City") electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines, telephone and communication lines, and other structures for Company's own use), (herein called "Facilities") for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 10, subject to this consent by the City in accordance with Texas Utilities Code, Section 181.043 and subject to the Public Utility Regulatory Act (PURA) and all other applicable laws, rules, and regulations (herein called "Franchise Agreement").

B. The provisions set forth in this ordinance represent the terms and conditions under which Company shall construct, operate, and maintain its system facilities within the Public Rights-of-Way of the City. This Franchise Agreement shall in no way affect or impair the rights, obligations, or remedies of the parties under PURA, other state or federal laws, rules or regulations, or the Texas Constitution.

C. Company must get written approval from City prior to installing Company's facilities in a City park or City property other than public utility easements, streets, alleys, or highway Public Rights-of-Way.

D. Company may not use any portion of its Electric Distribution and Transmission System in City's Public Rights-of-Way for any purpose other than the delivery of electric service

(or in the support of Company'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 City for Company's ancillary service; however, Company is hereby expressly permitted as required by Federal law to allow Telecommunication Companies (e.g. telephone, and cable) to attach to Company's Facilities so long as Federal laws and Company requirements are met, which includes the allowed attachment fees, and notice of such attachment is provided to City by Company within a reasonable time after the City's request.

E. Subject to Subsection 1.D. above, Company agrees to notify other persons, firms, or corporations that desire to attach facilities to Company's Electric Distribution and Transmission System located within City that they must obtain all legally required franchises, licenses, waivers, consents, easements, rights of way, and permits needed to construct and operate its equipment within City. However, in no event is Company responsible or liable to City or any other person or entity if the persons, firms, or corporations that desire to attach to Company's Electric Distribution and Transmission System fails to obtain anything required by City. City may request a list of persons or corporations who have a contract to attach facilities to Company's equipment within the City limits, and Company shall provide such information within a reasonable time after City's request.

F. Company 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.

SECTION 2. USE OF PUBLIC RIGHTS-OF-WAY

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 (subject to City's notification to Company in writing of said plan prior to Company erecting or installing the Facilities in question) vehicular and pedestrian traffic over streets, alleys, highways, and sidewalks; 2) present and planned (subject to City's notification to Company in writing of said plan prior to Company erecting or installing the Facilities in question) gas, electric, or telephone fixtures; or 3) present and planned (subject to City's notification to Company in writing of said plan prior to Company 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. Company acknowledges and accepts at its own risk, that City may, unilaterally and at its sole discretion, 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, Company shall only be entitled to compensation or reimbursement from City as provided by Section 3 or any applicable state and federal laws, rules, and regulations including Tariffs and any amendments thereto.

C. Use of Poles and Ducts. Company may permit the wires of the City to be attached

to the poles or use of spare conduit in duct systems owned and maintained by Company, under separate agreement, upon securing a Company "Pole Attachment/Duct Use" agreement which specifies the requirements and compensation for said use. Company does not warrant or guarantee there will be space made available on Company poles or spare conduits in Company duct systems for the City's use. Company may require the City to furnish evidence of adequate insurance, provide indemnity covering Company as allowed by law, and provide adequate bonds covering the performance of the City or City's contractor prior to attaching wires to Company poles and prior to City's use of conduit in Company duct systems. Agreements for wires of the City to be attached to the poles or for use of spare conduit in duct systems maintained and owned by Company which are existing prior to this Franchise remain in effect according to the terms defined in such agreements.

D. The location of Company's facilities in the Public Rights-of-Way shall be subject to approval by the City Manager, or his/her designee, (the "Manager") prior to construction, which shall not be unreasonably withheld; provided however, that City and Company recognize that Company 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 Company may rely upon reasonable safety requirements in determining the appropriate location of such Facilities. Should Company determine that the Manager's determination is unreasonable, Company shall have the opportunity to appeal to the City Council or request review of the matter by any court or regulatory agency having jurisdiction. Any appeal to City Council shall be made in writing to the City Secretary within ten (10) days of Manager's determination and will be placed on the first available regularly scheduled City Council meeting for *Discussion and Possible Action Regarding an Appeal of the City Manager's Determination*.

E. Company shall cooperate with the City in providing information regarding the location of current and future overhead and underground wires and poles within City's 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 City upon reasonable request. The maps shall be provided in electronic digital format, or any format City requests, if available.

SECTION 3.

CONSTRUCTION, MAINTENANCE, OPERATION AND RELOCATION

A. Company shall construct and maintain its facilities in conformance with the applicable provisions of the National Electrical Safety Code or such comparable standards as may be adopted, and in a good and workmanlike manner.

B. City retains the right to make visual, non-invasive inspections of Company's Facilities in City Public Rights-of-Way and upon reasonable notice and request, to require Company to make available for inspection available records or data to demonstrate its current compliance with the terms of this Franchise Agreement.

C. Company shall, except in cases of emergency conditions or work incidental in nature, provide City reasonable advance notice and submit traffic control plans, if necessary as

determined by City in its sole discretion, and obtain a permit prior to performing work in the Public Rights-of-Way, except in no instance shall Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, despite the City's enactment of any ordinance providing the contrary. Company shall at all times ensure that any traffic control necessary to perform work in City's Public Rights-of-Way is set up only during times Company is performing work. In no event, shall Company's traffic control interfere with vehicular traffic if Company is not actively performing work. Company shall construct its facilities in conformance with the applicable provisions of the National Electrical Safety Code.

D. Company shall restore at the Company's sole expense, all work within City Rights-of-Way, to a condition equally as good as it was immediately prior to being disturbed by Company's construction, excavation, repair or removal or to a condition agreed upon by City and Company. If City or Company believes that there are extenuating circumstances that do not allow for restoration of all work within the City Rights-of-Way to a condition equally as good as it was prior to being disturbed by Company, City and Company will negotiate an alternative restoration plan (in writing) to remedy the situation.

E. City shall have the ability, at any time, to require Company to repair, remove or abate any distribution pole, wire, cable, or other distribution structure in City's Public Rights-of-Way that is determined to be unnecessarily dangerous to life or property. After receipt of notice from City, Company shall either cure said condition within a reasonable time or provide City with facts defending its position that said condition is not a condition that is unnecessarily dangerous to life or property or is in compliance with the provisions of this Franchise Agreement. Notwithstanding the aforementioned, within a reasonable time after investigation, Company shall provide City with a report of findings on its Facilities. Company will work with City on coordinating communication of such findings to Company's impacted customers. Company shall, as soon as practically possible, address any Company Facilities City advises Company of that are interfering with vehicular traffic. In the event City finds that Company has not sufficiently addressed said condition by either of the aforementioned methods, City shall be entitled to immediately exercise the remedies in Section 12, and Company shall be entitled to seek review of City action or inaction by any regulatory agency or court having jurisdiction.

F. City reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipelines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. City also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines (or in the case of utility line owned by Company, to require that change by Company), storm sewers, drainage basins, drainage ditches, and the like.

G. City shall provide Company with at least thirty (30) days' notice when requesting Company to relocate Facilities and shall specify a new location for such Facilities along the Public Rights-of-Way. Company shall proceed to relocate Facilities without unreasonable delay.

H. City-requested relocations of Company Facilities in the Public Rights-of-Way shall be at the Company's expense; provided however, if 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 City. Provided further, if the relocation request includes, or is for, Company to relocate above-ground Facilities to an underground location, City shall be fully responsible for the additional cost of placing the Facilities underground.

I. If any other corporation or person (other than City) requests Company to relocate Company facilities located in City Rights-of-Ways, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities. City may not request the Company to pay for any relocation which has already been requested, and paid for, by any entity other than City. City shall never be liable for any such reimbursement due to Company under this Section 3.I. assuming City is not involved with any matters related to this subsection.

J. If City abandons any Public Rights-of-Way in which Company has existing facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

K. Company shall have in place Vegetation Management Guidelines, which shall be provided to City upon request. The Vegetation Management Plan, as amended, shall be kept on file with the City Secretary. Any release of Company's Vegetation Management Guidelines shall be pursuant to the same confidential protection process identified in Section 9.E. of this Franchise Agreement. Company shall conduct its tree-trimming activities in accordance with its Vegetation Management Guidelines, including as amended by Company from time to time, and will address concerns or complaints with regard to its tree-trimming activities as requested by City within a reasonable time frame. Except in emergency situations or in response to outages, and in accordance with Company's Vegetation Management Guidelines, Company shall provide advance notice to affected property owners and City prior to beginning planned tree-trimming activities within City limits.

SECTION 4. INDEMNIFICATION

A. In consideration of the granting of this Franchise Agreement, Company shall, at its sole cost and expense, indemnify and hold the City, and its past and present officers, agents and employees harmless against any and all liability arising from suits, actions or claims regarding injury or death to any person or persons, or damages to any property arising out of or occasioned

by the intentional and/or negligent acts or omissions of Company or any of its officers, agents, or employees in connection with Company's construction, maintenance and operation of Company's Facilities in City Public Rights-of-Way, including any court costs, reasonable expenses and reasonable defenses thereof.

B. This indemnity shall only apply to the extent that the loss, damage, death or injury is attributable to the negligence or wrongful act or omission of the Company or its officers, agents or employees, and does not apply to the extent such loss, damage, or death or injury is attributable to the negligence or wrongful act or omission of City or City's officers, agents, or employees or any other person or entity. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of Company and the City.

C. In the event of joint and concurrent negligence or fault of both Company and City, responsibility and indemnity, if any, shall be apportioned comparatively between City and Company in accordance with the laws of the state of Texas without, however, waiving any governmental immunity available to 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 City, responsibility for all costs of defense shall be apportioned between City and Company based upon the comparative fault of each.

D. In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this franchise. If Company fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all reasonable defense costs incurred by City, except as otherwise provided in section 4.B. and 4.C.

SECTION 5. INSURANCE

Company shall, at its sole cost and expense, obtain, maintain, or cause to be maintained, and provide, throughout the term of this Franchise Agreement, insurance in the amounts, types and coverages in accordance with the following requirements. Such insurance may be in the form of self-insurance to the extent permitted by applicable law or by obtaining insurance, as follows:

A. Commercial general or excess liability on an occurrence or claims made form with minimum limits of five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate. This coverage shall include the following:

- (1) Products/completed operations coverage continuing for two (2) years after final acceptance, or completion of the Work, whichever is later.
- (2) Personal and advertising injury.
- (3) Contractual liability.

(4) Explosion, collapse, or underground (XCU) hazards.

B. Automobile liability coverage with a minimum policy limit of one million dollars (\$1,000,000) combined single limit each accident. This coverage shall include all owned, hired and non-owned automobiles.

C. Workers compensation and employers liability coverage. Statutory coverage limits for Coverage A and five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, and five hundred thousand dollars (\$500,000) policy limit bodily injury by disease Coverage B employers' liability are required. Company must provide the City with a waiver of subrogation for worker's compensation claims.

D. Company must name City, which includes all authorities, commissions, divisions and departments, as well as elected and appointed officials, agents, employees and volunteers, as additional insureds under the coverage required herein, except Worker's Compensation Coverage. The certificate of insurance must state that City is an additional insured.

E. Company will require its contractors and subcontractors to maintain, at their sole cost and expense, a minimum of three million dollars (\$3,000,000) each occurrence or each accident general liability and automobile liability throughout the course of work performed. Also, contractors and subcontractors will be required to maintain statutory workers' compensation benefits in accordance with the regulations of the State of Texas or state of jurisdiction as applicable. The minimum limits for employers' liability insurance will be five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, five hundred thousand dollars (\$500,000) policy limit bodily injury by disease.

F. The Company will provide proof of its insurance in accordance with this Franchise Agreement within thirty (30) days of the effective date of this Franchise Agreement and annually thereafter. Company will not be required to furnish separate proof when applying for permits.

SECTION 6. NON-EXCLUSIVITY

This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation. Any Franchise granted by the City to any other person, firm, or corporation shall not unreasonably interfere with this Franchise.

SECTION 7. CONSIDERATION

A. In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees,

easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Company shall pay to the City the following:

- (1) A final annual payment was made to City on or before March 15, 2023 for the basis period of January 1, 2022 through December 31, 2022 and the privilege period of January 1, 2023 through December 31, 2023 in accordance with the provisions of the previous franchise.
- (2) As authorized by Section 33.008(b) of PURA, the original franchise fee factor calculated for the City in 2002 was 0.002834 (the “Base Factor”), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility’s point of delivery is located within the City’s municipal boundaries for determining franchise payments going forward.

Due to a 2006 agreement between Company and City the franchise fee factor was increased to a franchise fee factor of 0.002976 (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 an annual basis.

However, consistent with the 2006 agreement, should the Public Utility Commission of Texas at any time disallow Company’s recovery through rates of the higher franchise payments made under the Current Factor as compared to the Base Factor, then the franchise fee factor shall immediately revert to the Base Factor of 0.002834 and all future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.

B. Company shall make quarterly payments as follows:

<u>Payment Due Date</u>	<u>Basis Period</u>	<u>Privilege Period (Following Year)</u>
September 15	Jan. 1 – Mar. 31	Jan. 1 – Mar. 31
December 15	Apr. 1 – Jun. 30	Apr. 1 – Jun. 30
March 15	Jul. 1 – Sept. 30	Jul. 1 – Sept. 30
June 15	Oct. 1 – Dec. 31	Oct. 1 – Dec. 31

- (1) The first payment hereunder shall be due and payable on or before September 15, 2023 and will cover the basis period of January 1, 2023 through March 31, 2023 for the privilege period of January 1, 2024 through March 31, 2024. The final payment under this franchise is due on or before March 15, 2043 and covers the basis period of July 1, 2042 through September 30, 2042 for the privilege period of July 1, 2043 through September 30, 2043; and
- (2) After the final payment date of March 15, 2043, Company may continue to make additional annual 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 annual periods.

C. A sum equal to four percent (4%) of gross revenues received by Company from services identified as DD1 through DD24 in Section 6.1.2 “Discretionary Service Charges,” in Oncor’s Tariff for Retail Delivery Service (Tariff), effective 1/1/2002, that are for the account and benefit of an end-use retail electric consumer. Company’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 Company’s approved Tariffs, then no payment is due. Company will, upon request by City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company’s current approved Tariff.

- (1) The franchise fee amounts based on “Discretionary Service Charges” shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year.
- (2) The franchise fee amounts that are due based on “Discretionary Service Charges” shall be paid at least once annually on or before April 30 each year based on the total “Discretionary Service Charges”, as set out in Section 7.C., received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2024 and will be based on the calendar year January 1 through December 31, 2023. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2044 and will be based on the calendar year of January 1, 2043 through December 31, 2043.
- (3) Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
- (4) City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
- (5) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.
- (6) In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Company will not be required to continue payment of such franchise fees.

D. With each payment of compensation required by 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. Should any payment due date required by this Franchise Agreement fall on a weekend or declared bank holiday, payment shall be delivered to City 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 Company has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined by mutual written agreement between City and Company and City shall be paid by Company within thirty (30) calendar days of such determination. Any overpayment to City through error or otherwise will, at the sole option of City, either be refunded to Company by City within thirty (30) days of such determination or offset against the next payment due from Company. Acceptance by either party of any payment due under this Section shall not be deemed to be a waiver by either party of any claim of 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 law 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 the Texas Utilities Code, Section 183.003, as amended for the time period involved.

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

SECTION 8. MOST FAVORED NATION

A. This Section 8 applies only if, after the effective date of this Franchise Agreement, Company enters into a new municipal franchise agreement or renews an existing municipal franchise agreement with another municipality that provides for a different method of calculation of franchise fees for use of the Public Rights-of-Way than the calculation under PURA, Section 33.008(b), which, if applied to City, would result in a greater amount of franchise fees owed City than under this Franchise Agreement.

B. In the event of an occurrence as described in Section 8.A. hereof, City shall have

the option to:

- (1) Have Company select, within 30 days of City's request, any or all portions of the franchise agreement with the other municipality or comparable provisions that, at Company's sole discretion, must be considered in conjunction with the different method of the calculation of franchise fees included in that other franchise agreement; and
- (2) Modify this Franchise Agreement to include both the different method of calculation of franchise fee found in the franchise agreement with the other municipality and all of the other provisions identified by Company pursuant to Section 8.B(1). In no event shall City be able to modify the franchise to include the different method of calculation of franchise fee found in the franchise agreement with the other municipality without this franchise also being modified to include all of the other provisions identified by Company pursuant to Section 8.B(1).

C. City may not exercise the option provided in this Section 8.B. if any of the provisions that would be included in this Franchise Agreement are, in Company's reasonable opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or City Charter.

D. In the event of a regulatory disallowance of the increase in franchise fees paid pursuant to City's exercise of its option under Section 8.B., then at any time after the regulatory authority's entry of an order disallowing recovery of the additional franchise fee expense in rates, Company shall have the right to cancel the modification of the franchise fee made pursuant to this Section 8, and the terms of the Franchise Agreement shall immediately revert to those in place prior to City's exercise of its option under Section 8.B.

E. Notwithstanding any other provision of this Franchise Agreement, should the City exercise the option provided in Section 8.B., and then adopt any rule, regulation, ordinance, law, Code, or Charter that, in Company's sole reasonable opinion, is inconsistent with or in any manner contrary to the provisions included in this Franchise Agreement pursuant to Section 8.A., then Company shall have the right to cancel all of the modifications to this Franchise Agreement made pursuant to Section 8.B., and, effective as of the date of the City's adoption of the inconsistent provision, the terms of the Franchise Agreement shall revert to those in place prior to the City's exercise of its option under Section 8.B. The provisions of Section 8.B. 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 Section 8.B. do not apply to differences in the franchise fee factor that result from the application of the methodology set out in PURA Section 33.008(b) or any successor methodology.

SECTION 9. RECORDS AND REPORTS

A. Company shall keep accurate books of accounting at its principal office for the purpose of determining the amount due to City under this Franchise Agreement.

B. Pursuant to Section 33.008(e) of the Texas Utilities Code, 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. 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 City to ascertain the correctness of the reports agreed to be filed herein.

C. Company shall make available to the auditor or City during Company's regular business hours and upon reasonable notice, such personnel and records as City may, in its reasonable discretion, request in order to complete such audit, and shall make no charge to City therefore. Company shall assist City in its review by responding to all requests for information no later than thirty (30) days after receipt of a request.

D. Regarding Refunds or Credits under this Franchise Agreement:

- (1) If as the result of any City audit, Company is refunded/credited for an overpayment or pays City for an underpayment of the franchise fee, such refund/credit or payment shall be made pursuant to the terms established in Sections 7.G. and 7.H.
- (2) If, as a result of a subsequent audit, initiated within two years of an audit which resulted in Company making a payment to City due to an underpayment of the franchise fee of more than 5%, Company makes another payment to City due to an underpayment of the franchise fee of more than 5%, City may immediately treat this underpayment as an Uncured Event of Default and exercise the remedies provided for in Section 12.C.

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

SECTION 10. TERM AND ACCEPTANCE

This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City within sixty (60) days after final passage and publication by City as required by City Charter. The right, privilege and franchise granted hereby shall expire on September 30, 2043; provided that, unless written notice of cancelation is given by either party hereto to the other not less than sixty (60) days before the expiration of this Franchise Agreement, it shall be automatically renewed for an additional period of six (6) months

from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period. This Franchise Agreement, however, shall terminate no later than twenty-five (25) years from its effective date.

**SECTION 11.
REPEALER CLAUSE**

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

**SECTION 12.
DEFAULT, REMEDIES, TERMINATION**

A. Events of Default. The occurrence, at any time during the term of this Franchise Agreement, of any one or more of the following events, shall constitute an Event of Default by Company under this Franchise Agreement:

- (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 commencement of proceedings to seek revocation of Company's certificate of convenience and necessity to serve any or all of Company's service area located within the City.
- (4) The termination of this Franchise.

D. The rights and remedies of City and Company set forth in this Franchise Agreement shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same failure to cure. However, City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance.

E. Termination. In accordance with the provisions of Section 12.C, this Franchise may be terminated upon thirty (30) business day's prior written notice to Company by City. City shall notify Company in writing at least fifteen (15) business days in advance of the City Council meeting at which the question of forfeiture or termination shall be considered, and Company shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Company may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction. Upon timely appeal by Company of the City Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or an order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this Franchise shall remain in effect for all purposes. The City recognizes Company's right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission of Texas in accordance with the Texas Utilities Code.

F. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise Agreement shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect, subject to applicable statute of limitations. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by that party.

**SECTION 13.
NOTICES**

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

If intended for City, to:
City of Mansfield
Attn.: City Manager
1200 E. Broad St.
Mansfield, Texas 76063

If intended for Company, to:
Oncor Electric Delivery Company LLC
Attn: Regulatory Affairs
1616 Woodall Rodgers Fwy, 6th floor
Dallas, Texas 75202

**SECTION 14.
SEVERABILITY**

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.
ASSIGNMENT**

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

**SECTION 16.
RIGHT OF RENEGOTIATION**

A. Should either Company or City have cause to believe that a change in circumstances relating to the terms of this Franchise Agreement 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 of the Franchise Agreement as a result of such negotiations. A failure to agree does not show a lack of good faith. If, as a result of renegotiation, City and Company agree to a change in a provision of this Franchise Agreement, the change shall become effective upon passage of an ordinance by the City in accordance with the City Charter and written acceptance of the amendment by Company.

**SECTION 17.
GOVERNING LAW AND VENUE**

This Franchise Agreement shall be construed and governed by the laws of the State of Texas. City and Company agree that any lawsuit between City and Company concerning this Franchise Agreement will be filed in the State of Texas. Nothing in this Franchise Agreement shall prohibit City from filing an action related to this Franchise Agreement in Tarrant County, Texas.

**SECTION 18.
PUBLIC MEETING**

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

**DULY PASSED ON THE FIRST AND FINAL READING BY THE CITY
COUNCIL OF THE CITY OF MANSFIELD, TEXAS, THIS 11TH DAY OF SEPTEMBER,
2023.**

Michael Evans, Mayor

ATTEST:

Susana Marin, City Secretary

APPROVED AS TO FORM:

Bradley A. Anderle, City Attorney