

1 AN ORDINANCE GRANTING TO THE ONCOR ELECTRIC DELIVERY
2 COMPANY LLC, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE
3 ELECTRIC POWER FRANCHISE IN THE CITY OF AUSTIN, TEXAS; TO USE
4 THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC
5 UTILITY EASEMENTS, AND PUBLIC RIGHTS-OF-WAY OF AUSTIN, TEXAS;
6 ESTABLISHING COMPENSATION; REPEALING ALL PREVIOUSLY
7 EXISTING FRANCHISE ORDINANCES TO ONCOR ELECTRIC DELIVERY
8 COMPANY LLC, ITS PREDECESSORS AND ASSIGNS AND CONFLICTING
9 ORDINANCES AND RESOLUTIONS; AND ESTABLISHING AN EFFECTIVE
10 DATE.

11
12 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

13
14 **PART 1.** The Council finds that:

15 SECTION 1. Definitions.

- 16 1.1 For the purpose of this Ordinance and subject to all applicable laws, rules, and
17 regulations, the following terms, phrases, words and their derivations shall
18 have the meanings given herein. When not inconsistent with the context,
19 words used in the present tense include the future, words in the plural number
20 include the singular number, and words in the singular number include the
21 plural number, and the use of any gender shall be applicable to all genders
22 whenever the sense requires. The words "shall" and "will" are mandatory and
23 the word "may" is permissive. Words not defined shall be given their common
24 and ordinary meaning.
- 25
- 26 1.2 "CCN" shall mean the Certificate of Convenience and Necessity issued by the
27 Public Utility Commission of Texas held by Oncor Electric Delivery
28 Company, LLC allowing the provision of electric delivery services.
- 29
- 30 1.3 "City" shall mean the city of Austin, Texas, a municipal corporation in the
31 state of Texas.
- 32
- 33 1.4 "Company" shall mean Oncor Electric Delivery Company LLC, a Delaware
34 limited liability company existing and authorized to do business by the laws
35 of the State of Texas, authorized to transact and actually transacting business
36 in the State of Texas, its successors, lessees and assigns.
- 37

- 1.5 "City Manager" shall mean the City Manager of the City or an authorized designate of the City Manager.
- 1.6 "Consumer" or "Customer" shall mean any person or organization receiving and using electric delivery service from the Company.
- 1.7 "Council" shall mean the governing body of the City of Austin.
- 1.8 "Director of Financial Services" shall mean the Director of the Financial Services Department of the City of Austin, or its successor or Department.
- 1.9 "Director of Public Works and Transportation" shall mean the Director of the Public Works and Transportation Department of the City of Austin, or its successor Department.
- 1.10 "Franchise" shall mean this Ordinance/Contract, and all rights and obligations established herein or as it may be amended.
- 1.11 "Electricity" shall mean energy (kWh) and demand (kW) provided by Company.
- 1.12 "Public Right-of-Way" shall mean the area in, under, along and across, any and all present and future streets, avenues, easements, alleys, highways, and public ways held, owned or controlled by the City, the terms, conditions or limitations upon which are not inconsistent with the construction or maintenance of an electric distribution system.
- 1.13 "Service line" shall mean lines directly connected to the Company's Distribution system and used to deliver electricity to the Consumer's/Customer's meter.
- 1.14 "Sidewalk" shall mean a paved area, within this street right-of-way or sidewalk easement, specifically designed for pedestrians and/or bicyclists.
- 1.15 "Street" shall mean a publicly dedicated or maintained Right-of-Way (excluding easements, alleys, public ways and property), a portion of which is open to use by the public for vehicular travel.
- 1.16 "Transmission and Distribution System" or "Company Facilities" shall mean all interrelated lines, equipment, poles, and other appurtenances used, necessary, or in support of the transmission and distribution delivery of electricity to consumers or customers in the City and its environs.

SECTION 2. Granting of Franchise.

- 1 2.1 There is hereby granted to Company a non-exclusive franchise to maintain,
2 construct, equip, extend, replace, alter, operate in and otherwise establish in
3 the City Public Rights-of-Way as constituted as of the effective date of this
4 Ordinance or as may hereafter be constituted, Company's Transmission and
5 Distribution System (including those now in service) necessary or appropriate
6 to distribute, convey or otherwise conduct, serve, supply and furnish the
7 inhabitants of City and others, and to the City, whenever the City may desire
8 to contract therefor, electric power, and said Company is hereby granted
9 passage and the right to occupy and use in any lawful way during the life of
10 this franchise said City Public Right-of-Way, as they now or hereafter may
11 exist, for every and any such service, use, effect, and lawful purpose as herein
12 mentioned; provided that nothing herein shall be construed to require or
13 authorize Company to exceed its CCN; and provided further, that the
14 Company shall in accordance with applicable federal, state and local laws,
15 provide notice to the Director of Transportation before commencing any
16 excavation in the paved portion of any street and, in the case of a bona fide
17 emergency, provide notice to the Director of Transportation of any such
18 excavation as soon as reasonably practicable.
- 19 2.2 The Company shall, prior to constructing Company Facilities within Public
20 Right-of-Way within a City park, comply with all applicable state laws and
21 with all applicable valid and enforceable regulations of the City.
- 22 2.3 This franchise shall be subject to all applicable federal, state, and local laws,
23 rules, and regulations and subject to the Company's rights of appeal or to
24 otherwise contest the validity, applicability or enforceability of same as may
25 be provided by law. The venue for all causes of action arising under this
26 Ordinance shall be filed in the State of Texas. Nothing in this Ordinance shall
27 prohibit the City from filing an action related to this Ordinance in Travis
28 County, Texas. Company retains all rights under all applicable laws, rules,
29 and regulations.
- 30 2.4 The initial term of this franchise shall be for a period of twenty (20) years,
31 from the effective date of this Ordinance; provided, that at the end of the initial
32 term, the term shall be automatically renewed for a five year extension period,
33 unless written notice of non-renewal is given to the Company by the City or
34 to the City by the Company at least 120 days before expiration of the initial
35 term to reconsider or terminate this franchise, in which event this franchise
36 shall expire at the end of the initial term.
- 37

2.5 The rights granted by this Franchise Agreement inure to the benefit of the Company. The rights granted by this franchise shall not be assignable without the express written consent, by Ordinance, of the City Council of the City, unless otherwise superseded by state laws, rules, or regulations or Public Utility Commission of Texas action, and such consent by City shall not be unreasonably withheld or delayed. Company may assign its rights under this Franchise to a parent, subsidiary, or affiliate without City's consent, so long as such parent, subsidiary, or affiliate assumes all obligations of Company and has net capital and liquid assets reasonably equivalent to Company's as of the month immediately preceding the transfer or there are provided other guarantees or assurances of the assignee's financial ability to perform this Franchise reasonably acceptable to City. Company shall give City written notice thirty (30) days prior to such assignment. Provided an assignment of this Franchise is consented to or otherwise complies with this section, the rights granted by this Franchise inure to the benefit of the assignee.

SECTION 3. Acceptance by Company.

3.1 This franchise shall not become effective unless and until accepted by Company in writing, filed with the City Clerk within sixty (60) days following the final adoption of this Ordinance by the Council, and when so accepted this Ordinance shall be a contract, duly executed by and between the City and Company.

SECTION 4. Service.

4.1 Service shall be provided by means of Company's Transmission and Distribution system in the City's Public Rights-of-Way. All future locations of Company's Transmission and Distribution System shall be located so that they will not unreasonably interfere with the flow of water in any gutter or drain, with the operations of any City-owned utility, with any existing electric, water, sewer or telephone facilities, traffic control signals, street lights, fire lines or communications lines, and so that same will not unduly interfere with ordinary travel on City Public Rights-of-Way. The surface of any City Public Rights-of-Way disturbed by the Company in the construction or maintenance of its Transmission and Distribution System shall be restored within a reasonable time after the completion of the work to as good a condition as before the commencement of the work. Should the City reasonably determine, within one year from the date of such restoration, that such surface requires additional restoration work to place it in as good a condition as before the

commencement of the work, the Company shall perform such additional restoration work to the reasonable satisfaction of the City. No Public Rights-of-Way shall be encumbered for a longer period than shall be reasonably necessary to execute all work.

4.2 The Company shall not unreasonably discriminate in furnishing electric utility service on the terms provided in its service regulations and line extension policy, as they may be in effect from time to time. The Company shall not deny electric utility service, or otherwise discriminate against applicants for service or customers, on the basis of race color, religion, national origin, sex, or sexual orientation. Electric utility service shall be provided to all areas of the City for which the Company holds a valid CCN.

4.3 The Company shall maintain its property and equipment in good order and condition, consistent with the needs of the service to be rendered therefrom. It is recognized that the Company shall retain full title in and right to its personal property whether or not same is incorporated in real estate.

4.4 The City may conduct, or may hire an auditor to conduct, an audit or other inquiry of the Company's books, accounts, and operations in relation to the obligations of this Franchise. The Company shall make available to the City or auditor during the Company's regular business hours and upon reasonable notice, such personnel and records as the City may, in its reasonable discretion, requests in order to complete such audit, and shall make no charge to the City therefore.

SECTION 5. Use of Rights-of-Way.

5.1 The Company is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this franchise, provided the same do not conflict with existing water pipes, sewers, electric power lines, telephone lines, cable television lines and other authorized installations, and provided that all work done in said Public Rights-of-Way by the Company shall be done with reasonable diligence and without unnecessary inconvenience to the public or individuals. Provided, it is not the intention of either city or Company to create any liability, right, or claim for the benefit of third parties and this Franchise is intended and shall be construed for the sole benefit of City and Company.

1 5.2 Except in an emergency, the Company may not excavate pavement in Public
2 Rights-of-Way or significant amounts of unpaved Public Rights-of-Way
3 without first complying with applicable City requirements. On completion
4 of initial or any subsequent construction work, the Company shall promptly
5 restore the Public Rights-of-Way in accordance with applicable City
6 requirements. The Company may excavate only for the construction,
7 installation, expansion, repair, removal, and maintenance of Company
8 Facilities.

9
10 SECTION 6. Work by the City and Others.

11 6.1 City reserves the right to lay, and permit to be laid, sewer, cable television,
12 water, telephone, electric and other lines, cables and conduits, and to do and
13 permit to be done an underground or overhead work that may be necessary or
14 proper in, across, along, over, or under any Public Rights-of-Way occupied
15 by the Company.
16

17 SECTION 7. Changes for Governmental Purposes.

18 7.1 Provided the City gives Company at least ninety (90) days' advance notice,
19 Company shall relocate Company Facilities. Company shall, except in cases
20 of emergency conditions or work incidental to the emergency, obtain a permit,
21 if required by City ordinance, prior to performing work in the Public Rights-
22 of-Way. Company shall construct Company Facilities in conformance with
23 the applicable provisions of the National Electrical Safety Code. Schedules
24 for removal and relocation work shall be developed by designated
25 representatives of the Company and the City. If representatives cannot agree
26 on the schedule, the City Manager, after consultation with the Company, shall
27 establish a schedule. This schedule shall provide for a minimum of thirty (30)
28 days to exist between the time the schedule is furnished to the Company and
29 the time that any specific work to be done by the Company covered in the
30 schedule is to begin.
31

32 7.2 If the costs for work contemplated by this section is eligible for funding, in
33 whole or in part, with federal or state highway funds, the federal government
34 or state may provide compensation for utility adjustments. If compensation
35 for utility adjustment costs is provided from federal or state funds, City shall
36 request that compensation be provided to Company by the funding authority.
37 If City receives such compensation, it shall deliver to Company that portion

of the compensation that is allocated by the funding authority to Company's costs incurred for utility adjustment.

7.3 If City shall require Company to adapt or conform Company Facilities, or in any manner alter, relocate, or change Company Facilities to enable any other corporation or person, except the City, to use, or use with greater convenience, said Public Rights-of-Way, Company shall not be bound to make any 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 arise out of such change, alteration, or relocation of Company Facilities; provided however, that the City shall never be liable for such reimbursement due to Company from such other corporation or person.

7.4 If City vacates Public Rights-of-Way in which Company Facilities are located, the City will provide advance notice to Company of the vacation and an opportunity for Company to take necessary steps to retain Company's use of the affected Public Rights-of-Way scheduled for vacation.

SECTION 8. Captions and Severability.

8.1 The use of captions or headings for the various sections of this Ordinance are for the convenience of the parties only and do not reflect the intent of the parties. This Ordinance shall be construed and deemed to have been drafted by the combined efforts of the City and the Company.

8.2 Notwithstanding anything contained in this Ordinance to the contrary, in the event that this Ordinance or any part hereof is declared unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, by any court at law, the remainder of the provisions of this Ordinance shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 9. Fees.

9.1 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 City's 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 reimbursement for reasonable expenses incurred in employing rate case professionals in rate proceedings to the extent permitted by law, 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:

9.1.1 A final quarterly payment will be made on or before November 15, 2017 for the privilege period of July 1, 2017 through September 30, 2017 in accordance with the provisions in the previous franchise.

9.1.2 As authorized by Section 33.008(b) of the Texas Utilities Code, the original franchise fee factor calculated for the City in 2002 was 0.001886 (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 0.001980 (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.

9.1.3 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 0.001886 and all future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.

9.1.4 Payments to the City shall be made per the quarterly schedule as follows:

<u>Payment Due</u>	<u>Basis and Privilege Period</u>
February 15	Oct. 1 – Dec. 31
May 15	Jan. 1 – Mar. 31
August 15	Apr. 1 – Jun. 30
November 15	Jul. 1 – Sept. 30

1
2 The first quarterly payment hereunder shall be due and payable on or
3 before February 15, 2018, and will cover the basis and privilege period
4 of October 1, 2017 through December 31, 2017. If this Franchise is not
5 effective prior to the first quarterly payment date, Company will pay
6 any payments due within 30 days of the effective date of this agreement.
7 The final payment under this Franchise is due on or before November
8 15, 2037 or 2042 (depending on whether the five year extension under
9 Section 2.4 is exercised) and covers the basis and privilege period of
10 July 1 through September 30 in the same year the final November 15
11 payment is made.
12

13 After the final payment date of November 15, 2037 or 2042, per the
14 previous paragraph, Company may continue to make additional
15 quarterly payments in accordance with the above schedule. City
16 acknowledges that such continued payments will correspond to
17 privilege periods that extend beyond the term of this Franchise and that
18 such continued payments will be recognized in any subsequent
19 franchise as full payment for the relevant quarterly periods.
20

21 9.1.5 On a prospective basis, a sum equal to four percent (4%) of gross
22 revenues received by Company from services identified as DD1
23 through DD24 in Section 6.1.2 "Discretionary Service Charges," in
24 Oncor's Tariff for Retail Delivery Service (Tariff), effective 1/1/2002,
25 that are for the account and benefit of an end-use retail electric
26 consumer. Company will, upon request by City, provide a cross
27 reference to Discretionary Service Charge numbering changes that are
28 contained in Company's current approved Tariff.
29

30 9.1.5.1 The franchise fee amounts based on "Discretionary Service Charges"
31 shall be calculated on an annual calendar year basis, i.e. from January
32 1 through December 31 of each calendar year.
33

34 9.1.5.2 The franchise fee amounts that are due based on "Discretionary
35 Service Charges" shall be paid at least once annually on or before
36 April 30 each year based on the total "Discretionary Service
37 Charges", as set out in Section 9.1.5, received during the preceding
38 calendar year. The initial Discretionary Service Charge franchise fee
39 amount will be paid on or before April, 30 2018 and will be based on
40 the calendar year January 1 through December 31, 2017. The final
41 Discretionary Service Charge franchise fee amount will be paid on or

before April 30, 2038 or 2043 (per the terms set forth in Section 9.1.4) and will be based on the calendar months of January 1 through September 30, 2037 or 2042 (per the terms set forth in Section 9.1.4).

9.1.5.3 City acknowledges that Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.

9.1.5.4 City and Company acknowledge that the City by granting this Franchise is not making determinations within the City's exclusive original jurisdiction to regulate rates charged by Company to its Consumers or Customers within the City.

SECTION 10. Indemnity.

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

10.2 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, 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.

10.3 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.

- 10.4 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 10.2 and 10.3.

SECTION 11. Default, Remedies, and Termination.

- 11.1 In addition to all other rights and powers retained by City under this franchise or otherwise, City reserves the right to declare this Franchise forfeited and to terminate this Franchise and all rights and privileges of Company hereunder in the event of a material breach of its terms and conditions. A material breach by Company shall include, but shall not be limited to, the following:

11.1.1 Failure to pay the fee prescribed by Section 9 hereof.

11.1.2 Material misrepresentation of fact in the application for or negotiation of the franchise.

11.1.3 Conviction of any director, officer, employee, or agent of the company of the offense of bribery or fraud connected with or resulting from the awarding of this franchise to the Company.

- 11.2 The foregoing shall not constitute a major breach if violation occurs without fault of Company or of its employees or occurs as a result of circumstances beyond its control. Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, or employees.

- 11.3 In order for City to declare a forfeiture, City shall make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this franchise. If the violation by the Company continues for a period of thirty (30) days following the Company's receipt of such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City Council may take under consideration the issue of termination of the franchise. City shall cause

to be served upon Company, at least twenty (20) days prior to the date of such City Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the City Council is to consider.

11.4 The City Council shall hear and consider the issue, shall hear any person interested therein, and shall determine, in its discretion, whether or not any violation by the company has occurred.

11.5 If the City Council shall determine that the violation by Company was the fault of Company and within its control, the council may declare this Franchise forfeited and terminated, or the City Council may grant Company a period of time for compliance.

SECTION 12. Foreclosure, Receivership and Bankruptcy.

12.1 Company shall notify City within thirty (30) days after any foreclosure or other judicial sale of all or substantial part of Company Facilities or of the appointment of a receiver or trustee to take over and conduct Company's business affecting Company Facilities, whether in receivership, reorganization, bankruptcy or other action or proceeding, whether voluntary or involuntary, such notice to include, where applicable, the cause number and court involved.

PART 2. In compliance with the provisions of the Charter of the City of Austin, this Ordinance, upon being introduced at regular meeting of the City Council, shall be read by City at three (3) separate regular meetings of the City Council and shall not be passed finally until thirty (30) days after the first reading. Within five (5) days following each of its three (3) readings the full text of this Ordinance shall be published by City one (1) time in a daily newspaper published in the City of Austin. This Ordinance shall take effect sixty (60) days after its final passage, if it is accepted in writing by Company, by Company filing its written acceptance with the City Clerk of the City of Austin within sixty (60) days following the final adoption of this Ordinance by the Council.

PART 3. The City Clerk is hereby authorized and directed to make appropriate endorsements over her official hand and the seal of the City of Austin, on a form provided at the conclusion of this Ordinance, of the dates upon which this Ordinance shall have been read by City at three (3) separate regular meetings of the City Council and the date of final passage of this Ordinance; and the date upon which this Ordinance shall take effect, being sixty (60) days after the date of final passage, if the Company shall have accepted this franchise in writing, and the dates upon which the full text of this Ordinance shall have

1 been published and the name and address of the daily newspaper in which such publications
2 were had in the City of Austin.

3 **PART 4.** This ordinance takes effect on _____, 2017.

4
5 **PASSED AND APPROVED**

6
7
8 §
9 §
10 _____, 2017 §
11 _____
12 Steve Adler
13 Mayor

14
15 **APPROVED:** _____
16 Anne L. Morgan
17 City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk