

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY, A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, AVENUES, ALLEYS, ROADS, HIGHWAYS, SIDEWALKS, EASEMENTS AND OTHER PUBLIC RIGHTS-OF-WAY OF THE CITY OF PLANO, TEXAS FOR THE PURPOSES OF CONSTRUCTING AND OPERATING AN ELECTRIC DISTRIBUTION AND TRANSMISSION SYSTEM; SETTING FORTH TERMS AND CONDITIONS TO GOVERN THE FRANCHISE; PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, on July 13, 1915, the City of Plano, Texas, granted a non-exclusive franchise to Texas Power & Light Company and its successors and assigns to construct, erect, build, equip, own, maintain and operate in, along, under, over and across the streets, avenues, alleys, bridges, viaducts and public grounds of the City of Plano, Texas for the purpose of supplying electricity to Plano residents; and

WHEREAS, Texas Power & Light Company is now Oncor Electric Delivery Company, a Texas Corporation ("Oncor"); and

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

WHEREAS, the original franchise authority granted by the Plano City Council expires June 1, 2003; and

WHEREAS, the City Council of the City of Plano hereby finds that it is to the mutual advantage of both the City and Oncor to enter into a new franchise establishing the conditions under which Oncor will operate in the City; and

WHEREAS, pursuant to Articles 2 and 10 of the City's Charter, the City Council hereby determines that a grant of this Ordinance is in the best interests and will inure to the benefit of the City and its citizens.

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

**SECTION 1.
DEFINITIONS**

For the purpose of this ordinance the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When consistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- 1.1 **"City"** shall mean the home rule municipal corporation designated as the City of Plano, Texas, and includes the territory that currently is or may in the future be included within the boundaries of the City of Plano.
- 1.2 **"Oncor" or "Company"** shall mean Oncor Electric Delivery Company, a Texas corporation, its successors and assigns.
- 1.3 **"Effective Date"** shall be thirty (30) calendar days after final passage and publication of this Ordinance as required by the City Charter, provided that Oncor has timely filed its written acceptance of this Ordinance and agreement with the City Secretary of the City of Plano.
- 1.4 **"Electric Distribution and Transmission System"** shall mean Oncor's system of electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, equipment and facilities), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof.
- 1.5 **"Public Right-of-Way"** shall be the present and future streets, alleys and public places

of the City of Plano.

- 1.6 **"Public Utility Commission of Texas" or "PUC"** shall mean that agency as presently constituted by the laws of the State of Texas or any successor agency.
- 1.7 **"Municipal Franchise Charge"** shall mean the fee authorized by Section 33.008(b) of PURA, currently the product of a factor of .002730 multiplied by each kilowatt hour of electricity delivered to each retail customer within the City of Plano's municipal boundaries, or any amended fee calculation for which the Texas Legislature or Public Utility Commission may require.

SECTION 2.
GRANT OF AUTHORITY

- 2.1 **Permission.** Subject to all the terms and conditions contained herein, the Texas Constitution, the Code of Ordinances of the City of Plano, Texas, the City's Right-of-Way Management Ordinance, as amended, and Home Rule Charter for the City of Plano, Texas, City hereby grants Oncor the non-exclusive right, to construct, install, and maintain its Electric Distribution and Transmission system in the present and future rights-of-way of Plano, Texas (herein called "City"), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof. Oncor cannot use any portion of its Electric Distribution and Transmission System in the City's Public Right of Way for any purpose other than the delivery of electric service without first entering into a separate agreement for the ancillary service. Oncor agrees to require other persons, firms, or corporations that desire to attach facilities to Oncor's electric transmission and distribution system located within the City to represent and warrant that they have obtained all legally required franchises, licenses, waivers, consents, easements, rights of way and permits needed to construct and operate its equipment within the City. Oncor shall notify the City of any person, firm or corporation that enters into a contract with Oncor to attach facilities on Oncor's facilities.
- 2.2 **Non-Exclusive Use.** This Franchise Agreement does not provide Oncor with exclusive

use of the Public Right-of-Way and City shall have the right to permit other providers of services, including telecommunications services, to install equipment or devices in the Public Right-of-Way.

- 2.3 **No Priority.** This Franchise Agreement does not establish any priority for the use of the streets and Public Rights-of-Way by Oncor or by any present or future recipients of franchise agreements, franchisees or other permit holders. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other permit holders, as determined by City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Texas.
- 2.4 **Area of the City Affected.** This Franchise shall extend to and include any and all territory that is within the corporate limits of the City that have been certificated to Oncor by the Public Utility Commission of Texas. Additionally, this franchise shall extend to any and all territory that is annexed by the City during the term of this Franchise and certificated to Oncor by the Public Utility Commission of Texas. In the event of disannexation, this Franchise shall be reduced to the territory that continues to be in the City.
- 2.5 **City's Rights In Public Rights-of-Way.** Oncor acknowledges that by this Franchise Agreement it obtains no rights to or further use of the Public Rights-of-Way other than those expressly granted herein. Oncor acknowledges and accepts at its own risk, provided that City has the legal authority for the use or uses in question, that City may make use in the future of the Public Rights-of-Way in which the Electric Distribution and Transmission System is located in a manner inconsistent with Oncor's use of such Public Rights-of-Way and, in that event, Oncor shall only be entitled to compensation or reimbursement from City as provided by Sections 2.8 and 4.4.
- 2.6 **Compliance With Law.** Oncor shall be subject to and comply with all applicable and controlling local, state and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time

in the future. This franchise agreement shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Public Utility Regulatory Act, or other state or federal law. 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 Oncor believes is contrary to any federal, state, or local law or regulation. The City shall provide Oncor with reasonable notice and opportunity to review and comment upon any new or revised City laws, rules, or regulations that impact Oncor's use of the Public Right-of-Way. In constructing, maintaining and operating the Electric Distribution and Transmission System, Oncor shall act in a good and workmanlike manner, observing high standards of engineering and workmanship and using materials of good and durable quality. Oncor shall comply with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition).

- 2.7 Continued Obligations.** This Franchise Agreement does not relieve Oncor of the obligation to obtain permits, licenses and other approvals from City or other units of government, which are required for the construction, repair or maintenance of the Electric Distribution and Transmission System, except in no instance shall Oncor be required to pay permitting fees or bonds related to these permits, licenses or other approval processes.
- 2.8 Use of Poles and Ducts.** Nothing contained in this Franchise shall be construed to require any pole attachments for electric light or power wires or electrical facilities or systems not provided by Oncor to be attached to Oncor's poles or other physical plant by the City, or for the City, nor to require any electric light or power wires or electrical facilities or systems not provided by Oncor to be placed in any duct in Oncor's conduit by the City or for the City. If the City desires pole attachments for electric light or power wires or electrical facilities or systems not provided by Oncor, or if the City desires to place electric light or power wires or communications facilities or systems not provided by Oncor in any Oncor duct, then a further separate, non-contingent agreement with a reasonable fee, shall be prerequisite to such attachments or such use of any Oncor facilities.

**SECTION 3.
TERM OF FRANCHISE**

This Ordinance shall become effective thirty (30) days after its final passage and publication as required by the City Charter, provided that Oncor has timely filed with the City Secretary its written acceptance of this Ordinance and agreement. This franchise agreement expires on August 31, 2013.

**SECTION 4.
PUBLIC RIGHTS-OF-WAY AND CONSTRUCTION**

- 4.1 **Governance.** Use of Public Rights-of-Way by Oncor shall be governed by the City of Plano's Right-of-Way Management Ordinance, as amended and subject to the provisions of Section 2.6.
- 4.2 **Easements.** Any easements over or under private property necessary for the construction or operation of the Electric Distribution and Transmission System shall be arranged by Oncor. Any easements over or under property owned by City other than the Public Rights-of-Way shall be separately negotiated with City, except that Oncor may use general utility easements that are dedicated for compatible uses on property owned by City.
- 4.3 **Placement of Fixtures.** Oncor shall not place poles, towers or similar fixtures where the same will unduly interfere with any existing gas, electric, or telephone fixture, water hydrant or main, drainage facility or sanitary sewer, and all such poles, towers and similar facilities shall be placed in such manner as not to unreasonably interfere with the usual travel or use of the streets.
- 4.4 **Relocation of Facilities.** If Company is required by City to remove or relocate its poles, towers, or other facilities for any reason other than the widening or straightening of a street by City, Company shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.
- 4.5 **Abandonment.** If City abandons any Public Right-of-Way in which Oncor has facilities,

the abandonment and quitclaim is without prejudice to any and all improvements, facilities, equipment or lines of any public utility, municipal or otherwise, if any, which are presently located within any portion of the Right-of-Way. Oncor shall have the continued right to locate, maintain, repair, reconstruct, preserve or relocate improvements, facilities, equipment or lines in such portion of the Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Oncor to remove or relocate its facilities, 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 Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 5.

LIABILITY INSURANCE

- 5.1 Company's assurance of its obligations and risks undertaken pursuant to this franchise shall be met by providing insurance in accordance with the City's Right-of-Way Management Ordinance, as amended; provided, however, that Oncor may instead meet the insurance requirements of the Right-of-Way Management Ordinance either by a City approved formal plan of self-insurance maintained in accordance with sound accounting and risk-management practices 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 (\$5,000,000.00) per occurrence and ten million dollars (\$10,000,000.00) aggregate. To the extent that coverage is maintained on a claims made form, the minimum limits are ten million dollars (\$10,000,000) per occurrence and twenty million dollars (\$20,000,000) aggregate. This coverage shall include the following:
 - (1) Products/completed operations to be maintained for one (1) year.
 - (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 (\$1,000,000.00) combined single limit. 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 (\$500,000.00) Coverage B employers liability is required. Oncor must provide the City of Plano with a waiver of subrogation for worker's compensation claims.
 - D. Oncor must name the City of Plano, which includes all authorities, commissions, divisions, and departments, as well as elected and appointed officials, agents, and volunteers, as an additional insured under the coverage required under Sections 5.1.A and 5.1.B. The certificate of insurance must state that the City of Plano is an additional insured.
 - E. The insurance coverage required under Sections 5.1.A and 5.1.B must include coverage for work performed by Oncor's contractors and subcontractors.
- 5.2 The Company will provide proof of insurance in accordance with this franchise within 30 days of the effective date of the franchise. Company will not be required to furnish separate proof when applying for permits.

SECTION 6.

INDEMNIFICATION AND LIABILITY FOR DAMAGES

- 6.1 In consideration of the granting of this franchise, Company agrees to indemnify, defend, and hold harmless the City, its, officers, agents and employees (the "Indemnitees") from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's operations; except that the indemnity provided for in this paragraph shall not apply to any liability determined by a court of competent jurisdiction to have resulted from the sole negligence or intentional acts or omissions of the City, its officers, agents and employees. In the event of joint and concurrent negligence or fault of both the Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively 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 the Company and the City, responsibility for all costs of defense shall be apportioned between the City and Company based upon the comparative fault of each.

- 6.2 In fulfilling its obligation to defend and indemnify City, Oncor shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. Oncor shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Oncor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Oncor shall be liable for all defense costs incurred by City, except as set out in Section 6.1.

**SECTION 7.
COMPENSATION TO THE CITY**

- 7.1 In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right 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, permit, license and inspection fees or charges, street taxes, street or alley rentals, bonds, certain regulatory expenses incurred prior to July 26, 2008, and otherwise subject to reimbursement under Section 33.023 of the Public Utility Regulatory Act, Title 2, Texas Utilities Code ("PURA"), as amended, or any similar or successor law, 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, Oncor shall pay to the City the following:

- A. The franchise fee due from Oncor shall be a sum comprised of the following:
- (1) the Municipal Franchise Charge. The first payment hereunder shall be due and payable on or before August 31, 2004, based on each kilowatt hour of electricity delivered by Oncor during the twelve-month period ending July 31, 2004, to each retail customer

whose consuming facility's point of delivery is located within the City's municipal boundaries. This initial payment and the payment provided on or before August 31 of each year throughout the life of this franchise is for the rights and privileges granted hereunder for the twelve month period (September 1 – August 31) succeeding the payment date. Thereafter, on or before August 31 of each year throughout the life of this franchise, Oncor shall pay to the City a Municipal Franchise Charge based on the preceding twelve month period beginning August 1 and ending July 31. The final payment hereunder shall be due and payable on or before August 31, 2012 and will be for the right and privilege from September 1, 2012 through August 31, 2013; and

(2) a sum equal to four percent (4%) of gross revenues received by Oncor from services identified in its "Tariff of Retail Delivery Service," Section 6.1.2, "Discretionary Service Charges," Items DD1 through DD24, that are for the account or benefit of an end-use retail electric consumer.

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

(b) The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges" received during the preceding calendar year. The initial payment under this franchise will be due on or before April 30, 2004 and will be based on January 1 – December 31, 2003. The final payment hereunder will be due on or before April 30, 2013 and will be based on January 1 – December 31, 2012.

B. Oncor Franchise Fee Recovery

- (1) Oncor may file a tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges as provided in Subsection 7.1.A.(2) above.
 - (2) 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 Oncor; 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 appeal in support of the 100% recovery of such franchise fees by Oncor.
 - (3) 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 Oncor.
- C. Notwithstanding anything to the contrary in Section 7.1.A hereof, if Oncor files general rate cases and the City incurs cumulative expenses, otherwise reimbursable by Oncor under Section 33.023 of PURA, as amended, or similar or successor law, in excess of \$3 million, then in such event, Oncor shall reimburse all of the expenses incurred by the City in connection with all general rate cases filed during the period beginning June 1, 1993, and ending July 26, 2008 in excess of said \$3 million. The term "general rate case" as used in this Ordinance means a rate case initiated by Oncor in which it seeks to increase its rates charged to a substantial number of its customer classes in the City and elsewhere in its system and in which Oncor's overall revenues are determined in setting such rates. The City agrees to exercise reasonable best efforts, considering the facts and circumstances, to keep its expenses on average to under \$1,000,000 per general rate case.

- 7.2 With each payment of compensation required by Section 7.1.A.(1), Oncor shall furnish to the City a statement that provides the franchise basis period, the total amount of kilowatt

hours of electricity delivered during the franchise basis period by Oncor to retail customers whose consuming facility's point of delivery is located within the City's municipal boundaries, and the privilege period covered by that payment. Oncor hereby stipulates that its reports may be treated by the City exactly as if they were filed under oath.

- 7.3 With each payment of compensation required by Section 7.1.A.(2), Oncor shall furnish to the City a statement reflecting the total amount of gross revenues received by Oncor within the City's municipal boundaries for services identified in its "Tariff of Retail Delivery Service," Section 6.1.2, "Discretionary Service Charges," Items DD1 through DD24. Oncor hereby stipulates that its report may be treated by the City exactly as if it was filed under oath.
- 7.4 Should any payment due date required by this Franchise 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.
- 7.5 If either party discovers that Oncor has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined and the City shall be paid by Oncor within thirty (30) calendar days of such discovery. Any overpayment to the City through error or otherwise will, at the option of the City, either be refunded within thirty (30) days of discovery OR be offset against the next payment due from Oncor. Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this Franchise Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.
- 7.6 Interest on late payments shall be calculated in accordance with the interest rate for customer deposits established by the PUC in accordance with Texas Utilities Code Section 183.003 as amended for the time period involved.
- 7.7 No taxes, fees, or other payments by Oncor to the City, including, but not limited to, ad valorem taxes, shall reduce the Franchise Fees payable to City hereunder, except as

agreed to by the City in Section 7.5.

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

A. City shall have the option to:

- (1) Have Oncor select, within 30 days of the City's request, any or all portions of the franchise agreement with the other municipality or comparable provisions that, at Oncor's sole discretion, must be considered in conjunction with the different method of the calculation of franchise fees included in that other franchise agreement; and
- (2) Modify this franchise to include both the different method of calculation of franchise fee found in the franchise agreement with the other municipality and all of the other provisions identified by Oncor pursuant to Section 7.8.A. 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 Oncor pursuant to Section 7.8.A.(1).

B. City may not exercise the option provided in Section 7.8.A if any of the provisions that would be included in this franchise are, in Oncor's sole opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or Charter of City.

- C. In the event of a regulatory disallowance of the increase in franchise fees paid pursuant to City's exercise of its option under this Section, then at any time after the regulatory authority's entry of an order disallowing recovery of the additional franchise fee expense in rates, Oncor shall have the right to cancel the modification of the franchise made pursuant to this Section, and terms of the franchise shall immediately revert to those in place prior to City's exercise of its option under this Section.
- D. Notwithstanding any other provision of this franchise, should the City exercise the option provided in Section 7.8.A, and then adopt any rule, regulation, ordinance, law, Code, or Charter of City that, in Oncor's sole opinion, is inconsistent with or in any manner contrary to the provisions included in this franchise pursuant to Section 7.8.A, then Oncor shall have the right to cancel all of the modifications to this franchise made pursuant to this Section and, effective as of the date of the City's adoption of the inconsistent provision, the terms of the franchise shall revert to those in place prior to City's exercise of its option under this Section.
- E. The provisions of this Section apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, such as the timing of such payments. The provisions of this Section do not apply to differences in the franchise fee factor that result from the application of the methodology set out in Section 33.008(b) of PURA or any successor methodology.

**SECTION 8.
ACCOUNTING MATTERS**

- 8.1 **Maintenance of Records.** Oncor shall keep accurate books of account at its principal office in Dallas, Texas, for the purpose of determining the amount due to the City under this Franchise Agreement.
- 8.2 **Audit.** Pursuant to Section 33.008(e) of the Public Utility Regulatory Act, the City may conduct an audit or other inquiry in relation to a payment made by Oncor less than two (2) years before the commencement of such audit or inquiry. As a part of the audit process, the City may inspect Oncor's books of accounts relative to the City during

regular business hours and on ten (10) business days' prior written notice or as otherwise agreed to by the parties. The City may also request the identity of the service provider and the type of service delivered for any service in addition to electricity delivered directly to retail customers through Oncor's electricity-conducting facilities that are located in the City's streets, alleys, or public ways and for which Oncor receives compensation.

8.3 Access to Records. All records deemed by City to be reasonably necessary for such audit performed pursuant to Section 8.2 shall be made available by Oncor at a location in the City of Dallas. Oncor agrees to give its full cooperation in such audit and shall provide complete responses to inquiries within thirty (30) calendar days of a written request, unless otherwise agreed to by the City and Oncor.

A. If as the result of any City audit, Oncor 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 7.5 and 7.6.

B. If as a result of a subsequent audit, initiated within two years of an audit which resulted in Oncor making a payment to the City due to an underpayment of the Franchise Fee of more than 5%, Oncor 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 11.1.A-D.

8.4 The City agrees to hold in confidence any non-public information it obtains from Oncor to the fullest extent permitted by law. Where a court or regulatory agency order requires the City to release non-public information, City shall provide notice to Oncor prior to releasing the information so as to allow Oncor adequate time to pursue available remedies for protection. City is not liable to Oncor for the release of the information. If the City receives a request under the Texas Public Information Act that includes Oncor's proprietary information, City will notify the Texas Attorney General of the proprietary nature of the document(s). The City also will provide Oncor with a copy of this notification, and thereafter Oncor is responsible for establishing that an exception under the Act allows the City to withhold the information.

- 8.5 Acceptance of any payment shall not estop City from timely asserting that an amount paid is not the amount due under this Franchise Agreement.

SECTION 9.
RIGHT OF RENEGOTIATION

- 9.1 Should either Oncor or the City have cause to believe that a change in circumstances relating to the terms of this franchise may exist, it may request and the other party shall provide it with a reasonable amount of information to assist in determining whether a change in circumstances has taken place.
- 9.2 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. "Good faith," for the purpose of this Franchise, shall mean an objective, diligent, timely, and responsible discourse on the issue(s) involved and a resolute attempt to settle said issue(s). The obligation to engage in such negotiations does not obligate either party to agree to an amendment of the Franchise as a result of such negotiations. A failure to agree does not show a lack of good faith. If, as a result of renegotiation, the City and Oncor agree to a change in a provision of this Ordinance, the change shall become effective upon passage of an Ordinance by the City in accordance with the City Charter and acceptance of the amendment by Oncor.

SECTION 10.
DEFAULT

- 10.1 **Events of Default..** The occurrence, at any time during the term of the Franchise Agreement, of any one or more of the following events, shall constitute an Event of Default by Oncor under this Franchise Agreement:
- A. The failure of Oncor to pay the Franchise Fee on or before the due dates specified herein.
 - B. Oncor's breach or violation of any of the material terms, covenants,

representations or warranties contained herein or Oncor's failure to perform any material obligation contained herein.

10.2 Uncured Events of Default.

- A. Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to City or a third party, Oncor 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 11.
- B. Upon the occurrence of an Event of Default by Oncor which cannot be cured by the immediate payment of money to City or a third party, Oncor shall have one hundred twenty (120) 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 11.
- C. If the Event 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 11.

SECTION 11.

REMEDIES

- 11.1 Remedies.** The City shall notify the Company in writing, of an alleged Uncured Event of Default as described in Section 10.2, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within thirty (30) calendar days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or in a written response to the City either present facts and arguments in refuting or defending such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure. In the event that such cure is not forthcoming, City shall be entitled to exercise any and all of the following cumulative remedies:

- A. The commencement of an action against Oncor at law for monetary damages.
- B. 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.
- C. The commencement of proceedings to seek revocation of Oncor's certificate of convenience and necessity to serve any or all of Oncor's service area located within the City of Plano.
- D. The termination of this franchise in accordance with the provisions of Section 12.

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

SECTION 12.

TERMINATION

In accordance with the provisions of Section 11.1 D, this Franchise Agreement may be terminated upon thirty business day's prior written notice to Oncor. City shall notify Oncor 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 Oncor shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Oncor may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction. Upon timely appeal by Oncor of the City Council's decision terminating the franchise, the effective date of such termination shall be either when such appeal is withdrawn or a court 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 Oncor's

right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission in accordance with the Texas Utilities Code.

**SECTION 13.
ASSIGNMENT**

The rights granted by this Franchise Agreement inure to the benefit of Oncor and any parent, subsidiary, affiliate or successor entity now or hereafter existing. The rights shall not be assignable without the express written consent of the City Council of the City and such consent shall not be unreasonably withheld or delayed, except Oncor may assign its rights under this Franchise Agreement to a parent, subsidiary, affiliate or successor entity without such consent, so long as (i) such parent, subsidiary, affiliate or successor assumes all obligations of Oncor hereunder, and (ii) is bound to the same extent as Oncor hereunder. Any required consent is to be evidenced by an ordinance of the City Council of the City that fully recites the terms and conditions, if any, upon which consent is given. Oncor shall give the City written notice of any such assignment to a parent, subsidiary, affiliate or successor entity.

**SECTION 14.
NOTICES**

14.1 **Notices.** All notices required by this Franchise Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by overnight delivery service as just described, addressed as follows:

If to the City:

City of Plano

Attn: City Manager's Office

P. O. Box 860358

Plano, TX 75086-0358

With a Copy to:

City of Plano

Attn: City Attorney's Office

P. O. Box 860358

Plano, TX 75086-0358

If to Oncor:

Oncor Electric Delivery Company

- 14.2 **Date of Notices; Changing Notice Address.** Notices shall be deemed received: (a) upon receipt in the case of personal delivery; (b) three (3) days after deposit in the mail; or (c) the next day in the case of facsimile or overnight delivery. From time to time, either party may designate another address for this purpose by written notice to the other party delivered in the manner set forth above.

SECTION 15.

MISCELLANEOUS

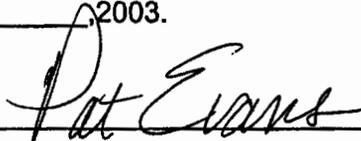
- 15.1 **Amendment Of Franchise Agreement.** This Franchise Agreement may not be amended except pursuant to a written instrument signed by both parties.
- 15.2 **Governing Law.** The laws of the State of Texas shall govern the interpretation validity, performance and enforcement of this Franchise Agreement.
- 15.3 **Force Majeure.** In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.
- 15.4 **Exhibits.** All exhibits referred to in this Franchise Agreement and any addenda, attachments, and schedules which may from time to time be referred to in any duly executed amendment to this Franchise Agreement are by such reference incorporated in

this Franchise Agreement and shall be deemed a part of this Franchise Agreement.

- 15.5 **Successors and Assigns.** This Franchise Agreement is binding upon the successors and assigns of the parties hereto.
- 15.6 **Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Franchise Agreement, such party shall not unreasonably delay or withhold consent.
- 15.7 **Waiver of Breach.** The waiver by either party of any breach or violation of any Provision of this Franchise Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other Provision of his Franchise Agreement.
- 15.8 **Representations and Warranties.** Each of the parties to this Franchise Agreement represent and warrant that at the time of signing of this Franchise Agreement it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.
- 15.9 **Entire Agreement.** This Franchise Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Franchise Agreement that are not fully expressed herein.
- 15.10 **No Third Party Beneficiaries.** This Franchise Agreement is for the benefit of Oncor, any transferee or assignee in accordance with the provisions contained herein, and the City, and not for the benefit of any third party. No provision of this Franchise Agreement shall be construed as creating any third party beneficiaries.
- 15.11 **Repealer Clause.** This Ordinance shall supersede any and all other franchises granted by the City to Oncor, its predecessors and assigns.

- 15.12 Severability Clause.** If any provision, section, subsection, sentence, clause or phrase of this Ordinance is for any reason found unconstitutional, void or invalid or for any reason unenforceable, the City and Oncor intend that the remaining portions of this Ordinance are not affected thereby, it being the intent of the City and Oncor in accepting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to this end, all provisions of this Ordinance are declared severable.
- 15.13 Savings Clause.** The repeal of any ordinance or part of any ordinance affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this Ordinance.
- 15.14 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, all as required by law.
- 15.15. Acceptance.** In order to accept this franchise, Oncor must file its written acceptance of this franchise ordinance with the City Secretary within forty-eight (48) hours of the ordinance's final passage and approval by City Council. In order to facilitate Oncor's timely review and acceptance, City agrees to provide Oncor with both a hard copy and an electronic copy of the ordinance within twenty-four (24) hours after City Council's first and second reading. If this franchise is not accepted in accordance with this Section, then this franchise is considered null and void.

PASSED AND APPROVED ON FIRST READING by the City Council of the City of
Plano, Texas, on the 14th day of OCTOBER, 2003.



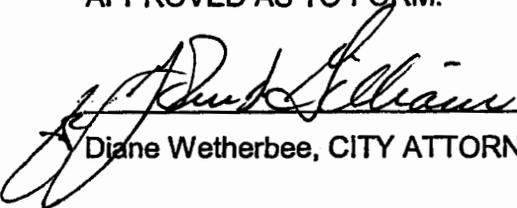
Pat Evans, MAYOR

ATTEST:



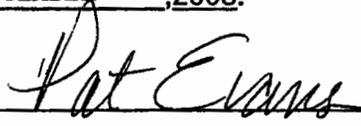
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:



Diane Wetherbee, CITY ATTORNEY

FINALLY PASSED AND APPROVED ON SECOND READING by the City Council of the
City of Plano, Texas, on the 8th day of DECEMBER, 2003.



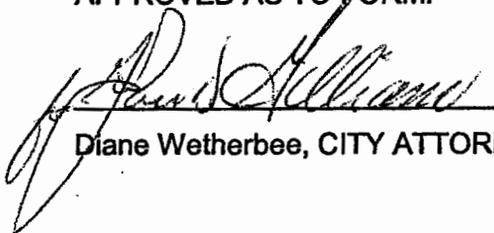
Pat Evans, MAYOR

ATTEST:



Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:



Diane Wetherbee, CITY ATTORNEY

DATED:

First Reading: October 14, 2003

Second Reading: ~~November~~ 8, 2003
December

ACCEPTANCE

WHEREAS, the City Council of the City of Plano, Texas, did on the 8th day of December, 2003, enact an ordinance entitled:

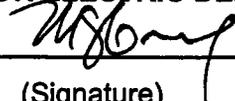
AN ORDINANCE OF THE CITY OF PLANO, TEXAS, GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY, A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, AVENUES, ALLEYS, ROADS, HIGHWAYS, SIDEWALKS, EASEMENTS AND OTHER PUBLIC RIGHTS-OF-WAY OF THE CITY OF PLANO, TEXAS FOR THE PURPOSES OF CONSTRUCTING AND OPERATING AN ELECTRIC DISTRIBUTION AND TRANSMISSION SYSTEM; SETTING FORTH TERMS AND CONDITIONS TO GOVERN THE FRANCHISE; PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE AND AN EFFECTIVE DATE; and

WHEREAS, said ordinance was on the 8th day of December, 2003, duly approved by the Mayor of said City and, the Seal of said City was thereto affixed and attested by the City Secretary.

NOW THEREFORE, in compliance with the terms of said ordinance as enacted, approved and attested, Oncor Electric Delivery Company hereby accepts said ordinance and files this its written acceptance with the City Secretary of Plano, Texas in her office.

Dated this 9th day of December, 2003.

ONCOR ELECTRIC DELIVERY COMPANY

BY: 

(Signature)

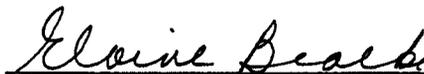
MS GREENE

(Print name)

vice chairman

(Title)

Acceptance filed in the office of the City Secretary of Plano, Texas this 9th day of December, 2003.



City Secretary