

# Memorandum



CITY OF DALLAS

DATE March 22, 2024

TO Honorable Members of the Government Performance and Financial Management Committee: Chad West (Chair), Paula Blackmon (Vice Chair), Cara Mendelsohn, Jesse Moreno, and Jaime Resendez

SUBJECT **March 27, 2024, Upcoming Agenda Item – 24-847 – Franchise Agreement with Oncor Electric Delivery Company LLC**

The March 27, 2024, City Council agenda includes an item to approve a franchise agreement with Oncor Electric Delivery Company LLC. Oncor provides electric transmission and delivery service with the City of Dallas pursuant to a Certificate of Convenience and Necessity issued by the Public Utility Commission of Texas and City of Dallas. The current ordinance (ordinance no. 27485) was granted February 11, 2009 and expires on March 31, 2024.

On February 7, 2024, the City Council was briefed on this item. Additionally, this item was deferred from the February 28, 2024, City Council agenda to March 27, 2024, and staff was asked to negotiate a 5-year term and discuss Oncor compliance with the Americans with Disabilities Act (ADA). The attached briefing provides a summary of the changes negotiated. The ordinance has been amended to reflect the updated term.

If you have any questions, please contact Nick Fehrenbach, Manager of Regulatory Affairs in Budget & Management Services at [n.fehrenbach@dallas.gov](mailto:n.fehrenbach@dallas.gov).

A handwritten signature in blue ink that reads "Jack Ireland".

Jack Ireland  
Chief Financial Officer

[Attachment]

c: Honorable Mayor and Members of the City Council  
T.C. Broadnax, City Manager  
Tammy Palomino, City Attorney  
Mark Swann, City Auditor  
Biliera Johnson, City Secretary  
Preston Robinson, Administrative Judge  
Kimberly Bizzor Tolbert, Deputy City Manager

Jon Fortune, Deputy City Manager  
Majed A. Al-Ghafry, Assistant City Manager  
M. Elizabeth (Liz) Cedillo-Pereira, Assistant City Manager  
Dr. Robert Perez, Assistant City Manager  
Genesis D. Gavino, Chief of Staff to the City Manager  
Directors and Assistant Directors



**City of Dallas**

# **Oncor Electric Delivery Company LLC Franchise Amendment**

**Government Performance  
and Financial Management  
Committee  
March 25, 2024**

**Nick Fehrenbach  
Manager of Regulatory Affairs  
Budget and Management Services**

# Overview



- Update the Council on the Oncor Electric Delivery Company, LLC (Oncor) franchise extension
  - Compliance with Americans With Disabilities Act (ADA)
  - Franchise Fee
  - Key terms of proposed franchise extension
  - Recommendation



# Compliance with ADA



- Proposed franchise extension requires Oncor to comply with the Americans with Disabilities Act (ADA)
  - Oncor has agreed to work with the City to resolve any sidewalk obstructions not in compliance with the ADA caused by their facilities once those sites are identified
  - Oncor has a process to relocate non-ADA compliant poles when notified
    - Oncor has 218,530 poles within the City of Dallas
    - Oncor has provided the City with a GIS file containing the location of their poles



# Compliance with ADA



- Since 2004, Oncor has been submitting permits to the City of Dallas prior to placement of new utility poles or relocation of utility poles as part of City capital projects
  - ADA issues are mitigated through this process
- City is working with Oncor to identify poles placed prior to 2004 that may be in noncompliance with the ADA
- Public Works will continue using “Sidewalk Utility Obstruction” to address poles that are not in compliance



# Franchise Fee



- Budget and Management Services will issue an RFP for a consultant to perform a right-of-way (ROW) valuation and franchise fee study in the second quarter of 2024
  - Results of the study will be used to negotiate the franchise fee to be charged to Oncor going forward
  - Results will be included in the next franchise agreement (approximately 5 years)
- Any fee increase included in the next franchise agreement is subject to PUC approval in the next general rate case (approximately 5 years)





# Proposed Extension of Oncor Franchise



- Oncor desires to extend the term of the current franchise
  - Staff has met with Oncor and negotiated the terms of a franchise extension
    - Franchise will be extended for 5 years
      - New expiration date March 31, 2029
    - Section 3, Regulation by City and Placement of Facilities
      - Amended to clarify that Oncor will comply with the Americans with Disabilities Act
    - Section 4, Construction and Maintenance
      - Amended to clarify that Oncor will comply with the City's standard construction details and pavement cut and repair manual
    - Section 5, Joint use of poles trenches and conduits
      - Amended to ensure that wires attached to Oncor poles by others will not block signals at signalized intersections
    - Section 9, Compensation
      - Amended to remove unnecessary language



# Next Steps



- March 27, 2024, City Council agenda item to adopt City Manager recommended franchise extension as negotiated by staff





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

**AN ORDINANCE AMENDING ORDINANCE NO. 27485 WHICH GRANTS A FRANCHISE TO ONCOR ELECTRIC DELIVERY COMPANY LLC, BY EXTENDING THE TERM AND PROVIDING FOR ITS RENEWAL WITH MINOR MODIFICATIONS; FURTHER PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR ACCEPTANCE BY ONCOR ELECTRIC DELIVERY COMPANY LLC.**

**WHEREAS**, on February 11, 2009 the City Council adopted Ordinance No. 27485, an ordinance granting Oncor Electric Delivery Company LLC (“**Oncor**” or “**Company**”), a franchise for a period of fifteen (15) years the right, privilege, and franchise to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public utility easements, and public ways (“Public Rights-of-Way”) of the City of Dallas, Texas, (herein called “City”), electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for Company’s own use) (“System”) for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, (collectively, the “**Franchise**”); and

**WHEREAS**, Ordinance No. 27485 expires on March 31, 2024; and

**WHEREAS**, the City and Oncor wish to extend the term of the Franchise and with certain amendments as specified in this Ordinance;

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

**Section 1.** The extension to the term of Ordinance No. 27485 of the City until March 31, 2029 is hereby approved and agreed to by Oncor and the City; provided that, unless written notice of cancellation is given by either party hereto to the other not less than sixty (60) days before the March 31, 2029 expiration of this Franchise amendment, 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, provided that, in no event shall the maximum term under this franchise agreement exceed forty (40) years..

**Section 2.** In all respects, except as specifically and expressly amended by this Ordinance, the Franchise shall remain in full force and effect according to its terms until the Franchise expires or otherwise terminates in accordance with this Ordinance.

- Section 3.(d) in Ordinance 27485 is amended to now state “In accordance with direction given by the authority of the governing body under the police and regulatory powers of the City, the placement of poles and excavations and other construction in the Public Rights-of-Way shall interfere as little as practicable with the use of the streets, sidewalks, and alleys. Company has the right to request City Council review of this or any actions concerning Company use of the Public Rights-of-Way. Placement shall comply with the city’s Street Design Manual, as amended which includes compliance with the Americans with Disabilities Act of 1990, as amended (“ADA”). Poles placement shall not obstruct or interfere with the placement of ramps at roadways intersections, trail crossings, designated crosswalks, or similar pedestrian facilities in a way that would interfere with the intended use of those facilities, as provided by the ADA.”
- Section 4.(a) in Ordinance 27485 is amended to now state “Except in an emergency, the Company shall comply with applicable City ordinances and rules pertaining to notification **including but not limited to those found in the City’s Standard Construction Details and Pavement Cut and Repair Standard Manual**, when excavating in any Public Rights-of-Way. The City shall be notified as soon as practicable regarding work performed under emergency conditions and Company shall comply with the City’s reasonable requirements for restoration of the excavated area in compliance with the city’s Standard Construction Details, Pavement Cut and Repair Standard Manual and other applicable manuals, as amended.”
- Section 5.(b) in Ordinance 27485 is amended to now state “The Company shall have authority to require that all work undertaken, by or on behalf of another person or corporation, on any Company poles shall be performed in accordance with the following safety and engineering standards; (1) the National Electrical Safety Code; (2) the rules and regulations of the Occupational Safety & Health Administration (“OSHA”); (3) other applicable laws or regulations of any governing authority or regulatory body, having jurisdiction; and (4) Company’s standards and procedures, and shall not interfere with the erection, replacement, operation, repair, or maintenance of the wires and appurtenances of the persons or corporation occupying the poles and must ensure that no permitted wires obstruct the view of traffic signal heads at signalized intersections. Company shall not be required to attach its wires to the poles of another person or corporation or to permit the wires of another person or corporation to be attached to Company’s poles if it can be satisfactorily shown that Company will be subjected to increased risks of interruption of service or liability for accidents, or if the poles, wire, and appurtenances of such other person or corporation are not of the character, design, and construction required by or are not being maintained in accordance with modern practice, or if sufficient clearance or space is not available on the pole.”

- The first paragraph of Section 9 in Ordinance 27485 is amended to now state “As compensation for the rights and privileges herein conferred, Company shall pay to the City each quarter a sum of money equal to a franchise fee factor as authorized by Section 33.008(b) of PURA multiplied by each kilowatt hour (kWh) of electricity delivered by Company to each customer whose consuming facility’s point of delivery is located within the City’s municipal boundaries. The current factor at the signing of this franchise is \$0.002753 per kilowatt hour of electricity as a result of the Agreement to Resolve Outstanding Franchise issues dated January 27, 2006. However, such factor may be revised from time to time, as agreed upon between Company and City, in accordance with Section 33.008 of PURA or successor statute.”

**Section 3.** 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 or agency of competent jurisdiction, such illegality or unconstitutionality shall not affect the legality and enforceability of any of the remaining portions of this Ordinance.

**Section 4.** It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given by City as required.

**Section 5.** This Ordinance shall be in full force and effect following (i) its adoption by City; and (ii) Company filing its written acceptance of this Ordinance with the City Secretary’s office within sixty (60) calendar days following adoption of this Ordinance by the City.

RECOMMENDED BY

\_\_\_\_\_  
JACK IRELAND  
Chief Financial Officer

APPROVED AS TO FORM:  
TAMMY L. PALOMINO  
City Attorney

BY \_\_\_\_\_  
Assistant City Attorney



**STATE OF TEXAS**

**COUNTY OF DALLAS**

**CITY OF DALLAS**

I, **ROSA A. RIOS**, Assistant City Secretary, of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

**FILE NO. 09-0463**

filed in my office as official records of the City of Dallas, and that I have custody and control of said records.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the 2<sup>ND</sup> day of **April, 2009**.

A handwritten signature in cursive script, appearing to read 'Rosa A. Rios', written over a horizontal line.

**ROSA A. RIOS**  
**ASSISTANT CITY SECRETARY**  
**CITY OF DALLAS, TEXAS**

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OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

FEBRUARY 11, 2009

09-0463

**Oncor Electric Delivery Company LLC**

**Note:** Addendum Item Nos. 12 and 13 must be considered collectively.

Addendum addition 12: Authorize adoption of a compromise, settlement and release agreement between City of Dallas and Oncor Electric Delivery Company LLC - Estimated Annual Revenue: \$500,000

Addendum addition 13: An ordinance granting a franchise to Oncor Electric Delivery Company LLC, for a term of fifteen years to provide electric distribution services within the City and providing for compensation - Estimated Annual Revenue: \$48,000,000

Approved as part of the consent agenda.

Assigned ORDINANCE NO. 27485

**WHEREAS** Oncor Electric Delivery Company LLC (formerly known as Texas Utilities Inc.) has provided electric delivery service in Dallas in accordance with City franchise Ordinance No. 21666, as amended; and

**WHEREAS** With the adoption of SB7 in 1999 by the State Legislature, the electric industry was deregulated; and as part of the deregulation process SB7 prescribed a franchise fee methodology based on a fixed fee per kWh delivered within the franchise area; and

**WHEREAS** In June of 2000 the City of Denton and 36 other Texas cities that did not include Dallas (the Litigating Cities) sued TXU Electric (n.k.a Oncor Electric Delivery Company LLC) alleging that Oncor had underpaid franchise fees, and Denton and the other cities claimed that Oncor had inappropriately excluded certain categories of revenue from gross receipts used to calculate franchise fees prior to deregulation (the "Litigation") and The City of Dallas was not a Litigating City due to differences in its franchise language compared to the franchise language of other cities; and

**WHEREAS** The franchise fees at issue in the Litigation were those paid on Contributions In Aid of Construction (CIAC) and certain other discretionary service charges; and

**WHEREAS** The Litigating Cities and Oncor reached a settlement of the Litigation in 2002 resulting in a lump sum payment to the Litigating Cities, additional fees being paid to the Litigating Cities going forward and no admission of liability by Oncor; and

**WHEREAS** After months of negotiations, City and Oncor have reached agreement on terms of the renewal of Oncor's franchise and as part of franchise negotiations City staff requested Oncor to pay a 4% franchise fee on discretionary service charges including CIAC, which Oncor is paying currently to the Litigating Cities; and

**WHEREAS** Oncor has agreed to pay these franchise fees to the City as part of the new franchise, on condition that the City adopt a Compromise, Settlement and Release Agreement similar to the one adopted by the litigating cities; and

**WHEREAS** The City of Dallas has never formally claimed that Oncor was obligated to pay to the City of Dallas any of the CIAC or the other fees that were at issue in the Litigation under the franchise nor demanded payment from Oncor of such fees, under Ordinance No. 21666, and any claims that the City of Dallas may have for payment of such fees under Ordinance No. 21666 would be doubtful as to validity and amount. Moreover, under the terms of the renewal of the franchise, the City of Dallas will be receiving consideration that is of reasonably equivalent value to any claims that are authorized for release by this Resolution.

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS::**


**Section 1.** That the City Manager, upon approval as to form by the City Attorney, is hereby authorized to execute a COMPROMISE, SETTLEMENT AND RELEASE AGREEMENT, by whatever name denominated, with Oncor Electric Delivery Company LLC, respecting any claims of the City for CIAC and other fees that were the subject of the Litigation for the period during which Oncor's franchise has been and will be effective under Ordinance No. 21666.

**Section 2.** That the City Controller is authorized to deposit revenues received from Oncor Electric Delivery LLC to Fund 0001, Dept. BMS, Unit 1246, Revenue Code 8203.

**Section 3.** That this resolution shall take affect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas and it is accordingly so resolved.

APPROVED BY  
CITY COUNCIL

FEB 11 2009

  
City Secretary



# 09-0463

## ADDENDUM ITEM # 12

**KEY FOCUS AREA:** Make Government More Efficient, Effective and Economical

**AGENDA DATE:** February 11, 2009

**COUNCIL DISTRICT(S):** N/A

**DEPARTMENT:** Office of Financial Services

**CMO:** Dave Cook, 670-7804

**MAPSCO:** N/A

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### SUBJECT

Authorize adoption of a compromise, settlement and release agreement between City of Dallas and Oncor Electric Delivery Company LLC - Estimated Annual Revenue: \$500,000

### BACKGROUND

Oncor Electric Delivery Company (formerly known as Texas Utilities Inc.) provides electric delivery service in Dallas in accordance with City franchise Ordinance No. 21666, as amended.

In 1999 with the adoption of SB7 by the State Legislature the electric industry was deregulated. As part of the deregulation process, SB7 prescribed a franchise fee methodology based on a fixed fee per kWh delivered within the franchise area.

In June of 2000 the City of Denton and 36 other cities sued TXU Electric (n.k.a Oncor Electric Delivery Company LLC) alleging that Oncor had underpaid franchise fees. Denton and the other cities claimed that Oncor had inappropriately excluded certain categories of revenue from gross receipts used to calculate franchise fees prior to deregulation. The City of Dallas was not a party to that suit due to differences in our franchise versus the other cities franchises. At issue were franchise fees paid on Contributions In Aid of Construction (CIAC) and some other discretionary service charges.

The litigating cities and Oncor reached a settlement of the law suit in 2002 resulting in a lump sum payment to the settling cities, additional fees being paid to the litigating cities going forward and no admission of liability by Oncor.

After months of negotiations, City Staff and Oncor have reached agreement on terms of the franchise renewal. As part of franchise negotiations staff requested Oncor to pay a 4% franchise fee on discretionary service charges including CIAC. Oncor is currently paying this fee to the litigating cities that settled with them.

**BACKGROUND** (Continued)

Oncor agreed to pay these franchise fees to the City as part of the new franchise provided that the City adopt a Compromise, Settlement and Release Agreement similar to the one adopted by the litigating cities. Future revenue to the City would be approximately \$500,000 annually to the General Fund.

**PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

The City Council was briefed on February 4, 2009.

**FISCAL INFORMATION**

Estimated Annual Revenue - \$500,000.

ORDINANCE NO. 27485

An Ordinance granting to Oncor Electric Delivery Company LLC a franchise for the purpose of constructing, maintaining, and using an electric delivery utility system in the City of Dallas; regulating the construction work done by the grantee in the city; requiring joint use of poles, trenches, and conduits in certain instances; prescribing the relationship and relative rights between grantee and others with respect to construction in the city and location of facilities; prescribing the duties, responsibilities, and rule making authority of the City Manager and the City with respect to administration of this franchise; requiring certain records and reports and providing for inspections and location of principal offices; reserving to the governing body of the city the right to set charges and rates of grantee; providing the rights and responsibilities of the governing body in setting the rates; providing for enforcement of the franchise; prescribing the compensation to the city from the grantee for the franchise privilege; providing for assignment of the franchise; providing indemnity of the city and its employees; providing for good faith effort; providing for insurance; setting forth the term of the franchise and its renewal; repealing Ordinance No. 21666 as amended; providing for acceptance of the franchise by grantee; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF DALLAS, TEXAS:

SECTION 1. GRANT OF AUTHORITY

There is hereby granted to Oncor Electric Delivery Company LLC, its successors and assigns, (herein called "Company") the right, privilege, and franchise to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public utility easements, and public ways ("Public Rights-of-Way") of the City of Dallas, Texas, (herein called "City"), electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for Company's own use) ("System") 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 16.

SECTION 2. CITY AUTHORITY; DELEGATION

(a) The City Manager of the City of Dallas or designee, if any (City Manager), is the principal City officer responsible for the administration of this franchise and shall oversee and review the operations of Company under this franchise. The City may delegate to the City Manager the exercise of any of the powers conferred upon the City by its charter or by law relating to supervising Company in the exercise of the rights and privileges herein conferred,

including calculation of payments due to the City under this franchise or state law. The City Manager shall have the authority to make and publish, after notice to those affected and an opportunity to submit written comments, such rules and regulations necessary to carry out the duties and power conferred upon the City Manager.

(b) The governing body of the City reserves to itself exclusively the power to establish policy, and to fix and regulate the general charges, rates, and services of the Company, to the full extent that such power is provided in the charter, this franchise, and state law. The City Manager shall have the authority to make and publish, after notice to those affected and an opportunity to submit written comments, such rules and regulations as necessary to assist the governing body of the City in exercising its reserved powers.

(c) The City and the City Manager shall have full authority to administer this franchise and to keep fully informed as to all matters in connection with or affecting the construction, reconstruction, maintenance, operation, and repair of the properties of the Company's System within the City's Public Rights-of-Way. Irrespective of whether City retains original jurisdiction over the rates and services of Company, the City and the City Manager shall maintain full authority to administer this franchise and to oversee and review the operations of the Company pursuant to the terms of this franchise.

(d) The City Manager shall provide written notice to the Company of any designee contemplated by this section. The City Manager may limit, change, or revoke such designation at will by service of written notice to the Company. Such designation, limitation, change or revocation shall not be effective until service of written notice thereof on the Company, except that changes due solely to succession in office or position of a City officer or employee shall become effective immediately and the City shall serve written notice thereof on the Company within a reasonable time.

### SECTION 3. REGULATION BY CITY & PLACEMENT OF COMPANY FACILITIES

(a) Work done in connection with the construction, reconstruction, maintenance, repair or operation of the Company's System shall be subject to and governed by all valid and enforceable ordinances, laws, rules, and regulations of the City and the State of Texas. To the extent that such City ordinances rules and regulations conflict with specific provisions of this Franchise, the Franchise provisions apply, to the extent allowed by law.

(b) Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal, or file suit with respect to any action or decision of the other

party, including ordinances adopted by the City that Company believes is in violation of any federal, state, or local law or regulation. The City will endeavor to provide Company notice and opportunity to review and comment upon proposed ordinances relating to the Public Rights-of-Way.

(c) The governing body of the City may require Company from time to time to place certain facilities underground. If the governing body of the City so requires placement of facilities underground, adequate provision shall be made to compensate Company for the increased costs involved.

(d) In accordance with direction given by the authority of the governing body under the police and regulatory powers of the City, the placement of poles and excavations and other construction in the Public Rights-of-Way shall interfere as little as practicable with the use of the streets, sidewalks, and alleys. Company has the right to request City Council review of this or any actions concerning Company use of the Public Rights-of-Way.

(e) Company shall construct its facilities in conformance with the applicable provisions of the National Electric Safety Code.

#### SECTION 4. CONSTRUCTION AND MAINTENANCE; EXCAVATION

(a) Except in an emergency, the Company shall comply with applicable City ordinances and rules pertaining to notification, when excavating in any Public Rights-of-Way. The City shall be notified as soon as practicable regarding work performed under emergency conditions and Company shall comply with the City's reasonable requirements for restoration of the excavated area.

(b) 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 that is determined to be unnecessarily dangerous to life or property. After receipt of notice, Company shall either cure said dangerous condition within a reasonable time, or provide City with facts or arguments in refuting or defending its position that said condition is not a condition that is unnecessarily dangerous to life or property. In the event City finds that Company has not sufficiently addressed said dangerous condition by either of the aforementioned methods, 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, which as a matter of equity, are specifically enforceable.

(c) 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, notwithstanding this Section or any other provision of this Franchise, 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.

(d) 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.

(e) Company shall promptly restore to as good condition as before working thereon, and to the reasonable satisfaction of the City, Public Rights-of-Way excavated by it.

#### SECTION 5. JOINT USE OF POLES, TRENCHES, AND CONDUITS

(a) Company may be required to attach its wires to poles owned and maintained by another person or corporation, or to permit the wires of another person or corporation to be attached to the poles owned and maintained by the Company, upon reasonable terms and for just compensation. The Company may require another person or corporation to furnish evidence of adequate insurance and provide indemnity covering the Company and adequate bonds covering the performance of the person or corporation attaching to the Company's poles as a condition precedent to giving permission to any person or corporation to attach wires to Company's poles. Company's requirement for such insurance and indemnity must be reasonable.

(b) The Company shall have authority to require that all work undertaken, by or on behalf of another person or corporation, on any Company poles shall be performed in accordance with the following safety and engineering standards; (1) the National Electrical

Safety Code; (2) the rules and regulations of the Occupational Safety & Health Administration ("OSHA"); (3) other applicable laws or regulations of any governing authority or regulatory body, having jurisdiction; and (4) Company's standards and procedures, and shall not interfere with the erection, replacement, operation, repair, or maintenance of the wires and appurtenances of the persons or corporation occupying the poles. Company shall not be required to attach its wires to the poles of another person or corporation or to permit the wires of another person or corporation to be attached to Company's poles if it can be satisfactorily shown that Company will be subjected to increased risks of interruption of service or liability for accidents, or if the poles, wire, and appurtenances of such other person or corporation are not of the character, design, and construction required by or are not being maintained in accordance with modern practice, or if sufficient clearance or space is not available on the pole.

(c) Company may be required by the city to share trench space for cables or ducts with another person or corporation for the placement of cables or wires underground. Compensation to the Company as well as terms of sharing trench space shall be resolved as provided in subsection (a) of this section. Also, Company may require insurance and indemnification as provided in subsection (a). Ducts, cables, or wires shall be placed in trenches in compliance with applicable safety standards and in a manner that does not interfere with Company's cables or wires, as provided in subsection (b).

#### SECTION 6. UNDERGROUND CONDUITS AND POLES -USE BY CITY.

(a) If Company shall from time to time have spare ducts in its underground conduits or space on any of its poles, in the allotted communications space, not then necessary in the conduct of its business, it shall permit the City to use one such duct in each conduit or reasonable communications space on poles, or both, for the City's police and fire alarm wires, traffic control wire or cable, fiber optic lines connecting City facilities or other similar, appropriate non-commercial, governmental use. If additional duct(s) or communications space is not available for City as requested, City shall be responsible for any and all construction costs related to providing the additional duct(s) or communications space as requested. If Company shall construct or extend additional conduits or erect additional poles, the governing body of the City may require the Company to provide one such duct in each conduit, or reasonable communications space on poles, or both, for the City's own use as aforesaid understanding that Company does not reserve conduit or communications space on poles for other parties. In either event, the City shall pay Company a fair rental therefore. The requirements of Section



5(b) apply to City use of Company conduits and poles.

(b) Company shall cooperate with the City at all times by providing timely and complete information regarding the location of conduits and poles, upon request. Company and City shall cooperate and coordinate their efforts to make the most efficient and economical use of facilities.

(c) City shall not sell, lease or otherwise make available its rights to use Company's facilities to any third party for commercial purposes. Such rights are provided solely for the non-commercial, governmental use by the City. However, this restriction shall not prevent the City from using the services of a third party commercial entity to manage or operate the City's facilities on behalf of the City, so long as no resale or other commercial use of such facilities shall occur.

(d) Company is not authorized to license or lease to any person or entity the right to occupy or use the City's Public Rights-of-Way for the conduct of any private business.

#### SECTION 7. CONFORMANCE WITH PUBLIC IMPROVEMENTS

Whenever by reason of any changes, of any street, sidewalk, curb, alley, highway or public way or in the location or manner of constructing any water or wastewater pipe, gas pipe, storm sewer, or other underground or overhead structure for any governmental purpose, it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt, or conform the underground or overhead facilities of Company located in the public right-of-way, such alterations or changes shall be made as soon as practicable by Company when ordered in writing by the City, without claim for reimbursement or damages against the City; provided, however, if said requirements impose a financial hardship upon the Company, the Company shall have the right to present alternative proposals for the City's consideration. The City shall not require Company to remove its facilities from Public Rights-of-Way unless suitable alternatives are available either within other City Public Rights-of-Way or elsewhere agreeable to the City and the Company.

#### SECTION 8. WORK BY OTHERS

(a) The City reserves the right to lay, and permit to be laid, storm sewer, gas, water, wastewater and other pipe lines, cables, and conduits, 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 a Public Rights-of-Way occupied by the Company. The City also reserves the right to

27485

change in any manner any curb, sidewalk, highway, alley, public way or street. In permitting such work to be done, the City shall not be liable to the Company for any damage so occasioned, except as provided in Section 14 hereof, but nothing herein shall relieve any other person or corporation from responsibility for damages to the facilities of Company.

(b) In the event that the governing body of the City authorizes someone other than the Company to occupy space within the Public Rights-of-Way, such grant shall be subject to the rights herein granted or heretofore obtained by the Company. In the event that the governing body of the City shall close or abandon any Public Rights-of-Way which contains existing facilities of the Company, any conveyance of land within such closed or abandoned Public Rights-of-Way shall be subject to the rights herein granted or heretofore obtained by Company. Provided, that the Company may be ordered to vacate any land so conveyed if an alternate route is practicable and if the Company is reimbursed by the person to whom the property is conveyed for the reasonable costs of removal and relocation of facilities.

(c) If the City shall require Company to adapt or conform its facilities, or in any way or manner to alter, relocate, or change its property 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 the Company for any cost, loss, or expense which will be caused by, or arise out of such change, alteration, or relocation of Company's property; provided however, that the City shall never be liable for such reimbursement, due to Company from such other corporation or person.

#### SECTION 9. COMPENSATION

As compensation for the rights and privileges herein conferred, Company shall pay to the City each quarter a sum of money equal to a franchise fee factor as authorized by Section 33.008(b) of PURA multiplied by each kilowatt hour (kWh) of electricity delivered by Company to each customer whose consuming facility's point of delivery is located within the City's municipal boundaries. The current factor at the signing of this franchise is \$0.002753 per kilowatt hour of electricity as a result of the Agreement to Resolve Outstanding Franchise issues dated January 27, 2006. If the Public Utility Commission of Texas denies recovery in Company's rates of compensation paid to City as provided for in the 1/27/2006 Agreement to Resolve Franchise issues, then the factor shall immediately revert to \$0.002622/kWh (factor as calculated in accordance with PURA Section 33.008(b) and in effect on December 31, 2005),

and Company will not seek to impose a refund or credit obligation for franchise fees already paid under the increased franchise fee factors. However, such factor may be revised from time to time, as agreed upon between Company and City, in accordance with Section 33.008 of PURA or successor statute.

- (A) Payment of the compensation provided for in this section will be made on a quarterly schedule and shall be made on or before the due dates listed below for the rights and privileges granted hereunder for the said calendar quarter (Privilege Period) and shall be based upon the kWh delivered in said calendar quarter (Basis Period) as follows :

<u>Payment Due Date</u>	<u>Basis Period</u>	<u>Privilege Period</u>
October 31	July 1 – September 30	October 1 – December 31
January 31	October 1 – December 31	January 1 – March 31
April 30	January 1 – March 31	April 1 – June 30
July 31	April 1 – June 30	July 1 – September 30

The first quarterly payment hereunder shall be due and payable on or before April 30, 2009 and will cover the Basis Period of January 1 through March 31, 2009 for the rights and privileges granted hereunder for the Privilege Period of April 1 through June 30, 2009. The final payment under this franchise is due on or before January 31, 2024 and covers the Basis Period of October 1 through December 31, 2023 for the rights and privileges of January 1 through March 31, 2024.

- (B) Each payment shall be due and payable on or before the due date by electronic funds transfer or by other means that provide immediate available funds on the day the payment is due. If the due date falls on a weekend or holiday, then the payment is due on the business day prior to the due date. In the event any quarterly payment or partial payment is made after 3:00 p.m. on the due date, the Company shall pay the higher of either (1) such amount plus a daily penalty rate equal to 0.00022 multiplied by the total amount past due, as of 3:00 PM on the date paid, or (2) pay such amount plus interest, calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission of Texas in accordance with Texas Utilities Code Section

183.003 for the time period involved, from such due date until payment is received by City.

- (C) Company shall provide to the City at or before the time of payment a report indicating the amount of the payment and the basis upon which the payment is calculated. The report shall be at the level of detail being provided to City at the time this franchise is accepted.

These payments shall be exclusive of and in addition to all other general municipal taxes of whatever nature, including but not limited to ad valorem taxes, sales and use taxes and special taxes and assessments for public improvements. During the quarters for which payments are made to the City as compensation or part compensation for this franchise to use the Public Rights-of-Way of the City for the purpose of engaging in the business of providing electric delivery service, the payments shall be (insofar as the City has legal power so to provide and agree) in lieu of and shall be accepted as payment for all of Company's obligations to pay municipal charges, fees, rentals, pole rentals, wire taxes, inspection fees, easement taxes, franchise taxes, or other charges and taxes of every kind, except ad valorem taxes, sales and use taxes, and special taxes and assessments for public improvements. These payments shall not excuse payment of, and shall be in addition to, reimbursement to the City of allowable rate case expenses by Company under applicable state law or rules.

- (D) a sum equal to four percent (4%) of gross revenues received by Company from services identified as DD1 through DD24 in Section 6.1.2 "Discretionary Service Charges," in its Tariff for Retail Delivery Service (Tariff), effective 1/1/2002, that are for the account and benefit of an end-use retail electric consumer. 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 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 9(D), received during the preceding calendar year. The initial Discretionary Service Charge franchise fee

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amount will be paid on or before April 30, 2010 and will be based on the calendar year January 1 through December 31, 2009. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2025 and will be based on the calendar months January 1 through March 31, 2024.

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, to the extent authorized by law, 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, to the extent authorized by law, 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 Discretionary Service Charges, Company will not be required to continue payment.

#### SECTION 10. RECORDS, REPORTS, AND INSPECTIONS

(a) The Company shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the Public Utility Commission of Texas, or as mutually agreed to by the City and Company. Should the Public Utility Commission of Texas cease to exist, the City retains the right to require the Company to maintain a system of accounts and forms of books and accounts and memoranda prescribed either by the Federal Energy Regulatory Commission or the National Association of Regulatory Utility Commissioners or the successor of either of these organizations as mutually agreed to by the City and Company.

(b) The City shall have the right to, pursuant to Section 33.008(e) of the Texas Utilities Code, 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 and Company may agree to a different timeframe. The City may, if it sees fit, and upon reasonable notice to the Company, have the books and records of the Company examined by a representative of the City to ascertain the correctness of the franchise fee payments made under Section 9.

(c) The City shall retain all of the investigative powers and other rights provided to the City by the charter and state law.

(d) Company will make available public reports it provides to the PUC, FERC, or SEC as City may reasonably require in the administration of this franchise and upon specific request by City.

#### SECTION 11. FRANCHISE AND OTHER VIOLATIONS

Upon evidence being received by the governing body of the City that a violation of this franchise, City charter provision, or ordinance lawfully regulating Company in the furnishing of service hereunder is occurring or has occurred, it shall at once cause an investigation to be made. If the governing body of the City finds that such a violation exists or has occurred, it shall take the appropriate steps to secure compliance.

#### SECTION 12. PRESERVATION OF RECORDS; LOCATION

(a) The Company shall be a legal entity authorized to conduct business in this state under Texas law and having legal capacity and any authority that might be required under state or federal law to operate, construct, reconstruct, and maintain an electric delivery system in the City.

(b) Company shall make available all of its books, records, accounts, documents and papers relevant to (1) Company's use of the Public Rights-of-Way in accordance with this Franchise, and (2) Company's provision of retail electric delivery service within the City of Dallas for purposes of any City audit of franchise fees paid pursuant to this franchise; upon reasonable notice by the City of not less than 20 days, or such longer time as agreed to by City and Company. If Company disagrees that the information requested is relevant, Company and City shall select a third party agreeable to both to assist them in reaching agreement, with the cost, if any, shared equally. If after a reasonable time the parties are not able to reach agreement, City may seek to enforce its audit rights through any available remedies. Such production may be at Company's offices if within the City, appropriate City facilities or other location provided by the Company and agreeable to the City. City agrees that customer-

specific information shall be provided only to City's Auditor, and the City's Auditor shall not provide such information to any other City department, employee or official without Company's prior consent.

(c) The City agrees, to the extent allowed by law, to maintain the confidentiality of any information obtained from Company that the Company, at the time the information is provided to City, has clearly designated as confidential or proprietary. City shall not be liable to Company for the release of any information the City is required by law to release. City shall provide notice to Company of any request for release of non-public information prior to releasing the information to the public so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes Company's proprietary information, City will notify the Texas Attorney General of the proprietary nature of the document(s). The City also will provide Company with a copy of this notification, and thereafter Company is responsible for establishing that an exception under the Act allows the City to withhold the information.

(d) Company will keep its principal office in the City of Dallas.

#### SECTION 13. ASSIGNMENT OF FRANCHISE.

(a) The rights granted by this Franchise inure to the benefit of Company. The Company may, without consent by City, transfer or assign the rights granted by this Franchise to a parent, subsidiary or affiliate, provided that such parent subsidiary or affiliate assumes all obligations of Company hereunder and is bound to the same extent as Company hereunder, and has net capital and liquid assets reasonably equivalent to the Company's as of the month immediately preceding the transfer or there are provided other guarantees or assurances of the transferee's or assignee's financial ability to perform this Franchise reasonably acceptable to the City. Company shall give City written notice thirty (30) days prior to such assignment.

(b) If Company engages in a transaction that requires filing with, and prior approval by, the Public Utility Commission of Texas pursuant to Section 37.154 or Section 39.915 of the Public Utility Regulatory Act or successor statute, Company shall give City notice within five (5) working days of such filing. Nothing in this section shall be construed as to limit the ability of the City to take a position either for or against such approval in any regulatory proceeding.

(c) In the event that the Public Utility Commission of Texas no longer has the authority currently granted in PURA §§ 37.154 or 39.215, City will have the right to approve, by ordinance, the transfer or assignment of the franchise, except as provided in Section 13(a). City agrees that said approval shall not be unreasonably withheld or delayed. Any such



assignment or transfer shall require that said Assignee assume all obligations of Company and be bound to the same extent as Company hereunder. If within the first 90 days after assignment to Assignee, City identifies a failure to comply with a material provision of this Franchise, City shall have the right, after notice and opportunity for hearing before Council, to terminate this Franchise.

#### SECTION 14. INDEMNITY

In consideration of the granting of this franchise, Company agrees to defend, indemnify and hold harmless the City and all of its officers, agents, and employees (the Indemnitees”), from and against all suits, actions, or claims or damages arising out of (i) any injury to or death of any person or persons, or (ii) damages to or loss of any property, in each case occasioned by Company or its officers’, agents’, employees’, or subcontractors’ intentional and/or negligent acts or omissions in connection with Company’s operations in the Public Rights-of-Way or arising out of a breach of any of the terms or provisions of this ordinance by way of strict liability or negligence in the construction, maintenance, operation, or repair of the System; 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 addition, 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. It is understood that it is not the intention of the parties hereto to create liability for the benefit of third parties, but that this agreement shall be solely for the benefit of the parties hereto and shall not create or grant any rights, contractual or otherwise, to any person or entity.

#### SECTION 15. INSURANCE

Company will insure against the risks undertaken pursuant to their franchise including indemnification under Section 14 hereof. Such insurance may be in the form of self-insurance to the extent permitted by applicable law under a Company approved formal plan of self-insurance maintained in accordance with sound accounting practices otherwise, Company shall maintain reasonably adequate insurance covering its obligations of indemnity under Section 14 hereof. A certificate of insurance shall be provided to the City annually and upon any substantial

change in the nature of its coverage under this section. Should Company elect to self-insure, its annual notice to the City shall contain information identifying the process for filing a claim.

#### SECTION 16. TERM

This franchise agreement shall commence on April 1, 2009, and expire on March 31, 2024; provided that, unless written notice 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; provided that, in no event shall the maximum term under this franchise agreement exceed forty (40) years.

#### SECTION 17. CONFORMITY TO CONSTITUTION, STATUTES, CHARTER, AND CITY CODE

This ordinance is passed subject to the applicable provisions of the Constitution and Laws of the State of Texas, the Charter of the City, and the City Code. This franchise agreement shall in no way affect or impair the rights, obligations, or remedies of the parties under the Public Utility Regulatory Act of Texas, or amendments thereto.

#### SECTION 18. GOOD FAITH EFFORT

Company agrees to faithfully adhere to all applicable federal, state and City rules and regulations pertaining to non-discrimination, equal employment and affirmative action. Company also agrees to continue in its commitment to maintain fairness and equality in the workplace and in its purchases of goods, equipment, and other services.

#### SECTION 19. RIGHT OF APPEAL

Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest or appeal any action or decision of the other party made contrary to any federal, state or local law or regulation.

#### SECTION 20. REPEAL

That Ordinance No. 21666, as amended, be and the same is hereby specifically repealed, as of the commencement date under Sec. 16 hereof. All other ordinances, rules, regulations, and agreements which in any manner relate to the regulation of or provision for

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electric utility services by Company shall remain in full force and effect until and unless duly modified pursuant to applicable state law.

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

SECTION 21. EFFECTIVE DATE; AUTHENTICATION

This ordinance shall take effect immediately from and after its passage, publication, and written acceptance by Company, said written acceptance to be filed by Company with the City within sixty (60) days after final passage and approval hereof, in accordance with the provisions of the Charter of the City, and it is accordingly so ordained. 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.

SECTION 22. ACCEPTANCE OF FRANCHISE

In order for this franchise to be effective, the Company shall, within sixty (60) days from the passage of this ordinance, file in the office of the City secretary a written instrument signed and acknowledged by a duly authorized officer, in substantially the following form:

To the honorable Mayor and City Council of the City of Dallas:  
Oncor Electric Delivery Company LLC (Company), acting by and through the undersigned authorized officer, hereby accepts Ordinance No. \_\_\_\_\_ granting a franchise to Company.

\_\_\_\_\_  
Chairman & CEO  
Oncor Electric Delivery Company LLC

ATTEST:  
  
\_\_\_\_\_  
Secretary

Executed this, the \_\_\_\_ day of \_\_\_\_\_, 2009.

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The acceptance shall be duly acknowledged by the person executing the same. In the event the acceptance is not filed within the 60 day period this ordinance and the rights and privileges hereby granted shall terminate and become null and void.

### SECTION 23. NOTICE TO PARTIES

Notices required to be given under this franchise shall be deemed to be given when delivered in writing, personally to the person designated below, or when five days have elapsed after it is deposited in the United States Mail with registered or certified mail postage prepaid to the person designated below, or on the next business day if sent by Express Mail or overnight air courier addressed to the person designated below:

If to City:

City Manager  
City of Dallas  
1500 Marilla Street, Room 4 E North  
Dallas, Texas 75201

If to the Company:

Director, Regulatory Affairs  
Oncor Electric Delivery Company LLC  
1601 Bryan St., 23rd floor  
Dallas, Texas 75201

with a copy to:

Office of Utility Management  
City of Dallas  
1500 Marilla Street, Room 4 F North  
Dallas, Texas 75201

City or Company may change the position and/or addresses listed above by providing the other party with written notice of the change, with such change taking effect upon receipt of such notice.

RECOMMENDED BY:

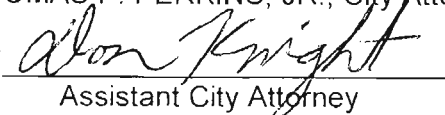


\_\_\_\_\_  
David Cook, Chief Financial Officer

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

BY



\_\_\_\_\_  
Assistant City Attorney

**COMPROMISE, SETTLEMENT AND RELEASE AGREEMENT - 2008**

This Compromise, Settlement, and Release Agreement (the "Agreement") is made and entered into as of the date set forth below by and between the City of Dallas (the "City") and Oncor Electric Delivery Company LLC (Oncor):

**WHEREAS**, in 2001-2002, Oncor, was a party to a lawsuit (the "Litigation") which involved a dispute with several cities with regard to the calculation and amount of franchise fees paid by TXU Electric (predecessor to Oncor);

**WHEREAS**, the Litigation was resolved by agreement and TXU Electric agreed to offer the City the same benefits offered to the Plaintiffs in the Litigation and the City declined to accept the offer by TXU Electric to release any claims related to the payment of franchise fees prior to and through December 31, 2001 and to have the option to amend their franchise to begin to receive franchise fee payments effective January 1, 2002 on miscellaneous service revenues (now known as Discretionary Service Charges);

**WHEREAS**, subsequently in 2008 during franchise renewal negotiations, the City has requested and the Company has agreed to provide, certain terms of the Litigation agreement to the City effective beginning January 1, 2009 upon the City's agreement to release any claims related to the payment of franchise fees on miscellaneous service revenues (now known as Discretionary Service Charges) provided for in Oncor's approved tariff prior to and through December 31, 2008; and

**WHEREAS**, the claims that Oncor has requested the City to release are doubtful as to validity and amount, and the consideration that the City will receive under a renewed Oncor franchise will

provide value to the City substantially equivalent to or greater than the value of the claims being released;

**NOW, THEREFORE**, in order to fully and finally resolve all disputes and claims arising out of the calculation and payment of franchise fees on miscellaneous service revenues (Discretionary Service Charges) to the City by Oncor prior to and through December 31, 2008, for the mutual promises and covenants set forth in this Agreement, the adequacy and sufficiency of which consideration is acknowledged, the City and Oncor agree as follows:

**1. REVISION TO THE ELECTRIC FRANCHISE ORDINANCE**

Effective January 1, 2009, Oncor agrees to, at the election of the City, provide that the Discretionary Services Charges identified in Section 6.1.2 of the Tariff for Retail Delivery applicable to Oncor effective January 1, 2002 which are directly paid by the customer and which are those charges identified as items DD1 through and inclusive of DD24 in said tariff, shall be subject to an additional franchise fee based on 4% of such charges which additional franchise fee shall be paid to the City. The following additional provisions will be included in the franchise:

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. 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 DD1-DD24" received during the preceding calendar year.

B. The City acknowledges that Oncor may file with the Texas Public Utility Commission and/or the City a tariff amendment in compliance with the terms of this agreement, which will provide that Oncor shall have the right to collect from the customer the franchise fee on

such Discretionary Service Charges such that the customer shall bear 100% of the franchise fee on such Discretionary Service Charges. The City acknowledges that Oncor is an intended third-party beneficiary of this agreement and, to the extent authorized by law, agrees to cooperate with Oncor in order for Oncor to pass through to customers the entire franchise fee on such Discretionary Service Charges by taking the following actions: (i) to the extent the City acts as regulatory authority, by adopting and approving that portion of any tariff in compliance with the terms of this Agreement which provides for 100% recovery of such franchise fees; (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 appeals in support of the 100% recovery of such franchise fees by Oncor.

C. The City, to the extent authorized by law, further agrees not to take any action to prevent the recovery of the franchise fees on such Discretionary Service Charges by Oncor and to take other action which may be reasonably requested by Oncor to provide for the 100% recovery of such franchise fees by Oncor.

Attachment A to this agreement is a copy of Section 6.1.2 of the Tariff for Retail Delivery effective 1/1/02. Since that time, as a result of actions at the Public Utility Commission, revisions to the numbering system for Discretionary Service Charges have been implemented and a cross reference to the current numbering system is provided as Attachment B.

## **2. RELEASE OF ONCOR AND ITS AFFILIATES BY THE CITY**

Except for claims arising out of a breach of this Agreement, the City of Dallas, on behalf of itself and its successors and assigns and any and all persons, entities or municipalities claiming by, through or under them, hereby **RELEASES, DISCHARGES AND ACQUITS**, forever and for all purposes, Oncor Electric Delivery Company, its agents, employees, officers, directors, shareholders, partners, insurers, attorneys, legal representatives, successors and assigns as well as their affiliated corporations, and its subsidiaries, from and against any and all liability which they now have, have had or may have, and all past, present and future actions, causes of action, claims, demands, damages, costs, expenses, compensation, losses and attorneys' fees of any kind or nature whatsoever, or however described, whether known or unknown, fixed or contingent, in law or in equity, whether asserted or unasserted, whether in tort or contract, whether now existing or accruing in the future arising out of or related to the payment, calculation or rendition of franchise fees on miscellaneous service revenues (Discretionary Service Charges) to the City on or before December 31, 2008 and all claims which could be asserted against Oncor in litigation in any way related to the payment, calculation or rendition of franchise fees on miscellaneous service revenues (Discretionary Service Charges) by Oncor on or before December 31, 2008. This release is intended to only release claims related to the payment, calculation or rendition of franchise fees on miscellaneous service revenues (Discretionary Service Charges) by Oncor on or before December 31, 2008 and is not intended to release any other claim or cause of action that any party to this Agreement has, known or unknown, or which accrues in the future. This release does not apply to any other claim or cause of action related to payment of franchise fees calculated on the basis of kilowatt hours delivered.



**3. WARRANTY AS TO OWNERSHIP OF CLAIMS AND AUTHORITY**

- A. The City warrants and represents that it is the owner of the claims being compromised, settled, discharged and released pursuant to this Agreement and each further warrants and represents that it has not previously assigned all or any part of such claims to another entity or person. The City warrants and represents that there are no liens of any nature, assignments or subrogation interests in or to the money paid to the City under the terms of this Agreement. The City warrants that it will take all action necessary to properly execute and deliver this agreement.
- B. Oncor warrants that the person(s) executing this Agreement on their behalf have authority to bind the entity for whom such person signs this Agreement.

**4. NO ADMISSION OF LIABILITY**

This Agreement is made to compromise, terminate and to constitute an accord and satisfaction of all of the claims released by this Agreement and Oncor admits no liability, fault or wrongdoing of any nature or kind whatsoever and expressly denies and disclaims any liability, fault or wrongdoing alleged or which could have been alleged with regard to the claims asserted in the Litigation if the City had become a party to the Litigation or any similar claims which might be asserted by the City against Oncor.

**5. RECOVERY OF DAMAGES DUE TO BREACH**

In the event of breach by any party of the terms and conditions of this Agreement, a non-breaching party shall be entitled to recover all expenses as a result of such breach, including, but not limited to, reasonable attorneys fees and costs.

**MISCELLANEOUS PROVISIONS**

6. It is understood and agreed that all agreements and understandings by and between the parties to this Agreement with respect to the payment of franchise fees and the settlement of any claims related to the payment of franchise fees are expressly embodied in this Agreement and that this Agreement supersedes any and all prior agreements, arrangements or understandings between the parties relating to the claims released pursuant to this Agreement or any matters related thereto executed by the parties.
7. The parties acknowledge and agree that the terms of this Agreement are all contractual and not mere recitals.
8. The parties acknowledge that they have read this Agreement, understand its terms, and that this Agreement is entered into voluntarily, without duress, and with full knowledge of its legal significance.
9. This Agreement may not be modified in any manner, nor may any rights provided for herein be waived, except by an instrument in writing signed by each party.
10. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
11. Should any term or any provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties agree that all other terms of this Agreement are binding and have full force and effect as if the invalid portion had not been included.
12. The parties represent and warrant that no party has been induced to enter this Agreement by a statement, action or representation of any kind or character made by the persons or entities released under this Agreement or any person or persons representing them, other than those expressly made in this Agreement.

13. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

14. The headings contained herein are for convenience and reference only and are agreed, in no way, to define, describe, extend or limit the scope or intent of this Agreement or its provisions.

15. This Agreement shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date set forth.

Executed As To Form:  
THOMAS P. PERKINS, JR.,  
City Attorney

By: Don Knight  
Assistant City Attorney

THE CITY OF DALLAS, TEXAS

By: [Signature]  
Its: City Manager  
Date: 3/3/09

ONCOR ELECTRIC DELIVERY  
COMPANY, LLC

By: [Signature]  
Its: VP External Affairs  
Date: 3-3-2009

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STATE OF TEXAS :

COUNTY OF DALLAS :

This instrument was acknowledged before me on the 3rd day of March 2008,<sup>9</sup>  
by Mary K. Suhm, as City Manager on behalf of the City of Dallas

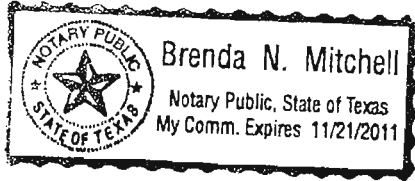
Margie Saabedra  
Notary Public, State of Texas

STATE OF TEXAS :

COUNTY OF DALLAS :



This instrument was acknowledged before me on the 3rd day of March 2008,<sup>9</sup>  
by Don Clawenger, of Oncor Electric Delivery Company, LLC, on behalf of said corporation.



Brenda N. Mitchell  
Notary Public, State of Texas

**WHEREAS** Oncor Electric Delivery Company LLC (formerly known as Texas Utilities Inc.) has provided electric delivery service in Dallas in accordance with City franchise Ordinance No. 21666, as amended; and

**WHEREAS** With the adoption of SB7 in 1999 by the State Legislature, the electric industry was deregulated; and as part of the deregulation process SB7 prescribed a franchise fee methodology based on a fixed fee per kWh delivered within the franchise area; and

**WHEREAS** In June of 2000 the City of Denton and 36 other Texas cities that did not include Dallas (the Litigating Cities) sued TXU Electric (n.k.a Oncor Electric Delivery Company LLC) alleging that Oncor had underpaid franchise fees, and Denton and the other cities claimed that Oncor had inappropriately excluded certain categories of revenue from gross receipts used to calculate franchise fees prior to deregulation (the "Litigation") and The City of Dallas was not a Litigating City due to differences in its franchise language compared to the franchise language of other cities; and

**WHEREAS** The franchise fees at issue in the Litigation were those paid on Contributions In Aid of Construction (CIAC) and certain other discretionary service charges; and

**WHEREAS** The Litigating Cities and Oncor reached a settlement of the Litigation in 2002 resulting in a lump sum payment to the Litigating Cities, additional fees being paid to the Litigating Cities going forward and no admission of liability by Oncor; and

**WHEREAS** After months of negotiations, City and Oncor have reached agreement on terms of the renewal of Oncor's franchise and as part of franchise negotiations City staff requested Oncor to pay a 4% franchise fee on discretionary service charges including CIAC, which Oncor is paying currently to the Litigating Cities; and

**WHEREAS** Oncor has agreed to pay these franchise fees to the City as part of the new franchise, on condition that the City adopt a Compromise, Settlement and Release Agreement similar to the one adopted by the litigating cities; and

**WHEREAS** The City of Dallas has never formally claimed that Oncor was obligated to pay to the City of Dallas any of the CIAC or the other fees that were at issue in the Litigation under the franchise nor demanded payment from Oncor of such fees, under Ordinance No. 21666, and any claims that the City of Dallas may have for payment of such fees under Ordinance No. 21666 would be doubtful as to validity and amount. Moreover, under the terms of the renewal of the franchise, the City of Dallas will be receiving consideration that is of reasonably equivalent value to any claims that are authorized for release by this Resolution.

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS::**


**Section 1.** That the City Manager, upon approval as to form by the City Attorney, is hereby authorized to execute a COMPROMISE, SETTLEMENT AND RELEASE AGREEMENT, by whatever name denominated, with Oncor Electric Delivery Company LLC, respecting any claims of the City for CIAC and other fees that were the subject of the Litigation for the period during which Oncor's franchise has been and will be effective under Ordinance No. 21666.

**Section 2.** That the City Controller is authorized to deposit revenues received from Oncor Electric Delivery LLC to Fund 0001, Dept. BMS, Unit 1246, Revenue Code 8203.

**Section 3.** That this resolution shall take affect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas and it is accordingly so resolved.

APPROVED BY  
CITY COUNCIL

FEB 11 2009

  
City Secretary

**Receipt of Contract**

RECEIVED

090463

2009 MAR -9 PM 2: 35

CITY SECRETARY  
DALLAS, TEXAS



CITY OF DALLAS

DATE March 6, 2009

TO Don Knight  
Assistant City Attorney

By signing below I acknowledge receipt in the City Secretary's Office of one fully executed original of the following:

**Type Contract:** Compromise, Settlement and Release Agreement - 2008

**Other Party to Contract:** Oncor Electric Delivery LLC (Oncor)

**Resolution Number:** 09-0463

**Council Date:** February 11, 2009

Deborah Watkins  
City Secretary

By \_\_\_\_\_

Date: \_\_\_\_\_

090463

Ron McCune  
Franchise Manager,  
Regulatory Affairs

RECEIVED ONCOR

2009 MAR 31 PM 2:49

CITY SECRETARY  
DALLAS, TEXAS

**Oncor Electric Delivery**

1601 Bryan St.  
EP 23-050G  
Dallas, TX 75201

Tel (214) 486-5678

Fax (214) 486-2180

rmccune1@oncor.com

March 31, 2009

The Honorable Tom Leppert  
Mayor  
City of Dallas  
1500 Marilla St.  
Dallas, Texas 75201

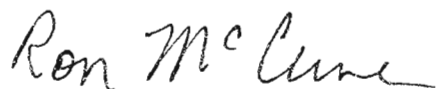
Dear Mayor Leppert:

Enclosed is one franchise ordinance including two original acceptance agreements for the City of Dallas, Texas.

Please have one original acceptance agreement returned to my office with a City Secretary certificate attached verifying receipt of the original acceptance agreement of the franchise ordinance from the City of Dallas.

Please let me know if you have any questions.

Sincerely,



Enclosures

Cc: Debbie Dennis



RECEIVED

STATE OF TEXAS  
COUNTY OF DALLAS

§  
§  
§

2009 MAR 31 PM 2:49

CITY SECRETARY  
DALLAS, TEXAS

To the honorable Mayor and City Council of the City of Dallas:  
Oncor Electric Delivery Company LLC (Company), acting by and through  
the undersigned authorized officer, hereby accepts Ordinance No. 27485  
granting a franchise to Company.

Robert S. Shepard  
Chairman & CEO  
Oncor Electric Delivery Company LLC

ATTEST:  
[Signature]  
Secretary

Executed this, the 30<sup>th</sup> day of March, 2009.

# 09-0463

## ADDENDUM ITEM # 13

**KEY FOCUS AREA:** Make Government More Efficient, Effective and Economical

**AGENDA DATE:** February 11, 2009

**COUNCIL DISTRICT(S):** N/A

**DEPARTMENT:** Office of Financial Services

**CMO:** Dave Cook, 670-7804

**MAPSCO:** N/A

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### SUBJECT

An ordinance granting a franchise to Oncor Electric Delivery Company LLC, for a term of fifteen years to provide electric distribution services within the City and providing for compensation - Estimated Annual Revenue: \$48,000,000

### BACKGROUND

Oncor Electric Delivery Company LLC (formerly known as Texas Utilities Inc.) provides electric delivery service in Dallas in accordance with City franchise Ordinance No. 21666, as amended. The franchise will expire by its own terms on March 31, 2009.

In 1999 with the adoption of SB7 by the State Legislature the electric industry was deregulated. As part of the deregulation process, TXU Inc. required to functionally separate its business into separate entities. Oncor Electric Delivery Company LLC is the entity that owns and operates the Electric Transmission and Distribution system and is franchised by the City to use public rights-of-ways. SB7 in addition to requiring functional separation of the incumbent electric utility, also prescribed a franchise fee methodology based on a fixed fee per kWh delivered within the franchise area. The initial fee was based on 1998 actual franchise fees and 1998 kWh.

In January 2006 the City of Dallas and Oncor reached an agreement to resolve outstanding franchise issues (Resolution No. 06-0368). As part of that agreement Oncor was to increase its franchise fee factor by 5% over 4 years. The final portion of that increase went into effect January 1, 2009 and the associated expense to Oncor is included in its current rate case pending before the PUC of Texas.

After months of negotiations, City Staff and Oncor have reached an agreement on terms of the franchise renewal. This franchise Ordinance provides for the City's continued management of the public rights-of-ways as well as requiring reasonable compensation for its use by Oncor. The term of the franchise is for 15 years and will require Oncor to keep its principal office in the City of Dallas.

**09-0463**

**PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On September 10, 2008, the current franchise was extended by Ordinance No. 27317.

On February 4, 2009, the City Council was briefed.

**FISCAL INFORMATION**

Estimated Annual Revenue - \$48,000,000.

## SEE ALSO

THE FOLLOWING FILES CONTAIN INFORMATION RELATING TO THIS FILE AND MAY BE OF INTEREST. THE INFORMATION CONTAINED IN THESE FILES MAY AMEND, REPEAL OR OTHERWISE AFFECT THE STATUS OF THIS FILE.

93-1845

06-0368

08-2484

09-0357

THIS FILE IS:

09-0463