TOWN OF POETRY, TEXAS
ORDINANCE NO. 2021-08-02

AN ORDINANCE OF THE TOWN OF POETRY, TEXAS GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS AND PUBLIC PROPERTY OF THE TOWN OF POETRY, TEXAS, IN ACCORDANCE WITH STATE LAW; PROVIDING FOR THE INCORPORATION OF PREMISES; APPROVING THE TERMS OF THE FRANCHISE AGREEMENT AS PROVIDED HEREIN; PROVIDING FOR THE ADOPTION OF AN APPROPRIATE FRANCHISE FEE APPLICABLE TO SERVICES PROVIDED; PROVIDING FOR THE TERM OF SAID FRANCHISE; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE BY FRANCHISEE; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING SEVERABILITY; PROVIDING FOR ENROLLMENT AND ENGROSSMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Poetry, Texas (the "Town") is a general law municipal corporation duly organized and validly existing under the laws of the State of Texas and located within Kaufman and Hunt County, Texas; and

WHEREAS, on November 24th, 2020 the Town incorporated; and

WHEREAS, the Town Council now desires to approve a franchise for the provision of electric service within the Town; and

WHEREAS, the Town and Oncor Electric Delivery Company LLC, (the "Company"), desire to execute a franchise agreement setting the terms and conditions of the electric service franchise granted to the Company herein; and

WHEREAS, the Town is legally authorized to approve a franchise for electric service and regulate and franchise the use of Town owned rights of way; and

WHEREAS, all legal prerequisites for the passage of this Ordinance have been met by Town, including but not limited to the requirements of the Texas Open Meetings Act; and

WHEREAS, the Town Council has found that the passage of this Ordinance serves the best interests of the health, safety, and welfare of the public.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF POETRY, TEXAS:

SECTION 1. RECITALS:

The Town Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the Town Council hereby incorporates such recitals as part of this Ordinance.

SECTION 2. GRANT OF AUTHORITY:

That 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, easements held by the Town to which the Town holds the property rights in regard to use for utilities, public ways and other public property ("Public Rights-of-Way" or "Rights-of-Way") of the Town of Poetry, Texas (herein called "Town") electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines, telephone and communication lines, and other structures for Company's own use), (herein called "Facilities") for the purpose of delivering electricity to the Town, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 9.

SECTION 3. CONSTRUCTION, MAINTENANCE, OPERATION AND RELOCATION OF FACILITIES:

Poles, towers and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways.

The Town reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipe lines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The Town also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines (or in the case of utility line owned by Company, to require that change by Company), storm sewers, drainage basins, drainage ditches, and the like. Town shall provide Company with at least thirty (30) days' notice when requesting Company to relocate facilities and shall specify a new location for such facilities along the Public Rights-of-Way. Company shall, except in cases of emergency conditions or work incidental in nature, obtain a permit, if required by Town ordinance, prior to performing work in the Public Rights-of-Way, except in no instance shall Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, despite the Town's enactment of any ordinance providing the contrary. Company shall construct its facilities in conformance with the applicable provisions of the National Electrical Safety Code. Town-requested relocations of Company facilities in the Public Rights-of-Way shall be at the Company's expense; provided however, if the Town is the end use Retail Customer (customer who purchases electric power or energy and ultimately consumes it) requesting the removal or relocation of Company Facilities for its own benefit, or the project requiring the relocation is solely aesthetic/beautification in nature, it will be at the total expense of the Town. Provided further, if the relocation request includes, or is for, the Company to relocate above-ground facilities to an underground location, Town shall be fully responsible for the additional cost of placing the facilities underground.

If any other corporation or person (other than Town) requests Company to relocate Company facilities located in Town Rights-of-Ways, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities. Town may not request the Company to pay for any relocation which has already been requested, and paid for, by any entity other than Town.

If Town abandons any Public Rights-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following

abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

The Company shall restore at the Company's expense, all work within the Town Public Rights-of-Way, to a condition equally as good as it was immediately prior to being disturbed by Company's construction, excavation, repair or removal or to a condition agreed upon by Town and Company. If Town or Company believe that there are extenuating circumstances that do not allow for restoration of all work within the Town Rights-of-Way to a condition equally as good as it was immediately prior to being disturbed by Company, Town and Company will negotiate an alternative restoration plan (in writing) to remedy the situation. Absent an agreement to an alternative restoration plan, either party has a right to request review of the matter by any court or regulatory agency having jurisdiction.

SECTION 4. INDEMNITY:

A. IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, COMPANY SHALL, AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD THE TOWN, AND ITS PAST AND PRESENT OFFICERS, AGENTS AND EMPLOYEES HARMLESS AGAINST ANY AND ALL LIABILITY ARISING FROM SUITS, ACTIONS OR CLAIMS REGARDING INJURY OR DEATH TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY ARISING OUT OF OR OCCASIONED BY THE INTENTIONAL AND/OR NEGLIGENT ACTS OR OMISSIONS OF COMPANY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES IN CONNECTION WITH COMPANY'S CONSTRUCTION, MAINTENANCE AND OPERATION OF COMPANY'S FACILITIES IN THE TOWN PUBLIC RIGHTS-OF-WAY, INCLUDING ANY COURT COSTS, REASONABLE EXPENSES AND REASONABLE DEFENSES THEREOF.

B. THIS INDEMNITY SHALL ONLY APPLY TO THE EXTENT THAT THE LOSS, DAMAGE OR INJURY IS ATTRIBUTABLE TO THE NEGLIGENCE OR WRONGFUL ACT OR OMISSION OF THE COMPANY OR ITS OFFICERS, AGENTS OR EMPLOYEES, AND DOES NOT APPLY TO THE EXTENT SUCH LOSS, DAMAGE OR INJURY IS ATTRIBUTABLE TO THE NEGLIGENCE OR WRONGFUL ACT OR OMISSION OF THE TOWN OR THE TOWN'S OFFICERS, AGENTS, OR EMPLOYEES OR ANY OTHER PERSON OR ENTITY. THIS PROVISION IS NOT INTENDED TO CREATE A CAUSE OF ACTION OR LIABILITY FOR THE BENEFIT OF THIRD PARTIES BUT IS SOLELY FOR THE BENEFIT OF COMPANY AND THE TOWN.

C. IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH COMPANY AND THE TOWN, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY BETWEEN THE TOWN AND COMPANY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE TOWN UNDER TEXAS LAW AND WITHOUT WAIVING ANY OF THE DEFENSES OF THE PARTIES UNDER TEXAS LAW. FURTHER, IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH COMPANY AND THE TOWN, RESPONSIBILITY FOR ALL COSTS OF DEFENSE SHALL BE APPORTIONED BETWEEN THE TOWN AND COMPANY BASED UPON THE COMPARATIVE FAULT OF EACH.

D. IN FULFILLING ITS OBLIGATION TO DEFEND AND INDEMNIFY TOWN, COMPANY SHALL HAVE THE RIGHT TO SELECT DEFENSE COUNSEL, SUBJECT TO TOWN'S APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. COMPANY SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF TOWN'S WRITTEN NOTICE THAT TOWN IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS FRANCHISE. IF COMPANY FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, TOWN SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND COMPANY SHALL BE LIABLE FOR ALL REASONABLE DEFENSE COSTS INCURRED BY TOWN, EXCEPT AS OTHERWISE PROVIDED IN SECTION 4.B AND 4.C.

SECTION 5. LIABILITY INSURANCE:

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

A. Commercial general or excess liability on an occurrence or claims made form with minimum limits of five million dollars ($5,000,000) per occurrence and ten million dollars ($10,000,000) aggregate. This coverage shall include the following:
   (1) Products/completed operations to be maintained for the warranty period.
   (2) Personal and advertising injury.
   (3) Contractual liability.
   (4) Explosion, collapse, or underground (XCU) hazards.

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

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

D. Company must name the Town, which includes all authorities, commissions, divisions and departments, as well as elected and appointed officials, agents, and volunteers, as an additional insureds under the coverage required herein, except Worker's Compensation Coverage. The certificate of insurance must state that the Town is an additional insured. Additionally, a waiver of subrogation shall be provided on all policies.

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

thousand dollars ($500,000) each employee bodily injury by disease, five hundred thousand dollars ($500,000) policy limit bodily injury by disease.

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

SECTION 6. NON-EXCLUSIVE FRANCHISE:

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

SECTION 7. PAYMENTS TO TOWN:

In consideration of the grant of said right, privilege and franchise by the Town and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the Town may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the Town is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Company shall pay to the Town the following:

A. Company agrees to pay, and Town agrees to accept, a one-time payment of $10,895.76 in consideration of the use and occupancy of the Public Rights-of-Way for the period from incorporation of the Town through May 31, 2021.

B. On a quarterly basis thereafter, a charge, as authorized by Section 33.008(b) of PURA and a franchise factor set by the Town per 33.008(g) of PURA at 0.003589, multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the Town's municipal boundaries for determining franchise payments going forward.

Company shall make quarterly payments as follows:

Payment Due Date	Basis Period	Privilege Period
September 30	Jun. 1 - Aug. 31	Jun. 1 - Aug. 31
December 31	Sept.1 - Nov. 30	Sept.1 - Nov. 30
March 31	Dec. 1 - Feb. 28(29)	Dec. 1 – Feb. 28(29)
June 30	Mar. 1 - May 31	Mar. 1 - May 31

1. The first quarterly payment hereunder shall be due and payable on or before September 30, 2021 and will cover the basis and privilege period of June 1, 2021 through August 31, 2021. If this franchise is not effective prior to the first quarterly payment date, Company will pay any payments due within 30 days of the effective date of this agreement. The final payment under

this franchise is due on or before September 30, 2041 and covers the basis and privilege period of June 1, 2041 through August 31, 2041; and

2. After the final payment date of September 30, 2041, Company may continue to make additional quarterly payments in accordance with the above schedule. Town acknowledges that such continued payments will correspond to privilege periods that extend beyond the term of this Franchise and that such continued payments will be recognized in any subsequent franchise as full payment for the relevant quarterly periods.

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

1. The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year.
2. The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges", as set out in Section 7C, received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2022 and will be based on the calendar year January 1, 2021 through December 31, 2021. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2042 and will be based on the calendar months of January 1, 2041 through August 31, 2041.
3. Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
4. Town agrees (i) to the extent the Town 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 Town 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 Town 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 Town has intervened, the Town will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
5. Town agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.
6. In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Company will not be required to continue payment of such franchise fees.

SECTION 8. BOOKS AND RECORDS:

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

B. Pursuant to Section 33.008(e) of the Texas Utilities Code, the Town may conduct an audit or other inquiry in relation to a payment made by Company less than two (2) years before the commencement of such audit or inquiry. The Town 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 Town to ascertain the correctness of the reports agreed to be filed herein.

C. The Company shall make available to the auditor during the Company's regular business hours and upon reasonable notice, such personnel and records as the Town may, in its reasonable discretion, request in order to complete such audit, and shall make no charge to the Town therefore.

1. If as the result of any Town audit, Company is refunded/credited for an overpayment, or pays the Town for an underpayment, of the Franchise Fee, such refund/credit or payment shall be made pursuant to the terms established in Section 8.G.

2. If as a result of a subsequent audit, initiated within two years of an audit which resulted in Company making a payment to the Town due to an underpayment of the franchise fee of more than 5%, Company makes another payment to the Town due to an underpayment of the franchise fee of more than 5%, the Town may immediately treat this underpayment as an Uncured Event of Default and exercise the remedies provided for in Section 11.C.

D. The Company shall assist the Town in its review by responding to all requests for information no later than thirty (30) days after receipt of a request.

E. The Town agrees to maintain the confidentiality of any non-public information obtained from Company to the extent allowed by law if Company identifies the information as non-public prior to providing the information to Town. Town shall not be liable to Company for the release of any information the Town is required by law to release. Town shall provide notice to Company of any request for release of non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the Town receives a request under the Texas Public Information Act that includes information Company has identified as Company's confidential information, Town will notify the Texas Attorney General of the confidential nature of the document(s). The Town 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 Town to withhold the information.

F. If either party discovers that Company has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined by mutual written agreement between the Town and Company and the Town shall be paid by Company within thirty (30) calendar days of such determination. Any overpayment to the Town through error or otherwise will, at the sole option of the Town, either be refunded to Company by the Town within thirty (30) days of such determination or offset against the next payment due from Company. Acceptance by either party of any payment due under this Section shall not be deemed to be a waiver by either party of any claim of breach of this Franchise, nor shall the acceptance by either party of any such payments preclude either party from later establishing that a larger amount was actually due or from collecting any balance due. Nothing in this Section shall be deemed a waiver by either party of its rights under law or equity.

G. Interest on late payments shall be calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission of Texas in accordance with the Texas Utilities Code, Section 183.003, as amended for the time period involved.

SECTION 9. ACCEPTANCE OF FRANCHISE:

A. In order to accept this franchise, Company must file with the Town Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by Town. If such

written acceptance of this franchise ordinance is not filed by Company, the franchise ordinance shall be rendered null and void.

B. When this franchise ordinance becomes effective, all previous ordinances of Town granting franchises held by Company, if any, shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 10. TERM:

The right, privilege and franchise granted hereby shall expire on August 31, 2041; provided that, unless written notice of cancelation is given by either party hereto to the other not less than sixty (60) days before the expiration of this franchise agreement, it shall be automatically renewed for an additional period of six (6) months from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

SECTION 11. DEFAULT, REMEDIES, TERMINATION:

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

(1) The failure of Company to pay the franchise fee on or before the due dates specified herein.

(2) Company's material breach or material violation of any material terms, covenants, representations or warranties contained herein.

B. Uncured Events of Default.

(1) Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to Town, Company shall have thirty (30) calendar days from receipt of written notice from Town of an occurrence of such Event of Default to cure same before Town may exercise any of its rights or remedies provided for in Section 11.C.

(2) Upon the occurrence of an Event of Default by Company which cannot be cured by the immediate payment of money to Town, Company shall have sixty (60) calendar days (or such additional time as may be agreed to by the Town) from receipt of written notice from Town of an occurrence of such Event of Default to cure same before Town may exercise any of its rights or remedies provided for in Section 11.C.

(3) If the Event of Default is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle Town to exercise the remedies provided for in Section 11.C.

C. Remedies. The Town shall notify the Company in writing of an alleged Uncured Event of Default as described in Section 11.B, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within thirty (30) business days after receipt of such notice or such longer period of time as the Town may specify in such notice, either cure such alleged failure or in a written response to the Town 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, Town shall be entitled to exercise any and all of the following

cumulative remedies:

(1) The commencement of an action against Company at law for monetary damages.

(2) The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions that as a matter of equity, are specifically enforceable.

(3) The termination of this Franchise.

D. The rights and remedies of Town 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. Town and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by Town of any one or more of such remedies shall not preclude the exercise by Town, at the same or different times, of any other such remedies for the same failure to cure. Town shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance.

E. Termination. In accordance with the provisions of Section 11.C, this Franchise may be terminated upon thirty (30) business day's prior written notice to Company from Town. Town shall notify Company in writing at least fifteen (15) business days in advance of the Town Council meeting at which the question of forfeiture or termination shall be considered, and Company shall have the right to appear before the Town Council in person or by counsel and raise any objections or defenses Company may have that are relevant to the proposed forfeiture or termination. The final decision of the Town Council may be appealed to any court or regulatory authority having jurisdiction. Upon timely appeal by Company of the Town Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or an order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this Franchise shall remain in effect for all purposes. The Town recognizes Company's right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission of Texas in accordance with the Texas Utilities Code.

SECTION 12. NO THIRD-PARTY BENEFICIARIES:

This Franchise is made for the exclusive benefit of the Town and Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION 13. SUCCESSORS AND ASSIGNS:

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

SECTION 14. COMPLIANCE WITH LAWS AND ORDINANCES:

Company's operations and activities within the Public Rights-of-Way in the Town shall be subject to all Town ordinances of general applicability, unless otherwise in conflict with any federal or state laws, rules, or regulations, or this Franchise. The Town shall endeavor to provide Company with reasonable notice and opportunity to review and comment upon any new or revised Town laws, rules, or regulations that impact Company's use of the Public Rights-of-Way, but the failure to do so shall not affect the applicability of such laws, rules, or regulations to Company. Nothing herein shall be deemed a waiver, release or relinquishment of any right by either party to contest, appeal, or file suit with respect to any action or decision of the other party.

SECTION 15. WAIVER OF BREACH:

The waiver by either party of any breach or violation of any Provision of this Franchise 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 this Franchise.

SECTION 16. NOTICES:

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (1) delivered in person to the address set forth below; (2) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; (3) delivered to such party by courier receipted delivery; or (4) by prepaid overnight delivery service. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice. Notice shall be deemed received (1) upon receipt in the case of personal delivery; (2) upon date and signature by the receiving party of return receipt in the case of USPS delivery; or (3) upon confirmation of delivery by an overnight delivery service.

To: Town of Poetry
Attn: Town Administrator
20425 County Road 986
Poetry, Texas 75160

To: Oncor Electric Delivery Company LLC
Attn: Regulatory External Affairs
1616 Woodall Rodgers Fwy 6th floor
Dallas, TX 75202-1234

SECTION 17. RIGHT OF RENEGOTIATION:

Should either Company or the Town have cause to believe that a material change in circumstances relating to the terms of this Franchise may exist, it may request, and the other party shall timely provide the requesting party a reasonable amount of information to assist in determining whether a material change in circumstances has taken place.

Should either party hereto determine that based on a material change in circumstances, it is in the best interest to renegotiate all or some of the provisions of this Franchise, then the other party agrees to enter into good faith negotiations. Said negotiations shall involve reasonable, diligent, and timely discussions about the pertinent issues and a resolute attempt to settle those issues. The obligation to enter into such negotiations does not obligate either party to agree to an amendment of any or all terms 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 Town and Company agree to a change in one or more provisions of this Franchise, the change shall become effective upon passage of an Ordinance by the Town in accordance with the Town Charter and the filing with the Town Secretary of written acceptance of the amendment by Company.

SECTION 18. PREVIOUS ORDINANCES:

When this Franchise becomes effective, all prior franchise ordinances and parts of franchise ordinances applicable to Company or its predecessors in interest granted by the Town, if any, are hereby repealed.

SECTION 19. PARAGRAPH HEADINGS. CONSTRUCTION:

The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 20. CHOICE OF LAW/VENUE.

This Franchise Ordinance shall be construed and governed by the laws of the State of Texas. Town and Company agree that any lawsuit between the Town and the Company concerning this Ordinance will be filed in the state of Texas. Nothing in this Ordinance shall prohibit the Town from filing an action related to this Ordinance in Hunt or Kaufman County, Texas.

SECTION 21. SIGNATORY:

The Mayor is hereby authorized to execute the franchise agreement.

SECTION 22. FRANCHISE FEE ADOPTED:

The franchise fees for the provision of electric service within the Town are hereby adopted as set out in the Agreement, subject to adjustments as provided in the Agreement, or as provided by other applicable laws, rules or regulations.

SECTION 23. SEVERABILITY:

The sections, paragraphs, sentences, clauses and phrases of this Franchise are severable. If any of the sections, paragraphs, sentences, clauses, phrases, words, or provisions of this ordinance should be declared unconstitutional or otherwise invalid for any reason, such event shall not affect any remaining sections, paragraphs, sentences, clauses, phrases, words, or provisions of this ordinance.

SECTION 24. ENROLLMENT/ENGROSSMENT:

The Town Secretary is hereby directed to engross and enroll this Ordinance by copying the exact Caption and Effective Date clause in the minutes of the Town Council and by filing this Ordinance in the Ordinance records of the Town.

SECTION 25. OPEN MEETING:

That it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given by Town all as required by Section 551.041, Texas Government Code.

SECTION 26. EFFECTIVE DATE; TERM:

This Ordinance becomes effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the Town within sixty (60) days after final passage and approval hereof. The right, privilege and franchise granted hereby shall expire on August 31, 2041, unless renewed as provided for herein.

PASSED AND APPROVED at a regular meeting of the Town Council of Poetry, Texas, on this the 17th day of August, 2021.

Sara Lentsch Mayor
The Town of Poetry

ATTEST:

Dorothy Dean
Town Secretary

STATE OF TEXAS §
COUNTY OF HUNT AND KAUFMAN §
TOWN OF POETRY §