

ORDINANCE NO. 005- 010

AN ORDINANCE GRANTING THE RIGHT, PRIVILEGE AND FRANCHISE TO TXU ELECTRIC DELIVERY COMPANY, AN ELECTRIC TRANSMISSION AND DISTRIBUTION UTILITY, AND ITS SUCCESSORS AND ASSIGNS, TO USE THE PUBLIC RIGHTS-OF-WAY OF THE TOWN OF ADDISON, TEXAS FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER SUBJECT TO THE CONDITIONS, RESTRICTIONS, AND LIMITATIONS OF THIS ORDINANCE; PRESCRIBING THE CONDITIONS, RESTRICTIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING COMPENSATION FOR SUCH USE; PROVIDING THE TERM OF FRANCHISE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE METHOD OF ACCEPTANCE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. GRANT OF FRANCHISE.

That the Town of Addison, Texas (the "City"), a home rule municipality pursuant to the Texas Constitution, the laws of the State of Texas, and its Home Rule Charter (the "City Charter"), subject to the terms and conditions of this Ordinance (the "Ordinance"), does hereby grant to TXU Electric Delivery Company, an electric transmission and distribution utility and a Texas corporation (the "Electric Delivery Utility"), its successors and permitted assigns, but not its affiliates or subsidiaries, except as provided for herein, the non-exclusive right, privilege and franchise to use the Public Rights-of-Way (hereinafter defined) of the City as provided herein for the purpose of locating, installing, using, maintaining, repairing, constructing, operating, and replacing Facilities for the transmission and distribution of electric power to the City, the inhabitants thereof and persons, firms and corporations beyond the corporate limits thereof. This Franchise does not grant to the Electric Delivery Utility the right, privilege or authority to engage in any other business within the City other than the transmission and distribution of electric power in the City.

The right of the Electric Delivery Utility to use the Public Rights-of-Way as set forth above is not an exclusive right, and the City has and reserves the right in its sole discretion to make or grant a similar or dissimilar use of the Public Rights-of-Way to any other person, firm, corporation, or other business entity of whatever kind.

SECTION 2. DEFINITIONS.

2.1 "Franchise" shall mean this Ordinance and all rights and obligations established herein.

2.2 "Municipal Franchise Charge" shall mean the fee authorized by Section 33.008(b) of the Public Utility Regulatory Act, Title 2, Texas Utilities Code ("PURA"), currently the product of a factor of .002544 cents/kWh multiplied by each kilowatt hour of electricity delivered to each retail customer within the City of Addison's municipal boundaries, or any amended fee calculation for which the Texas Legislature or Public Utility Commission may require.

2.3 "Public Rights-of-Way" shall mean the public streets, public alleys, public highways and other public property, of and owned or controlled by the City and beneath the surface thereof as they may now or hereafter may exist and as defined herein but not including bridges or other City improvements or infrastructure in, on or over the Public Rights-of-Way.

2.4 "Facilities" shall mean 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 its own use), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof.

SECTION 3. EFFECTIVE DATE; TERM OF FRANCHISE.

Upon the filing with the City by the Electric Delivery Utility of the acceptance required under Section 4, this Franchise shall be in full force and effect thirty (30) days from and after the date of the final passage and approval of this Ordinance by the City in accordance with the City's Home Rule Charter until July 31, 2014.

SECTION 4. ACCEPTANCE OF FRANCHISE.

4.1 When this Franchise becomes effective, all previous ordinances of the City granting a franchise for the transmission and distribution of electric power purposes that were held by the Electric Delivery Utility (or its predecessor in interest) shall be

automatically repealed, and shall be of no further force and effect; provided, however, that any City claim, action or complaint that arose under or pursuant to any such previous ordinance shall continue to be governed by the provisions of that ordinance and such previous ordinance shall continue in full force and effect for such purposes. The Electric Delivery Utility shall, within thirty (30) days from the final passage of this Franchise by the City, file its written acceptance of this Franchise with the Office of the City Secretary.

4.2. This Franchise shall be rendered null and void if written acceptance of this Franchise is not filed by the Electric Delivery Utility within such thirty (30) day period.

SECTION 5. FRANCHISE FEE.

5.1 In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, franchise taxes, license, permit and inspection fees or charges, bonds, street or alley rentals, certain regulatory expenses, subject to sections 5.5 and 5.6 herein, as may be otherwise due and owing under Section 33.023 of PURA, as amended, or any similar or successor law, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, the Electric Delivery Utility agrees to and shall pay to the City a franchise fee consisting of the following:

- (a) the Municipal Franchise Charge. The first payment hereunder shall be due and payable on August 1, 2005, based on each kilowatt hour of electricity delivered by the Electric Delivery Utility during the preceding twelve-month period ended June 30, 2005, to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries. This initial payment

and the payments provided on or before August 1 of each year throughout the life of this Franchise are for the rights and privileges granted hereunder for the twelve month period succeeding the payment date (August 1 – July 31).

Thereafter, on or before August 1 of each year throughout the life of this Franchise, the Electric Delivery Utility shall pay to the City the Municipal Franchise Charge as required or authorized by Section 33.008(b) of PURA, as currently enacted and as amended during the term of this Franchise, based on the preceding twelve-month period ending June 30. The final Municipal Franchise Charge payment under this Franchise is due on or before August 1, 2013 and covers the privilege period of August 1, 2013 – July 31, 2014; and

(b) a sum equal to four percent (4%) of gross revenues received by the Electric Delivery Utility from services identified in the Electric Delivery Utility's "Tariff for Retail Delivery Service", Section 6.1.2, "Discretionary Service Charges," items DD 1 through DD24, that are for the account or benefit of an end-use retail electric consumer (the "Discretionary Service Charges Fee") within the municipal boundaries of the City.

(1) The Discretionary Service Charges Fee shall be calculated on an annual calendar year basis, i.e., from January 1 through and including December 31 of each calendar year.

(2) The Discretionary Service Charges Fee shall be paid at least once annually on or before April 30 each calendar year based on the total Discretionary Service Charges received during the preceding calendar year. The initial Discretionary Service Charge Fee amount due under this Franchise shall be paid on or before April 30, 2005 and will be based on the calendar year January 1 through December 31, 2004. The final two Discretionary Service Charge Fee amounts due under this Franchise shall be paid as follows: On or before April 30, 2014 the last full twelve month payment will be due and will be based on the calendar year January 1 through December 31, 2013, with a final Discretionary Service Charge Fee payment for the last six

months under this Franchise to be paid on October 15, 2014 for the period January 1, 2014 to July 31, 2014. The obligation to make the final Discretionary Service Charge Fee payment shall survive the expiration of this Franchise.

5.2 The Electric Delivery Utility shall provide the City a statement which shall accompany each payment to the City to evidence a correct payment to the City. Electric Delivery Utility hereby stipulates that its reports may be treated by the City exactly as if they were filed under oath. Late or delinquent payment by the Electric Delivery Utility shall accrue interest. Interest shall be calculated in accordance with the interest rate for customer deposits established by the PUC in accordance with Texas Utilities Code Section 183.003 for the time period involved.

5.3 Electric Delivery Utility Discretionary Service Charges Fee Recovery Tariff

(a) Electric Delivery Utility may file a tariff amendment(s) to provide for the recovery of the Discretionary Services Charges Fee.

(b) City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the Discretionary Services Charges Fee; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the Discretionary Services Charges Fee is an issue, the City will take an affirmative position supporting the 100% recovery of such Fee by Electric Delivery Utility 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 Fee by Electric Delivery Utility.

(c) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such Discretionary Service Charges Fees by Electric Delivery Utility.

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

(a) City shall have the option to:

(1) Have Electric Delivery Utility select, within 30 days of the City's request, any or all portions of the franchise agreement with the other municipality or comparable provisions that, at Electric Delivery Utility's sole discretion, must be considered in conjunction with the different method of the calculation of franchise fees included in that other franchise agreement; and

(2) Modify this franchise to include both the different method of calculation of franchise fee found in the franchise agreement with the other municipality and all of the other provisions identified by Electric Delivery Utility pursuant to Section 5.4(a). In no event shall City be able to modify the franchise to include the different method of calculation of franchise fee found in the franchise agreement with the other municipality without this franchise also being modified to include all of the other provisions identified by Electric Delivery Utility pursuant to Section 5.4(a)(1).

(b) City may not exercise the option provided in Section 5.4(a) if any of the provisions that would be included in this franchise are, in Electric Delivery Utility's sole opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or Charter of City.

(c) In the event of a regulatory disallowance of the increase in franchise fees paid pursuant to City's exercise of its option under this Section, then at any time

after the regulatory authority's entry of an order disallowing recovery of the additional franchise fee expense in rates, Electric Delivery Utility shall have the right to cancel the modification of the franchise made pursuant to this Section, and terms of the franchise shall immediately revert to those in place prior to City's exercise of its option under this Section.

(d) Notwithstanding any other provision of this franchise, should the City exercise the option provided in Section 5.4(a), and then adopt any rule, regulation, ordinance, law, Code, or Charter of City that, in Electric Delivery Utility's sole opinion, is inconsistent with or in any manner contrary to the provisions included in this franchise pursuant to Section 5.4(a), then Electric Delivery Utility shall have the right to cancel all of the modifications to this franchise made pursuant to this Section and, effective as of the date of the City's adoption of the inconsistent provision, the terms of the franchise shall revert to those in place prior to City's exercise of its option under this Section.

(e) The provisions of this Section apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, such as the timing of such payments. The provisions of this Section do not apply to differences in the franchise fee factor that result from the application of the methodology set out in Section 33.008(b) of PURA or any successor methodology.

5.5 Notwithstanding anything to the contrary in Section 5.1 hereof, if during the term of this Franchise the Electric Delivery Utility files general rate cases and the City incurs cumulative expenses in connection with all general rate cases filed during the period beginning June 1, 1993, and ending August 24, 2008 which would otherwise have been reimbursable by Electric Delivery Utility under Section 33.023 of PURA, as amended, or similar or successor law, in excess of Four Million and No/100 Dollars (\$4,000,000.00), then in such event, the Electric Delivery Utility shall reimburse all of the expenses incurred by the City in connection with all general rate cases filed during the period beginning June 1, 1993, and ending August 24, 2008, in excess of said \$4,000,000.00. The term "general rate case" as used in this Ordinance means a rate

case initiated by the Electric Delivery Utility in which it seeks to increase its rates charged to a substantial number of its customer classes in the City and elsewhere in its system and in which the Electric Delivery Utility's overall revenues are determined in setting such rates. The City agrees to exercise reasonable best efforts, considering the facts and circumstances, to keep its expenses on average to under One Million and No/100 Dollars (\$1,000,000.00) per general rate case.

5.6 Notwithstanding the above section 5.1, City reserves its rights and does not waive any claim that Ordinance No. 093-041 requires reimbursement of general rate case expenses incurred by the City after August 24, 2008, and ending with the term of this Franchise, that would have been otherwise reimbursable by Electric Delivery Utility under Section 33.023 of PURA, as amended, or similar or successor law.

SECTION 6. AUDIT OF ELECTRIC DELIVERY UTILITY'S RECORDS AND REPORTS.

6.1 Books of Account. The Electric Delivery Utility shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise. To the extent practicable, all such books of accounts and records shall be made available at the Electric Delivery Utility's principal office in Dallas, Texas.

6.2 Access by City. The City Manager or the City Manager's designee shall, upon thirty (30) days prior written notice to the Electric Delivery Utility, have the right to access and to inspect the books of accounts and records of the Electric Delivery Utility for the period then subject to audit under Section 33.008(e) of the Public Utility Regulatory Act to ascertain the correctness of any payments and reports to the City, as provided for in Section 33.008(e) of the Public Utility Regulatory Act, and as to the Electric Delivery Utility's compliance with this Franchise, and Electric Delivery Utility shall fully cooperate in making available its accounts and records and otherwise assisting in these activities.

6.3 Audits. The City Manager may cause to be conducted no more than once annually, an audit to verify the accuracy of the method used to compute the Electric Delivery Utility's Franchise Fee payments to the City and to verify that all utility accounts within the City are properly included in the computation of the Franchise Fee. Said audit shall be limited to the time period subject to audit under PURA Section 33.008(e). If either party discovers that the Electric Delivery Utility has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined and the City shall be paid by the Electric Delivery Utility within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the option of the City, either be refunded within thirty (30) days of determination OR be offset against the next payment due from Electric Delivery Utility. Such payments shall include interest as provided for in Section 5.2.

SECTION 7. ANNEXATION.

This Franchise shall extend to and include any and all territory that is annexed by or otherwise added to the corporate limits of the City during the term of this Franchise. Upon receipt of written notification by the City of newly annexed areas, or other areas added to the City limits, the Electric Delivery Utility shall promptly initiate a process to reclassify affected customers into the City limits in a timely manner. The annexed areas or other areas added to the City limits will be included in future franchise payments in accordance with the effective date of the annexation. Upon request from the City, the Electric Delivery Utility will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise payments.

SECTION 8. CONSTRUCTION IN THE PUBLIC RIGHTS-OF-WAY.

8.1 In connection with any activity of, by, on behalf of, or for the benefit of the Electric Delivery Utility on or within the Public Rights-of-Way under this Franchise, the Electric Delivery Utility shall comply with the City Charter and all lawful ordinances, rules, codes, laws, standards, policies, and regulations of the City (including, without limitation, the right-of-way construction, permitting, and relocation provisions of the

Code of Ordinances) as now existing or as the same may be adopted, supplemented, amended or revised (together, "City Standards"). To the extent any City Standards conflict with this Franchise, the requirements of this Franchise shall govern. The Electric Delivery Utility shall also comply with any and all applicable laws, standards, policies, regulations, and rules, whether federal or state. This Franchise shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Public Utility Regulatory Act, or other State or Federal Law. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal, or file suit with respect to any action or decision of the other party, including, without limitation, ordinances adopted by the City, that it believes is contrary to any federal, state or local law or regulation. To the extent practicable City shall provide Electric Delivery Utility with reasonable notice and opportunity to review and comment upon any new or revised City Standards that impact Electric Delivery Utility's use of the Public Rights-of-Way.

8.2 Electric Delivery Utility shall locate, install, use, maintain, repair, construct, operate, and replace its Facilities to minimize interference with traffic (motor vehicle, pedestrian, or otherwise) and shall perform work in a timely and expeditious manner, and shall promptly clean up and restore to the approximate condition at the time disturbed, all Public Rights-of-Way that it may disturb to the satisfaction of the City consistent with applicable City Standards. With respect to Electric Delivery Utility Facilities not located in public streets, alleys or highways, to the extent the Electric Delivery Utility is authorized to locate such Facilities in Public Rights-of-Way other than public streets, alleys, or highways, the location of Electric Delivery Utility's Facilities shall be subject to approval by the City Manager prior to construction or installation; provided however, said approval shall not be unreasonably withheld. When Electric Delivery Utility makes, or causes to be made, excavations, or places, or causes to be placed, obstructions in any Public Rights-of-Way, Electric Delivery Utility shall place, erect, and maintain barriers and lights to identify the location of such excavations or obstructions, all in accordance with the most recent edition of the Uniform Manual on Traffic Control Devices and applicable City Standards. In determining the location of Electric Delivery Utility's Facilities within the City, the Electric Delivery Utility shall not interfere with then existing above-ground or underground structures, equipment and

facilities of the City, other utility franchisees (which have received a franchise from the City to use the Public Rights-of-Way), and other persons (whether a natural person or business entity of any kind) who have received the City's consent to place and locate equipment and facilities within the Public Rights-of-Way (such other utility franchisees and other persons being "Public Right-of-Way Users"). The City will seek, after the effective date of this Franchise, to include in its agreements with other utilities and users of the Public Rights-of-way provisions requiring that such users shall not interfere with the Electric Delivery Utility Facilities. The Company recognizes that it is the responsibility of other utility franchisees and Public Rights-of- Way Users to ensure that their activities do not interfere or damage the Electric Delivery Utility facilities and will pursue any damage claims directly with the responsible Public Rights-of-Way Users. The Electric Delivery Utility shall be responsible to repair at its sole cost all damage caused by Electric Delivery Utility activities pursuant to this Franchise. If any such damage poses a threat to the health, safety or welfare of the public or residents, Electric Delivery Utility, upon receipt of notice, shall take prompt actions to mitigate the health, safety or welfare concerns and shall promptly initiate repairs. If the City requests the Electric Delivery Utility to initiate repairs and the Electric Delivery Utility fails to initiate and timely complete repairs within a reasonable time after the City's request, after notice to the Electric Delivery Utility of the City's intent, the City may repair or cause repairs to be made at the Electric Delivery Utility's expense, and Electric Delivery Utility shall promptly pay to the City the actual cost incurred by the City in making or causing such repairs. The Electric Delivery Utility shall require its contractors working in the Public Rights-of-Way to hold all necessary contracting licenses and permits required by the City, or otherwise required by any law, rule, or regulation, for such business. Except as otherwise provided for herein, in determining the location of the facilities of the City, the City shall minimize interference with then existing Facilities of the Electric Delivery Utility. In the event of a conflict between the location of the proposed Facilities of the Electric Delivery Utility and the location of the existing facilities of the City or other Public Right-of-Way Users within Public Rights-of-Way that cannot otherwise be resolved, the City or an authorized agent of the City shall use its reasonable efforts and attempt to resolve the conflict and determine the location of the respective facilities,

provided that if the City determines in such instance that proposed Facilities of the Electric Delivery Utility must be relocated from that proposed by the Electric Delivery Utility, the City will designate a reasonable alternate location within the Public Rights-of-Way for Electric Delivery Utility. Except in an emergency, the Electric Delivery Utility shall be required to obtain street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with the Electric Delivery Utility's operations in Public Rights-of-Way in accordance with City Standards. Under no circumstances, however, shall the Electric Delivery Utility be required to pay for such permitting or be required to post bonds.

8.3 The City reserves the right for any reason whatsoever to use, change the grade of, construct, install, repair, alter, maintain, relocate, modify, open, close, reduce, or widen (collectively "change") any Public Right-of-Way, within the present or future limits of the City. At the City's request, the Electric Delivery Utility shall relocate or remove its Facilities in order to accommodate such change of any Public Right-of-Way. If the Electric Delivery Utility is required by the City to remove or relocate its Facilities, Electric Delivery Utility shall be entitled to reimbursement from the City of the cost and expense of such removal or relocation except to the extent PURA Section 37.101(c) or other state or federal law requires or permits the City to require, the relocation to be done at Electric Delivery Utility's expense.

8.4 If the City abandons any Public Right-of-Way in which the Electric Delivery Utility has Facilities, such abandonment shall be conditioned on the Electric Delivery Utility's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Electric Delivery Utility for all removal or relocation expenses if Electric Delivery Utility agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Electric Delivery Utility to remove or relocate its facilities and Electric Delivery Utility 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 Right-of-Way, the expense of

any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

8.5 The Electric Delivery Utility shall install, construct, repair, maintain and replace its Facilities in a good and workmanlike manner.

8.6 City Inspection. The City retains the right to make visual, non-invasive inspections of the Electric Delivery Utility's Facilities.

8.7 Temporary Removal of Wires. The Electric Delivery Utility on the request of any person shall remove or raise or lower its wires within the City temporarily to permit the moving of houses or other bulky structures. The total expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and Electric Delivery Utility may require such full payment in advance. Electric Delivery Utility shall be given not less than thirty (30) days advance notice to arrange for such temporary wire changes. The clearance of wires above ground or rails within the City and also underground work shall conform to the basic standards of the National Electrical Safety Code.

SECTION 9. INDEMNITY AND INSURANCE.

9.1 (A) IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, ELECTRIC DELIVERY UTILITY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH THE ELECTRIC DELIVERY UTILITY'S PERFORMANCE OF THIS FRANCHISE, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

(B) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), ELECTRIC DELIVERY UTILITY SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(C) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), IF AN INDEMNITEE SUFFERS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS FRANCHISE THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, OF BOTH THE ELECTRIC DELIVERY UTILITY AND THE INDEMNITEE, THE ELECTRIC DELIVERY UTILITY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A) WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO THE ELECTRIC DELIVERY UTILITY'S OWN PERCENTAGE OF RESPONSIBILITY.

(D) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S DUTY TO DEFEND SET FORTH HEREIN IN SUBSECTION (A), THE ELECTRIC DELIVERY UTILITY SHALL HAVE THE RIGHT TO SELECT DEFENSE COUNSEL, SUBJECT TO CITY'S APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. ELECTRIC DELIVERY UTILITY SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF RECEIPT OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS FRANCHISE AGREEMENT. IF ELECTRIC DELIVERY UTILITY FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND ELECTRIC DELIVERY UTILITY SHALL BE LIABLE FOR ALL REASONABLE AND NECESSARY DEFENSE COSTS INCURRED BY CITY, EXCEPT AS LIMITED IN SUBSECTIONS (B) AND (C) OF THIS SECTION.

9.2 Electric Delivery Utility may self-insure to the extent permitted by applicable law under any plan of self-insurance, maintained in accordance with sound accounting practices, against risks and obligations undertaken pursuant to this franchise and shall not be required to maintain insurance; provided that Electric Delivery Utility furnishes the City satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance. Electric Delivery Utility shall provide the City with evidence of the form and basis for insurance coverage or self insurance, as applicable, within thirty (30) days of the effective date of this franchise ordinance. Provided however that the Electric Delivery Utility's self-insurance shall provide to the City, its officers, employees and agents, with the same defense as would be provided by an insurance carrier and with substantially the same coverage as required by other users of the Public Right-of-Way in the City as set forth in Chapter 70 of the Code of Ordinances, currently or as it may be amended (or any successor ordinance or regulation). Should Electric Delivery Utility elect to change the form or

basis of insurance during the term of this franchise, Electric Delivery Utility shall notify the City. Electric Delivery Utility shall provide documentation necessary for review by the City of the changed circumstances of Electric Delivery Utility.

SECTION 10. TRANSFERS AND ASSIGNMENT.

Prior to assignment, transfer, pledge or other conveyance of its rights, duties and obligations under this franchise, except to an affiliated entity, Electric Delivery Utility shall obtain prior written consent of the governing body of the City, which consent will not be unreasonably withheld or delayed. For purposes hereof, an “affiliated entity” means Electric Delivery Utility’s corporate parent owning more than 50% of the voting shares of Electric Delivery Utility, a subsidiary of Electric Delivery Utility’s corporate parent (provided the corporate parent owns more than 50% of the voting shares of the subsidiary), a partnership or joint venture in which Electric Delivery Utility owns a controlling interest of more than 50%, or a subsidiary entity of Electric Delivery Utility in which Electric Delivery Utility owns a controlling interest of more than 50%. Electric Delivery Utility shall provide notice of any assignment, transfer, pledge or conveyance to an affiliated entity at the same time it provides written notice to the Public Utility Commission. Any assignment, transfer, pledge or other conveyance, whether to an affiliated entity or otherwise, shall require the assignee or transferee to perform all of the terms and conditions of this franchise.

SECTION 12. FORFEITURE AND TERMINATION.

12.1 The City shall notify the Electric Delivery Utility, in writing, of an alleged failure of the Electric Delivery Utility to comply with a material provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Electric Delivery Utility shall, upon its receipt of such notice, either:

- (a) diligently cure such failure, but in any event within not more than thirty (30) days after such receipt; or
- (b) if such failure cannot with due diligence be cured within the said thirty (30) day period, then cure such failure within an additional reasonable period of time

so long as the Electric Delivery Utility has submitted to the City in writing its plan (including, without limitation, the time period) to cure such failure and has commenced curative action within the said thirty (30) day period, and thereafter is diligently attempting to cure the failure; or

(c) if the Electric Delivery Utility reasonably believes that the failure specified in the notice from the City is not a failure of a material provision of this Franchise, submit to the City within ten (10) days after its receipt of the notice the Electric Delivery Utility's written response specifying facts and presenting arguments in refutation or defense of such alleged failure (the "Electric Delivery Utility's Defense").

12.2 In the event that the Electric Delivery Utility does not comply with subparagraphs (a), (b), or (c) above, or if the Electric Delivery Utility does comply with subparagraph (c) above but the City, after its review of the Electric Delivery Utility's Defense, nevertheless believes that the Electric Delivery Utility has failed to comply with a material provision of this Franchise, the City may declare this an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 12.3. Notice of such declaration shall be given to the Electric Delivery Utility prior to the City's exercise of any such remedies.

12.3 Not sooner than seven (7) days following the City's declaration of an Uncured Event of Default and the giving of notice of such declaration to the Electric Delivery Utility, the City shall be entitled to exercise any and/or all of the following remedies:

(a) The commencement of an action against Electric Delivery Utility at law for monetary damages.

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

(c) The commencement of any other action which may be available to the City.

(d) The termination of this Franchise in accordance with the provisions of Section 12.4.

12.4 In accordance with the provisions of Section 12.3(d), this Franchise Agreement may be terminated upon at least thirty business day's prior written notice to Electric Delivery Utility. City shall notify Electric Delivery Utility in writing at least fifteen (15) business days in advance of the City Council meeting at which the question of forfeiture or termination shall be considered, and Electric Delivery Utility shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Electric Delivery Utility may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction within thirty days following the effective date of such final decision. Upon timely appeal by Electric Delivery Utility of the City Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or a court or administrative order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this Franchise shall remain in effect for all purposes. The City recognizes Electric Delivery Utility's right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission in accordance with the Texas Utilities Code.

SECTION 13. NONEXCLUSIVE FRANCHISE.

Nothing contained in this Franchise shall ever be construed as conferring upon the Electric Delivery Utility any exclusive rights or privileges of any nature whatsoever.

SECTION 14. ENTIRE AGREEMENT.

This Franchise contains all of the agreements of the parties with respect to the subject matter covered in this Franchise, and no prior or contemporaneous agreements

or understandings pertaining to any such matters shall be effective for any purpose, with the exception of the Compromise Settlement Release agreement signed by the City on October 24, 2002.

SECTION 15. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Franchise is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 16. NON-WAIVER; RIGHTS CUMULATIVE; SURVIVING RIGHTS, REMEDIES, AND OBLIGATIONS.

Failure of the City to declare, or any delay by the City in taking any action in connection with, any breach or default of this Franchise by the Electric Delivery Utility immediately upon the occurrence thereof shall not constitute or be construed to be a waiver by the City of such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default of the Electric Delivery Utility does not act as a waiver of the City's rights to declare another breach or default. By entering into this ordinance, City does not waive any claim which the City may have under the Prior Electric Franchise, except to the extent any such claims were settled in that certain Compromise Settlement Release agreement signed by the City on October 24, 2002. Except as otherwise provided for herein, the rights and remedies provided by this Franchise are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise.

SECTION 17. GOVERNING LAW.

This Ordinance shall be governed by and construed in accordance with the laws of the State of Texas and the City Charter; and, with respect to any conflict of law

provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the interpretation, validity and enforcement of this Ordinance.

SECTION 18. NOTICES.

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

<u>To the City:</u> Town of Addison, Texas 5300 Belt Line Road Dallas, Texas 75254 Attn: City Manager	<u>To Electric Delivery Utility:</u> TXU Electric Delivery Company <u>500 N. Akard Street, Suite 13-062</u> <u>Dallas, TX 75201</u> Attn: Manager Municipal Regulatory Affairs
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SECTION 19. PARAGRAPH HEADINGS; CONSTRUCTION.

The paragraph headings contained in this Franchise 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. THIRD PARTIES.


This Franchise and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

First reading of this Ordinance by the City Council of the Town of Addison, Texas occurred on the 11th day of January 2005.

Second reading of this Ordinance by the City Council of the Town of Addison, Texas occurred on the 25th day of January 2005.

DULY PASSED AND APPROVED by the City Council of the City of Addison, Texas on the 22nd day of February 2005.

APPROVED:



MAYOR

APPROVED AS TO FORM:

CORRECTLY ENROLLED:


CITY ATTORNEY
CITY SECRETARY