

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

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

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

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

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

SECTION 5. Use of Rights-of-Way.

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

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

SECTION 6. Work by the City and Others.

6.1 City reserves the right to lay, and permit to be laid, sewer, cable television, water, telephone, electric and other lines, cables and conduits, and to do and permit to be done an underground or overhead work that may be necessary or proper in, across, along, over, or under any Public Rights-of-Way occupied by the Company. The City shall be liable to the Company only for any damage to the Company's lines, equipment or appurtenances of the Company, the producing cause of which is the negligence of the City or its employees.

SECTION 7. Changes for Governmental Purposes.

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

7.2 If the costs for work contemplated by this section is eligible for funding, in whole or in part, with federal or state highway funds, the federal government or state may provide compensation for utility adjustments. If compensation