



# CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		8/11/2014		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): <b>Dianna Wike x7549</b>				
<b>CAPTION</b>				
To approve and authorize Amendment No. 2 to the Distribution Pole License Agreement S0527371C that allows the City of Plano to mount Mesh Network devices on distribution poles owned by Oncor Electric Delivery Company LLC, (f/k/a TXU Electric Delivery Company). This Amendment No. 2 will provide for updated definitions, and insurance requirements, and provide terms concerning transfers.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2013-14</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
BALANCE	0	0	0	<b>0</b>
FUND(S): <b>N/A</b>				
<b>COMMENTS:</b> This contract modification has no financial impact. <b>STRATEGIC PLAN GOAL:</b> Periodic updates and modifications to existing agreements relate to the City's Goal of Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
Technology Services recommends approval of Amendment No. 2 to the Distribution Pole License Agreement owned by Oncor Electric Delivery Company LLC (f/k/a TXU Electric Delivery Company), that allows the City of Plano to mount Mesh Network devices on distribution poles. This Amendment No. 2 is required to provide for updated definitions, and insurance requirements, and provide terms concerning transfers.				
List of Supporting Documents: Memorandum, Amendment No. 2			Other Departments, Boards, Commissions or Agencies	



# Memorandum

**Date:** July 22, 2014

**To:** Diane Palmer-Boeck, Purchasing Manager

**From:** David Stephens, Director Technology Services

**Subject: Amendment No. 2 to Distribution Pole License Agreement S0527371C with Oncor Electric Delivery Company LLC (f/k/a TXU Electric Delivery Company)**

Technology Services proposes approval of Amendment No. 2 to the Distribution Pole License Agreement S0527371C that allows the City of Plano to mount Mesh Network devices on distribution poles. This agreement is with Oncor Electric Delivery Company LLC (f/k/a TXU Electric Delivery Company). Oncor is requesting to update some definitions in this contract, provide terms about transfers, and updated insurance requirements. There is no monetary impact to this contract modification.

**AMENDMENT NO. 2**

**DATED AUGUST 12, 2014**

**TO**

**DISTRIBUTION POLE LICENSE AGREEMENT**

**S0527371C**

**BY AND BETWEEN**

**CITY OF PLANO**

**AND**

**ONCOR ELECTRIC DELIVERY COMPANY LLC  
(f/k/a TXU ELECTRIC DELIVERY COMPANY)**

**DATED APRIL 12, 2007**

**AMENDMENT NO. 2****EFFECTIVE DATE**

The Effective Date of this Amendment is **August 12, 2014**.

**PURPOSE**

This Amendment modifies, alters or changes specific terms and conditions of contract number **S0527371C** (the "Agreement") currently in effect between the parties hereto. This Amendment shall replace and supersede Amendment No.1 to the Agreement in its entirety. Except as modified in this Amendment or previous amendments, the Agreement will remain in full force and effect.

**MODIFICATIONS**

The Agreement is hereby modified as follows:

1. SECTION 1. DEFINITIONS: 1.5 "Equipment."

- a. The definition of "Equipment" shall be deleted in its entirety and replaced with the following definition:

"This shall mean equipment, including appurtenances, attached by or on behalf of Licensee to any Pole. Such Equipment shall include, without limitation, the fiber optic or other cables (whether original or overlashed), power supplies, amplifiers and drop wires, wires and appliances, including service wires and bonding wires, together with associated cable messengers, anchors, pedestals, guy wires, and other appurtenances as well as radios, antennas and other wireless equipment used by Licensee and approved by Company."

2. SECTION 1. DEFINITIONS: 1.14 "Poles."

- a. The definition of "Poles" shall be deleted in its entirety and replaced with the following definition:

"This shall mean distribution pole(s) located within the boundaries of the areas in which Company provides electric utility service, each of which has a circuit with a nominal voltage of less than 69,000 volts, which are owned solely by Company; such term does not mean or include, without limitation, pole(s) or other structures owned by Company which are used for the transmission, rather than distribution, of electric energy."

3. SECTION 1. DEFINITIONS: 1.17 "Standards."

The definition of "Standards" shall be deleted in its entirety and replaced with the following definition:

"This shall mean the safety or engineering standards Company applies to electric distribution overhead and underground construction and maintenance, which shall include:

- a) the current edition of the National Electrical Safety Code;
- b) the rules and regulations of the Occupational Safety & Health Administration ("OSHA");
- c) Company's Distribution Construction Standards Manual (available at Company's Website); and
- d) other applicable laws or regulations of any governing authority, or regulatory body, having jurisdiction over the subject matter of this Agreement."

4. SECTION 1. DEFINITIONS: 1.18 "TXU Electric Delivery."

- a. The term "TXU Electric Delivery," shall be replaced with the term "Company," and the definition of "TXU Electric Delivery" shall be deleted in its entirety and replaced with the following definition of "Company":

"This shall mean Oncor Electric Delivery Company LLC."

**AMENDMENT NO. 2**

- b. All references throughout the Agreement to “TXU Electric Delivery,” shall be replaced with the term “Company.”
5. SECTION 1. DEFINITIONS: 1.19 “TXU Electric Delivery Party.”
- a. The term “TXU Electric Delivery Party” shall be replaced with the term “Indemnified Party (Parties),” and the definition of “TXU Electric Delivery Party” shall be deleted in its entirety and replaced with the following definition of “Indemnified Party (Parties)”:
- “This shall mean Company Group, its present and future affiliates, and its representatives, agents, officers and employees. For purposes of this Agreement, the term shall also include any contractor, electric utility or other entity authorized by Company to perform work on its Poles on its behalf.”
- b. All references throughout the Agreement to the term “TXU Electric Delivery Party” shall be replaced with the term “Indemnified Party (Parties).”
6. SECTION 1. DEFINITIONS: 1.21 “Power Space.”
- a. The definition of “Power Space” shall be deleted in its entirety and replaced with the following definition:
- “This shall mean any space on the Poles normally and primarily utilized by Company for the distribution of electric power, including the space from the tops of the Poles down to and including the neutral space.”
7. SECTION 1. DEFINITIONS: 1.22 “Approved Contractor.”
- a. The term “Approved Contractor” shall be replaced with the term “Approved Power Space Contractor” and the definition of “Approved Contractor” shall be deleted in its entirety and replaced with the following definition of “Approved Power Space Contractor”:
- “This shall mean any party retained by Licensee that is approved by Company to perform certain installation, repair and maintenance functions on the Equipment attached to Poles in the Power Space and any contractor or other party approved by Company to perform work on Company’s behalf in the Power Space.”
8. SECTION 1. DEFINITIONS: 1.24 “Company’s Website.”
- a. The term “Company’s Website” shall be added as Section 1.24 of the Agreement and defined as follows:
- “This shall mean the following website: <http://www.oncor.com/EN/Pages/Joint-Use-Management.aspx>.”
9. SECTION 1. DEFINITIONS: 1.25 “Company Group.”
- a. The definition of “Company Group” shall be added as Section 1.25 of the Agreement and defined as follows:
- “This shall mean Company, its majority investor, Energy Future Holdings Corp., and all subsidiaries and affiliates of Energy Future Holdings Corp., and all officers, directors, shareholders, associates, related firms and entities, employees, servants and agents of Company and each such subsidiary or affiliate.”
10. SECTION 4. ATTACHMENT, REPLACEMENT, RELOCATION AND MODIFICATION OF EQUIPMENT.

The following language shall be inserted at the beginning of Section 4, and prior to Section 4.1:

**AMENDMENT NO. 2**

“Throughout the term of this Agreement, Licensee may designate Poles on which it desires to work. All work on the Poles shall:

- (a) comply with the terms of this Agreement;
- (b) comply with the Standards;
- (c) be conducted in a good and workmanlike manner; and
- (d) not interfere with equipment of any Company Group, Joint User or other third-party attacher.”

11. SECTION 4. ATTACHMENT, REPLACEMENT, RELOCATION AND MODIFICATION OF EQUIPMENT: 4.11  
“Transfers by Company.”

The following provision shall be inserted as Section 4.11 of the Agreement, which shall be entitled “Transfers by Company”:

“Company, in the exercise of its sole discretion and in accordance with the provisions of the Agreement, may transfer Licensee’s simple, tangent attachments to a new Company Pole or relocate simple, tangent attachments as needed on an existing Pole, provided that such work does not create a safety hazard. The parties agree that, notwithstanding 47 C.F.R. § 1.1403, Company may perform such work without prior notice to Licensee, and shall notify Licensee of the performance of such work within fifteen (15) days of its completion, and request inspection by Licensee of said work for Standards compliance. Company shall invoice Licensee seventy-five Dollars (\$75.00) per transfer for all transfers performed on a monthly basis, with payment due within thirty (30) days of receipt. At Company’s discretion, Company may increase or decrease said transfer price from time to time upon sixty (60) days’ notice to Licensee. For and with respect to Equipment located within the Power Space, such work shall continue to be performed exclusively by an Approved Power Space Contractor.

Licensee may communicate in writing to Company that it does not wish to participate in the transfer program described in the preceding paragraph, or that it does not wish for Company to make a specific category or type of transfer or relocation upon Licensee’s behalf.”

12. SECTION 13: INSURANCE

Section 13 of the Agreement shall be deleted in its entirety and replaced with the following language:

“SECTION 13. INSURANCE TO BE PROVIDED TO COMPANY BY LICENSEE.

13.1 Coverage Requirements. Licensee shall, at its sole expense and during the term of this Agreement, purchase and maintain insurance in accordance with the requirements of Attachment E, Licensee’s Insurance Requirements. However, notwithstanding the foregoing insurance requirements, if an entity is exempt by law from the provision of insurance or has otherwise been granted by law the ability to self-insure, a cite to the applicable law or regulation creating such exemption, or other verifiable evidence of any exemption from the provision of insurance is required. Such evidence shall be provided to Company prior to the execution of this Agreement and shall be made an attachment hereto.

13.2 Notification of Accident, Injury, or Damage. Licensee will notify Company’s manager of claims per the requirements in Attachment E as soon as practical of any accidents or occurrences resulting in injuries to any person, including death, or any property damage (including, without limitation, damage to any Equipment or Pole), arising out of or relating to this Agreement.

13.3 Enhancement of Indemnification. Nothing in this Section 13, or the provision of any insurance or irrevocable standby letter of credit or other security required by this Section 13, shall affect, limit or otherwise reduce the indemnity obligations provided for in Section 12.

13. SECTION 19.1: Notices.

The following portion of Section 19.1 of the Agreement shall be deleted in its entirety:

“(b) If to TXU Electric Delivery:

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Capgemini Energy LP  
1601 Bryan Street, Suite 19-010B  
Dallas, Texas 75201

Attn: Ron Coan  
Telephone Number: 214-812-2211  
Fax Number: 214-812-7450  
Email: rcoan@capgeminienergy.com”

The following language shall replace the aforementioned deleted language in Section 19.1 of the Agreement:

“(b) If to Company:

Oncor Electric Delivery Company LLC  
Attention: Contracts Administrator  
115 W. 7th Street, Suite 211  
Fort Worth, TX 76102

Attn: Alan Quam  
Telephone Number: 817-215-6755  
Fax Number: 817-215-6243  
Email: [alan.quam@oncor.com](mailto:alan.quam@oncor.com).”

All other terms of Section 19.1 shall remain the same.

14. ATTACHMENT E: LICENSEE’S INSURANCE REQUIREMENTS.

Exhibit 1 hereto, entitled “Attachment E, Licensee’s Insurance Requirements,” shall supersede existing Attachment E.

**[SIGNATURE PAGE FOLLOWS]**

**AMENDMENT NO. 2**

The parties have signed this Amendment acknowledging their agreement to its provisions as of the Effective Date.

**CITY OF PLANO**

**ONCOR ELECTRIC DELIVERY COMPANY LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Bruce D. Glasscock

Name: Karen Flewharty

Title: City Manager

Title: Joint Use Manager

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

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

**AMENDMENT NO. 2**

**EXHIBIT 1**

**AMENDMENT NO. 2****ATTACHMENT E****LICENSEE'S INSURANCE REQUIREMENTS****A. Coverage Requirements**

Licensee will, at its own expense, maintain in force throughout the period of the Agreement, or as otherwise specified, and until released by Company the following minimum insurance coverages, with insurers acceptable to Company.

- 1) Commercial General Liability Insurance including bodily injury and property damage, personal and advertising injury, contractual liability, and including products and completed operations, with minimum limits of one million dollars (\$1,000,000) per occurrence for bodily injury, including death and property damage.
- 2) Automobile Liability Insurance for coverage of owned, non-owned and hired autos, trailers or semi-trailers with a minimum combined single limit of one million dollars (\$1,000,000) per accident for bodily injury, including death, and property damage.
- 3) Excess Liability Insurance over and above the employers' liability, commercial general liability and automobile liability insurance coverage, with a minimum limit of two million dollars (\$2,000,000) per occurrence. Coverage must replace exhausted aggregate limits under Commercial General Liability and Workers' Compensation (Employers Liability) insurance coverages referenced herein.
- 4) Workers' Compensation and Employers' Liability Insurance providing statutory benefits in accordance with the laws and regulations of the State of Texas or state of jurisdiction as applicable. The minimum limits for the 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.

Note: The required limits of insurance can be satisfied by any combination of primary and excess coverage.

**B. Additional Requirements**

- 1) Each of the policies in section A., above, except workers' compensation and employers' liability insurance, will contain provisions that specify that the policies are primary and will apply without consideration for other policies separately carried and will state each insured is provided coverage as though a separate policy had been issued to each, except with respects to limits of insurance, and that only one deductible will apply per occurrence regardless of the number of insureds involved in the occurrence. Licensee will be responsible for any deductibles or retentions.
- 2) Each of the policies in section A, above, except workers' compensation and employers' liability insurance, if written on a claims-made basis, will be maintained in full force and effect for two (2) years after final acceptance or completion of the Work, whichever is later.
- 3) All policies must be issued by carriers having an *A.M. Best's* rating of "A-" or better, and an *A.M. Best's* financial size category of "VIII", or better. If requested in writing by Company, Licensee will make available to Company a certified copy of any or all insurance policies or endorsements required of Licensee.
- 4) Company will receive advance written notice prior to non-renewal or cancellation.
- 5) Certificates of insurance (COI) must show "Oncor Electric Delivery Company LLC and its affiliates" as the certificate holder, and as an additional insured (including completed operations) to the extent Licensee has agreed to indemnify any Indemnified Party or Parties pursuant to the provision of indemnity therein. The additional insured requirement shall apply to all of the required coverages except workers' compensation. All of the required coverages must provide a waiver of subrogation in favor of the certificate holder.

**AMENDMENT NO. 2****C. Limitation of Liability**

The requirements contained herein as to the types and limits of all insurance to be maintained by Licensee are not intended to and will not, in any manner, limit or qualify the liabilities and obligations assumed by Licensee under the Agreement.

**D. Carrier/Agent to Provide Proof of Insurance**

Prior to execution of the Agreement, and when requested by Company, Licensee will instruct its insurance carrier/agent to submit directly to Company valid certificate(s) of insurance, evidencing the coverage required herein. Valid certificates of insurance utilize ACORD 25 form dated 2010/05 or later and other Texas Department of Insurance (TDI) approved forms which properly addresses each requirement referenced in this document (as depicted in Company's Sample COI, available on request). If Licensee's insurance carrier/agent provides to Company a certificate of insurance that is not an ACORD 25 form dated 2010/05 or later, insurance carrier/agent must also submit sufficient documentation directly to Company indicating that certificate is approved by TDI. Company's review of certificates or policies will not be construed as accepting any deficiencies in Licensee's insurance or relieve Licensee of any obligations set forth herein. In addition, Licensee will require each of its subcontractors to provide adequate insurance. Any deficiencies in the insurance provided by subcontractors will be the responsibility of Licensee.

**E. Description of Operations Language**

The following language or language substantially in the form of such language must be included in the Description of Operations section of the COI or otherwise indicated on the form:

**Certificate holder is included as an additional insured (including completed operations) as respects all of the required coverages except workers' compensation. All of the required coverages provide a waiver of subrogation in favor of the certificate holder.**

**F. Certificate Holder Detail**

The certificate holder must be shown on the COI as follows:

**Oncor Electric Delivery Company LLC and its affiliates  
Attention: Joint Use Management  
115 W. 7th Street, Suite 211  
Fort Worth, TX 76102**

**G. Reporting of Damage and Accidents**

Licensee agrees to report to the manager of the claims department (address shown below) of the Company in writing as soon as practical all instances of property damage (including, without limitation, damage to any Equipment or Pole), and all accidents or occurrences which may result in injuries to any person, including death, arising out of or relating to this Agreement.

**Oncor Electric Delivery Company LLC  
Attention: Claims  
1616 Woodall Rodgers Freeway  
Dallas, TX 75202**

**H. Maximum Limits of Insurance**

If the insurance obligations required in the Agreement exceed the maximum limits permitted by law or do not otherwise conform with any applicable law, then this Agreement will be deemed amended so as to only require

**AMENDMENT NO. 2**

Licensee to provide insurance to the maximum extent allowed by law.

**I. Notice for Legislatively Created Entities**

Notwithstanding the foregoing insurance requirements, if an entity is exempt by law from the provision of insurance or has otherwise been granted by law the ability to self-insure, a cite to the applicable law or regulation creating such exemption, or other verifiable evidence of any such exemption from the provision of insurance is required. Such evidence shall be provided to Company prior to the execution of this Agreement and shall be made an attachment hereto.



City of Plano  
1520 K Avenue  
Plano, TX 75074

P.O. Box 860358  
Plano, TX 75086-0358  
Tel: 972.941.7000  
plano.gov

Attachment F to Amendment 2 of Distribution Pole License Agreement S0527371C

August 1, 2014

Mr. Alan Quam  
Oncor Electric Delivery Company, LLC  
Attention: Contrasts Administration  
115 West 7<sup>th</sup> Street, Suite 805

Re: Revised Insurance Requirements to Contract

Dear Mr. Quam:

As required by Section 13, Article 1-Coverage Requirements of the referenced contract; this letter will serve as notification that the City of Plano, Texas is a self-insured government entity in accordance with Texas Government Code, Title 10, Subtitle F, and Chapter 2259- Self-Insurance by Governmental Units.

As requested by Attachment E-licensee's insurance Requirements, Paragraph D-Carrier/Agent to Provide Proof of the Insurance, a current Certificate of Insurance has been included as an attachment to this letter.

Should you have any questions or need further assistance, please feel free to contact me via e-mail: [jimm@plano.gov](mailto:jimm@plano.gov) or direct dial phone: 972-941-5652.

Sincerely,

Jim Miller  
Assistant Risk Manager

Attachment: Certificate of Insurance

