

TOWN OF SEABROOK ISLAND

ORDINANCE NO. 2022-08

ADOPTED _____

AN ORDINANCE TO GRANT TO BERKELEY ELECTRIC COOPERATIVE, INC., THE NON-EXCLUSIVE RIGHT, POWER, AND AUTHORITY TO ERECT AND TO INSTALL, MAINTAIN, AND OPERATE IN, OVER, UNDER, AND UPON THE STREETS, ALLEYS AND PUBLIC PLACES OF THE TOWN OF SEABROOK ISLAND, ITS ELECTRIC LINES, POLES, WIRES, GUYS, PUSH BRACES, AND APPURTENANT ELECTRIC DISTRIBUTION FACILITIES, WHETHER USED TO RENDER SERVICE TO THE TOWN OR NOT, TOGETHER WITH ANY NECESSARY RIGHT OF ACCESS THERETO, FOR SUCH PERIOD AS THE SAME ARE NEEDED BY THE COOPERATIVE TO RENDER ELECTRIC SERVICE TO ITS CUSTOMERS IN THE TOWN OF SEABROOK ISLAND, SOUTH CAROLINA; ALSO TO SET THE AMOUNT OF THE FRANCHISE FEE TO BE PAID BY BERKELEY ELECTRIC COOPERATIVE, INC., TO THE TOWN OF SEABROOK ISLAND, SOUTH CAROLINA

WHEREAS, electricity and related services are currently provided within the Town of Seabrook Island by the Berkeley Electric Cooperative, Inc. under a duly authorized franchise agreement; and

WHEREAS, both the Town of Seabrook Island and Berkeley Electric Cooperative, Inc. desire that such service shall continue; and

WHEREAS, the Town of Seabrook Island and Berkeley Electric Cooperative, Inc. have negotiated an amended Franchise Agreement whereby said Berkeley Electric Cooperative, Inc. shall continue to be granted the right to use the public rights-of-way within the Town for the purpose of erecting, constructing, maintaining, and operating its facilities; and

WHEREAS, the said amended Franchise Agreement sets forth the method by which the Town shall be compensated for the rights and privileges granted to Berkeley Electric Cooperative, Inc.; and

WHEREAS, the Mayor and Council of the Town of Seabrook Island believe that adoption of the amended Franchise Agreement is in the best interest of its citizens and property owners; and

WHEREAS, the payments made to the Town under the terms and conditions of the amended Franchise Agreement shall be in lieu of business license fees; and

WHEREAS, the Mayor and Council advertised and held a public hearing on this ordinance during a duly called meeting on _____;

NOW, THEREFORE, pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, **BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE TOWN OF SEABROOK ISLAND, S.C.:**

SECTION 1

That wherever the word "Cooperative" appears in the Ordinance, it is hereby to designate, and shall refer to, Berkeley Electric Cooperative, Inc., a corporation organized, authorized, and doing business pursuant to the laws of the State of South Carolina, its successors and assigns. That wherever "Town"

appears in this Ordinance, it is hereby to designate, and shall refer to, the Town of Seabrook Island, South Carolina.

SECTION 2

That the non-exclusive right, power, and authority is hereby granted and vested in said Cooperative to erect and to install, maintain, and operate in, over, under, and upon the streets, alleys, and public places of the Town, its electric lines, poles, wires, guys, push braces, and appurtenant electric facilities, whether used to render service to the Town or not, together with any necessary right of access thereto, for such period as the same are needed by the Cooperative to render electric service to its customers in said Town; all for a term of thirty (30) years.

SECTION 3

The Cooperative shall have the right to continue its service, to construct, extend, operate, and maintain an electric distribution system for its existing customers within the present Town limits and to existing and new customers in the extended Town limits when the extended Town limits encompass an area which has been previously assigned to the Cooperative by the Public Service Commission for the State of South Carolina. As required by federal law, the Cooperative may allow pole attachments for cable systems or other telecommunications carriers. It is the responsibility of the cable or other telecommunications carriers to secure any necessary easements or permits for their attachments.

SECTION 4

The Cooperative shall be entitled to charge its customers within the Town for electric service at the prevailing rates prescribed and approved from time to time by the Board of Trustees of the Cooperative. Provided, however, that said rates shall be identical to the rates charged to other customers of the same class throughout the Cooperative's distribution system.

SECTION 5

No street, alley, bridge, or other public place used by the Cooperative in the construction or maintenance of its distribution system shall be obstructed longer than necessary to perform such construction or maintenance work, and shall be restored to the same good order and condition as when said work commenced. No part of any street, alley, bridge, or other public place of said Town, including any public drain, sewer, catch basin, water pipes, pavement, or other public improvements shall be injured, but if such damage should occur due to the Cooperative's failure to use due care, then the Cooperative shall promptly repair the same, and in default thereof, the Town may make such repairs and charge the reasonable cost thereof to and collect the same from the Cooperative. The Cooperative shall save the Town harmless from all liability or damages (including judgments, decrees and legal court costs) resulting solely from the Cooperative's failure to use due care in the exercise of the privileges hereby granted.

SECTION 6

Upon approval of this Franchise Agreement and the franchise agreement between Dominion Energy South Carolina, Inc. ("DESC") and the Town in accordance with the terms of the Agreement Concerning Electric Service Rights Between Berkeley Electric Cooperative and DESC, dated _____, 2022 ("Electric

Service Rights Agreement”), the Cooperative shall have electric service rights to the parcels shaded in green on Exhibit A, and DESC shall have electric service rights to the parcels shaded in red on Exhibit A, provided, however, that:

- A. The Cooperative may continue to provide electric service to any building or structure to which it is already providing electric service as of the effective date of the Franchise Agreement until such building or structure is removed, torn down, razed to the ground, or demolished, even if Exhibit A provides electric service rights for the parcel on which the building or structure is located to DESC; and DESC may continue to provide electric service to any building or structure to which it is already providing electric service as of the effective date of the Franchise Agreement until such building or structure is removed, torn down, razed to the ground, or demolished, even if Exhibit A provides electric service rights for the parcel on which the building or structure is located to the Cooperative. After any building or structure that is being served by DESC or the Cooperative pursuant to the terms of this Section VI is removed, torn down, razed to the ground, or demolished, the service rights designation in Exhibit A shall be the sole determining factor as to whether DESC or the Cooperative has the right to provide electric service to any future replacement building or structure within that parcel.
- B. Where any new building or structure is constructed so that part of the building or structure resides on a red parcel in Exhibit A and part of the building or structure resides on a green parcel of Exhibit A, the customer, in its sole discretion, may choose whether the Cooperative or DESC provides electric service to such new building or structure.
- C. Upon any future annexation by the Town, the Cooperative shall have electric service rights to those annexed parcels assigned to it by the Public Service Commission of South Carolina prior to the annexation, and DESC shall have electric service rights to those annexed parcels assigned to it by the Public Service Commission of South Carolina prior to the annexation.
- D. If the Town Council does not approve this Franchise Agreement and the franchise agreement with DESC pursuant to the terms of the Electric Service Rights Agreement, the Electric Service Rights Agreement shall be considered terminated, null, and void.

SECTION 7

The Cooperative shall furnish, install, operate, and maintain a street lighting system and service along the streets, highways, alleys, and public places of and located inside the Town as may be requested by the Town. The Town hereby accepts the street lighting system existing (if any) and operated by the Cooperative within the Town on the date of franchise effectiveness as the street lighting system and service which the Cooperative is initially obligated to provide pursuant to this section.

SECTION 8

In regard to the aforesaid street lighting system, if any, the Cooperative shall:

- A. Upon written request of the Town, expand and extend such system to areas inside the Town where the Cooperative is authorized by law to serve.
- B. Properly maintain the street lighting system in first class condition and all materials used therein

shall be of standard quality and kind and shall meet the requirements of good street lighting practices.

- C. Provide reliable street lighting service from dusk to dawn each night during the Ordinance period, or for such other times or occasions as may be required as a matter of safety due to abnormal darkness.
- D. Maintain at its own expense a system for repairing or renewing the lamps in use. The Cooperative, upon receiving official notice that there is a defective lamp, shall, within twenty-four (24) hours (except on Saturday, Sunday or holiday), put the same in order or replace same.
- E. Make changes in the location of any such street lighting facilities upon written order to the Town, provided the Town shall pay to the Cooperative the actual cost of labor, material, and other costs incurred in making such changes.

SECTION 9

For such street lighting service, the Town shall pay the Cooperative the prevailing standard rate charged for such services by the Cooperative. The Town shall pay promptly, within fifteen (15) days after receipt of proper bill from the Cooperative for the preceding month's service.

SECTION 10

The Town shall have access at all reasonable times to all maps, records, and rates relating to the street lighting system located in the Town.

SECTION 11

The Cooperative shall relocate any of its facilities located within the Town upon written order of the Town, provided such relocation can be accomplished without substantial detriment to the Cooperative's distribution system and provided that the Town shall pay to the Cooperative the actual cost of labor, material, and other costs incurred in making such relocation.

SECTION 12

The Town agrees that all electric energy supplied by the Cooperative (except for street lighting) shall be metered by standard meters to be owned, furnished, and maintained by the Cooperative. All electric wires, fixtures, lamps, appliance, equipment, and machinery used in the Town's buildings shall be installed, owned, maintained, and operated by the Town at its cost and expense.

The Cooperative shall charge and the Town shall pay for any such electric service according to the Cooperative's applicable rate schedules which shall at all times be identical to the rates charged to other customers of the same class throughout the Cooperative's distribution system.

None of the electric energy furnished to the Town under this section shall be sold or disposed of to others without the expressed written consent of the Cooperative; provided, however, this restriction shall not apply to any electric vehicle charging station owned and operated by the town and made available to the public.

SECTION 13

The electric service performed pursuant to this Ordinance is not guaranteed to be free from minor interruptions or from major outages beyond the reasonable control of the Cooperative. In the event electric service should be wholly or partially interrupted or suspended, or shall fail, due to any cause beyond the reasonable control of the Cooperative and not due to its neglect, or in the event the Cooperative shall deem it necessary to suspend said service for the purpose of inspecting its lines, substations, or other equipment, or make repairs or alterations thereto, the Cooperative shall not be obligated to provide said service during any such period of interruption or suspension or failure and shall not be liable for any damage or loss resulting therefrom.

SECTION 14

All sidewalks, street pavements, street surfaces, or other public improvements which may be disturbed or damaged by reason of the Cooperative's erecting poles or performing any necessary work upon the streets and public places of the Town shall be properly replaced and repaired by the Cooperative to the reasonable requirements of the Town.

SECTION 15

The Cooperative, as to all other terms and conditions of service not specifically stated or covered herein, shall supply electric service under this Ordinance, and the Town shall receive and utilize such service, consistent with the Service Rules and Regulations of the Cooperative, both as they now exist or as established and revised from time to time by the Cooperative's Board of Trustees. No provision or section of this Ordinance, however, shall prevent the Town from exercising any other lawful authority or regulatory power that may now or hereafter be possessed by the Town.

SECTION 16

The Cooperative shall, as payment for the total license fee for each calendar year, pay into the Treasury of the Town, on or before the 31st day of March each year, a sum of money equal to a fixed percentage of the total gross sales paid to the Cooperative from all electrical service accounts, excluding industrial and municipal, within the corporate limits of the Town for the preceding calendar year, as follows:

- A. For the payment due on or before March 31, 2023, the sum shall be equal to three percent (3%) of the total gross sales paid to the Cooperative from all electrical service accounts, excluding industrial and municipal, within the corporate limits of the Town for the preceding calendar year.
- B. For the payment due on or before March 31, 2024, and for each year thereafter, the sum shall be equal to five percent (5%) of the total gross sales paid to the Cooperative from all electrical service accounts, excluding industrial and municipal, within the corporate limits of the Town for the preceding calendar year.

The payment of the percentage of gross sales provided for herein shall be in lieu of all money demands and charges, except ad valorem taxes on property.

The Town shall notify the Cooperative in writing of areas annexed into the Town, including with the notification: (1) accurate maps, (2) tax map numbers, and (3) street addresses of all locations in the annexed areas so that newly annexed customers may be subject to franchise fees. Such notification is a precondition to franchise fee payments by the Cooperative on those accounts. In addition, the Town shall promptly update its municipal boundary maps with its County Geographical Information Systems (GIS) Office.

From time to time, but no more than once a year and no less than once every three years, the Cooperative will provide the Town a list of service addresses to which franchise fees are being applied (the "List"). The Town shall have sixty (60) days from receipt to verify that all addresses included on the List are accurate and that no addresses are missing. Unless the Town notifies the Cooperative of any error: (1) the Town shall be required to reimburse the Cooperative for any Franchise Fee refund based on an address incorrectly included on the List; (2) the Cooperative shall not be responsible for Franchise Fees for any service addresses not included on the List. Reimbursement shall be made to the Cooperative within sixty (60) days of receipt of request by the Town or the Cooperative may agree, in its sole discretion, to deduct the amounts owed under this Subsection from the next Franchise Fee payment to the Town. This information is confidential and proprietary and shall not be disclosed to any third party without a court order or the Cooperative's prior written consent.

Should the Town ever, at any time, construct, purchase, lease, acquire, own, hold, or operate an electric distribution system, then in that event the payment of the percentage of gross sales provided herein to be paid by the Cooperative, its successors and assigns, shall abate, cease, and be no longer due, and shall forever thereafter be uncollectible.

SECTION 17

The Town hereby levies, and the Cooperative may collect and transmit to the Town, a franchise fee on all electricity sold by third parties to customers within the Town using the Cooperative's lines or facilities, said fee is to be in all respects equivalent to the franchise fees established herein, which the Cooperative is obligated to make on whatever basis during the life of this franchise.

SECTION 18

The Electric Service Agreement and Franchise granted by this Ordinance, when accepted by the Cooperative, shall constitute a contract between the Town and the Cooperative, and shall be in force and effect for the term of thirty (30) years.

SECTION 19

The Town shall become and remain a member of the Cooperative, if and for so long as the Town purchases electric service from the Cooperative.

SECTION 20

All rights, privileges and authority possessed by the Cooperative, pursuant to the laws and regulations of the State of South Carolina and its regulatory agencies, including but not limited to Act 431 of 1984 of the General Laws of South Carolina, shall be reserved to the Cooperative and shall not be

abridged, delegated, modified, or waived, except as specifically provided herein and then only for the term of this agreement. In addition, the Cooperative reserves all rights, title, and interest that it now has by deed or prescriptive rights in its easements and rights of way and said rights shall not be abridged, delegated, or granted, except as specifically provided herein and then on for the term of this agreement.

SECTION 21

This Ordinance shall not become effective until accepted in writing by the Cooperative which shall be on the same date that the Franchise Ordinance for DESC becomes effective.

SECTION 22

If any section, subsection, paragraph, clause, or provision of this ordinance shall be deemed to be unconstitutional, unenforceable, or otherwise invalid by the final decision of a court of competent jurisdiction, it shall be construed to have been the legislative intent of Town Council to pass said ordinance without such unconstitutional provision, and the validity of all remaining sections, subsections, paragraphs, clauses, or provisions of said ordinance shall not be affected thereby. If said ordinance, or any provision thereof, is held by the final decision of a court of competent jurisdiction to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances.

SECTION 23

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SIGNED AND SEALED this ____ day of _____, 2023, having been duly adopted by the Town Council for the Town of Seabrook Island on the ____ day of _____, 2023.

First Reading:
Public Hearing:
Second Reading:

TOWN OF SEABROOK ISLAND

John Gregg, Mayor

ATTEST

Katharine E. Watkins, Town Clerk

ACCEPTANCE of the electric franchise granted by within Ordinance acknowledged by BERKELEY ELECTRIC COOPERATIVE, INC., this _____ day of _____, 20__.

BERKELEY ELECTRIC COOPERATIVE, INC.

Michael S. Fuller
Chief Executive Officer

ATTEST

Exhibit A

Town of Seabrook Island Parcel Assignment Map

Exhibit A - Town of Seabrook Island Parcel Assignment

