

# TOWN OF SEABROOK ISLAND

Town Council – Work Session

March 14, 2023 – 1:00PM

Town Hall, Council Chambers  
2001 Seabrook Island Road  
Seabrook Island, SC 29455



[Watch Live Stream \(YouTube\)](#)

**Virtual Participation:** Individuals who wish to participate in the meeting via Zoom may call (843) 768-9121 or email [kwatkins@townofseabrookisland.org](mailto:kwatkins@townofseabrookisland.org) for log-in information prior to the meeting.

## AGENDA

### Call to Order – Roll Call – Freedom of Information

#### Presentations

- Dr. Abby Sterling, Director of the Georgia Bight Shorebird Conservation Initiative (Manomet); WHSRN Application for Seabrook Island

#### Executive Session

- Discussion of Legal Matters (S.C. Code Sec. 30-4-70(a)(2))
  - *Please Note: Town Council may take action on Executive Session Items listed on the agenda when they come back into Public Session.*

#### Mayor John Gregg

- Update Concerning Town's Bonding Authority
- CACVB Vacation Rental Update (Seabrook Island)
- Update concerning Sewer Usage Projection and Proposed Development (Bohicket Creek Investors)

#### Town Council Members:

- **Jeri Finke**
- **Patricia Fox**
- **Barry Goldstein**
- **Dan Kortvelesy**

#### Town Administrator Joe Cronin

- Action Items for March 28, 2023 Meeting
  - Ord. 2022-08: 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 [*SECOND READING & PUBLIC HEARING*]

- Ord. 2023-01: An ordinance amending the zoning map of the Town of Seabrook Island so as to change the zoning designation for Charleston County Tax Map Number 149-06-00-003, containing approximately 0.25 +/- acres located at 2754 Old Forest Drive, from the Moderate Lot Single-Family Residential (R-SF2) district to the Conservation (CP) district [*SECOND READING & PUBLIC HEARING*]
- Ord. 2023-02: An ordinance (“Franchise Ordinance” or “Agreement”) to grant to Dominion Energy South Carolina, INC. its successors and assigns, the limited nonexclusive right, power, and authority to erect and install, maintain, and operate on, along, across, in over, above, upon and under the streets, alleys and other public places of the Town: (1) electric lines, poles, wires, guys, push braces, transformers and appurtenant facilities and (2) communication lines and facilities for use by the company or any designee under the terms set forth in this agreement, together with any necessary right of access thereto, for such period as the same is needed by the company to render service to its customers in the Town of Seabrook Island, South Carolina from those facilities; to set the amount of franchise fee to be paid by Dominion Energy South Carolina, INC. to the Town; If so required, to levy franchise fees on third parties selling electricity using the company’s electric systems; to allow for the establishment of a fund and underground Utility Districts for electric non-standard service [*SECOND READING & PUBLIC HEARING*]
- Electric Service Rights Agreement: Agreement concerning electric service rights between Berkeley Electric Cooperative, Inc., and Dominion Energy South Carolina, Inc.
- Code Enforcement Officer Resolutions (Beach Patrol): Resolutions to appoint and commission multiple code enforcement officers for the proper security and general welfare for the Town of Seabrook Island
- Items for Information
  - Update of meeting with Sheriff Kristin Graziano
  - Update on the status of MyGov licensing and permitting software

**Adjourn**

**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: December 13, 2022  
Public Hearing: March 28, 2023  
Second Reading: March 28, 2023

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

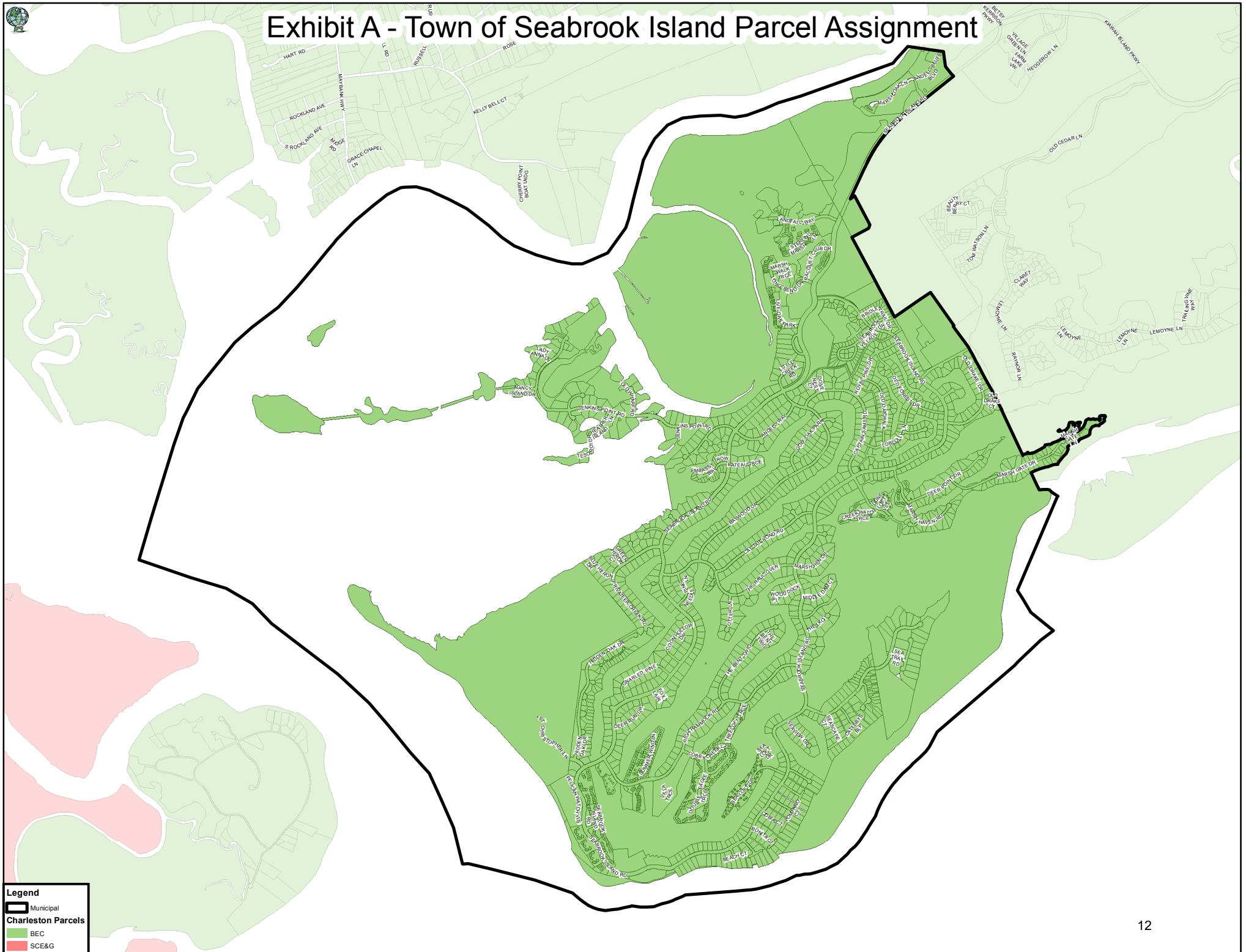
ATTEST

\_\_\_\_\_

**Exhibit A**

Town of Seabrook Island Parcel Assignment Map

# Exhibit A - Town of Seabrook Island Parcel Assignment



**Legend**

- Municipal
- Charleston Parcels
- BEC
- SCE&G

**TOWN OF SEABROOK ISLAND**

**ORDINANCE NO. 2023-01**

**ADOPTED \_\_\_\_\_**

**AN ORDINANCE AMENDING THE ZONING MAP OF THE TOWN OF SEABROOK ISLAND SO AS TO CHANGE THE ZONING DESIGNATION FOR CHARLESTON COUNTY TAX MAP NUMBER 149-06-00-003, CONTAINING APPROXIMATELY 0.25 +/- ACRES LOCATED AT 2754 OLD FOREST DRIVE, FROM THE MODERATE LOT SINGLE-FAMILY RESIDENTIAL (R-SF2) DISTRICT TO THE CONSERVATION (CP) DISTRICT**

**WHEREAS**, on or about January 11, 2023, the Seabrook Island Property Owners Association filed Rezoning Application #88 with the Town of Seabrook Island seeking to change the zoning designation of Charleston County Tax Map Number 149-06-00-003, containing approximately 0.25 +/- acres located at 2754 Old Forest Drive, from the Moderate Lot Single-Family Residential (R-SF2) district to the Conservation (CP) district; and

**WHEREAS**, the Seabrook Island Planning Commission reviewed the above referenced rezoning application during its regularly scheduled meeting on February 8, 2023, at which time the Planning Commission made a recommendation to the Mayor and Council that the rezoning request is in the best interest of the Town of Seabrook Island and is consistent with the Town's Comprehensive Plan; and

**WHEREAS**, a public hearing was held on the above referenced rezoning application on March 28, 2023, as required by law;

**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:**

**SECTION 1. Zoning Map Amendment.** The Official Zoning District Map of the Town of Seabrook Island is hereby amended to change the zoning designation for Charleston County Tax Map Number 149-06-00-003, containing approximately 0.25 +/- acres located at 2754 Old Forest Drive, from the Moderate Lot Single-Family Residential (R-SF2) district to Conservation (CP) district. A map of the property subject to this rezoning ordinance is attached hereto as Exhibit A.

**SECTION 2. Severability.** 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 3. Conflicting Ordinances Repealed.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 4. Effective Date.** This ordinance shall be effective from and after the date of adoption.

**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: February 28, 2023  
Public Hearing: March 28, 2023  
Second Reading: March 28, 2023

TOWN OF SEABROOK ISLAND

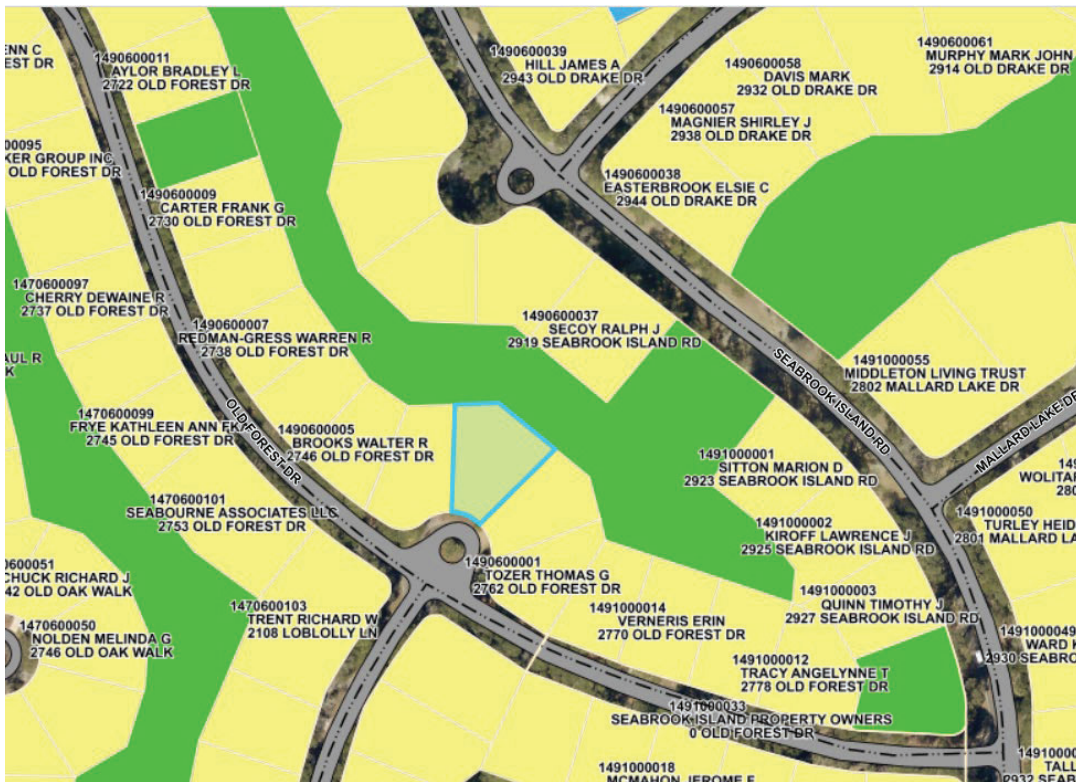
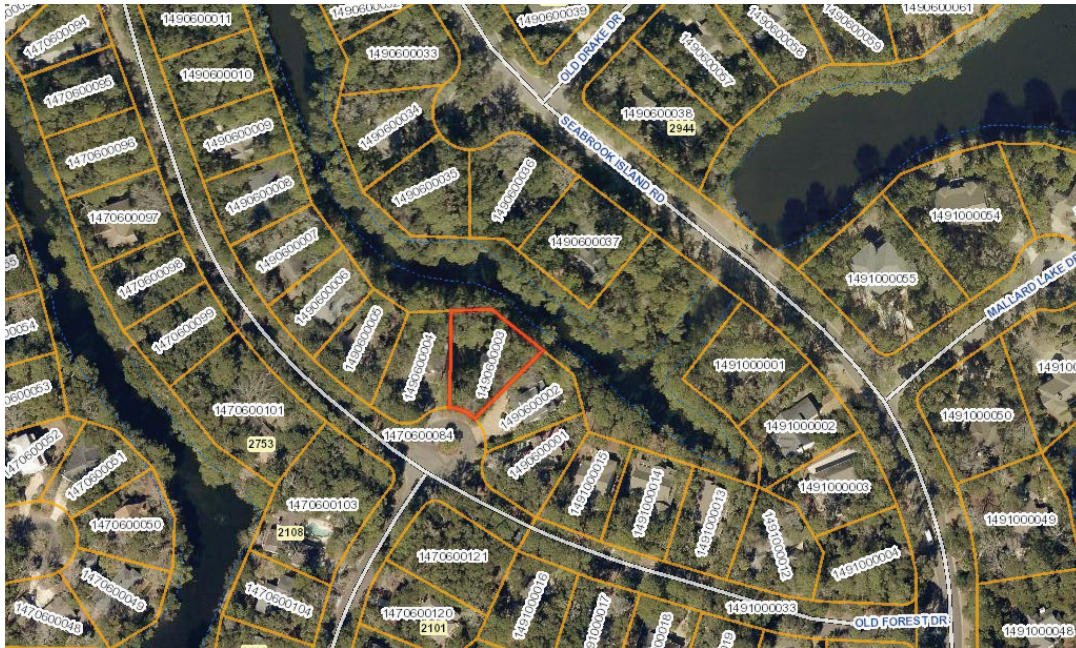
\_\_\_\_\_  
John Gregg, Mayor

ATTEST

\_\_\_\_\_  
Katharine E. Watkins, Town Clerk



# Exhibit A



Green = Conservation

Yellow =R-SF2

**TOWN OF SEABROOK ISLAND**

**ORDINANCE NO. 2023-02**

**ADOPTED \_\_\_\_\_**

**AN ORDINANCE (“FRANCHISE ORDINANCE” OR “AGREEMENT”) TO GRANT TO DOMINION ENERGY SOUTH CAROLINA, INC., ITS SUCCESSORS AND ASSIGNS, THE LIMITED NON-EXCLUSIVE RIGHT, POWER AND AUTHORITY TO ERECT AND TO INSTALL, MAINTAIN, AND OPERATE ON, ALONG, ACROSS, IN, OVER, ABOVE, UPON AND UNDER THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF THE TOWN: (1) ELECTRIC LINES, WIRES, GUYS, PUSH BRACES, TRANSFORMERS AND APPURTENANT FACILITIES AND (2) COMMUNICATION LINES AND FACILITIES FOR USE BY THE COMPANY OR ANY DESIGNEE UNDER THE TERMS SET FORTH IN THIS AGREEMENT, TOGETHER WITH ANY NECESSARY RIGHT OF ACCESS THERETO, FOR SUCH PERIOD AS THE SAME IS NEEDED BY THE COMPANY TO RENDER SERVICE TO ITS CUSTOMERS IN THE TOWN OF SEABROOK ISLAND, SOUTH CAROLINA FROM THOSE FACILITIES; TO SET THE AMOUNT OF FRANCHISE FEE TO BE PAID BY DOMINION ENERGY SOUTH CAROLINA, INC. TO THE TOWN; IF SO REQUIRED, TO LEVY FRANCHISE FEES ON THIRD PARTIES SELLING ELECTRICITY USING THE COMPANY’S ELECTRIC SYSTEMS; TO ALLOW FOR THE ESTABLISHMENT OF A FUND AND UNDERGROUND UTILITY DISTRICTS FOR ELECTRIC NON-STANDARD SERVICE**

**WHEREAS**, the Town of Seabrook Island and Dominion Energy South Carolina, Inc., have negotiated a Franchise Agreement whereby said Dominion Energy South Carolina, Inc., shall be granted the limited non-exclusive 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 Franchise Agreement sets forth the method by which the Town shall be compensated for the rights and privileges granted to Dominion Energy South Carolina, 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**

Wherever the word "Company" appears in this Franchise Ordinance, it is hereby to designate, and shall be held to refer to Dominion Energy South Carolina, Inc., a corporation duly authorized and doing business pursuant to the laws of the State of South Carolina, its successors and assigns.



## **SECTION 2**

The limited non-exclusive right, power and authority is hereby granted and vested in the Company to erect and to install, maintain and operate on, along, across, in, upon and under the streets, alleys, bridges, rights-of-way and other public places of the Town: (1) electric lines, wires, guys, push braces, transformers and other appurtenant facilities and to use those facilities to conduct an electric business, and any other business or businesses which may be lawfully conducted using the permitted facilities.

## **SECTION 3**

Any street, alley, bridge, right-of-way or other public place used by the Company shall not be obstructed longer than necessary during its work of construction or repair, and shall be restored to the same good order and condition as when said work was commenced. No part of any street, alley, bridge, right-of-way, or other public place of the Town, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be injured. However, should any such damage occur due to Company's failure to use due care, the Company shall repair the same as promptly as possible after notice from the Town, and, in default thereof, the Town may make such repairs and charge the reasonable cost thereof to and collect the same from the Company. The Company shall save the Town harmless from all liability or damage (including judgment, decrees, and legal court costs) resulting from its failure to use due care in the exercise of the privileges hereby granted or of its rights under this Section.

## **SECTION 4**

Upon approval of this Franchise Agreement and the franchise agreement between Berkeley Electric Cooperative, Inc. ("Berkeley Electric") and the Town in accordance with the terms of the Agreement Concerning Electric Service Rights Between Berkeley Electric Cooperative, Inc. and Dominion Energy South Carolina, Inc., dated [REDACTED] ("Electric Service Rights Agreement"), the Company shall have electric service rights to the parcels shaded in red on Exhibit A, and Berkeley Electric shall have electric service rights to the parcels shaded in green on Exhibit A as specifically set forth in Electric Service Rights Agreement, provided, however, that:

- A. The Company 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 Agreements 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 Berkeley Electric; and Berkeley Electric 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 Agreements 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 Company. After any building or structure that is being served by Berkeley Electric or the Company pursuant to the terms of this Subsection 4(A) 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 Berkeley Electric or the Company 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 Company or Berkeley Electric provides electric service to such new building or structure.
- C. Upon any future annexation by the Town, the Company 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 Berkeley Electric 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 Berkeley Electric pursuant to the terms of the Electric Service Rights Agreement, the Electric Service Rights Agreement shall be considered terminated, null, and void.
- E. The rights granted to Company by this Agreement are limited by the terms and conditions of the Electric Service Rights Agreement. If Company is not providing electrical services to any customer within the Town limits in accordance with the Electric Service Rights Agreement, this Agreement provides no authority to erect, install, maintain, or operate an electrical system of any type on any right of way or public place(s) within the Town.

## SECTION 5

The Company shall:

- A. Construct and extend its electric system within the present and/or extended Town limits and have the right to connect new services in the parcels shaded in red on Exhibit A and in newly annexed parcels assigned to the Company by the Public Service Commission of South Carolina prior to the annexation, and supply standard electric service at standard voltages under rates and general terms and conditions as authorized by law.
- B. Install underground electric distribution and service lines in the Town under terms and conditions customarily applicable with respect to aid to construction.
- C. When called upon, expand and maintain all of the electric street lighting system (to include both lighting fixtures and poles) and service along the streets, highways, alleys and public places of the Town, as said system may be hereafter installed and/or changed by order of the Town, in accordance with the terms and provisions of this franchise. All materials furnished shall be of standard quality and kind, and shall meet the requirements of good street lighting practice.

- D. Make changes in the location of the street lighting system covered by this franchise upon written request of the Town.
- E. Render to the Town a bill each month for the street lighting service furnished hereunder during the preceding month, in accordance with the provisions of this Franchise Ordinance.
- F. Maintain at its own expense a system for repairing the street lighting system in use. The Company, upon receiving official notice that there is a defective standard fixture or pole, shall within five (5) days repair or replace the same.

## **SECTION 6**

The Town shall:

- A. Take electric street lighting and other Town electric services from the Company during the period covered by this Franchise Ordinance in all areas of the Town served by Company or in which Company is authorized by law to serve consistent with the terms of Agreement.
- B. Pay monthly, within twenty-five (25) days after receipt, a proper bill from the Company for the preceding month's service in accordance with the amounts provided for in approved tariffs.
- C. Pay the Company for street lighting service provided by the Company at the municipal rate schedule approved by the Public Service Commission of South Carolina applicable to that lighting fixture and pole, including underground rates. If no applicable municipal rate is available for any fixture and pole at the time of billing, then the Town shall pay the full and applicable non-municipal rate for such fixture(s) and pole(s).
- D. Notify the Company 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 Company on those accounts. In addition, the Town shall promptly update its municipal boundary maps with its County Geographical Information Systems (GIS) Office.
- E. Upon annexation, pay to the Company for street lighting service to customers subject to the annexation at the municipal rate schedule approved by the Public Service Commission of South Carolina applicable to that lighting fixture and pole, including underground rates. If no applicable municipal rate is available for any fixture and pole at the time of billing, then the Town shall pay the full and applicable non-municipal rate for such fixture(s) and pole(s).

## **SECTION 7**

The Town and the Company agree that:

- A. All work performed within the municipal limits by the Company or its contractors shall be in accordance with the National Electric Safety Code and the applicable electric rules and regulations, as adopted by the Public Service Commission of South Carolina.
- B. The records of the Company pertaining to the electric street lighting system are to be accepted as full and final proof of the existence and configuration of the same, that system being hereinafter referred to as the "Street Lighting System."
- C. Where lighting units of a different type and character than those now included in the Street Lighting System are desired by the Town, a new unit charge and specification shall be agreed upon which will apply to such lighting units and which thereafter shall become a part hereof.
- D. Except as otherwise provided herein, the Town shall have the right at any time to order the installation of new fixtures and poles in new areas of the Town.
- E. The Town shall have access at all reasonable times to maps, records, and rates relating to the Street Lighting System in the Town.
- F. Subject to applicable rates and terms and conditions, throughout the life of the franchise the Company will supply to the Town, and the Town agrees that it will purchase from the Company, electric energy required by the Town for its own use including traffic signal lighting, street lighting, lighting and power for public buildings, pumping stations, or other installations now owned or hereafter constructed or acquired by the Town and for all other uses in all areas served by or to be served by the Company, as allowed by law. However, should the Town request to provide electric service to any of its facilities utilizing an alternative energy facility owned by the Town, the Company will consent to such a request so long as the energy from that facility is allowed by and subject to a rate schedule approved by the Public Service Commission of South Carolina. If the Town receives service from such a facility, then the Company shall have the right to change the terms and conditions under which it provides any remaining services to Town facilities.
- G. The Company shall charge and the Town shall pay to the Company monthly for all electric energy furnished by the Company for miscellaneous light and power service under this franchise in accordance with rates and tariffs and terms and conditions as established by law.
- H. None of the electric energy furnished hereunder shall be sold, disposed of, or exchanged by the Town to others without the expressed written consent of the Company.
- I. The electric energy hereunder is not guaranteed or warranted to be free from minor interruptions or from major outages or electrical surges beyond the control of the Company.

## **SECTION 8**

All work upon the streets and public places of the Town shall be done under the general supervision of the Mayor and Council (or other legally constituted governing body) of the Town, and all sidewalks or street pavements or street surfaces which may be displaced by reason of such work shall be properly replaced and relayed by the Company, its successors and assigns, to the reasonable requirements of the Mayor and Council (or other legally constituted governing body) of the Town.

## **SECTION 9**

The Company shall, as to all other conditions and elements of service not fixed herein, be and remain subject to the reasonable rules and regulations of the Public Service Commission of South Carolina or its successors, applicable to electric service in the Town.

## **SECTION 10**

- A. As payment for the right to provide electric service, and any other services as may be permitted under this Franchise Ordinance, in the succeeding calendar year, the Company shall pre-pay into the Treasury of the Town, on the first business day of July each year, beginning with the year 2023, a sum of money (the "Franchise Fee") equal to five percent (5%) of the gross sales revenue accruing to the Company during the preceding calendar year from all residential and commercial sales of electricity in the municipality and all wheeling or transportation service to such customers within the corporate limits of the Town, not including sales made under legally authorized special sales programs which allow the Company to reduce prices to meet customers' competitive energy prices. To change the percentage of the revenue on which the Franchise Fee is calculated, the Town must both (1) amend this Franchise Ordinance by means of an Amendatory Ordinance solely addressed to that purpose, and (2) provide the Company written notice including an attested copy of the Amendatory Ordinance at least ninety (90) days prior to the next Franchise Fee payment due date. So long as both conditions are met, the increase or decrease will apply to the next Franchise Fee payment due from the Company and the recovery of the higher fee will begin during the calendar year for which the Franchise Fee applies. During the term of this Franchise Ordinance, the percentage of the revenue on which the Franchise Fee is based shall not exceed the highest percentage paid by the Company to any other town or city under a franchise agreement. Any other revenue accruing to the Company in the municipality may be subject to other fees and/or business license taxes as appropriate.
- B. Subject to Section 10(A) above, the Town's right to receive franchise fees as provided for herein shall be in lieu of all occupation, license, excise and special franchise taxes and fees, and shall be in full payment of all money demands, charges, or fees of any nature whatsoever imposed by the Town, except ad valorem taxes on property. The Company may at its option pay and deduct from its franchise fee payments any amount that shall be required or exacted from the Company for the benefit of the Town other than ad valorem taxes on property.

- C. It is expressly understood that all franchise fees or other payments imposed by the Town on the Company shall be collected from customers of the Company within the municipal boundaries, as is presently provided for in the orders of the Public Service Commission of South Carolina applicable to the Company. From time to time, but no more than once a year and no less than once every three years, the Company 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 Company of any error: (1) the Town shall be required to reimburse the Company for any Franchise Fee refund based on an address incorrectly included on the List; (2) the Company shall not be responsible for Franchise Fees for any service addresses not included on the List. Reimbursement shall be made to the Company within sixty (60) days of receipt of request by the Town or the Company 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 under the Freedom of Information Act or otherwise without a court order or the Company's prior written consent.
  
- D. The Town hereby levies, and the Company may collect and transmit to the Town, a franchise fee on electricity sold by third parties to customers within the Town using the Company lines, or facilities; said fee is to be in all respects equivalent to the franchise fees established herein plus a proportional share of all other payments to the Town, or to the Non-Standard Service Fund established hereunder, which the Company is obligated to make on whatever basis during the life of this franchise.
  
- E. Should the Town itself ever at any time construct, purchase, lease, acquire, own, hold or operate an electric distribution system to provide electric service within the Town, then the payment of percentages of gross sales revenue herein provided to be paid by the Company shall abate, cease and no longer be due and no other fee for the franchise rights shall be required.

**SECTION 11**

This Franchise Ordinance is subject to the constitution and laws of the State of South Carolina.

**SECTION 12**

This Franchise Ordinance shall not become effective until accepted in writing by the Company, which shall be within thirty (30) days from the date of its ratification by the Town and on the same date that the Franchise Ordinance for Berkeley Electric becomes effective. The terms, obligations and rights granted by this Franchise Ordinance, when accepted by the Company, shall constitute a contract between the Town and the Company, and shall be in full force and effect for a term of thirty (30) years from the effective date.

**SECTION 13**

The rights hereunder accrue exclusively to the parties, their successors and assigns. It is the express intent of the parties that this Franchise Ordinance shall not create any rights in third parties.

**SECTION 14**

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 15**

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: February 28, 2023  
Public Hearing: March 28, 2023  
Second Reading: March 28, 2023

TOWN OF SEABROOK ISLAND

\_\_\_\_\_

John Gregg, Mayor

ATTEST

\_\_\_\_\_

Katharine E. Watkins, Town Clerk

ACCEPTANCE of the franchise granted by the within Ordinance acknowledged by DOMINION ENERGY SOUTH CAROLINA, INC., this \_\_\_\_\_ day of \_\_\_\_\_, 23\_\_.

DOMINION ENERGY SOUTH CAROLINA, INC.

\_\_\_\_\_  
W. Keller Kissam  
President

ATTEST:

\_\_\_\_\_  
Karen W. Doggett  
Assistant Corporate Secretary and Director-  
Governance

(Corporate Seal)



**AGREEMENT CONCERNING ELECTRIC SERVICE RIGHTS BETWEEN  
BERKELEY ELECTRIC COOPERATIVE, INC. AND DOMINION ENERGY SOUTH  
CAROLINA, INC.**

This Electric Service Rights Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among Dominion Energy South Carolina, Inc. (“DESC”), Berkeley Electric Cooperative, Inc. (“Berkeley Electric”), and the Town of Seabrook Island (“Town”) (collectively, “Parties”).

WHEREAS, DESC does not have an electric franchise agreement with the Town; and

WHEREAS, Berkeley Electric has an electric franchise agreement with the Town, which became effective on [REDACTED]; and

WHEREAS, the Town desires to avoid electric service rights disputes between Berkeley Electric and DESC within the Town limits; and

WHEREAS, Berkeley Electric and DESC have engaged in a detailed infrastructure and parcel mapping exercise within the Town in an effort to allow both companies to have more certainty in planning to provide electric service and to allow both companies to provide electric service more efficiently and effectively; and

WHEREAS, as agreed to by the Parties, the attached Exhibit A is a map of the Town of Seabrook Island with the parcels for which Berkeley Electric is to have electric service rights shaded in green and the parcels for which DESC is to have electric service rights shaded in red;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Berkeley Electric and DESC shall enter into Franchise Agreements with the Town on [REDACTED], 20[REDACTED], or earlier if the Parties so agree, provided that both Franchise Agreements will be signed on the same day. The Franchise Agreements shall each have the same effective date, shall each be for a specified term of at least thirty (30) years, shall each expire on the same date certain, and shall each omit any provisions allowing for amendment of the term of the Franchise Agreement. Five (5) business days prior to execution of the Franchise Agreements, each Party shall be provided with the final versions of the Franchise Agreements for the purpose of determining compliance with the terms of this Electric Service Rights Agreement. If any Party determines that either Franchise Agreement does not comply with the terms of this Electric Service Rights Agreement, that Party may terminate this

Electric Service Rights Agreement at any time prior to execution of the Franchise Agreements.

2. The Parties agree that Exhibit A is a reasonable assignment of the electric service rights to the parcels located within the Town limits and resolves any current and future disputes regarding electric service rights to the parcels. As such, the Franchise Agreements entered into pursuant to Paragraph 1 shall each reference and include as an attachment Exhibit A attached hereto. The Franchise Agreement between DESC and the Town shall provide that DESC has electric service rights to the parcels shaded in red on the attached Exhibit A. The Franchise Agreement between Berkeley Electric and the Town shall provide that Berkeley Electric has electric service rights to the parcels shaded in green on the attached Exhibit A. The Franchise Agreements entered into pursuant to Paragraph 1 need not and shall not include any language indicating the possibility of electric service rights disputes.
3. Upon acceptance by Town Council of both the Franchise Agreement between Berkeley Electric and the Town and the Franchise Agreement between DESC and the Town, DESC shall have electric service rights to the parcels shaded in red on the attached Exhibit A, and Berkeley Electric shall have electric service rights to the parcels shaded in green on the attached Exhibit A. Except as specifically provided in Paragraphs 4, 5, and 6 herein, the service rights designation in the attached Exhibit A shall be the sole determining factor as to whether Berkeley Electric or DESC has the right to serve a building or structure within a particular parcel.
4. The Parties further agree that Berkeley Electric 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 Agreements 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 Agreements 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 Berkeley Electric. After any building or structure that is being served by Berkeley Electric or DESC pursuant to the terms of this Paragraph 4 is removed, torn down, razed to the ground, or demolished, the service rights designation in the attached Exhibit A shall be the sole determining factor as to whether Berkeley Electric or DESC has the right to provide electric service to any future replacement building or structure within that parcel. Each Franchise Agreement entered into pursuant to Paragraph 1 shall contain a provision stating as such.

5. The Parties further agree that, where any new building or structure is constructed so that part of the building or structure resides on a green parcel of the attached Exhibit A and part of the building or structure resides on a red parcel of the attached Exhibit A, the customer, in its sole discretion, may choose whether Berkeley Electric or DESC provides electric service to such new building or structure. Each Franchise Agreement entered into pursuant to Paragraph 1 shall contain a provision stating as such.
6. The Parties further agree that, upon any future annexation by the Town, Berkeley Electric shall continue to provide electric service to those annexed parcels assigned to it by the Public Service Commission of South Carolina prior to the annexation, and DESC shall continue to provide electric service to those annexed parcels assigned to it by the Public Service Commission of South Carolina prior to the annexation. Each Franchise Agreement entered into pursuant to Paragraph 1 shall contain a provision stating as such.
7. The electric service rights delineated in Exhibit A are in compliance with applicable state law.
8. This Electric Service Rights Agreement will not be amended without the express written consent of all Parties.
9. If the Town Council does not approve both Franchise Agreements entered into pursuant to Paragraph 1, this Electric Service Rights Agreement shall be considered terminated, null and void. Each Franchise Agreement entered into pursuant to Paragraph 1 shall contain a provision stating as such.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have caused this Electric Service Rights Agreement to be executed on the date first written above.

**[SIGNATURE PAGE FOLLOWING]**

**TOWN OF SEABROOK ISLAND**

---

John Gregg, Mayor

Date

**DOMINION ENERGY SOUTH CAROLINA, INC.**

---

W. Keller Kissam, President

Date

**BERKELEY ELECTRIC COOPERATIVE, INC.**

---

Michael S. Fuller, President & Chief Executive Officer

Date

# Exhibit A - Town of Seabrook Island Parcel Assignment

