

AGENDA
TOWN OF EDISTO BEACH
December 12, 2019
REGULAR TOWN COUNCIL MEETING
6:00 P.M.

- I. **Call to Order**
- II. **Pledge of Allegiance and Invocation**
- III. **Approval of Minutes**
 - A. Regular Council Meeting Minutes, November 14, 2019
- IV. **Proclamations and Presentations**
 - A. Starfish Award –
 - 1. Corey Merritt
 - 2. Morgan Viars, Iris Hill, Mark Aakhus, Deborah Hargis, Paul Otte, Marshall Horstmann, Pete Lala, Alfred Meggett, Julian “Hoss” Meggett, Axavier Wright and Patrick Zemp
- V. **Old Business**
 - A. Second Reading of Ordinance No. 2019-26 to Grant to Dominion Energy, South Carolina, Inc., its successors and assigns, the 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, poles, wires, guys, push braces, transformers, appurtenant facilities; and (2) communication lines and facilities for any purpose and any use by the company or any designee, 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 Edisto Beach, South Carolina, from those facilities; to set the amount of franchise fees 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; be it ordained by the Mayor and Council of Edisto Beach in Town Council assembled.
 - B. Second Reading of Ordinance No. 2019-27 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 Edisto Beach, 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 Edisto Beach, South Carolina; also to set amount of the franchise fee to be paid by Berkeley Electric Cooperative, Inc., to the Town of Edisto Beach, South Carolina.
 - C. Deer Study Results
- VI. **New Business**
 - A. Bank Depository Agreement
 - B. Award of RFQ 2019-06 Parks Recreation Trails Master Plan
 - C. Coastal Water Level Monitoring System for South Carolina
 - D. 2020 Red Cross Blood Drive Date Requests
- VII. **Committee Vacancies**
 - A. The Image and Design of Edisto (TIDE) Committee
- VIII. **Departmental Reports and Committee Updates**
- IX. **Public Comment**
- X. **Adjournment**

STATE OF SOUTH CAROLINA)
 COUNTY OF COLLETON) ORDINANCE NO.2019-26
 TOWN OF EDISTO BEACH)

ORDINANCE (“FRANCHISE ORDINANCE” OR “AGREEMENT”) TO GRANT TO DOMINION ENERGY SOUTH CAROLINA, INC., ITS SUCCESSORS AND ASSIGNS, THE 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, POLES, WIRES, GUYS, PUSH BRACES, TRANSFORMERS AND APPURTENANT FACILITIES; AND (2) COMMUNICATION LINES AND FACILITIES FOR ANY PURPOSE AND ANY USE BY THE COMPANY OR ANY DESIGNEE, 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 EDISTO BEACH, 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; BE IT ORDAINED BY THE MAYOR AND COUNCIL OF EDISTO BEACH IN TOWN COUNCIL ASSEMBLED:

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 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, over, above, upon and under the streets, alleys, bridges, rights-of-way and other public places of the Town: (1) electric lines, poles, wires, guys, push braces, transformers and other appurtenant facilities; and (2) communication lines and facilities, with any necessary right of access thereto; 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. As required by federal law, the Company may allow pole attachments for cable systems or other telecommunications carriers. It is the responsibility of the cable systems or other telecommunication carriers to secure any necessary easements or permits for their attachments.

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 indemnify and 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 July 11, 2019 ("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, 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.

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. If requested by the Town, install underground electric distribution and service lines in new residential subdivisions of twenty-five lots or more in the Town under terms and conditions customarily applicable with respect to aid to construction.

C. Furnish, install, operate, and 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.

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. Accept the street lighting system as it exists on the effective date of this Franchise Ordinance.

D. Pay the Company for street lighting service 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).

E. 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.

F. 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 alternative energy 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 an alternative energy facility, then the Company shall have the right to change the rate schedule under which it provides any remaining services to Town facilities to ensure that it provides any remaining services to Town facilities under an appropriate rate schedule approved by the Public Service Commission of South Carolina and for which the Town qualifies to take service at its remaining 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 2020, 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 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. The Company acknowledges that the List may be determined to be a public document subject to release under the South Carolina Freedom of Information Act (FOIA) unless exempt in whole or in part. The Company will visibly mark this information "confidential and proprietary" and the Town shall immediately notify the Company of any FOIA request for the List, if marked, so that the Company can timely file any action challenging release under the FOIA.

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

The Town and Company further agree that:

A. In addition to the requirements above, the Town may require the Company to convert overhead distribution and service lines to underground lines or other non-standard service to existing customers (“Non-Standard Service”), including the use of special equipment or facilities or the use of special landscaping or screening of facilities, within the municipal limits of Town, to the extent that the cost of such Non-Standard Service can be defrayed by the Non-Standard Service Fund provided for in this Section. The costs of Non-Standard Service are defined as those costs which exceed the costs of standard service. Underground distribution and/or service wires to new customers, whether residential or commercial, shall not be included in the definition of Non-Standard Service for the purposes of this Section.

B. The Non-Standard Service Fund (hereinafter, the “Fund”) shall be established pursuant to the terms of this Ordinance and shall be used to defray the costs of Non-Standard Service.

C. Each year the Company shall designate to the Fund an amount equivalent to fifty basis points (0.50%) applied to the Company’s gross revenue from electric service utilized in Section 10, that being the same amount of electric revenue that is used in computing its municipal franchise fee payment for that year. (The “Company Match” to the Fund.) This designation shall occur simultaneously with the payment of the franchise fee for the year in question and shall be in addition to the franchise fee. The Company Match funds shall remain on deposit with the Company and be paid out by the Company on a one to one basis with the Town matching funds as needed to defray costs of Non-Standard Service. Unexpended amounts of the Company Match not used in a given year shall remain designated to the Fund, provided that the amount of

Company Match designated to the Fund shall never exceed the sum of the matches for the most recent five (5) years. The sum of the Company Match designated to the Fund for the most recent five years is \$111,251.13 with the individual totals for each of the most recent five years as follows: \$23,316.80 in 2015, \$22,818.23 in 2016, \$22,282.64 in 2017, \$21,942.84 in 2018, and \$20,890.62 in 2019.

D. The Town shall designate as the Town's matching funds an amount equal to fifty basis points (0.50%) applied to the electric revenue subject to franchise fee charges for that year. The Town's matching funds shall remain on deposit with the Town and be paid out on a one to one basis with the Company Match funds to defray the cost of Non-Standard Service. Unexpended fund balances will carry over from year to year, provided that the amount of the Town's match designated to the Fund shall never exceed the sum of the matches for the most recent five (5) years. The sum of the Town Match designated to the Fund for the most recent five years is \$111,251.13 with the individual totals for each of the most recent five years as follows: \$23,316.80 in 2015, \$22,818.23 in 2016, \$22,282.64 in 2017, \$21,942.84 in 2018, and \$20,890.62 in 2019.

E. For any Non-Standard Service project involving more than twenty-five (25) existing customers, the Town may designate an underground utility district ("Underground Utility District") wherein Non-Standard Service will be provided, and at its option may conduct a referendum or petition in that district to determine whether the project should go forward. After an Underground Utility District has been designated and the Non-Standard Service project approved by that District, but prior to commencement of construction for the Non-Standard Service project, the Town shall, by ordinance pursuant to S.C. Code Ann. § 6-1-330, as amended, authorize the collection of a fee from the property owners of each parcel within the District (the "Underground Utility Fee"). The Underground Utility Fee shall be applied to all of Company's accounts for electricity within the boundaries of the Underground Utility District. The total of such Underground Utility Fee, the Franchise Fee in Section 10(A) and any other fee provided for in Section 10 will

not exceed 7% of a customer's total bill for electricity. The Underground Utility Fee shall be applied beginning with the commencement of construction of the project for a definite time not to exceed ten (10) years. Proceeds shall be paid into the Fund, provided that the Fund has paid for the construction of the Non-Standard Service within the Underground Utility District. If the Town or the Company advanced funds for the Non-Standard Service in the Underground Utility District, the Underground Utility Fee shall be used to reimburse the Town or the Company as appropriate on a monthly basis following recovery of same from the customers. The cost of borrowing funds from the Company to pay for the Non-Standard Service in the Underground Utility District shall be included in the reimbursement. The Company's weighted average cost of capital as filed with the Public Service Commission of South Carolina would apply to any amounts advanced by the Company.

F. The amounts designated for the Fund shall be used exclusively to defray the reasonable and necessary costs of planning, designing, permitting and/or constructing the electric utility projects involving Non-Standard Service.

G. Costs for Non-Standard Service projects shall be paid from amounts designated to the Fund as incurred. The Company shall be required to undertake Non-Standard Service projects in the Town only to the extent that balances designated to the Fund are reasonably projected to be adequate to cover the costs of the projects as they are incurred.

H. The Town shall establish, in consultation with the Company, priorities for Non-Standard Service projects. Projects which maintain system reliability, and/or improve system safety, shall have priority over all other non-standard service projects. All Non-Standard Service projects shall conform to good utility practices as to reliability and safety.

I. The Town shall use best efforts to acquire all necessary right-of-way, transformer sites, or other use and access rights for Non-Standard Service projects. Within three (3) months of completion of an overhead to underground conversion project, the Company shall remove overhead facilities and the Town shall remove and require other utilities and third parties, if any,

to remove their facilities from the Company's poles and shall require property owners to connect to the underground facilities.

Section 12

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

Section 13

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 an initial term of twenty (20) years from the effective date, and succeeding terms of ten (10) years, until properly terminated by the Company or the Town providing a notice of termination for this Agreement or Berkeley Electric or the Town providing a notice of termination of the franchise agreement between the Town and Berkeley Electric. Any such notice of termination must be provided to the Town and Berkeley Electric (if the Company is terminating this Agreement), or to the Town and the Company (if Berkeley Electric is terminating its franchise agreement), or to the Company and Berkeley Electric (if the Town is terminating either franchise agreement) in writing no later than one (1) year prior to the expiration of the initial term or any succeeding 10-year term, and the termination is effective at the end of the initial term or the applicable succeeding term. Should Berkeley Electric, the Company, or the Town provide such a notice of termination, both this Agreement and the franchise agreement between the Town and Berkeley Electric will expire at the end of the initial 20-year term or the applicable succeeding term. Upon acceptance by the Company in writing, this Franchise Ordinance supersedes and replaces the Electric Franchise Ordinance which became effective on March 17, 1992.

Section 14

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.

Ratified in Town Council this

___ day of _____, 20__.

(originally signed by:) _____
Mary Jane S. Darby, Mayor

ATTEST:
(originally signed by:) _____
Deborah Hargis, Town Clerk

ACCEPTANCE of the franchises granted by the within Ordinance acknowledged by DOMINION ENERGY SOUTH CAROLINA, INC., THIS _____ DAY OF _____, 20__.

DOMINION ENERGY SOUTH CAROLINA, INC.

(originally signed by) _____
W. Keller Kissam,
President-Electric Operations

ATTEST:

Karen W. Doggett,
Its Assistant Corporate Secretary and Director-Governance

(Corporate Seal)

FRANCHISE AGREEMENT

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 EDISTO BEACH, 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 EDISTO BEACH, SOUTH CAROLINA; ALSO TO SET THE AMOUNT OF THE FRANCHISE FEE TO BE PAID BY BERKELEY ELECTRIC COOPERATIVE, INC., TO THE TOWN OF EDISTO BEACH, SOUTH CAROLINA.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EDISTO BEACH, SOUTH CAROLINA, IN COUNCIL DULY ASSEMBLED;

SECTION I

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 Edisto Beach, South Carolina.

SECTION II

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 twenty (20) years.

SECTION III

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 IV

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 V

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 from the Cooperative's failure to use due care in the exercise of the privileges hereby granted.

SECTION VI

Upon approval of this Franchise Agreement and the franchise agreements 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 _____, 2019 ("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:

1. 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.

2. 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.

3. 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.

4. 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 VII

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 VIII

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

1. 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.

2. 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.

3. 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.

4. 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.

5. 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 IX

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 X

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 XI

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 XII

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.

SECTION XIII

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 XIV

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 XV

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 XVI

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 beginning with the year 2020, a sum of money 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 XVII

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 XVIII

This Franchise Ordinance shall not become effective until accepted in writing by the Cooperative, 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 Dominion Energy South Carolina becomes effective. The terms, obligations and rights granted by this Franchise Ordinance, when accepted by the Cooperative, shall constitute a contract between the Town and the Cooperative, and shall be in full force and effect for an initial term of twenty (20) years from the effective date, and a succeeding term of ten (10) years if neither Dominion Energy South Carolina nor the Cooperative provide a notice of termination for their respective franchise agreements. Any such notice of termination must be provided to the Town and Dominion Energy South Carolina (if the Cooperative is terminating) or Cooperative (if Dominion Energy South Carolina is terminating) in writing no later than one (1) year prior to the expiration of the initial term, and the termination is effective at the end of the initial term. Should either Dominion Energy South Carolina or the Cooperative provide such a notice of termination, both this Agreement and the franchise agreement between the Town and Dominion Energy South Carolina will expire at the end of the initial 20-year term.

SECTION XIX

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 XX

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 XXI

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.

SIGNATURE PAGE ATTACHED

DONE AND RATIFIED IN COUNCIL DULY ASSEMBLED THIS _____ DAY OF
_____, 20_____.

ATTEST:

TOWN OF EDISTO BEACH, SOUTH CAROLINA

By: _____
Mayor, Jane Darby

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

ATTEST:

BERKELEY ELECTRIC COOPERATIVE,
INC.

By: _____
Dwayne Cartwright
Chief Executive Officer