

STATE OF SOUTH CAROLINA

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COUNTY OF LEXINGTON

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ORDINANCE NO. 2019-5

TOWN OF LEXINGTON

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ORDINANCE ("FRANCHISE ORDINANCE" OR "AGREEMENT") TO GRANT TO MID-CAROLINA ELECTRIC COOPERATIVE, 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 COOPERATIVE OR ANY DESIGNEE, TOGETHER WITH ANY NECESSARY RIGHT OF ACCESS THERETO, FOR SUCH PERIOD AS THE SAME IS NEEDED BY THE COOPERATIVE TO RENDER SERVICE TO ITS CUSTOMERS IN THE TOWN OF LEXINGTON, SOUTH CAROLINA FROM THOSE FACILITIES; TO SET THE AMOUNT OF FRANCHISE FEE TO BE PAID BY MID-CAROLINA ELECTRIC COOPERATIVE, INC TO THE TOWN; IF SO REQUIRED, TO LEVY FRANCHISE FEES ON THIRD PARTIES SELLING ELECTRICITY USING MCEC'S ELECTRIC SYSTEM BE IT ORDAINED BY THE MAYOR AND COUNCIL OF LEXINGTON IN TOWN COUNCIL ASSEMBLED:

Section 1

Wherever the word "Cooperative" appears in this Franchise Ordinance, it is hereby to designate, and shall be held to refer to Mid-Carolina Electric Cooperative, Inc., a corporation duly authorized and doing business pursuant to the laws of the State of South Carolina, its agents, subsidiaries, affiliated entities, successors and assigns.

Section 2

The non-exclusive right, power and authority is hereby granted and vested in the Cooperative 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 and communication lines, poles, wires, guys, push braces, transformers and other appurtenant facilities; and (2) communication lines and facilities for any purpose and any use by the Cooperative or any designee, 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 Cooperative 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 Cooperative 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 Cooperative's failure to use due care, the Cooperative 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 Cooperative. The Cooperative shall hold 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 South Carolina Electric and Gas Co. ("SCE&G") and the Town in accordance with the terms of the Agreement Concerning Electric Service Rights between Mid-Carolina Electric Cooperative, Inc., and South Carolina Electric & Gas Company, dated October 1, 2018 ("Electric Service Rights Agreement"), the Cooperative shall have electric service rights to the parcels shaded in green on Exhibit A, and SCE&G 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 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 SCE&G; and SCE&G 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 Cooperative. After any building or structure that is being served by SCE&G or the Cooperative 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 SCE&G 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 SCE&G 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 SCE&G 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 SCE&G 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 Cooperative 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 green on Exhibit A and in newly annexed parcels assigned to the Cooperative 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 Cooperative, 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 Cooperative during the period covered by this Franchise Ordinance in all areas of the Town served by Cooperative or in which Cooperative is authorized by law to serve.
- B. Pay monthly, within twenty-five (25) days after receipt, a proper bill from the Cooperative 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 Cooperative for street lighting service at the rate schedule approved by the Cooperative's Board of Trustees applicable to that lighting fixture and pole, including underground rates. If no applicable 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 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.
- F. Upon annexation, pay to the Cooperative for street lighting service to customers subject to the annexation at the rate schedule approved by the Cooperative's Board of Trustees 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 Cooperative agree that:

A. All work performed within the municipal limits by the Cooperative or its contractors shall be in accordance with the National Electric Safety Code and applicable electric rules and regulations.

B. The records of the Cooperative 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 Cooperative will supply to the Town, and the Town agrees that it will purchase from the Cooperative, 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 Cooperative, 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 Cooperative will consent to such a request so long as the energy from that facility is allowed by and subject to an approved Cooperative rate schedule approved by the Cooperative's Board of Trustees. If the Town receives service from such a facility, then

the Cooperative shall have the right to change the terms and conditions under which it provides any remaining services to Town facilities.

G. The Cooperative shall charge and the Town shall pay to the Cooperative monthly for all electric energy furnished by the Cooperative for miscellaneous light and power services 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 Cooperative.

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 Cooperative.

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 Cooperative, 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 Cooperative shall, as to all other conditions and elements of service not fixed herein, be and remain subject to the reasonable Service Rules and Regulations of the Cooperative as approved by the Cooperative's Board of Trustees applicable to electric service in the Town.

Section 10

A. As payment for the right to provide electric services, and any other services as may be permitted under this Franchise Ordinance, in the succeeding calendar year, the Cooperative shall pre-pay into the Treasury of the Town, on the first business day of July each year, beginning with the year 2019, a sum of money (the "Franchise Fee") equal to five percent

(5%) of the gross sales revenue accruing to the Cooperative 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 Cooperative 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 Cooperative 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 Cooperative 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 Cooperative to any other town or city under a franchise agreement.

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 Cooperative may at its option pay and deduct from its franchise fee payments any amount that shall be required or exacted from the Cooperative for the benefit of the Town other than ad valorem taxes on property.

C. It is expressly understood that all franchise fees imposed by the Town on the Cooperative shall be collected from customers of the Cooperative within the municipal boundaries. 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 under the Freedom of Information Act or otherwise without a court order or the Cooperative's prior written consent.

D. 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 Cooperative, 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 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 SCE&G 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 a term of thirty (30) years from the effective date. Upon acceptance by the Cooperative in writing, this Franchise Ordinance supersedes and replaces the Franchise Ordinance which became effective on October 1, 2014.


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.

Ratified in Town Council this

2nd day of January, 2019.

(originally signed by:)


Steve MacDougall, Mayor

ATTEST:

(originally signed by:)


Clerk of Council

ACCEPTANCE of the franchises granted by this Ordinance is acknowledged by MID-CAROLINA ELECTRIC COOPERATIVE, INC., THIS 11th DAY OF JAN, 2019.

MID-CAROLINA ELECTRIC COOPERATIVE, INC.

(originally signed by:)


B. Robert Paulling
President & Chief Executive Officer

ATTEST:

