

1 STATE OF GEORGIA
2 COUNTY OF DEKALB
3 CITY OF STONECREST
4

ORDINANCE 2017- 12-02

5 **AN ORDINANCE TO ADOPT DIVISION II – GEORGIA POWER, OF ARTICLE 2 –**
6 **ELECTRICAL FRANCHISES, IN CHAPTER 8 – FRANCHISES, OF THE CITY OF**
7 **STONECREST, GEORGIA CODE OF ORDINANCES**
8

9 **WHEREAS**, Pursuant to subsection (31) of Section 1.03 of the Charter of the City of
10 Stonecrest, Georgia, the City of Stonecrest (the “ City”) has been vested with the
11 power to “ grant franchises or make contracts for, or impose taxes on, public
12 utilities, cable companies; and public service companies; and to prescribe the
13 rates, fares, regulations, and standards and conditions of service applicable to the
14 service to be provided by the franchise grantee or contractor, insofar as not in
15 conflict with valid regulations of the Public Service Commission”; and
16

17 **WHEREAS**, the City has the power to define, regulate, license, and prohibit any act, practice,
18 conduct, or use of property which is detrimental to health, sanitation, cleanliness,
19 welfare and safety of the inhabitants of the City, and to provide for the
20 enforcement of such standards; and
21

22 **WHEREAS**, the Mayor and City Council find it desirable and in the interest of the health,
23 safety, and welfare of the citizens of the City to adopt a franchise agreement with
24 Georgia Power Corporation.
25

26 **THEREFORE**, the Mayor and City Council of the City of Stonecrest, Georgia hereby ordain as
27 follows:
28

29 **Section 1:** The Mayor and Council of the City of Stonecrest, Georgia, hereby adopt
30 **Division II – Georgia Power of Article II – Electrical Franchises in Chapter 8 – Franchises**
31 **to read and to be codified as follows:**
32

33 **“DIVISION II. GEORGIA POWER.**

34 **Sec. 8-2-10. Grant of Franchise.**
35

36
37 The authority, right, permission, and consent are hereby granted to Georgia Power, its
38 successors, leases and assigns (“Company”) for a period of thirty-five (35) years from the date of
39 the Company's acceptance hereof, to occupy and use the streets, alleys, and public places of the
40 City within the present and future corporate limits of the City as from time to time the Company
41 may deem proper or necessary for the overhead or underground construction, maintenance,

42 operation, and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers,
43 appliances, equipment, connections, and other apparatus (hereinafter referred to collectively as
44 the "Company's Facilities") for the business and purpose of transmitting, conveying, conducting,
45 using, supplying, and distributing electricity for light, heat, power, and other purposes for which
46 electric current may be or become useful or practicable for public or private use, and to re-enter
47 upon such streets, alleys, and public places from time to time as the Company may deem proper
48 or necessary to perform these functions, and to cut and trim trees and shrubbery when and where
49 necessary, in the judgment of the Company, to insure safe and efficient service.

50
51 **Sec. 8-2-11. Payment of Franchise Fees Required.**

52 (a) The Company shall pay into the treasury of the City (1) on or before the first day of
53 March in each year following the granting of this franchise, a sum of money equal to four
54 percent (4%) of the gross sales of electric energy to customers served under residential
55 and commercial rate schedules (as prescribed by the Georgia Public Service
56 Commission) within the corporate limits of the City during the preceding calendar year
57 and four percent (4%) of the gross sales of electric energy to customers served under
58 industrial rate schedules (as so prescribed) within the corporate limits of the City during
59 the period beginning on the first day of the month following the granting of this franchise
60 and ending on December 31 thereafter and (2) on or before the first day of March of each
61 year thereafter during the term of this franchise, a sum of money equal to four percent
62 (4%) of the gross sales of electric energy to customers served under residential,
63 commercial, and industrial rate schedules (as so prescribed) within the corporate limits of
64 the City during the preceding calendar year, on condition that in the event the City shall
65 grant to any other entity the right to use and occupy the City's streets for like purposes,

66 such use and occupancy shall be upon the same terms and conditions as those herein
67 contained, including the payment provisions hereof.

68 (b) If not paid by the due date, unpaid franchise fees shall accrue interest at the maximum
69 rate authorized by State Law.

70 (c) The amount, if any, of any tax, fee, charge, or imposition of any kind required,
71 demanded, or exacted by the City on any account, other than ad valorem taxes on
72 property, shall operate to reduce to that extent the amount due from the percentage of
73 gross sales provided for in subsection (a) above.

74 **Sec. 8-2-12. Conditions of Franchise.**
75

76 (a) The Company shall fully protect, indemnify, and save harmless the City from all
77 damages to persons or property caused by the construction, maintenance, operation, or
78 extension of the Company's Facilities, or conditions of streets, alleys, or public places
79 resulting therefrom, for which the City would otherwise be liable.

80 (b) The Company shall, in constructing, maintaining, operating, and extending the
81 Company's Facilities, submit and be subject to all reasonable exercises of the police
82 power by the City. Nothing contained herein, however, shall require the Company to
83 surrender or limit its property rights created hereby without due process of law, including
84 adequate compensation, for any other purpose at the instance of the City or for any
85 purpose at the instance of any other entity, private or governmental.

86 (c) "Distribution Facilities" means poles, lines, wires, cables, conductors, insulators,
87 transformers, appliances, equipment, connections, and other apparatus installed by or on
88 behalf of the Company (whether before or after the adoption of this ordinance) in the
89 streets, alleys, or public places of the City for the purpose of distributing electricity

90 within the present and future corporate limits of the City. Distribution Facilities do not
91 include any of the following: (i) electric transmission lines with a design operating
92 voltage of 46 kilovolts or greater (hereinafter referred to as "Transmission Lines"); (ii)
93 poles, towers, frames, or other supporting structures for Transmission Lines (hereinafter
94 referred to as "Transmission Structures"); (iii) Transmission Lines and related wires,
95 cables, conductors, insulators, or other apparatus attached to Transmission Structures;
96 (iv) lines, wires, cables, or conductors installed in concrete-encased ductwork; or (v)
97 network underground facilities.

98 (d) In the event that the City or any other entity acting on behalf of the City requests or
99 demands that the Company relocate any Distribution Facilities from their then-current
100 locations within the streets, alleys, and public places of the City in connection with a
101 public project or improvement, then the Company shall relocate, at its expense, the
102 Distribution Facilities affected by such project or improvement. The Company's
103 obligations under this subsection shall apply without regard to whether the Company has
104 acquired, or claims to have acquired, an easement or other property right with respect to
105 such Distribution Facilities and shall not affect the amounts paid or to be paid to the City
106 under the provisions of this Ordinance. Notwithstanding the foregoing provisions of this
107 subsection, the Company shall not be obligated to relocate, at its expense, any of the
108 following:

109 (i) Distribution Facilities that are located on private property at the time relocation is
110 requested or demanded;

111 (ii) Distribution Facilities that are relocated in connection with sidewalk
112 improvements (unless such sidewalk improvements are related to or associated

113 with road widenings, the creation of new turn lanes, or the addition of
114 acceleration/deceleration lanes);

115 (iii) Distribution facilities that are relocated in connection with streetscape projects or
116 other projects undertaken primarily for aesthetic purposes; or

117 (iv) Distribution Facilities that are converted from an overhead configuration or
118 installation to an underground configuration or installation.

119 (e) The City and the Company recognize that both parties benefit from economic
120 development within the City. Accordingly, when it is necessary to relocate any of the
121 Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission
122 Structures, or other facilities) within the City, the City and the Company shall work
123 cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring
124 compliance with applicable laws and regulations. In addition, the City and the Company
125 shall communicate in a timely fashion to coordinate projects included in the City's five-
126 year capital improvement plan, the City's short-term work program, or the City's annual
127 budget in an effort to minimize relocation of the Company's Facilities. Such
128 communication may include, but is not limited to,

129 (i) Both parties' participation in the Georgia Utilities Coordinating Council, Inc. (or
130 any successor organization) or a local utilities coordinating council (or any
131 successor organization); and

132 (ii) Both parties' use of the National Joint Utility Notification System (or any
133 successor to such system mutually acceptable to both parties).

134 (f) With regard to each streetscape project undertaken by or on behalf of the City, the City
135 shall pay the Company in advance for the Company's estimated cost to relocate any of the

136 Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission
137 Structures, or other facilities) in connection with such project. For each streetscape
138 project, the Company shall estimate in good faith the amount of incremental base
139 revenue, if any, that the Company will realize as a result of new customer load or
140 expansion of existing customer load attributable to such project; and such estimate shall
141 be based on tariffs in effect at the time that construction of such project begins and shall
142 not include fuel recovery charges, non-electric service billings, or taxes. If such estimate
143 indicates that the Company will realize incremental base revenue, the Company shall do
144 one of the following, whichever results in greater cost savings to the City:

- 145 (i) Reduce the City's advance payment to the Company for relocation costs by ten
146 percent (10%); or
- 147 (ii) Where the City has developed a bona fide marketing plan within twelve (12)
148 months after construction of such project begins, either refund the amount of the
149 Company's incremental base revenue during such twelve-month period to the City
150 or credit such amount against any future payment due from the City to the
151 Company. The City and the Company acknowledge and agree that the amount of
152 any refund or credit calculated pursuant to this subsection shall not exceed the
153 amount of the City's advance payment to the Company for relocation costs
154 associated with such project.

155 **Sec. 8-2-13. Right to Select Electrical Supplier.**

156 Nothing contained in this ordinance shall limit or restrict the right of customers within the
157 corporate limits of the City to select an electric supplier as may hereafter be provided by law.

158 **Sec. 8-2-14. Amendments.**

159 The Company and the City may enter into such additional agreements as the Company
160 and the City deem reasonable and appropriate; provided, however, that such agreements shall not
161 be inconsistent with the terms and conditions of the franchise granted in this ordinance, shall not
162 extend beyond the term of the franchise, and shall be enforceable separate and apart from the
163 franchise.

164 **Sec. 8-2-15. Acceptance.**

165 The Company shall, within ninety (90) days from the approval of this ordinance, file the
166 Company's written acceptance of the franchise granted in this ordinance with the Clerk of the
167 City, so as to form a contract between the Company and the City.

168 **Sec. 8-2-16. Conflicting Provisions.**

169 All laws and ordinances, and all agreements between the Company and the City with
170 respect to the Company's use of the City's streets, alleys, and public places, in actual conflict
171 herewith be and the same shall thereupon stand repealed and terminated, respectively.”

172 **Section 2:**

- 173
- 174 1. It is hereby declared to be the intention of the Mayor and City Council that all sections,
175 paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their
176 enactment, believed by the Mayor and City Council to be fully valid, enforceable and
177 constitutional.
 - 178
 - 179 2. It is hereby declared to be the intention of the Mayor and City Council that, to the
180 greatest extent allowed by law, each and every section, paragraph, sentence, clause or
181 phrase of this Ordinance is severable from every other section, paragraph, sentence,
182 clause or phrase of this Ordinance. It is hereby further declared to be the intention of the
183 Mayor and City Council that, to the greatest extent allowed by law, no section, paragraph,
184 sentence, clause or phrase of this Ordinance is mutually dependent upon any other
185 section, paragraph, sentence, clause or phrase of this Ordinance.
 - 186
 - 187 3. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance
188 shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise
189 unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is

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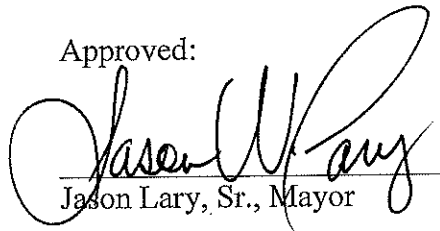
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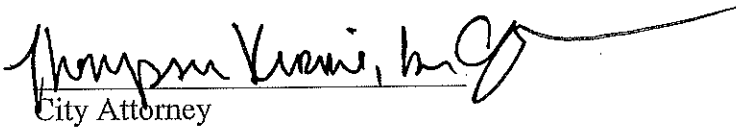
the express intent of the Mayor and City Council that such invalidity, unconstitutionality, or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.
5. The within ordinance shall become effective upon its adoption.
6. The provisions of this Ordinance shall become and be made part of The Code of the City of Stonecrest, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

SO ORDAINED AND EFFECTIVE this the 13 day of Dec., 2017.

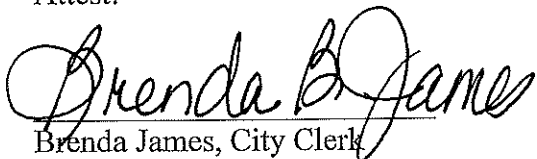
Approved:


Jason Lary, Sr., Mayor



City Attorney

Attest:


Brenda James, City Clerk