

ORIGINAL  
STAMPED IN RED

ORDINANCE NO.: 2023-044

*Amending Section 10 of the Franchise Agreement between Dominion Energy South Carolina, Inc. ("Dominion"), f/k/a South Carolina Electric & Gas Company and the City of Columbia, to Grant a Franchise Extension for the Construction, Operation and Maintenance of Electric and Gas Systems in the City of Columbia, South Carolina, and Authorizing the City Manager to Enter into a Memorandum of Understanding Setting Forth the Property Transactions Required By that Extension*

BE IT ORDAINED by the Mayor and Council of the City of Columbia this 18<sup>th</sup> day of April, 2023, that the initial thirty-year term referenced in Sections 10 and 12(d) of the current Franchise Agreement between Dominion Energy South Carolina, Inc., and the City of Columbia is hereby amended upon the terms and conditions as follows; that the initial thirty-year term of the original Franchise Agreement dated February 20, 2002, including any previous amendments, shall be extended for an additional twelve-years such that the amended initial term shall be forty-two years in exchange for Dominion executing a Limited Warranty Deed in favor of the City for the parcel identified as the Ball Park Property in the Memorandum of Understanding attached as Exhibit "B," and upon Dominion executing a long-term lease for the parcel(s) identified as the Saluda River Property in Exhibit A. Failure to secure all the approvals for the lease agreement may result in a reduction of the extension period by no more than five years on the terms and conditions as further described in the Memorandum of Understanding. If both transactions are consummated as intended, the expiration of the initial Franchise term is February 20, 2044.

BE IT FURTHER ORDAINED that the City Manager is hereby authorized to execute the attached Memorandum of Understanding or upon a form approved the City Attorney.

Requested by:

Assistant City Manager Gentry

Approved by:

Cheresa B. Wilson  
City Manager

Approved as to form:

[Signature]  
City Attorney

Introduced: 4/4/2023

Final Reading: 4/18/2023

[Signature]  
Mayor

ATTEST:

Erika D. Hammond  
City Clerk

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (this "Memorandum") is entered into as of this 30<sup>th</sup> day of April, 2023 ("Effective Date") between the City of Columbia (the "City") and Dominion Energy South Carolina, Inc. ("Dominion"). City and Dominion are referred to herein collectively as "Parties" and singularly as "Party".

### **RECITALS:**

A. The City and Dominion are parties to that certain combination electric and natural gas Franchise Agreement, dated as of February 20, 2002 (as amended for time to time, the "Franchise Agreement") and expiring on February 20, 2032.

B. The Parties have agreed to the transfer of certain real property from Dominion to City and the potential lease of certain real properties from Dominion to City in exchange for a 12-year extension of the Franchise Agreement extending its term to February 20, 2044 (the "Franchise Extension").

C. The Parties now desire to enter into this Memorandum for the purpose of governing the Parties' agreement on the contemplated real property transactions and Franchise Extension.

### **AGREEMENT:**

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, for the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties do hereby stipulate and agree as follows:

1. **Ball Park Property Conveyance.** Subject to the terms and conditions of this Memorandum, Dominion shall convey to City, and City shall accept from Dominion, the tract of real property as further described on Exhibit A attached hereto and incorporated herein (the "Ball Park Property"), in exchange for the Franchise Extension. In the interim, Dominion agrees to provide via a separate agreement a right of entry to City to facilitate its access to the Ball Park property to conduct due diligence in preparation of the transfer.

2. **Saluda River Property.** Subject to the terms and conditions of this Memorandum, Dominion shall lease to City the tracts of real property as further described on Exhibit B attached hereto and incorporated herein (collectively, the "Saluda River Property").

3. **Terms and Conditions.** The lease of the Saluda River Property from Dominion to City and the conveyance of the Ball Park Property shall be subject to the following terms and conditions, as applicable:

(a) **PSC Approvals.** The lease of the Saluda River Property is contingent upon the approval of the South Carolina Public Service Commission ("PSC") pursuant to S.C. Code Ann. § 58-27-1300 and, if applicable, the PSC's grant of a waiver of certain provisions related to property transfers in Dominion's Code of Conduct.

(b) **FERC Approvals.** The Parties acknowledge that portions of the Saluda River Property (collectively, the "FERC Project Properties") are located or have been committed under the pending Federal license to be included within the Project Boundary Line of the Saluda hydroelectric project designated in the Files of the Federal Energy Regulatory Commission ("FERC") as Project 516 (the "Project"). The lease of each FERC Project Property is contingent upon the approval of FERC, which is required by applicable law and/or the FERC-issued license applicable to the Project (the "License"). Prior to submitting its application for FERC approval,

Dominion is required by FERC to consult with various federal, state, and local agencies, as well as other stakeholders, to ensure proper notice of the proposed transfer of the FERC Project Properties ("Stakeholder Outreach").

(c) **Franchise Extension.** The Parties agree that the Franchise Extension shall be executed within thirty (30) days from the Effective Date of this Memorandum.

(d) **Closings.** The closing of the lease of the Saluda River Property and the closing of the conveyance of the Ball Park Property shall each occur on a date and time mutually acceptable to the Parties but in no event shall the closings occur before all governmental and regulatory approvals required for such Property have been obtained (each, a "Closing"). Each Closing shall be conducted in conformity with South Carolina law and custom for a commercial real estate transaction.

(e) **Conveyance Deed and Lease.** The conveyance of the Ball Park Property shall be accomplished by a limited warranty deed (the "Conveyance Deed") from Dominion. The lease of the Saluda River Property shall be accomplished by a 100-year lease with payment from City to Dominion of \$1 per year as further specified in the lease (the "Lease"). The Conveyance Deed and the Lease shall each be subject to the Utility Reservations set forth below, all existing, recorded or unrecorded, reservations, easements, encroachments, leases, licenses, restrictions, covenants, zoning, governmental regulations, land use regulations, and rights-of-way, which may affect the Property or as may be revealed by an inspection of the Property.

(f) **Utility Reservations.**

- i. In the Conveyance Deed and the Lease, Dominion shall be entitled to reserve a perpetual, non-exclusive easement or other rights for the purpose of installation, maintenance and repair of underground and above ground utility lines on the Properties, including, but not limited to, communications, electric, and gas, in a manner that is sufficient to maintain and operate existing and future facilities for the development along or near the Properties; provided however, that Dominion shall notify City prior to any installation of any new facilities, and Dominion shall be responsible for all costs of installation, maintenance and repair and shall restore any Property to the equivalent of its pre-installation condition following any utility installation, maintenance or repair contemplated herein.
- ii. The Lease will provide that the City reserves the right to obtain permanent easements and to construct water and wastewater utility conveyance improvements within leased properties as needed. No improvements shall be made unless prior authorization is obtained from the relevant regulatory authorities (SCDHEC, FERC, etc.) and installed in accordance with approved design standards for infrastructure, including proper separation from power utility lines.

(g) **FERC Project Properties.** The lease of the FERC Project Properties shall be subject to additional special terms and conditions, which shall be reflected in the Lease, as follows:

- i. Dominion shall reserve the right to perform any and all acts required by an order of FERC concerning the Project without the prior approval of City or any other person. In furtherance of the foregoing, the Lease shall include the following language, which is referred to as the "Linweave clause": "Notwithstanding anything to the contrary in this conveyance, Grantor has the right to perform any and all acts

required by an order of FERC affecting the Project without the prior approval of Grantee or any other person." Linweave, Inc., 23 FERC par. 61,391 at p. 61,830 (1983).

- ii. Dominion shall be entitled to reserve the right of ingress, egress and access in, to, over, across and out of such FERC Project Property for malaria control and for other corporate utility purposes.
- iii. Dominion shall be entitled to reserve flowage rights. Dominion has disclosed and City acknowledges that the FERC Project Property may be damaged from time to time by reason of Dominion's erection, construction, presence, operation and maintenance of a dam or dams and reservoir of water of any height or size and necessary spillways on the Saluda River, whether such damage is caused by the flooding of such FERC Project Property, release, or injury to the drainage thereof, or by storage of water, or for any reason whatsoever, City shall release Dominion from any and all liability for any and all damages that may be caused to such FERC Project Property.
- iv. The Parties understand and agree that the City, subject to any required FERC approvals, may develop on the FERC Project Properties a public recreation area, including such facilities, accommodations, equipment, utilities and appurtenances relating or incidental thereto and may provide such services and programs as the City deems are in the public interest. Notwithstanding the foregoing, following the Closing, the City's use of the Project Property shall not endanger health, create a nuisance, or otherwise be incompatible with overall Project use as may from time to time be impacted by changes in governmental law, regulation and policy, and the City shall take all reasonable precautions to ensure that the construction, operation and maintenance of any structures or facilities on FERC Project Property will occur in a manner that will protect the current and prospective scenic, recreational and environmental values of the Project; and the City shall not unduly restrict public access to Project waters. Use of the FERC Project Property shall at all times be subject to the terms, conditions and restrictions set out in the FERC Project 516 Land Use and Shoreline Management Plan (the "Plan"), as the same may be amended or revised from time to time, and/or in accordance with the License issued by FERC, and to the FERC's "Order Approving Land Use and Shoreline Management Plan with Modifications and Amending Exhibit R" dated June 23, 2004, and "Order Clarifying and Modifying Order and Denying Rehearing" dated October 28, 2004, and successor FERC orders thereto. City shall abide by and comply with such FERC orders and the Plan to the extent the same affect the FERC Project Property.
- v. The Lease for the FERC Project Properties shall contain conditions adequate to ensure that: (i) the property be used solely for public recreation use purposes only; (ii) the use of the FERC Project Properties shall not endanger health, create a nuisance, or otherwise be incompatible with overall Project recreational use; and (iii) the City shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the FERC Project Properties will occur in a manner that will protect the scenic, recreational, and environmental values of the Project.

- vi. The Lease for the FERC Project Properties shall contain a condition that the City shall not assess any admission price or other charge to members of the public using the Saluda River Properties, or in any other way perform any act which would jeopardize or deny to Dominion the liability limitations afforded under South Carolina Code of Laws Sections 27-3-10 through 27-3-70, as from time to time amended, referred to as the "Recreational Use Statute" per the South Carolina Court of Appeals June 2003 decision in *Cole v. South Carolina Electric & Gas Co.*
- vii. The Lease for the FERC Project Property shall provide that, upon any notice, communication, or finding from or by FERC that any FERC Project Property is being used or has become inconsistent with the Project, the License, the Plan, or any related FERC order or in violation of any FERC-required restriction, condition, or covenant relating to such FERC Project Property (collectively, a "FERC Violation"), or upon any notice, communication, or finding from or by FERC that the FERC Project Property is being used in a manner other than for public recreation use purposes (a "Non-Permitted Use"), the Lease shall terminate, subject to the following:

(1) Upon its receipt of any notice, communication, or finding of a FERC Violation or Non-Permitted Use, Dominion shall provide written notice of such FERC Violation or Non-Permitted Use to the City. Dominion's written notice must provide City with a stipulated period of time (the "Cure Period") for the City to cure the alleged FERC Violation or Non-Permitted Use at the FERC Project Property. The Cure Period shall be fixed by Dominion, but in any event shall be at least thirty (30) days, unless FERC requires or mandates a shorter period, in which case such shorter period shall apply and shall be set forth in Dominion's notice to the City.

(2) If the FERC Violation or Non-Permitted Use is not cured within the Cure Period, Dominion has the right to immediately terminate the Lease.

(3) Following receipt of any FERC Violation or Non-Permitted Use, Dominion may elect, in Dominion's sole discretion, upon notice to the City, to object to or dispute the notice, communication, or finding of a FERC Violation or Non-Permitted Use; in the event of such election, the commencement of the Cure Period shall toll during the pendency of such objection or dispute process. Following such objection or dispute, if FERC ultimately determines that a FERC Violation or Non-Permitted Use has occurred or if Dominion otherwise withdraws its objection or dispute, then Dominion shall notify City of such determination or withdrawal and, at such time, the Cure Period shall commence in accordance with Section 3(g)(vii)(1) above. Notwithstanding the foregoing, for avoidance of any doubt, Dominion shall be under no duty or obligation to object to or dispute any FERC Violation or Non-Permitted Use (or to appeal any FERC determination).

(4) Following receipt of notice of any FERC Violation or Non-Permitted Use, City may elect, in the City's sole discretion, to object to or dispute such notice by providing notice to Dominion of same and submitting the City's objection or dispute to FERC by the end of Cure Period (or by any applicable shorter deadline imposed by FERC). If agreed by both Dominion and the City, Dominion may submit the objection or dispute on behalf of the City, at the City's cost and expense. In the event that the City timely objects to or disputes a notice of any

FERC Violation or Non-Permitted Use, then the commencement of the Cure Period shall toll during the pendency of such objection or dispute process. Following such objection or dispute, if FERC ultimately determines that a FERC Violation or Non-Permitted Use has occurred or if the City otherwise withdraws its objection or dispute, then the City shall notify Dominion of such determination or withdrawal and, at such time (even if the City fails to timely notify Dominion), the Cure Period shall commence in accordance with Section 3(g)(vii)(1) above. Notwithstanding the foregoing, for avoidance of any doubt, the City shall be under no duty or obligation to object to or dispute any FERC Violation or Non- Permitted Use (or to appeal any FERC determination).

(5) If Dominion reasonably believes that a potential FERC Violation or Non-Permitted Use has occurred with respect to a FERC Project Property but has not yet received any notice, communication, or finding from or by FERC, Dominion shall have the right to provide written notice to the City, notifying the City of such potential FERC Violation or Non-Permitted Use. The written notice must provide a Cure Period of at least thirty (30) days for the City to either (i) cure the alleged potential FERC Violation or Non- Permitted Use, or (ii) object to or dispute such notice. Failure by the City to cure the potential FERC Violation or Non-Permitted Use within the Cure Period will be deemed to be the Department's objection to or dispute of such notice. In the event that the City objects to or disputes such notice (or is deemed to have objected to or disputed such notice), the commencement of the Cure Period shall toll indefinitely but Dominion shall have the right (but not the obligation) to submit the dispute to FERC for a determination as to the occurrence of a FERC Violation or Non-Permitted Use. Following such submittal, if FERC determines that a FERC Violation or Non-Permitted Use has occurred, then Dominion shall notify the City of such determination and, at such time, the Cure Period shall commence in accordance with Section 3(g)(vii)(1) above.

- viii. The Parties acknowledge that FERC could impose additional requirements impacting either FERC Project Property as a condition of approving the lease of the FERC Project Property, which shall be incorporated into the Lease for the FERC Project Properties. The Parties further acknowledge that the designation of certain FERC Project Property may be modified by FERC throughout the term of the Lease, and that upon issuance of the pending FERC License the FERC Project Boundary is expected to be modified to include those portions of the lower Saluda River Property that are not currently included in the FERC Project. Upon any of the Saluda River Property becoming part of the FERC Project, such property will be subject to the same conditions, and the parties, if necessary, will amend the Lease.
- ix. In connection with the process for applying for and obtaining FERC approval, Dominion reserves the right, if Dominion deems it is necessary or appropriate in Dominion's sole direction, to offer any of the foregoing terms and conditions in Dominion's application.

(k) No Warranties. Dominion makes no representation, warranty, or covenant of any kind whatsoever with respect to the Ball Park Property or the Saluda River Property, including, without limitation, any representation, warranty, or covenant, survey conditions, use, the physical condition or any improvements thereon or any repairs required thereto, past or present use,

development, investment potential, tax ramifications or consequences, compliance with law, present or future zoning, the presence or absence of hazardous substances or other environmental conditions, the availability of utilities, access to public roads, habitability, merchantability, fitness or suitability for any purpose, or any other matter with respect to the Properties, all of which are hereby expressly disclaimed by Dominion.

(l) Transfer Taxes. The transfers of the respective Properties will be exempt from documentary stamp taxes pursuant to Section 12-24-40(2) of the S.C. Code of Laws.

(m) Roll-back Taxes. Dominion shall not be responsible for any rollback taxes assessed on any Property on account of any change in use of any such Property following a Closing.

(n) Closing Costs. City shall be responsible for the cost of recording the deeds and Memorandum of Leases. If City desires to procure title insurance on any Property, City shall be responsible for all premiums and costs associated therewith, including without limitation the cost of any endorsement to City's title insurance policy. Each Party shall be responsible for their own attorney's fees and other transaction costs. As between Dominion and City, Dominion shall be responsible for the ad valorem real property taxes on the Ball Park Property for the year in which the transfer of the Ball Park Property occurs.

(o) Release from Indenture. Upon obtaining the FERC Approvals, Dominion shall take reasonable commercial efforts to obtain a release from that certain Indenture dated as of April 1, 1993, as supplemented (the "Indenture"), to NationsBank of Georgia, National Association, as Trustee, with respect to each Property at or prior to the time of the Closing of such Property. However, to the extent Dominion is unable to obtain a release from the Indenture prior to a Closing, Dominion shall indemnify and hold harmless City from any claims arising from failure to obtain the Indenture release which materially impair the leasing of the Saluda River Property. In connection with any claim by City pursuant to this indemnity, City shall notify Dominion in writing as soon as reasonably practical stating the facts of such claim.

(p) Environmental Waiver. City on behalf of itself and its successors and assigns waives any right to recover from, and forever releases and discharges, Dominion from any and all demands, claims, causes of action, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, actual attorneys' fees, consultants' fees, court costs, expert witness fees, assessment costs, cleanup costs and monitoring costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical, environmental or other similar conditions on or about any of the Properties, including without limitation as may arise under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1801, et seq.), the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), and/or any other federal, state or local environmental, health or safety statutes, regulations, rules, ordinances or common law theories. The Conveyance Deed and the Lease shall contain the foregoing waiver.

4. Covenants. Upon execution of this Memorandum, the Parties shall work together in good faith to diligently seek and obtain all approvals necessary or appropriate to effectuate the conveyance or lease of the Properties as contemplated herein. In furtherance of the foregoing, within thirty (30) days after receiving the PSC approval (and PSC waiver of any applicable Code of Conduct requirements), Dominion



shall engage in Stakeholder Outreach. Following the conclusion of Stakeholder Outreach, such determination to be made at Dominion's reasonable discretion, Dominion shall submit its application to FERC seeking FERC's approval of the lease of the FERC Project Properties as contemplated herein. Neither Party warrants or guaranties that the required approvals will be obtained in a timely manner or ever at all.

5. **Removal Rights.** If all necessary approvals have not been obtained for the lease of the Saluda River Property by an outside date that is thirty-six (36) months after the Effective Date, then Dominion shall have the right to withdraw the approvals and obligations contained in this Memorandum by providing written notice to the City. The City shall then have the right to reduce the term of the extended franchise agreement by not more than 5 years. Any reduction in the extended franchise agreement relieves Dominion of its obligations to lease any of the Saluda River Property though the parties will use best efforts to reach a mutually satisfactory resolution.

6. **No Brokers.** Each Party represents and warrants to the other Party that it has not engaged or employed any broker or finder in connection with the transactions contemplated by this Memorandum and has taken no action that would give rise to a valid claim against any Party for a brokerage commission, finder's fee, or other like payment.

7. **Survival.** The terms and conditions of this Memorandum shall survive the Closings and shall remain in full force and effect and shall not merge into the Conveyance Deeds.

8. **Successors and Assigns.** This Memorandum shall be binding on and inure to the benefit of the Parties and their respective successors and assigns. The covenants and restrictions in the Conveyance Deed and the Lease shall run with the land and be binding on and inure to the benefit of the grantor and grantee thereto and their respective successors and assigns.

9. **Notice.** Each Party shall deliver all notices, requests, consents, waivers, and other communications under this Agreement (each, a "Notice") in writing and addressed to the other Party at its address set out below (or to any other address that the receiving Party may designate from time to time in accordance with this section). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section

If to Dominion: Dominion Energy South Carolina, Inc.  
220 Operation Way  
Cayce, SC 29033  
Attention: \_\_\_\_\_

If to City: City of Columbia  
Attn: City Manager  
1737 Main Street  
Columbia, SC 29202

10. **Miscellaneous.** The individual executing this Memorandum on behalf of each Party represents and warrants that he or she is duly authorized to execute and deliver this Memorandum on behalf of such Party. This Memorandum may be executed in any number of counterparts bearing the original

signatures of one or more of the parties hereto, each of which shall constitute an original, and all of which, when taken together, shall evidence one and the same instrument. Delivery of an executed counterpart of a signature page of this Memorandum by fax transmission or e-mail transmission (e.g., "pdf") shall be effective as delivery of a manually executed counterpart of this Memorandum.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the undersigned Parties have executed this Memorandum on the dates set forth below to be effective as of the date first set forth above.

**CITY OF COLUMBIA**

By: Teresa B. Wilson  
Name: Teresa B. Wilson  
Title: City Manager  
Date: 4/26/2023

**DOMINION ENERGY SOUTH CAROLINA, INC.**

By: Keller Hissam  
Name: Keller Hissam  
Title: President  
Date: April 30, 2023

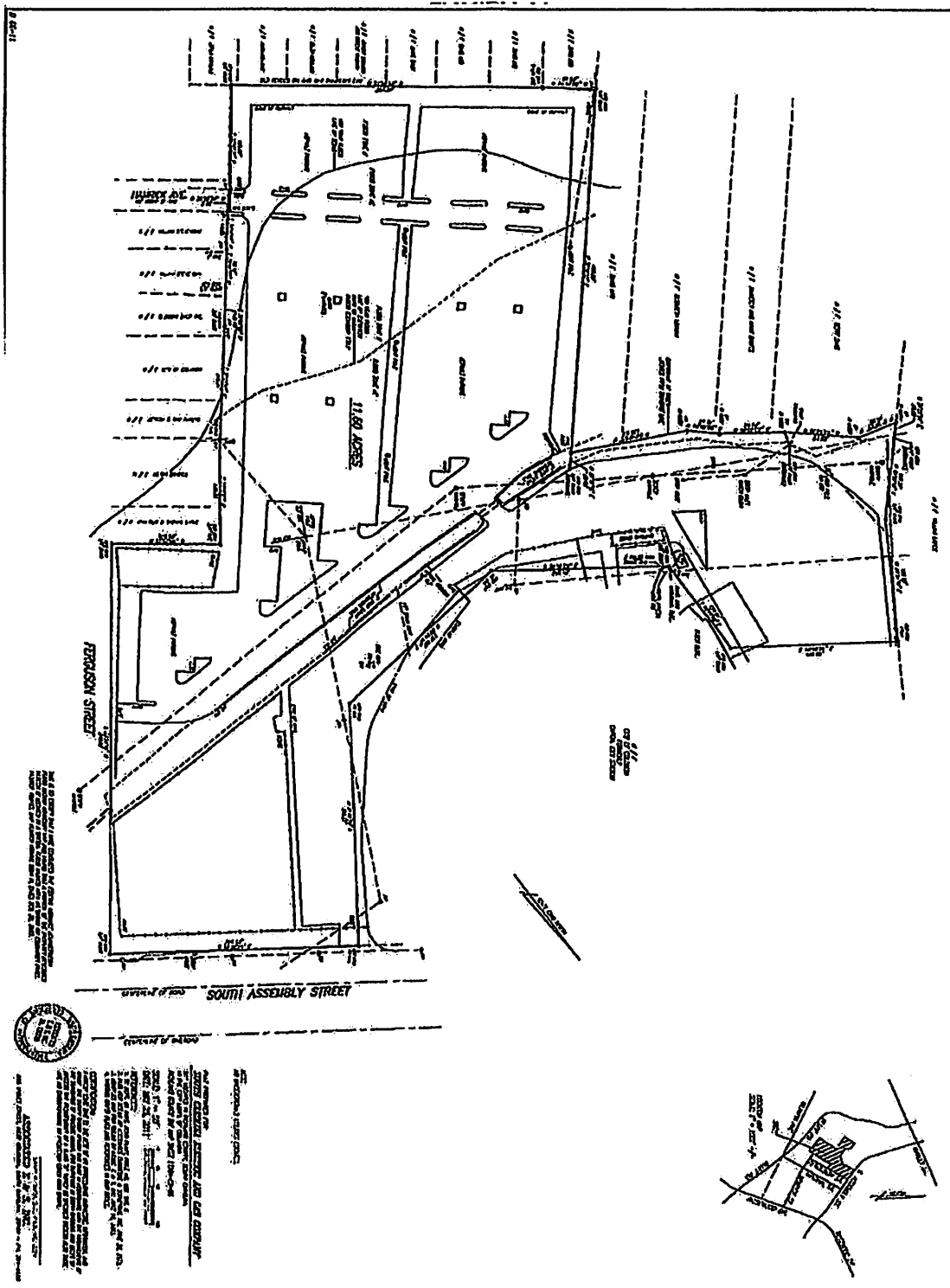
APPROVED AS TO FORM

[Signature]  
Legal Department City of Columbia, SC

04/05/2023

**EXHIBIT "A"**

**Ball Park Property**

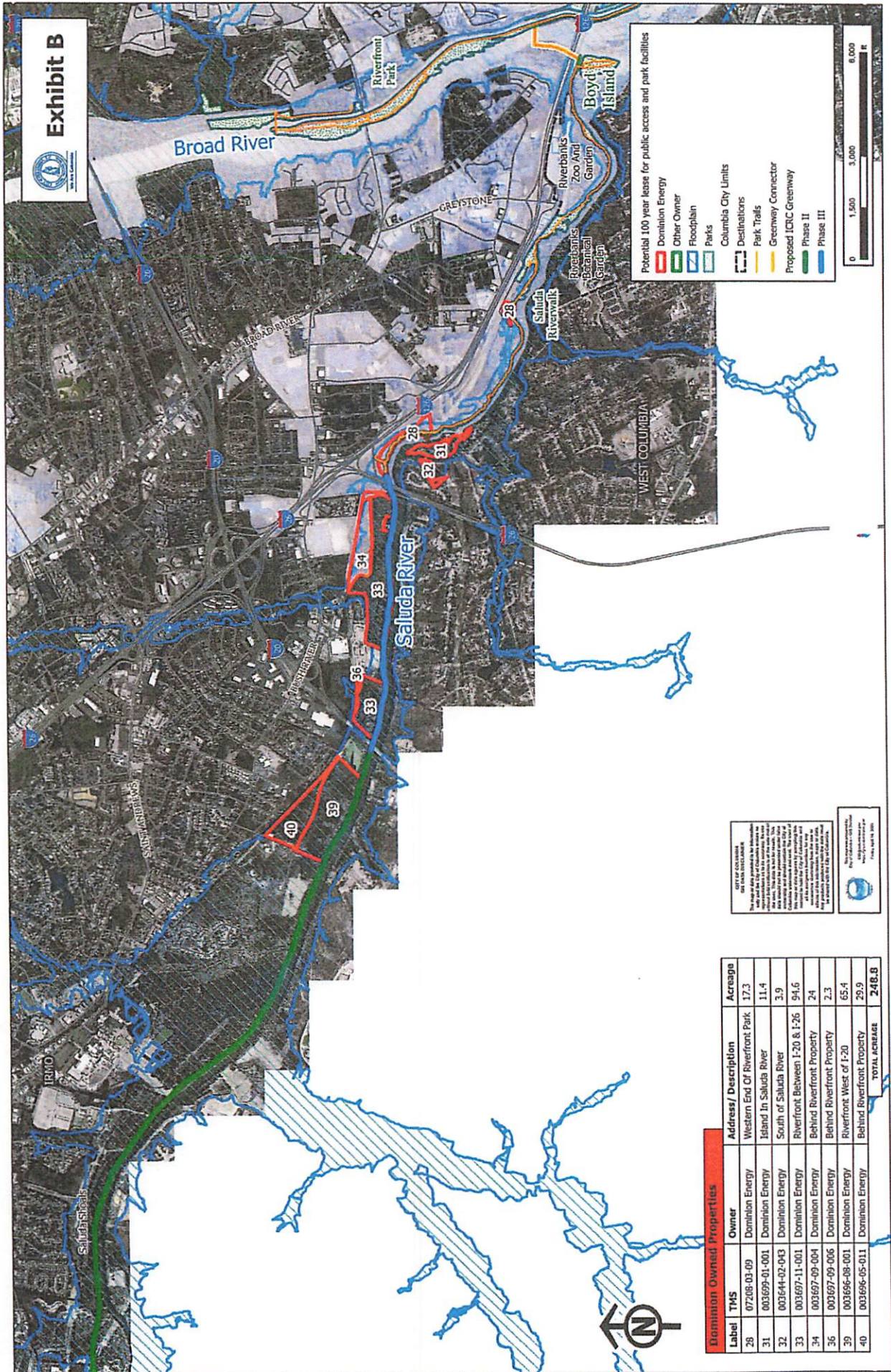
**EXHIBIT A**

**Exhibit "B"**

**Saluda River Property**



# Exhibit B



**OFFICIAL RECORD**  
This map was prepared by the City of Columbia, South Carolina, and is a true and correct copy of the original map as filed with the Office of the Register of Deeds, Columbia, South Carolina, on the 10th day of May, 2010.

**REGISTER OF DEEDS**  
COLUMBIA, SOUTH CAROLINA

| Dominion Owned Properties |               |                 |                                |
|---------------------------|---------------|-----------------|--------------------------------|
| Label                     | TMS           | Owner           | Address/Description            |
| 28                        | 07208-03-09   | Dominion Energy | Western End Of Riverfront Park |
| 31                        | 003699-01-001 | Dominion Energy | Island In Saluda River         |
| 32                        | 003644-02-043 | Dominion Energy | South of Saluda River          |
| 33                        | 003697-11-001 | Dominion Energy | Riverfront Between I-20 & I-26 |
| 34                        | 003697-09-004 | Dominion Energy | Behind Riverfront Property     |
| 36                        | 003697-09-006 | Dominion Energy | Behind Riverfront Property     |
| 39                        | 003696-08-001 | Dominion Energy | Riverfront West of I-20        |
| 40                        | 003696-05-011 | Dominion Energy | Behind Riverfront Property     |
|                           |               |                 | <b>TOTAL ACREAGE</b>           |
|                           |               |                 | <b>248.8</b>                   |



