

## ELECTRIC FRANCHISE AGREEMENT

THIS ELECTRIC FRANCHISE AGREEMENT (“Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007, between THE CITY OF LEESBURG, FLORIDA, hereinafter called “Grantor” and SUMTER ELECTRIC COOPERATIVE, INC., hereinafter called “Grantee.”

### WITNESSETH:

**WHEREAS**, the Grantor deems it necessary, desirable and in the interest of its citizens to establish a franchise granting to Grantee the permission to occupy Rights-of-Way in the City of Leesburg, Florida, for the purpose of providing electric services; and

**WHEREAS**, the Grantor’s Code of Ordinances requires any person or entity that wishes to sell or provide electric utility service to execute a Franchise Agreement with the Grantor in a form to be prescribed and approved by the Grantor’s City Commission; and

**WHEREAS**, the Grantee is willing to undertake the installation and operation of its electric utility facilities under a franchise from Grantor; and

**WHEREAS**, on October 14, 2002, Grantee and Grantor entered into such a franchise agreement, which expired on October 14, 2007; and

**WHEREAS**, the parties now wish to enter into this Agreement for the purposes stated herein.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

**1. Recitals.** The foregoing recitals are true and correct and by reference are incorporated herein and are made a part hereof.

**2. Entire Agreement.** The Parties affirm and understand that this Agreement constitutes the entire, full, and complete understanding between the Parties and they further affirm and understand that they have not relied in any way upon any representations, promises, agreements, arrangements, or understandings which are not fully and expressly contained herein.

**3. Definitions.** For the purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

- A.** “Grantor” - The City of Leesburg, Florida.
- B.** “Grantee” - Sumter Electric Cooperative, Inc., its successors and assigns.
- C.** “Electric Utility System” - An electric power system installed and operated in the Franchise Area in accordance with the provisions governing Rural Electric Cooperatives or such other regulations as may be appropriate to Grantee’s successors or assigns establishing technical standards, service areas, tariffs and operating standards, which shall include but not be limited to electric light, heat, power, and energy facilities, and a generation, transmission, and distribution system, with such extensions thereof and additions thereto as shall hereafter be made.
- D.** “Franchise Area” - That area for which Grantee provides Electric Utility Service which is within the corporate city limits of the Grantor.
- E.** “Base Revenues” - Revenues from the sale of electricity, net of customer credits, to residential, commercial, and industrial customers and Grantor sponsored street lighting all within the corporate limits of the Grantor.
- F.** “Person” - Any person, firm, partnership, association, corporation, company, or organization of any kind.
- G.** “Rights-of-Way” - All of the public streets, alleys, highways, waterways, bridges, and easements of the Grantor, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the Grantor, or in such territory as may hereafter be added to, consolidated or annexed to the Grantor.

- H. “Retail Wheeling” - A customer/supplier arrangement whereby an electric energy provider utilizes transmission and/or distribution facilities of Grantee to make energy sales directly to an end use customer located within the Franchise Area.
- I. “Adversely Affected” - For the Grantee, a loss of one percent (1%) of Base Revenues but not less than \$15,000 within the corporate city limits due to Retail Wheeling. For the Grantor, a loss of one percent (1%) of franchise fees but not less than \$1,000 due to Retail Wheeling.

**4. Grant of Authority.**

- A. There is hereby granted by Grantor, to Grantee, the right and privilege to construct, erect, operate, own and maintain, in, upon, along, across, above, over and under Rights-of-Way now laid out or dedicated, and all extensions thereof, and additions thereto in the corporate city limits, poles, wires, cables, underground conduits, manholes, fiber optic cable for its own use and other fixtures necessary or proper for the maintenance and operation of its Electric Utility System, provided that all portions of the same shall conform to the National Electrical Safety Code. This Franchise is awarded subject to the provisions of general or special laws of Florida now existing or hereinafter enacted. This grant of authority is limited to the provision by Grantee of electric utility services. Grantee agrees that without the prior written permission of Grantor, it will not allow any entity providing a wireless communication system to acquire rights to occupy Rights-of-Way under this Franchise. In the event Grantee desires to use its existing facilities, or construct new facilities, in order to provide public communications, leased fiber optic capacity, or video services to existing or potential consumers, Grantee must obtain additional and separate permission from Grantor for such activities.

- B. Annexation or Contraction.** Grantee agrees that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If Grantor approves any Franchise Area expansion or reduction by annexation or contraction, Grantor will provide written notice to Grantee. Grantee must revise its payments due to any expansion or reduction by annexation within a reasonable time after notice to Grantee, but no later than sixty (60) days after receipt of notice.
- C. Non-Exclusive Use.** The right to use and occupy Rights-of-Way for the purposes herein set forth shall be non-exclusive, and the Grantor reserves the right to grant similar use of said Rights-of Way, to any person at any time during the period of this Franchise so long as such grant does not materially and adversely impact Grantee's right to use and occupy Rights-of-Way as aforesaid.
- D. Non-Compete.** As a further consideration of this franchise, the Grantor agrees not to engage in the business of distributing and selling electricity within the service territory boundaries of the Grantee, approved by the Florida Public Service Commission, during the term of this franchise or any extension thereof in competition with the Grantee.

**5. Term of Agreement and Franchise.**

- A.** This Agreement and the corresponding Franchise shall take effect and be in force from the date of execution through October 9, 2011.
- B.** However, if in the event the appropriate governmental authorities authorize Retail Wheeling, then, either party, if Adversely Affected thereby, may reopen discussions regarding this Agreement by providing thirty (30) days written notice to the other for the sole purpose of addressing franchise fee payments between Grantee and Grantor. If the parties are unable to agree within ninety (90) days of reopening, either

party may declare an impasse and may file an action in the Circuit Court in Lake County, Florida for declaratory relief as to the proper franchise fee in light of Retail Wheeling.

- C. Each party shall bear its own costs in such a proceeding. During the pendency of any negotiations pursuant to the reopening or any declaratory action arising therefrom the current franchise payment, as set forth in Section 6 of this Agreement, shall continue to apply. Provided, however, if as a result of any such negotiations or any declaratory action arising therefrom, a different franchise payment is determined, that new franchise payment shall apply retroactively to the second full month following the date this ordinance is reopened and the parties shall balance their accounts accordingly.
- D. In all events, Grantor shall not grant more favorable treatment to providers of electric service through Retail Wheeling than is granted to Grantee under this Agreement, it being the intent of the parties that no future provider for electric service, be it generation, transmission or distribution service, to customers within the corporate limits of Grantor shall be given a competitive advantage over Grantee.

**6. Payment to Grantor.**

- A. Effective the first day of the second month beginning after the effective date of this Agreement, Grantor shall be entitled to receive from Grantee a monthly franchise amount which will equal six percent (6%) of Grantee's Base Revenues for the preceding month which amount shall be the total compensation due Grantor for the rights, authority and privileges granted by this Franchise.
- B. Payment shall be made to the Grantor for each month no later than the twentieth (20th) day of the following month. The monthly payment may

be made by wire transfer. Any monthly payment or any portion thereof received twenty (20) days after the due date shall be subject to interest at the rate of ten percent (10%) per annum until all payments are paid in full.

**7. Favored Nations.**

- A.** In the event Grantee shall hereafter accept an electric utility franchise ordinance from any municipality providing for the payment of a franchise fee in excess of the amount provided for per Section 6 above, the Grantee shall immediately notify the Grantor and the Grantor reserves the right to amend this Franchise to require the Grantee to pay the Grantor such additional franchise fees. The Grantee's failure to notify Grantor of such additional payments does not limit Grantor's rights to such additional franchise fees nor limit Grantee's liability with respect thereto including late payments outlined in Section 6 (B).
- B.** In the event Grantor exercises its right to amend this Agreement to adjust payment of the franchise fee in accordance with paragraph 7.A., Grantee agrees to execute any such amendment and to continue to abide by all terms of this Agreement as well as any amendments.
- C.** In no event shall Grantor receive a franchise fee that is less, in terms of percentage and/or Base Revenues, than any other governmental entity within Grantee's service area, except that, in the event Grantor shall hereafter grant a utility franchise to any other energy supplier providing for the payment of a franchise fee less than the amount provided for in Section 6 above, then Grantor shall be obligated to accept an amendment of this ordinance providing for a decrease in the franchise fee to such lessor amount.

**8. Rates and Services Provided.** The rates to be charged and services provided by the Grantee for electric service within the corporate limits of Grantor during the term of this

Agreement shall be as provided in the Grantee's tariffs now or hereafter approved by Grantee's Board of Trustees. In the event that Grantee's proposed successor or assign is an entity other than a Rural Electric Cooperative, it shall satisfy the Grantor that its rates will be reviewed and approved by the proper regulatory agency.

**9. Character of Service.** Grantee agrees that the materials to be used in the construction, operation and maintenance of the electric distribution system and the service rendered thereby shall be consistent with its overall system and shall be included in its long range plans for system maintenance and improvement.

**10. Indemnification.**

**A.** Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities thereunder, and the acceptance of this Agreement by Grantee shall be deemed an agreement on the part of the Grantee to indemnify Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which Grantor may incur by reason of the neglect, default, or misconduct of Grantee in the construction, operation, or maintenance of its electric utility facilities thereunder.

**B.** Grantee shall maintain throughout the term of this Agreement insurance with regard to all damages set forth in Section 10(A) in the minimum amounts of:

**(i)** \$1,000,000 for bodily injury or death to a person;

\$2,000,000 for bodily injury or death resulting from any one accident.

**(ii)** \$50,000 for property damage resulting from any one accident.

**11. Approval of Transfer.**

**A.** The rights and privileges granted by this Agreement shall not be sold, or assigned in whole or in part without the Grantor's prior written approval;

however, such consent shall not be unreasonably withheld. No such sale or assignment shall be effective until the vendee or assignee has filed with the Grantor an instrument, duly executed, reciting the fact of such sale, or assignment and agreeing to perform all the conditions thereof, including such amendments to the franchise as may be necessary when such proposed assignee is a legal entity other than a Rural Electric Cooperative.

**B.** Grantee shall annually make available to Grantor, Attention: City Clerk's Department, a copy of its Audited Annual Financial Report upon its normal issuance of same. By acceptance of this Agreement, the Grantee specifically agrees that in the event of any violation of this Section, after thirty (30) days written notice and an opportunity for Grantee to cure, Grantor may cause the Agreement and the corresponding Franchise granted herein to be terminated.

**12. Grantor Rights in Franchise.** The right is hereby reserved to the Grantor to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the Grantee or materially interfere with the benefits conferred on Grantee hereunder.

**13. Work in the Rights-of-Way.** The Grantee is hereby granted the right, authority and privilege to make all necessary excavations in said streets, avenues, alleys, thoroughfares, public rights-of-way and easements of Grantor. The Grantee shall have the right to fasten and to stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in Grantee's business, together with all the right and privileges necessary or convenient for the full use including the right to trim, cut and keep clear all trees and limbs along said lines that may in any way endanger the proper operation of same.



Moreover, the Grantee shall have the right to construct, erect, operate and maintain in said City an electric system together with necessary substations, lines and related facilities, for carrying Grantee's business; provided that, in accomplishing these purposes, the streets of said City shall not be unreasonably obstructed and work in connection therewith shall be done and carried on in conformity with such reasonable rules, regulations and local ordinances with reference thereto as may be adopted by Grantor for the protection of the public.

**14. Records and Reports.** The following records and reports shall be filed with or available to Grantor:

- A. Grantee Rules and Regulations.** Copies of rules, regulations, terms and conditions adopted by Grantee that relate to Grantee's use of Grantor's Right of Way shall be available upon request by Grantor.
- B. Accounting.** Grantee shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by its lenders, or as mutually agreed to by Grantor and Grantee.
- C. Reports.** The Grantee will attach to each payment a statement of its estimated Base Revenues by revenue account for the period on which such payment is based, signed by an authorized representative of the Grantee, in such reasonable form and detail as Grantor may from time to time prescribe, sufficient to show the source and method of computation of Base Revenues. The acceptance of any statement or payment shall not estop the Grantor from asserting that the amount paid is not the amount due or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6 (B).
- D. Availability of Records and Reports.** Grantee shall supply all accounts and records of the Grantee and/or all such information that the Grantor or its representatives may from time to time reasonably request or require relative to the calculation of franchise fees. Such financial records shall be

kept and maintained in accordance with generally accepted accounting principles. All of these records shall, on written request of Grantor, be open for examination and audit by Grantor and Grantor's representatives during ordinary business hours, and such records shall be retained by Grantee for a period of five (5) years.

- E. Audit.** Grantor may require an audit of Grantee's books at minimum of once every five (5) years. Grantee will reimburse Grantor's audit costs if the audit identifies errors in the Grantee's franchise Base Revenues of five percent (5%) or more for the period audited. Errors identified during the audit process shall be projected for any additional time periods not covered during the audit if there is a reasonable probability these errors occurred during the unaudited period, but not for more than five (5) years. If an underpayment of franchise fees has occurred, interest will be computed at a rate of ten percent (10%) per annum. Both the underpayment and interest shall be paid within thirty (30) days after receipt of demand therefor from Grantor.

**15. Grantor's Authority.**

- A.** Nothing in this Agreement shall prevent Grantor from levying and collecting such taxes as Grantor may from time to time be empowered, by law, to levy and collect provided such taxes shall be applied uniformly to all persons within Grantor's corporate limits and shall not constitute an additional tax or fee for Grantee's use of the Rights-of-Way. Such taxes are not considered part of the franchise fees.
- B.** In the event the Grantor acquires the property rights of Grantee as well as any extensions thereof within and without the City, used in or useful in or connected with Grantee's Electric Utility System and the extensions thereof, all grants or renewals shall at once terminate.

**16. Severability.** Should any section or provision of this Agreement or any portion thereof, the deletion of which would not adversely affect (in the general sense) the receipt of any material benefits or, substantially increase the burden of any party hereunder, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid. In the event of any such partial invalidity, the Grantor and Grantee shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority's decision.

**17. Attorney's Fees and Expenses.** Except as otherwise provided for herein, Grantor and Grantee hereto agree that if litigation becomes necessary to enforce any of the obligations, terms and conditions of this Agreement, the prevailing party shall be entitled to recover a reasonable amount for attorney's fees and court costs, including fees and costs on appeal, from the nonprevailing party.

**18. Governing Law and Venue.**

- A.** The rights and privileges granted to Grantee by this Agreement shall at all times be subordinate and inferior to the rights of the public in and to the ordinary use of Grantor's Rights-of-Way and nothing in this Agreement shall be considered as a surrender by Grantor of its right and power to use and relocate the use of its Rights-of-Way.
- B.** The Franchise and rights herein granted are subject to the provisions of existing Federal laws and the laws of the State of Florida and those hereafter enacted pertaining to the granting of franchise and to Retail Wheeling.
- C.** Venue. In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Lake County, Florida, or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Orlando Division.

**19. Notices.** Except in exigent circumstances, all notices by either Grantor or Grantee to the other shall be made by either depositing such notice in the United States Mail, Certified Mail return receipt requested or by facsimile. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. "Business Day" for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and Grantor and Grantee observed holidays excepted. All notices shall be addressed as follows:

**TO GRANTOR:**

City Manager

City of Leesburg, Florida

P. O. Box 490630

Leesburg, FL 34749-0630

**TO GRANTEE:**

C.E.O. & General Manager

Sumter Electric Cooperative, Inc.

P. O. Box 301

Sumterville, FL 33585-0301

Notice shall be given as required by this Agreement and for all other emergencies. Notice shall be provided to the above-named addressees unless directed otherwise in writing by Grantor or Grantee.

**20. Non-waiver Provision.** The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Agreement shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

**“Grantor”**

**THE CITY OF LEESBURG, FLORIDA**

BY: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

Approved as to form and content:

\_\_\_\_\_  
City Attorney

**“Grantee”**

**SUMTER ELECTRIC COOPERATIVE,  
INC.**

BY: \_\_\_\_\_

Its \_\_\_\_\_