

1 **DRAFT ORDINANCE 2020-06**
2 **TOWN OF LADY LAKE, FLORIDA**

3 **AN ORDINANCE GRANTING TO SUMTER ELECTRIC COOPERATIVE, INC. d/b/a SECO, A**
4 **NON-EXCLUSIVE ELECTRIC UTILITY RIGHTS OF WAY UTILIZATION FRANCHISE;**
5 **PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF**
6 **MUNICIPAL STREETS AND RIGHTS OF WAY IN TOWN OF LADY LAKE, FLORIDA, FOR THE**
7 **PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF**
8 **PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

9 **NOW, THEREFORE, BE IT ORDAINED** by the Town Commission of the Town of Lady Lake, Lake
10 County, Florida:

11 **SECTION 1. Findings.**

12 The Grantor deems it necessary, desirable and in the interest of its citizens to establish a non-
13 exclusive franchise (“Franchise”) granting to Grantee the permission to occupy Rights-of-Way
14 in the Town of Lady Lake, Lake County, Florida, for the purpose of providing electric services;
15 the Grantee is willing to undertake the installation and operation of its electric utility facilities
16 under a franchise from Grantor; and on June 21, 2010, Grantee and Grantor entered into such
17 a franchise agreement, which will expire August 1, 2020 and neither party is in breach of any
18 covenant or provision of the franchise agreement; and this Agreement shall supersede that
19 certain Franchise Agreement entered into by the parties on June 21, 2010; and

20 **SECTION 2. Short Title.**

21 The parties now wish, in consideration of the mutual promises and bargained-for exchange
22 described herein, to enter into this Agreement (the “Agreement”) for the purposes stated
23 herein; and the Grantor has obtained the authorization of its local governing body as may be
24 required by applicable law and Grantor’s charter and ordinances to enter into this
25 Agreement.

26 **SECTION 3. Definitions.**

27 In consideration of the mutual covenants, terms and conditions herein contained, the parties
28 do hereby mutually covenant and agree as follows:

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

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

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

11 A. **“Grantor”** — Town of Lady Lake.

12 B. **“Grantee”** — Sumter Electric Cooperative, Inc., its successors and assigns.

13 C. **“Electric Utility System”** — An electric power system installed and operated in the
14 Franchise Area in accordance with the provisions governing Rural Electric
15 Cooperatives or such other regulations as may be appropriate to Grantee’s successors
16 or assigns establishing technical standards, service areas, tariffs and operating
17 standards, which shall include but not be limited to electric light, heat, power, and
18 energy facilities, and a generation, transmission, and distribution system, with such
19 extensions thereof and additions thereto as shall hereafter be made.

20 D. **“Franchise Area”** — That area for which Grantee provides Electric Utility Service
21 which is within the corporate city limits of the Grantor.

22 E. **“Base Revenues”** — Revenues from the sale of electricity, net of customer credits,
23 to residential, commercial, and industrial customers and Grantor sponsored street
24 lighting all within the corporate limits of the Grantor.

25 F. **“Person”** — Any person, firm, partnership, association, corporation, company, or
26 organization of any kind.

27 G. **“Rights-of-Way”** — All of the public streets, alleys, highways, waterways, bridges,
28 and easements of the Grantor, as they now exist or may be hereafter constructed,
29 opened, laid out or extended within the present limits of the Grantor, or in such
30 territory as may hereafter be added to, consolidated or annexed to the Grantor.

1 **SECTION 4. Grant of Authority.**

2 1. There is hereby granted by Grantor, to Grantee, the right and privilege to construct,
3 erect, operate, own and maintain, in, upon, along, across, above, over and under Rights-
4 of-Way now laid out or dedicated, and all extensions thereof, and additions thereto in the
5 corporate city limits, poles, wires, cables, underground conduits, manholes, fiber optic
6 cable for its own use and other fixtures necessary or proper for the maintenance and
7 operation of its Electric Utility System, provided that all portions of the same shall
8 conform to the National Electrical Safety Code. This Franchise is awarded subject to the
9 provisions of general or special laws of Florida now existing or hereinafter enacted. This
10 grant of authority is limited to the provision by Grantee of electric utility services, but is
11 not intended to restrict any rights or authority for use of Rights-of-Way outside the scope
12 of this grant of authority which Grantee may have under other applicable laws or other
13 agreements.

14 **2. Annexation or Contraction.** Grantee agrees that the Franchise Area is subject to
15 expansion or reduction by annexation and contraction of municipal boundaries. If
16 Grantor approves a Franchise Area expansion or reduction by annexation or contraction,
17 Grantor will provide written notice to Grantee. Grantee must revise its payments due to
18 any expansion or reduction by annexation within a reasonable time after notice to
19 Grantee, but no later than 60 days after receipt of notice.

20 **3. Non-Exclusive Use.** The right to use and occupy Rights-of-Way for the purposes herein
21 set forth shall be non-exclusive, and the Grantor reserves the right to grant similar use of
22 said Rights-of-Way, to any person at any time during the period of this Franchise so long
23 as such grant does not materially and adversely impact Grantee’s right to use and occupy
24 Rights-of-Way as aforesaid.

25 **4. Non-Compete.** As a further consideration of this Franchise, the Grantor agrees not to
26 engage in the business of distributing and selling electricity within the service territory
27 boundaries of the Grantee (if any), approved by the Florida Public Service Commission,
28 during the term of this Franchise or any extension thereof in competition with the
29 Grantee.

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

31 This Agreement and the corresponding Franchise shall take effect and be in force from the
32 date of execution and shall continue and remain in effect for a period of 30 years from said
33 date. After expiration of the 30 year Term provided herein, this Agreement shall remain in
34 effect until and unless either Party provides written notice of termination. Such written

1 notice shall be provided as contemplated by Section 19 and shall be provided no less than 12
2 months prior to the date of termination.

3 **SECTION 6. Payment to Grantor.**

4 1. Effective the first day of the second month beginning after the effective date of this
5 Agreement, Grantor shall be entitled to receive from Grantee a monthly franchise amount
6 which will equal six percent of Grantee's Base Revenues for the preceding month which
7 amount shall be the total compensation due Grantor for the rights, authority and
8 privileges granted by this Franchise.

9 2. Payment shall be made to the Grantor for each month no later than the 20th day of the
10 following month. The monthly payment may be made by wire transfer or check. Any
11 monthly payment or any portion thereof received 20 days after the due date shall be
12 subject to interest at the rate of five percent per annum until all payments are paid in full.

13 **SECTION 7. Favored Nations.**

14 1. In the event Grantee shall hereafter accept an electric utility franchise ordinance from
15 any municipality providing for the payment of a franchise fee in excess of the amount
16 provided for per Section 6 above, the Grantee shall immediately notify the Grantor and
17 the Grantor reserves the right to amend this Franchise to require the Grantee to pay the
18 Grantor such additional franchise fees. The Grantee's failure to notify Grantor of such
19 additional payments does not limit Grantor's rights to such additional franchise fees nor
20 limit Grantee's liability with respect thereto including late payments outlined in Section
21 6.B.

22 2. In the event Grantor exercises its right to amend this Agreement to adjust payment of
23 the franchise fee in accordance with Paragraph 7.A., Grantee agrees to execute any such
24 amendment and to continue to abide by all terms of this Agreement as well as any
25 amendments.

26 3. In no event shall Grantor receive a franchise fee that is less, in terms of percentage
27 and/or Base Revenues, than any other governmental entity within Grantee's service area,
28 except that, in the event Grantor shall hereafter grant a utility franchise to any other
29 energy supplier providing for the payment of a franchise fee less than the amount
30 provided for in Section 6 above, then Grantor shall be obligated to accept an amendment
31 of this Agreement providing for a decrease in the franchise fee to such lesser amount.

1 **SECTION 8. Rates and Services Provided.**

2 The rates to be charged and services provided by the Grantee for electric service within the
3 corporate limits of Grantor during the term of this Agreement shall be as provided in the
4 Grantee's tariffs now or hereafter approved by Grantee's Board of Trustees. In the event that
5 Grantee's proposed successor or assign is an entity other than a Rural Electric Cooperative, it
6 shall satisfy the Grantor that its rates will be reviewed and approved by the proper regulatory
7 agency.

8 **SECTION 9. Character of Service.**

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

13 **SECTION 10. Indemnifications.**

14 1. Grantor shall in no way be liable or responsible for any accident or damage that may
15 occur in the construction, operation or maintenance by Grantee of its facilities
16 thereunder, and the acceptance of this Agreement by Grantee shall be deemed an
17 agreement on the part of the Grantee to indemnify Grantor and hold it harmless against
18 any and all liability, loss, cost, damage or expense which Grantor may incur by reason of
19 the neglect, default, or misconduct of Grantee in the construction, operation or
20 maintenance of its electric utility facilities thereunder. Notwithstanding the above, the
21 Grantee's indemnification of the Grantor shall be limited to the extent that the Grantor's
22 liability is found to be limited by §768.28, Florida Statutes, nor is any part of this
23 Agreement intended to be a waiver of sovereign immunity with respect to claims
24 described in this subparagraph.

25 2. Grantee shall maintain throughout the term of this Agreement insurance with regard to
26 all damages set forth in Section 10.A. in the minimum amounts of:

27 A. \$1,000,000 for bodily injury or death to a person; \$2,000,000 for bodily injury or
28 death resulting from any one accident;

29 B. \$50,000 for property damage resulting from any one accident.

30 **SECTION 11. Approval of Transfer.**

31 The rights and privileges granted by this Agreement shall not be sold or assigned in whole or
32 in part without the Grantor's prior written approval; however, such consent shall not be

1 unreasonably withheld. No such sale or assignment shall be effective until the vendee or
2 assignee has filed with the Grantor an instrument, duly executed, reciting the fact of such
3 sale, or assignment and agreeing to perform all the conditions thereof, including such
4 amendments to the franchise as may be necessary when such proposed assignee is a legal
5 entity other than a Rural Electric Cooperative.

6 **SECTION 12. Grantor Rights in Franchise.**

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

14 **SECTION 13. Work in the Rights-of-Way.**

15 The Grantee is hereby granted the right, authority and privilege to make all necessary
16 excavations and to place poles in said streets, avenues, alleys, thoroughfares, public rights-
17 of-way and easements of Grantor. The Grantee shall have the right to fasten and to stretch
18 and lay along the lines of said poles, any conduits, pipes and cables necessary or desirable for
19 transmitting and conveying the electric current to be distributed or used by Grantee, together
20 with all the rights and privileges necessary or convenient for the full use including the right to
21 trim, cut and keep clear all trees and limbs along said lines that may in any way endanger the
22 proper operation of the same. Moreover, the Grantee shall have the right to construct, erect,
23 operate and maintain in said City an electric system together with necessary substations,
24 lines and related facilities, for carrying Grantee's business; provided that, in accomplishing
25 these purposes, the streets of said City shall not be unreasonably obstructed and work in
26 connection therewith shall be done and carried on in conformity with such reasonable rules,
27 regulations and local ordinances with reference thereto as may be adopted by Grantor for the
28 protection of the public.

29 **SECTION 14. Records and Reports.**

30 The following records and reports shall be filed with or available to Grantor:

- 31 1. **Grantee Rules and Regulations.** Copies of rules, regulations, terms and conditions
32 adopted by Grantee that relate to Grantee's use of Grantor's Right-of-Way shall be
33 available upon request by Grantor.

1 **2. Accounting.** Grantee shall use the system of accounts and the form of books, accounts,
2 records, and memoranda prescribed by its lenders, or as mutually agreed to by Grantor
3 and Grantee.

4 **3. Reports.** The Grantee will attach to each payment a statement of its estimated Base
5 Revenues by revenue account for the period on which such payment is based, signed by
6 an authorized representative of the Grantee, in such reasonable form and detail as
7 Grantor may from time to time prescribe, sufficient to show the source and method of
8 computation of Base Revenues. The acceptance of any statement or payment shall not
9 estop the Grantor from asserting that the amount paid is not the amount due or from
10 recovering any deficit by any lawful proceeding, including interest to be applied at the
11 rate set forth in Section 6.B.

12 **4. Availability of Records and Reports.** Grantee shall supply all accounts and records of
13 the Grantee and/or all such information that the Grantor or its representatives may from
14 time to time reasonably request or require relative to the calculation of franchise fees.
15 Such financial records shall be kept and maintained in accordance with generally
16 accepted accounting principles. All of these records shall, on written request of Grantor,
17 be open for examination and audit by Grantor and Grantor's representatives during
18 ordinary business hours, and such records shall be retained by Grantee for a period of five
19 years.

20 **5. Audit.** Grantor may require an audit of Grantee's books relating to this Agreement and
21 the franchise hereunder periodically, but no more frequently than once every five years.
22 Such audit shall be at Grantor's expense. However, Grantee will reimburse Grantor's audit
23 costs if the audit identifies errors in the Grantee's franchise Base Revenues of five percent
24 or more for the period audited. Errors identified during the audit process shall be
25 projected for any additional time periods not covered during the audit if there is a
26 reasonable probability these errors occurred during the unaudited period, but not for
27 more than five years. If an underpayment of franchise fee has occurred, interest will be
28 computed at a rate of five percent per annum. Both the underpayment and interest shall
29 be paid within 30 days after receipt of demand therefore from Grantor.

30 **SECTION 15. Grantor's Authority.**

31 Nothing in this Agreement shall prevent Grantor from levying and collecting such taxes as
32 Grantor may from time to time be empowered, by law, to levy and collect provided such taxes
33 shall be applied uniformly to all persons within Grantor's corporate limits and shall not

1 constitute an additional tax or fee for Grantee's use of the Rights-of-Way. Such taxes are not
2 considered part of the franchise fees.

3 **SECTION 16. Severability.**

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

12 **SECTION 17. Attorney's Fees and Expenses.**

13 Except as otherwise provided for herein, Grantor and Grantee hereto agree that if litigation
14 becomes necessary to enforce any of the obligations, terms and conditions of this
15 Agreement, each party shall be responsible for its own attorney's fees and court costs
16 incurred.

17 **SECTION 18. Governing Law and Venue.**

18 1. The rights and privileges granted to Grantee by this Agreement shall at all times be
19 subordinate and inferior to the rights of the public in and to the ordinary use of Grantor's
20 Rights-of Way and nothing in this Agreement shall be considered as a surrender by Grantor
21 of its right and power to use and relocate the use of its Rights-of-Way.

22 2. The Franchise and rights herein granted are subject to the provisions of existing Federal
23 laws and the laws of the State of Florida and those hereafter enacted.

24 3. Venue. In the event that any legal proceeding is brought to enforce the terms of this
25 Franchise, the same shall be brought in Lake County, Florida, or if a federal claim, in the
26 U.S. District Court in and for the Middle District of Florida, Ocala Division.

27 **SECTION 19. Notices.**

28 Except in exigent circumstances, all notices by either Grantor or Grantee to the other shall be
29 made by either depositing such notice in the United States Mail, Certified Mail return receipt
30 requested or by facsimile. Any notice served by certified mail return receipt requested shall
31 be deemed delivered five days after the date of such deposit in the United States mail unless
32 otherwise provided. Any notice given by facsimile is deemed received by next Business Day.

1 “Business Day” for purposes of this section shall mean Monday through Friday, with
2 Saturday, Sunday and Grantor and Grantee observed holidays excepted. All notices shall be
3 addressed as follows:

4 **GRANTOR:**

5 Town Manager
6 Town of Lady Lake
7 409 Fennell Blvd.
8 Lady Lake, FL 32159
9 Facsimile: (352) 751-1510

10 **GRANTEE:**

11 CEO
12 Sumter Electric Cooperative, Inc.
13 330 South US Hwy 301
14 P.O. Box 301
15 Sumterville, FL 33585-0301
16 Facsimile: (352) 793-2563

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

20 **SECTION 20. Non-waiver Provision.**

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

27 [The remainder of this page is intentionally left blank.]

1 This Ordinance shall become effective immediately upon adoption.

2 **PASSED AND ORDAINED** this 17th day of **August, 2020** in the regular session of the Town
3 Commission of the Town of Lady Lake, Lake County, Florida, upon the Second and Final
4 Reading.

5 Town of Lady Lake, Florida

6 _____
7 Jim Richards, Mayor

8 Attest:

9 _____
10 Kristen Kollgaard, Town Clerk

11 Approved as to form and legality for the use and reliance of the Town of Lady Lake, Florida, only:

12 _____
13 Derek Schroth, Town Attorney

14 Sumter Electric Cooperative, Inc.

15 _____
16 James P. Duncan, C.E.O.