

ORDINANCE 2021 –13

AN ORDINANCE AMENDING APPENDIX “A.” FRANCHISES, ARTICLE V. “SUMTER ELECTRIC COOPERATIVE ELECTRIC FRANCHISE.” TO GRANT TO SUMTER ELECTRIC COOPERATIVE, INC. A NON-EXCLUSIVE ELECTRIC UTILITY RIGHT OF WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS-OF-WAY IN THE CITY OF BELLEVUE, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Sumter Electric Cooperative, Inc. (hereinafter referred to as “SECO”) is providing electrical power to residents of the City of Belleview, Florida (hereinafter referred to as “City”); and

WHEREAS, SECO is providing electrical power to residents of Marion County, whose property may be annexed into the corporate limits of the City; and

WHEREAS, the City is not granting SECO an exclusive franchise to provide electrical power to residents of the City; and

WHEREAS, SECO and City have agreed for SECO to continue to utilize the City’s streets and rights of way to provide electrical power to such persons and their property; and

WHEREAS, SECO has agreed to pay the fees as provided herein.

NOW THEREFORE, BE IT ORDAINED by the City Commission of the City of Belleview, Florida, that Appendix “A,” Article V of the City Code of Ordinances regarding Franchises is hereby amended to read as follows, to wit:

SECTION 1. Findings.

The City deems it necessary, desirable and in the interest of its citizens to establish a right-of-way utilization franchise (sometimes referred to herein as the “Franchise”) granting SECO permission to occupy the Rights-of-Way in the City of Belleview, Florida, for the purpose of providing electric services.

SECTION 2. Short Title.

This Ordinance shall be known as and may be cited as the "SECO Electric Franchise Ordinance."

SECTION 3. Definitions

For the purposes of this ordinance, the following terms, phrases, words, and their derivatives 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 permissive.

- A. "*Annexation*" means the adding of real property to the incorporated area within the boundaries of the City, such addition making the real property in every way a part of the City of Belleview.
- B. "*Base Revenues*" means 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.
- C. "*City*" – The City of Belleview, Florida.
- D. "*Contraction*" means the reversion of real property within the City's municipal boundaries to an unincorporated status (sometimes referred to as "de-annexation").
- E. "Franchise Area" means that area for which SECO provides electric utility service within the corporate City limits of the City.
- F. "*Grantor*" means the City of Belleview, Florida.
- G. "*Grantee*" means Sumter Electric Cooperative, Inc., its successors and assigns.
- H. "*Electric Utility System*" means 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.
- I. "*Franchise Area*" means that area for which Grantee provides Electric Utility Service which is within the corporate city limits of the Grantor.
- J. "*Person*" means any person, firm, partnership, association, corporation, company, or organization of any kind.
- K. "*Public Service Commission*" means the Florida Public Services Commission.

L. “*Rights-of-Way*” means 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.

M. “*SECO*” means Sumter Electric Cooperative, Inc., a Florida Rural Electric Cooperative, its successors and assigns.

SECTION 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 but, is not intended to restrict any rights or authority for use of Rights-of-Way outside the scope of this grant of authority which Grantee may have under other applicable laws or other agreements.

SECTION 5. 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 a 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.

SECTION 6. 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. The incorporated area of Grantor, and areas which may be annexed into the corporate limits of the Grantor in the future, are served by one or more electric distribution utilities other than Grantee in service territories established by agreements approved by the Florida Public Service Commission. Nothing in this Ordinance is intended nor shall be construed to interfere with or prohibit such other electric distribution utilities’ use of Grantor’s Rights-of-Way for such purposes in their respective service territories, or to modify or restrict modification of territorial agreements as the same may be amended, modified, or approved by the Florida Public Service Commission from time to time.

Section 7. 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 (if any), approved by the Florida Public Service Commission, during the term of this Franchise or any extension thereof in competition with the Grantee.

SECTION 8. Term of Ordinance and Franchise.

This Ordinance and the corresponding non-exclusive franchise shall take effect and be in force from the date of execution of the parties' non-exclusive Franchise Agreement and shall continue and remain in effect for a period of thirty (30) years from said date. Thereafter, this non-exclusive franchise will renew automatically for up to two (2) successive five (5) year periods, unless either party provides the other with written notice of its intent to forego automatic renewal at least twelve (12) months prior to the date of the automatic renewal. Such written notice shall be provided as contemplated by Section 23.

SECTION 9. Failure by SECO to Execute Franchise Agreement.

Should SECO fails to enter the non-exclusive Franchise Agreement within thirty (30) days of the date of this Ordinance, this Ordinance shall be null and void, and of no force and effect of any kind.

SECTION 10. Payment to Grantor.

A. Effective the first day of the second month beginning after the effective date of this Ordinance, 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 or check. Any monthly payment or any portion thereof received twenty (20) days after the due date shall be subject to interest at the rate of five percent (5%) per annum until all payments are paid in full.

SECTION 11. 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 10 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 10 B.

B. In the event Grantor exercises its right to amend this Ordinance to adjust payment of the franchise fee in accordance with Section 11 A, Grantee agrees to execute any such amendment and to continue to abide by all terms of this Ordinance 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 10 above, then Grantor shall be obligated to accept an amendment of this Ordinance providing for a decrease in the franchise fee to such lesser amount.

SECTION 12. 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 Ordinance 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.

SECTION 13. 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. If underground electric facilities are required or requested, and they can be reasonably constructed in accordance with Grantee's engineering standards, the National Electric Safety Code, and other applicable standards, the cost thereof shall be allocated in accordance with Grantee's Rate-Tariff Sheets on file with the Public Service Commission.

SECTION 14. Indemnifications.

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 non-exclusive franchise 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. Notwithstanding the above, the Grantee's indemnification of the Grantor shall be limited to the extent that the Grantor's liability is found to be limited by §768.28, Florida Statutes, nor is any part of this Ordinance intended to be a waiver of sovereign immunity with respect to claims described in this subparagraph.

B. Grantee shall maintain throughout the term the franchise granted by this Ordinance insurance with regard to all damages set forth in Section 10.A. in the minimum amounts of:

- (i) \$1,000,000 per person / \$2,000,000 per accident
Combined Single Limit
- (ii) \$200,000 for property damage resulting from any one accident.

SECTION 15. Approval of Transfer.

The rights and privileges granted by this d 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.

SECTION 16. 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, within the powers of the Grantor, 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 Grantees hereunder.

SECTION 17. Work in the Rights-of-Way.

The Grantee is hereby granted the right, authority and privilege to make all necessary excavations and to place poles 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, any conduits, pipes and cables necessary or desirable for transmitting and conveying the electric current to be distributed or used by Grantee, together with all the rights 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 the same. The Grantor's governing body has resolved and granted permission that the Grantee may engage in vegetation maintenance and tree pruning or trimming. 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.

SECTION 18. 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 relating to this Non-exclusive franchise and the franchise hereunder periodically, but no more frequently than once every five (5) years. Such audit shall be at Grantor's expense. However, 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 fee has occurred, interest will be computed at a rate of five percent (5%) per annum. Both the underpayment and interest shall be paid within thirty (30) days after receipt of demand therefore from Grantor.

SECTION 19. Grantor's Taxing Authority.

Nothing in this Non-exclusive franchise 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.

SECTION 20. Severability.

Should any section or provision of this Ordinance 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.

SECTION 21. 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 Ordinance, each party shall be responsible for its own attorney's fees and court costs incurred.

SECTION 22. Governing Law and Venue.

A. The rights and privileges granted to Grantee by this Ordinance 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 Ordinance 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.

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

SECTION 23. 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 requested 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:

GRANTOR:

City Administrator
City of Belleview
5343 Southeast Abshier Blvd.
Belleview, FL 34420
Facsimile: (352) 245-6532

GRANTEE:

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

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

SECTION 24. 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 non-exclusive franchise 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.

SECTION 25. Severability.

Should any section or provision of this non-exclusive Franchise Ordinance or any portion thereof, the deletion of which would not adversely affect 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, City and SECO shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority's decision.

SECTION 26. Merger.

This non-exclusive Franchise Ordinance embodies the full, complete and entire understanding of the parties, as set forth in their non-exclusive Franchise Agreement, and the written terms supersede all prior contemporaneous representations, discussions, negotiations, understanding and agreements relating to the subject matter of this non-exclusive franchise. The parties shall not be bound or liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducements, or other understanding of any kind or nature not set forth or provided in their written non-exclusive Franchise Agreement and reiterated herein.

SECTION 27. Repealer and Superseding Provision.

This Ordinance shall supersede, as to the rights, privileges and obligations between City and SECO, all Ordinances and parts of Ordinances in conflict with the terms of this Ordinance.

Ordinance No. 2011-13 and any amendments thereto, are hereby deemed null and void and will be repealed upon the effective date of this Ordinance, and none of the provisions of such repealed Ordinance No. 2011-13 and any amendments thereto shall have any further force and effect.

SECTION 28. Dispute Resolution.

The parties to this Franchise agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal remedies, they will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

EFFECTIVE DATE. This Ordinance shall be effective immediately upon adoption.

CERTIFICATE OF ADOPTION AND APPROVAL

The above and foregoing Ordinance was duly read and adopted upon First Reading by a **5 - 0** vote of the City Commission of the City of Belleview, Florida, at a Regular Meeting held on June 1st, Ju, 2021. Said Ordinance was duly read, passed and adopted upon Final Reading by a _____ to _____ vote of the City Commission of the City of Belleview, Florida, at a Public Hearing held on June 15th, 2021.

CHRISTINE K. DOBKOWSKI
Mayor/Commissioner

ATTEST:

MARIAH MOODY
City Clerk

APPROVED AS TO FORM AND LEGALITY:

FREDERICK E. LANDT, III, Esq.
City Attorney

CERTIFICATE OF ADVERTISING

I HEREBY CERTIFY that foregoing Ordinance was advertised for a Public Hearing in
Ordinance 2021-13
SECO Franchise
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the June 3rd, 2021 edition of the *Voice of South Marion* newspaper in accordance with Florida Statutes.

MARAH MOODY
City Clerk