

TERRITORIAL AGREEMENT

THIS AGREEMENT is made and entered into as of this 19th day of Dec., 2006, by and between the CITY OF FULTON, MISSOURI, a political subdivision of the Home Rule Class, organized and existing under Chapter 82, RSMo. 2000, with its principal office located at 4th and Market Streets, Fulton Missouri 65251, ("Fulton") and CALLAWAY ELECTRIC COOPERATIVE, a Missouri rural electric cooperative organized and existing pursuant to Chapter 394, RSMo. 2000, with its office located at 503 Truman Road, Fulton, Missouri 65251, ("Callaway").

WITNESSETH:

WHEREAS, Fulton and Callaway are authorized by law to provide electric service within certain areas of Missouri, including portions of Callaway County; and

WHEREAS, Sections 394.312 and 416.041 RSMo. 2000, provides that competition to provide retail electrical service as between rural electric cooperatives such as Callaway and municipally owned electrical utility corporations such as Fulton may be displaced by written territorial agreements;

WHEREAS, Fulton and Callaway desire 1) to promote the orderly development of retail electrical service within a portion of Fulton, Callaway County, Missouri, 2) to avoid unnecessary duplication of electrical facilities therein, and 3) to most effectively avail themselves of prior investment and planning for serving the public; and

WHEREAS, this Territorial Agreement does not require any customer of either Fulton or Callaway to change its supplier;

NOW, THEREFORE, Fulton and Callaway, in consideration of the mutual covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. Description of Territory Affected.

A. This Agreement pertains only to five tracts of land in Callaway County, Missouri. For purposes of this Agreement, these tracts shall be referred to as "Tracts 1, 2, 3, 4 & 5."

B. The legal description of Tract 1, in its entirety, as recorded in Book M389 at Page 193 with the Callaway County Recorder of Deeds on July 30, 2004, as follows: (113 acres)

A tract of land situated in the Northwest Quarter (NW 1/4) of Section Thirty (30), Township Forty-seven (47), Range Nine (9) West; beginning at the northwest corner of Section 30 aforesaid at a stone set in the North and South fence line; thence South 87 degrees 12' East 3507.0 feet to the centerline of the Old Jefferson City Road; thence South 25 degrees 24' West 1751.3 feet along the centerline of Old Jefferson City Road; thence South 24 degrees 09' West 1124.7 feet along the Centerline of Old Jefferson City Road to North Right-of-way line of Missouri State Highway "H"; thence North 88 degrees 11' West 1510.5 feet along North right-of-way line of Missouri State Highway "H" to pipe in fence; thence North 1 degree 12' East 671.5 feet along old fence more or less to an iron pipe; thence North 86 degrees 04' West 361.2 feet to pipe in old fence line; thence North 1 degree 13' East 1094.3 feet to pipe on West side of a 30 inch Black Oak Tree in old fence line; thence North 57 degrees 40' West 564.7 feet to pipe on East side of a 30 inch Elm in old fence line; thence North 1 degree 37' East 638.6 feet to Northwest corner Section 30 and POINT OF BEGINNING, EXCEPT that part conveyed to Harry E. Books and wife by Warranty deed recorded in Book 183 at page 497, Records of Callaway County, Missouri. FURTHER EXCEPT that part conveyed to William C. Baker and wife by instrument recorded in Book 220 at page 457, records of Callaway County, Missouri. FURTHER EXCEPT that part conveyed to Larry D. McDonald and wife by instrument recorded in Book 220 at page 623, Records of Callaway County, Missouri. FURTHER EXCEPT that part conveyed to the State of Missouri for Highway Deeds recorded in Books 234 at page 572 and Book 114 at page 50, Records of Callaway County, Missouri. FURTHER EXCEPT that part conveyed to Alvin L. Neal and wife by instrument recorded in Book 261 at page 201, Records of Callaway County, Missouri. FURTHER EXCEPT that part conveyed to W. C. Murphy by instrument recorded in Collector's Deed Book 2 at page 115, Records of Callaway County, Missouri. FURTHER EXCEPT 3.0 acres as shown by Survey filed in Callaway County Surveyor's Records Book BB, page 653 and being more particularly described as follows: Part of the Northwest Quarter of Section 30, Township 47 North, Range 9 West, Callaway County, Missouri described as follows: Commencing at a 1/2 inch iron pin at the West Quarter corner of said Section 30; thence North 89 degrees 07' 30" East, 1427.17 feet to a point; thence North 2 degrees 24' 00" East, 120.00 feet to a right-of-way marker on the North right-of-way line of Missouri State Route H; thence South 87 degrees 24' 54" East along said right-of-way line, 190.75 feet to a 1/2 inch iron pin and the true POINT OF BEGINNING; thence continuing along said line, South 87 degrees 24' 54" East, 6.10 feet to a right-of-way marker; thence continue along said line, South 87 degrees 48' 09" East,

179.68 feet to a right-of-way marker, thence North 22 degrees 46' 30" East, along the right-of-way line of the off ramp to U.S. Highway 54, 403.65 feet to a right-of-way marker, thence continue along said right-of-way line, North 35 degrees 38' 37" East, 122.79 feet to a 1/2 inch iron pin; thence leaving said right-of-way line South 87 degrees 02' 25" West along a fence line 414.00 feet to a 1/2 inch iron pin; thence South 443.42 feet to the true POINT OF BEGINNING.

C. The legal description of Tract 2, in its entirety, as recorded in Book M389 at Page 192 with the Callaway County Recorder of Deeds on July 30, 2004, as follows: (3 acres)

A tract of land situated in the Northwest Quarter (NW ¼) of Section Thirty (30), Township Forty-seven (47) North, Range Nine (9) West, Callaway County, Missouri described as follows: Commencing at a 1/2 inch iron pin at the West Quarter corner of said Section 30; thence North 89 degrees 07' 30" East, 1427.17 feet to a point; thence North 2 degrees 24' 00" East, 120.00 feet to a right-of-way marker on the North right-of-way line of Missouri State Route H; thence South 87 degrees 24' 54" East along said right-of-way line, 190.75 feet to a 1/2 inch iron pin and the TRUE POINT OF BEGINNING; thence continuing along said line, South 87 degrees 24' 54" East, 6.10 feet to a right-of-way marker; thence continue along said line, South 87 degrees 48' 09" East, 179.68 feet to a right-of-way marker; thence North 22 degrees 56' 30" East, along the right-of-way line of the offramp to U.S. Highway 54, 403.65 feet to a right-of-way marker; thence continue along said right-of-way line, North 35 degrees 38' 37" East, 122.79 feet to a 1/2 inch iron pin; thence leaving said right-of-way line South 87 degrees 02' 25" West along a fence line 414.00 feet to a 1/2 inch iron pin; thence South 443.42 feet to the TRUE POINT OF BEGINNING.

D. The legal description of Tract 3, in its entirety, as recorded in Book M399 at Page 235 with the Callaway County Recorder of Deeds on December 1, 2005, as follows: (2.3 acres)

A tract of land situated in the northwest Quarter of Section Thirty (30), Township Forty-seven (47), Range Nine (9) West; commencing at the Northwest corner of Section Thirty (30) aforesaid at a stone set in the North and South fence line, thence South 87 degrees 12 minutes East 3507.0 feet to the centerline of Old Jefferson City road, thence South 25 degrees 24 minutes West 1751.3 feet, along centerline of Old Jefferson City Road, thence South 24 degrees 09 minutes West, 1124.7 feet along centerline of Old Jefferson City Road to the North Right-of-Way line of Missouri State Highway "H", thence North 88 degrees 11 minutes West 1510.5 feet along North Right-of-way line of Missouri State Highway "H" to pipe in fence line, thence South 88 degrees 11 minutes East along North Right-of-way line of Missouri State Highway "H", 125.0 feet, to the point of beginning of closed traverse, thence North 1 degree 12 minutes East, 460 feet, thence South 88 degrees 11 minutes East, 125.0 feet, thence South 1 degree 12 minutes West, 460 feet, thence North 89 degrees 11 minutes West, 125.0 feet to the POINT OF BEGINNING, closed traverse.

EXCEPT that part deeded to the State of Missouri for Highway Purposes.

ALSO the following described part of the Northwest Quarter of Section Thirty (30) Township Forty (47, Range Nine (9) West: Commencing at the Northwest corner of Section Thirty (30) aforesaid at a stone set in the North and South fence line, thence South 87 degrees 12 minutes East 3507.0 feet to the centerline of the Old Jefferson City Road, thence South 25 degrees 24 minutes West 1751.3 feet along centerline of Old Jefferson City Road, thence South 24 degrees 09' West, 1124.7 feet along centerline of Old Jefferson City Road to North right-of-way line of Missouri State Highway "H", thence North 88 degrees 11 minutes west 1510.5 feet along North right-of-way of Missouri State Highway "H" to pipe in fence line, thence South 88 degrees 11 minutes East along North right-of-way line of Missouri State Highway "H", 250.0 feet, to the POINT OF BEGINNING of the tract herein described; thence continuing South 88 degrees 11 minutes East along the North right-of-way line of Missouri State Highway "H", 334.0 feet to the center of a creek, thence in a northwesterly direction along the center of said creek to a point where the said creek intersects with the East line of the property conveyed to Alvin L. Neal and Sandra L. Neal, husband and wife in Book 255 at page 1 of the records of Callaway County, Missouri, thence South 1 degree 12 minutes West along the East line of the property conveyed to Alvin L. Neal and Sandra L. Neal, husband and wife at Book 255, page 1, of the records of Callaway County, Missouri, 244.0 feet to the point of beginning. Except that part deeded to the State of Missouri for Highway purposes. Subject to easements of record.

E. The legal description of Tract 4, in its entirety, as recorded in Book M403 at Page 288 with the Callaway County Recorder of Deeds on June 28, 2006, as follows: (1.18 acres)

A tract of land situated in Northwest Quarter of Section Thirty (30), Township Forty-seven (47), Range Nine (9) west; commencing at the Northwest corner of Section Thirty (30) aforesaid at a stone set in the North and South fence line, thence South 87 degrees 12 minutes East, 3507.0 feet to the centerline of the Old Jefferson City Road, thence South 25 degrees 24 minutes West 1751.3 feet along centerline of Old Jefferson City road, thence South 24 degrees 09 minutes West 1124.7 feet along centerline of Old Jefferson City Road to the North Right-of-Way line of Missouri State Highway "H", thence North 88 degrees 11 minutes west 1510.5 feet along North Right-of-Way line of Missouri State Highway "H" to pipe in fence line, point of beginning of closed traverse, thence North 1 degree 12 minutes East 470 feet, thence South 88 degrees 11 minutes East, 125.0 feet, thence South 1 degree 12 minutes West, 470 feet, thence North 88 degrees 11 minutes West 125.0 feet along Missouri State Highway "H" to an iron pipe in fence line, closed Traverse. EXCEPT that part deeded to the State of Missouri for Highway Purposes.

F. The legal description of Tract 5, in its entirety, as recorded in Book M404 at Page 837 with the Callaway County Recorder of Deeds on September 7, 2006, as follows:

(4.4 acres)

A tract of land situated in Part of the North Half of the Northwest Quarter of Section Thirty (30), Township Forty-seven (47) North, Range Nine (9) West, more particularly described as follows: Commencing at the Northwest corner of said Section 30, thence South 87° 12' 00" East 2877.42 feet to the point of beginning of the land herein described; thence continuing South 87° 12' 00" East 221.90 feet, to the West right-of-way of Missouri State Highway 54 (as located March 1973); thence along said right-of-way South 24° 10' 42" West 660.53 feet; thence North 86° 29' 45" West 244.55 feet; thence North 26° 05' 06" East 666.35 feet to the point of beginning, EXCEPT that part condemned by the State of Missouri for Highway Purposes

A copy of the plat map depicting Tracts 1, 2, 3, 4 and 5 in Callaway County, Missouri is attached as **Exhibit "A"**.

G. This Agreement shall have no effect whatsoever upon service by Callaway or Fulton in any areas other than Tracts 1, 2, 3, 4 and 5.

H. Tracts 1, 2, 3, 4 and 5 are not currently located within the corporate limits of the City of Fulton, Missouri, and thus are a "rural area" as defined by Section 394.020(3) RSMo. 2000.

2. Definitions.

A. For purposes of this Agreement, the references to "structure" have the same meaning as the statutory definition of the term "structure" found in Sections 393.106 and 394.315 RSMo. in effect at the relevant time. In the event no such statutory definitions exist or are not otherwise applicable, the term shall be construed to give effect to the intent of this agreement which is to designate an exclusive provider, as between the parties hereto, of retail electric service for anything using or designed to use electricity that is located within the Service Areas described herein.

B. The term “permanent service” shall have the same meaning as the definition of “permanent service” found in Section 394.315 RSMo., in effect at the relevant time. The term shall be liberally construed to give effect to the expressed intent of this Agreement.

C. The term “new structure” shall mean (i) one on which construction has not commenced by the Effective Date, or (ii) one on which construction has commenced by the Effective Date but on the Effective Date is not complete from the standpoint that permanent wiring for the electrical power and energy to be utilized by or within in the structure has not been permanently installed and permanently energized by physical connection to the facilities of an electrical supplier, or (iii) one for which the respective electrical inspection authority has not granted a permit by the Effective Date for it to be energized, or (iv) one for which the respective building authority has not granted an occupancy permit by the Effective Date.

D. The term “Effective Date” shall mean 12:01 a.m. of the date on which the Report and Order of the Commission approving this Agreement is effective pursuant to the terms of such Report and Order, unless a writ of review or other proceeding is taken challenging the Report and Order, in which case there shall be no Effective Date of this Agreement until Fulton and Callaway both execute a document which establishes an Effective Date for purposes of this Agreement.

3. Exclusive Service Areas Established.

A. Callaway, pursuant to this Territorial Agreement, shall be entitled to provide permanent service to all structures now located within Tracts 1, 2 3, 4 and 5 and all new structures within Tracts 1, 2 3, 4 and 5 and therefore it shall be considered to be the exclusive Service Area of Callaway, as between Fulton and Callaway. Fulton does not now serve any structures, and shall not be allowed to serve in the future, as the result of any annexation of Tracts 1, 2 3, 4 and 5 or otherwise, any new structures, within Tracts 1, 2 3, 4 and 5.

B. This Agreement does not purport to affect the rights of any electric supplier not a party to this Agreement.

4. Condition Precedent – Regulatory Approvals. This Agreement is conditioned upon receipt of approval of it by the Commission with no changes, or those changes which have been

expressly agreed to by Fulton and Callaway. Either party may file an application for rehearing or other document with the Commission prior to the effective date of a Commission order approving this Agreement if the party objects to the form or content of the Commission's order approving the Agreement. If neither party files such an application for rehearing or document prior to the effective date of the Commission order approving this Agreement, it shall be presumed that the approval is satisfactory in form and content to both parties.

5. Service to Structures Receiving Service as of the Date of this Agreement. There are currently no structures located within Tracts 1, 2 3, 4 and 5 on the date of this Agreement which are receiving permanent retail electric service. To the knowledge of Fulton and Callaway, there are no other suppliers of electricity providing permanent electric retail service within Tracts 1, 2 3, 4 and 5.

6. Structures Coming Into Existence After the Effective Date.

A. After the Effective Date, Callaway shall have the exclusive right, as between Fulton and Callaway, to provide permanent service to new structures within Tracts 1, 2 3, 4 and 5.

B. During the interim period between the date of execution of this Agreement and the Effective Date, the parties shall abide by the territorial division provisions of this Agreement and may provide provisional service to any customer seeking service. Pending the issuance of a decision by the Commission either granting or denying approval of this Agreement, however, neither party shall construct primary or secondary electric facilities within the territory assigned exclusively to the other pursuant to this Agreement, unless (i) ordered to do so by the Commission or a court of competent jurisdiction or (ii) as a necessary part of the provision of service to its customers in other areas and such construction is within a previously established easement obtained for the purpose of providing service in other areas. In the interim before this Agreement is approved by the Commission, if a new structure should come into existence on one side of the proposed boundary and request service from the party on the opposite side of the boundary, and that party has the existing right to provide such service, the parties agree to submit the matter to the Commission for determination in the case docketed for approval of this Agreement. The parties agree to propose to the Commission in such case that the party which

will have the exclusive right to serve the customer if this Agreement is approved by the Commission should have the exclusive right and obligation to serve the customer in the interim.

7. Indirect Provision of Service to Structures Not Permitted. The intent of this Agreement is to designate an exclusive provider of electric service for structures or anything else using or designed to use electricity to be located within the described areas. Neither party shall furnish, make available, assist in providing, render or extend electric service to a structure, which that party would not be permitted to serve directly pursuant to this Agreement, by indirect means such as through a subsidiary corporation, through another entity, or by metering services outside of the area for delivery within the area. This shall not be construed to otherwise prohibit sales of electric power and energy between the parties to this Agreement.

8. Term. The term of this Agreement shall be perpetual unless terminated by the parties in accordance with Paragraph 12, Termination. The parties agree that a copy of any notice of termination of this Agreement shall be simultaneously served upon the Executive Secretary of the Commission and the Office of the Public Counsel. Termination of this Agreement shall eliminate the exclusive service territories provided for herein, but shall not entitle a party to provide service to a structure lawfully being served by the other party, or allow a change of supplier to any structure in the other's Service Area hereunder, unless such a change is otherwise permitted by law.

9. Cooperation. Fulton and Callaway agree to undertake all actions reasonably necessary to implement this Agreement. Fulton and Callaway will cooperate in presenting a joint application to the Commission demonstrating that this Agreement is in the public interest. Callaway shall pay all the costs assessed by the Commission for seeking administrative approval of this Agreement. All other costs, including but not limited to the attorneys fees of each party, will be borne by the respective party incurring the costs.

10. General Terms.

A. Land Descriptions: The land descriptions utilized in this Agreement are assumed by the parties to be accurate and reliable and to match the maps being submitted; however, where there are maps and the map does not correspond with the metes and bounds description, the map shall be controlling.

B. No Constructive Waiver: No failure of Fulton or Callaway to enforce any provision hereof shall be deemed to be a waiver.

C. Modifications: Neither the boundaries described in this agreement nor any provision of this Agreement may be modified or repealed except by a signed writing of the parties which is approved by all applicable regulatory authorities.

D. Survival: This Agreement shall inure to the benefit and be binding upon the parties, their respective successors and assigns.

E. Lack of Approval or Termination: If the Commission or any other regulatory authority having jurisdiction does not approve this Agreement, this Agreement shall be nullified and of no legal effect between the parties. If this Agreement is terminated pursuant to its terms, it shall thereafter be nullified and of no further legal effect except as may be necessary to govern disputes concerning situations existing prior to such termination. Further, if any part of this Agreement is declared invalid or void by a court or agency of competent jurisdiction, then the parties shall replace such provision as similarly as possible to the provision which was declared invalid or void so as to return each of them, as much as practical, to the status quo prior to the declaration.

F. This Agreement shall not be construed to prevent either party from obtaining easements or right of way through or in any part of the Service Area of the other if the acquisition of such easement or right of way is reasonably necessary to or desirable for the performance of the party's duties to provide electric service to its customers in other areas.

G. The subsequent platting, re-platting, subdividing, re-subdividing, or re-naming of any parcel or subdivision covered by this Agreement shall not affect the respective rights of Fulton or Callaway established by this Agreement.

11. Subsequent Legislation. This Agreement is reached between the parties based upon their understanding of the current state of the law in Missouri under Section 394.315 RSMo. 2000, which allows an electrical supplier, once it lawfully commences supplying retail electric energy to a structure through permanent service facilities, to have the right to continue serving such structure. Further, the concept of service under those sections at the current time

contemplates not only the physical provision of the conductors to provide an electrical path and connection between the structure and the conductors of the electrical supplier, but also the provision of electrical power and energy through such conductors. In the event the law in Missouri is changed during any term of this Agreement the provider of the electrical facilities (i.e. conductors) within the Service Area is not also required or assumed to be the provider of electrical power and energy (i.e., the electricity), and thereby give customers a choice as to who provides their electricity, as contrasted with who owns the wires over which such electricity is provided, then nothing in this Agreement shall be construed to prohibit Fulton from providing electrical power and energy to structures within the Service Area of Callaway established by this Agreement, or Callaway from providing electrical power and energy to structures within the Service Area of Fulton established by this Agreement, under the terms of such future legislation, notwithstanding the terms of this Agreement to the contrary. However, if either § 394.315 or § 394.312 RSMo. are repealed and not reenacted in a form substantially equivalent to their status on the Effective Date, this Agreement shall terminate, coincident with the effective date of the elimination of the current content of § 394.315 or § 394.312, as the case may be.

12. Termination.

A. Termination Events. This Agreement and the transactions contemplated by this Agreement may be terminated by mutual consent of Fulton and Callaway.

B. Effective Date of Termination. The termination of this Agreement shall be effective on the date the Commission receives a notice signed by both Fulton and Callaway of their decision to terminate this Agreement.

C. Effect of Termination. If this Agreement is terminated as provided herein, each party shall pay the costs and expenses incurred by it in connection with such termination, and no party (or any of its officers, directors, employees, agents, attorneys, representatives, or shareholders) shall be liable to any other party for any costs, expenses, or damages; except as provided herein, neither party shall have any liability or further obligation to the other party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 19th day
of December 2006.

CITY OF FULTON, MISSOURI

By: Robert W. Rafter

Title: Mayor

Attest: Charles J. Lawrence

Title: City Clerk

(seal)

CALLAWAY ELECTRIC COOPERATIVE

By: Thomas W. Howard

Title: CEO/General Manager

Attest: Clint R. Smith

Title: Administrative Asst.

(seal)