

Public Works Facility



PRESENTATION OUTLINE

- Current Facilities
- Summary of Needs
- Master Plan
- Programming Analysis
- Past and Future Actions
- Funding Options

City of Palm Coast Existing Public Works Facility

As a reminder

The current Public Works Facility is well beyond its capacity and the situation will only worsen in the years to come.

Current Fleet Maintenance and repair

- Acquisition and Maintenance of 1,380 city-owned vehicles and equipment
- Mechanics (7)



Current Fleet Maintenance and repair

220 Light Vehicles



Current Fleet Maintenance and repair

352 Pieces of Heavy Equipment



Current Fleet Maintenance and repair

33 Fire Trucks and Trailers



Current Fleet Maintenance and repair

79 Mowers



Current Fleet Maintenance and repair

700 Pieces of Handheld Equipment



Current Fleet Services



Current Fleet Services



Employee Parking



Leased Office Trailer



Wooden Structure



Summary of needs

- No major improvements made to facility since original acquisition
- Facility has outgrown its allowable usage area
- Limited circulation is problematic for efficiency
- Lack of Safety and Security of Staff & Equipment

City of Palm Coast Public Works Master Plan Analysis (2017)

Master Plan Team

Consultant Team Members

Master plan architect:

Bergmann associates (ba)

Facility planning consultant:

Maintenance design group (mdg)

Landscape/Site Plan architect:

Marquis latimer + halback, Inc.

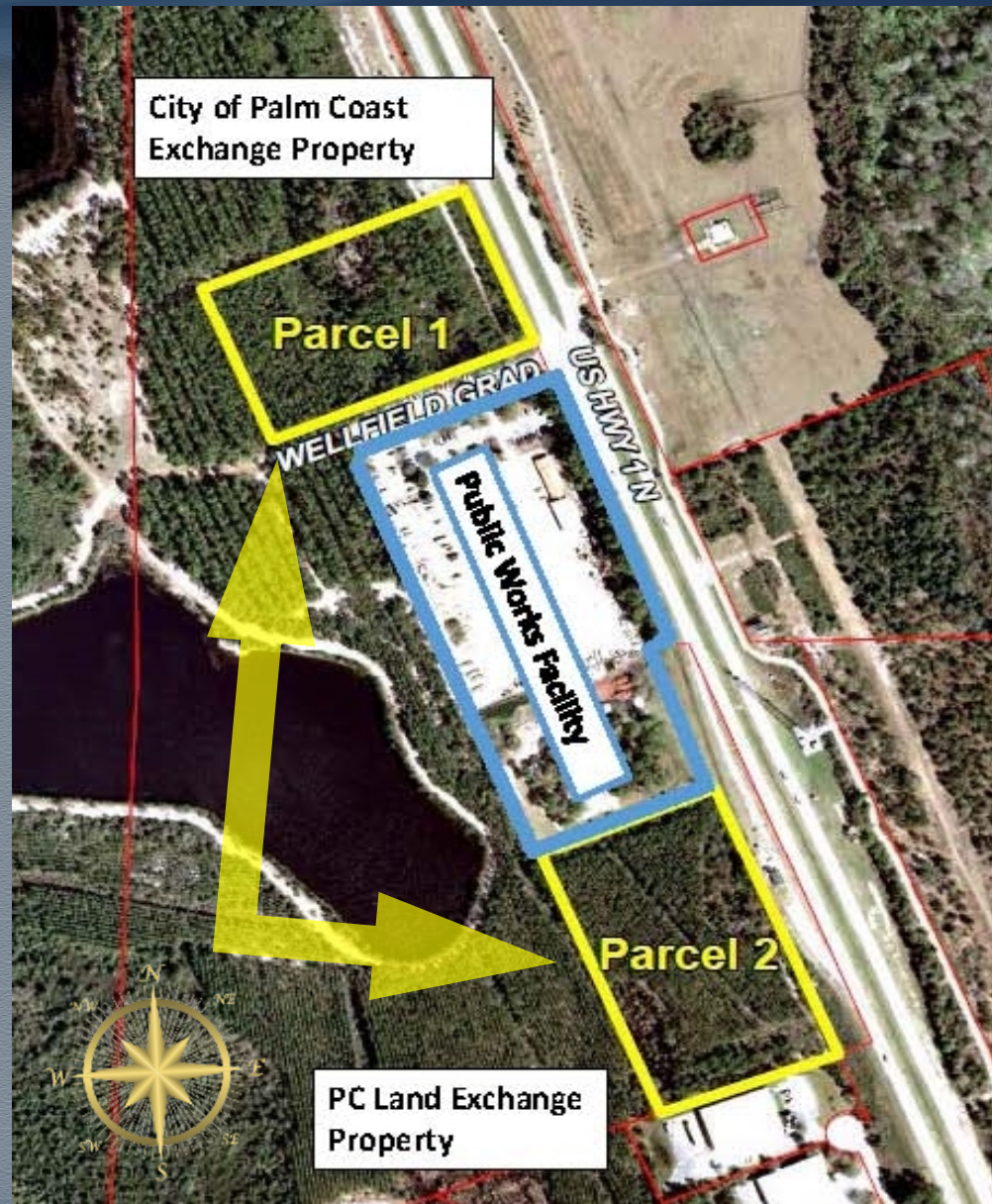
Programming Summary

- Questionnaires
- On site observations
- Staff interviews
- Comparison to industry wide standards
- Analyze master plan options
- Recommendation

Site Aerial



Land Swap



Estimates

Estimated Schedule

30 - 42 MONTHS

Estimated Cost

\$21,500,000

Past and Future Actions

- Completed Master Plan Study (Space Needs and Cost Analysis)
 - Selected Option 2
- Completed Land Swap
- Present Funding Options for Design & Construction (10/9/2018)
- Approve New Funding Source
- Approve Service Contracts
 - Architectural Services
 - Construction Management Services (at-risk)
- Complete Final Design
- Construction Manager Bids Project
- Establish Guaranteed Maximum Price
- Ground Breaking
- Occupancy

Funding Needs

Capital Projects Fund - Summary

	FY 18 Projected	FY 19	FY 20	FY 21	FY 22	FY 23
Path & Trail Projects:	446,711	965,000	150,000	500,000	1,000,000	975,000
Park Projects:	238,542	3,975,000	3,050,000	130,000	1,100,000	-
Park Projects - Rehab & Renewal:	222,764	925,000	860,000	735,000	2,035,000	1,250,000
IT Capital Projects:	-	880,000	-	910,000	-	-
Other Projects:	25,000	50,000	350,000	350,000	-	-
City Facility Projects:	3,807,525	1,165,000	125,000	75,000	75,000	75,000
Total Expenditures	4,740,542	7,960,000	4,535,000	2,700,000	4,210,000	2,300,000
Available Funds End of Year	2,498,756	214,803	49,803	1,748,303	2,124,228	4,606,950
*Public Works Facility	-	1,000,000	10,600,000	10,150,000	-	-
Funding Need	-	780,197	10,765,000	9,231,697	-	-

*Items in 'Pink' is a Council Priority or Directive
 Items in purple are unfunded
 Items in blue at least partially funded by grants

Streets Improvement Fund - Summary

	FY 18 Projected	FY 19	FY 20	FY 21	FY 22	FY 23
Capacity Improvement Projects:	759,088	716,100	7,000,000	-	-	-
Safety Improvement Projects:	71,059	445,000	1,755,000	565,000	55,000	60,000
Path Projects:	525,979	825,000	400,000	55,000	175,000	275,000
Beautification Projects:	38,533	50,000	-	290,000	1,105,000	-
Street Lighting Projects:	59,800	308,900	250,000	250,000	250,000	250,000
Bridge Rehabilitation Projects:	182,110	30,000	-	150,000	-	250,000
Traffic Signal Projects:	70,268	250,000	90,000	-	-	-
Street Rehabilitation & Renewal Projects:	1,989,107	2,730,000	2,330,000	1,735,000	1,835,000	2,060,000
Total Expenditures	3,695,944	5,355,000	11,825,000	3,045,000	3,420,000	2,895,000
Available Funds End of Year	3,374,491	2,058,272	50,446	5	4,145	165,118
Street resurfacing and renewal recommended total expense	-	2,500,000	3,100,000	3,400,000	3,500,000	3,900,000
Funding Need		-	1,000,000	1,900,000	1,900,000	2,200,000

*Items in 'Pink' is a Council Priority or Directive
 Items in purple are unfunded
 Items in blue at least partially funded by grants

Funding Options

Funding Source Options

Electric Franchise Fee

6% Electric Franchise Fee
(Life of Franchise Fee is 30 years)

Rate and use determined by City Council

Can be used to Fund Public Works Facility and Pavement Program

Added to FPL Bill

Public Service Electric Tax

Up to 10% Public Service Tax
(Does not expire)

Rate and use determined by City Council

Can be used to Fund Public Works Facility and Pavement Program

Added to FPL bills

Public Service Tax & FPL Franchise Fees in Neighboring Cities

Neighboring Cities with an FPL Franchise Fee and/or a Water and/or Electric Public Service Tax:

■ Ormond Beach

- Electric 10%

- FPL Franchise Fee

■ Flagler Beach

- Electric 10%

- Water 10%

- FPL Franchise Fee

■ Deland

- Electric 10%

- Water 10%

■ St. Augustine

– Electric 10%

– FPL Franchise Fee

■ Daytona Beach

– Electric 10%

– FPL Franchise Fee

■ Bunnell

– Electric 10%

– Water 10%

– FPL Franchise Fee

Anticipated Revenue based on FPL Estimates

Public Service Electric Tax Levy	Estimated Collections as per FPL	1000 KWH Residential bill (Jan 17)
10%	\$6.50 Million Annually	\$8.10
7%	\$4.50 Million Annually	\$5.67

Electric Franchise Fee	Estimated Collections as per FPL	1000 KWH Residential bill (Jan 17)
6%	\$4.30 Million Annually	\$5.94

Funding Program Timeline

	Pavement Management Funded	Public Works Facility Completion Timeline	
	Pay-as-you-go	Pay-as-you-go	Debt Funded
10% Electric Public Service Tax	Yes	FY 2023	FY 2021
7% Electric Public Service Tax	Yes	FY 2028	FY 2021
6 % Electric Franchise Fee	Yes	FY 2029	FY 2021

Debt Funding Examples

Financing Summary			
	30 Year	25 Year	20 Year
Project Fund	20,000,000	20,000,000	20,000,000
Net Issue Proceeds	21,765,555	21,882,141	22,069,600
All-In Total Interest Cost	4.36%	4.28%	4.13%
Final Maturity	10/1/2048	10/1/2043	10/1/2038
Total Debt Service	38,394,312	35,137,580	32,045,179
Maximum Annual Debt Service	1,293,320	1,422,714	1,625,328
Required Debt Service Coverage	1.35x	1.35x	1.35x
Required Minimum Amount	1,745,982	1,920,664	2,194,192
Annual Surplus Available	452,667	497,950	568,865

This information was provided by Hilltop Securities

Council Direction

- **Funding Source**
 - **Electric Franchise Fee**
 - **Electric Public Service Tax**
- **Debt Funding Option**

City of Palm Coast, Florida Agenda Item

Agenda Date: 10/09/2018

Department Item Key	Community Development	Amount Account
Subject	PRESENTATION – PROPOSAL AND FUNDING SOURCE FOR PUBLIC WORKS FACILITY AND PAVEMENT MANAGEMENT PROGRAM	
Background :		
<u>Public Works Facility</u>		
<p>The existing Public Works Facility was turned over to the City, by Flagler County, in 1999. During the past 18 years, the City has operated in this facility making minor improvements to address immediate needs and deficiencies. Currently, this facility lacks sufficient storage and maintenance capabilities that need addressing, in a safe and efficient manner, to meet the growing needs of the City of Palm Coast. Some of the current deficiencies include: inadequate parking and material storage areas, aging buildings with structural deficiencies, and inadequate fleet mechanics' bays that do not provide adequate space for the servicing of much of the City's larger work trucks, heavy equipment, and fire apparatus.</p> <p>The existing Public Works facility does not meet current operational needs and is deficient in safety, technology, capacity, traffic flow, and workflow. In order to continue providing a high level of service to our residents and address current and future needs of the community, a new Public Works facility is needed. The work performed by our Public Works crews impacts every resident, visitor, and employee of the City. An appropriate facility is the core need for staff to be able to function with maximum productivity. City Council conducted a site visit to the current Public Works facility in 2016. Council determined that the current facility underserves the needs of Public Works, and approved a "needs analysis" to be conducted.</p> <p>Public Works mainly operates from the approximate 10 acre parcel along US-1. In an effort to continue providing services in a safe and efficient manner to the residents of Palm Coast, the City had a Master Plan Study completed. The Facilities Master Plan included an analysis of current and projected needs based on the anticipated future demands of a growing community. Anticipating and addressing future, as well as current, community demands is part of the strategy to ensure that the expected levels of service necessary to properly maintain the City facility and public assets such as parks, community centers, rights-of-way, City fleet and equipment, and to respond to emergency/disaster situations will continue to be met in the future and occur without additional risk to employees. The Facilities Master Plan helps ensure that such improvements can be implemented in a fiscally responsible manner. The "needs analysis" was prepared and presented to Council in FY16.</p> <p>The Master Plan Study was presented to City Council in FY17. During the completion of the Public Works Facilities Master Plan, various alternatives were developed for the expansion of the facility. The alternative to expand the facility on contiguous lands on the southern boundary provided the most flexibility for future expansion and the option recommended and selected by City Council. After discussion with the adjacent property owner, Palm Coast Land, LLC, a land exchange agreement was crafted 50 exchange 5 acres of City-owned property for</p>		

approximately 6 acres of property owned by Palm Coast Land, LLC. City Council approved of this property exchange and the closing of this land swap has recently occurred.

Pavement Management Program

On August 28, 2018, City staff and the City’s consultant presented the Pavement Management Program and plan to address the City’s ongoing maintenance needs of approximately 1186 lane miles of streets. This Program is fully funded in Fiscal Year 2019, but requires additional funding in future years to ensure the maintenance program continues.

Funding Source

City Council requested that staff provide a funding mechanism for the construction of a new Public Works facility. City staff presented to City Council on August 28, 2018, the 5-Year Capital Improvement Plan that identified the funding need to design and construct the Public Works Facility. In addition, during this presentation, City staff presented the funding need to continue the Pavement Management Program in future years.

City staff will present an overview of the Public Works Master Plan with proposed funding options (Electric Franchise Fee and Public Service Utility Tax) to design and construct the proposed improvements for Council’s direction. In addition, the funding options would provide available funding for Pavement Management Program in future years. Attached to this agenda item are draft ordinance templates to implement the proposed funding options should City Council desire to move forward in addressing these needs.

Recommended Action :
For presentation and Council direction.

ORDINANCE 2018-_____

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE CITY OF PALM COAST, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Council of the City of Palm Coast recognizes that the City and its citizens need and desire the benefits of electric service; and

WHEREAS, the provision of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and the City does not desire to undertake to provide such services; and

WHEREAS, Florida Power & Light Company (FPL) is a public utility which has the demonstrated ability to supply such services; and

WHEREAS, FPL and the City desire to enter into a franchise agreement providing for the payment of fees to the City in exchange for the nonexclusive right and privilege of supplying electricity and other services within the City free of competition from the City, pursuant to certain terms and conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

Section 1. There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"), for the period of 30 years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon,

along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the City, Florida, and its successors (hereinafter called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (herein called "facilities"), for the purpose of supplying electricity and other services to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

Section 2. The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with traffic over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflicts with traffic, the location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers, and (c) shall not require the relocation of any of the

Grantee's facilities installed before or after the effective date hereof in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. If removal or relocation of Grantee's facilities is required, and the Grantee fails to remove or relocate such facilities within 30 days after written notice from Grantor, then Grantor may proceed to remove or relocate the facilities and charge Grantee for the cost of the work. Grantee shall be responsible for all costs and expenses to remove or relocate Grantee's facilities. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible. When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others and as may be provided by law.

Section 3. The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the Grantee to indemnify the Grantor, its

officers, agents, attorneys, servants, employees, or contractos and hold it harmless against any and all liability, loss, cost, injuries (including death), damage, attorney's fees or expense which may accrue to, or be incurred by or charged against the Grantor or any of its officers, agents, attorneys, servants, employees, or contractors by reason of the negligence, gross negligence or intentional torts, default or misconduct of the Grantee in the installation, construction, operation, repair, removal or maintenance of its facilities hereunder. The indemnity hereunder includes not only the costs, expenses and attorneys' fees incurred by the Grantor in defense of any third party's claim (prior to and during all phases of litigation, including trial and post-trial and appellate proceedings) it also includes the costs, expenses and attorneys' fees incurred by the Grantor in the event it must enforce the terms of this indemnity prior to and during all litigation including trial, post-trial and appellate proceedings. This indemnity shall survive termination of this franchise Ordinance, but only for incidents, acts or events, or for acts undertaken by Grantee, which take place during the term of this franchise.

Section 4. All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

Section 5. As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's

property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal 6 percent of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FPL's tariff) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed 6 percent of such revenues for any monthly billing period of the Grantee.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; (h) other service charges.

Section 6. As a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any

retail customer formerly served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facility(ies), and (c) not to seek to have the Grantee transmit and/or distribute electric capacity and/or electric energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s). Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person. If the Grantee does not

agree to rates, terms and conditions which equal or better the other person's offer, then the Grantor may proceed with the other person's offered sale and purchase agreement all of the terms and conditions of this franchise shall remain in effect.

Section 7. If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 60 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 60 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice.

Section 8. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated

areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice.

Section 9. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after such final determination

to make good the default before a forfeiture shall result with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

Section 10. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including, but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this franchise and entitle the Grantee to withhold all or part of the payments provided for in Section 5 hereof until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination in the matter. The Grantor recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right.

Section 11. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree

in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Section 12. Grantee understands and acknowledges that Grantor's policies strongly favor undergrounding of utilities and improvement of safety and aesthetics. Grantee has filed a Tariff and has adopted a Mechanism for Governmental Recovery of Undergrounding Fees (MGRUF), along with other undergrounding tariffs. Requests made by Grantor for undergrounding shall be implemented by Grantee in accordance with the applicable tariffs in effect on the date of Grantor's request.

Section 1213. ~~The provisions of this ordinance are interdependent upon one another, and if~~ any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect by a court of competent jurisdiction, ~~the entire ordinance shall be null and void and of no force or effect~~ then said holding shall in no way affect the validity of the remaining portions of this Ordinance. Notwithstanding the foregoing, if any of the provisions or Sections of this Ordinance are held invalid or unconstitutional, the parties shall attempt in good faith to negotiate a new lawful agreement that restores the fundamental terms of this Ordinance. In the event the parties are unable to reach a new lawful agreement,

this Ordinance shall be null and void and of no force and effect.

Section 1314. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 1415. All ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

Section 1516. As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of this ordinance. The effective date of this ordinance shall be the date upon which the Grantee files such acceptance.

PASSED on first reading this _____ day of _____, 2018.

PASSED AND ADOPTED on second reading this _____ day of _____, 2018.

CITY OF PALM COAST, FLORIDA

Milissa Holland, Mayor

ATTEST:

By: _____
Virginia A. Smith, City Clerk

APPROVED AS TO FORM AND LEGALITY

William E. Reischmann, City Attorney

ORDINANCE 2018-_____
PUBLIC SERVICE TAX

AN ORDINANCE OF THE CITY OF PALM COAST, FLAGLER COUNTY, FLORIDA, ENACTING A PUBLIC SERVICE TAX ON PURCHASES OF ELECTRICITY SERVICE; PROVIDING FOR APPLICABILITY, LEVY AND AMOUNT, EXEMPTIONS, COLLECTION BY SELLER AND REMITTANCE TO CITY, AND RECORDS OF SALES; PROVIDING PENALTIES FOR FAILURE OF SELLER TO PAY TAX TO CITY AND NONPAYMENT BY PURCHASER; PROVIDING FOR NOTICE TO DEPARTMENT OF REVENUE AND AN INITIAL LEVY DATE; PROVIDING FOR SEVERABILITY, CODIFICATION, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the City of Palm Coast (“City”) is granted the authority, under ' 2(b), Art. VIII of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City is authorized pursuant to Section 166.231, Florida Statutes, to impose a public service tax on the purchase of electricity; and

WHEREAS, the City Council elects to levy a public service tax on the purchase of electricity; and

WHEREAS, the City Council also hereby finds this Ordinance is in the best interests of the public health, safety, and welfare of the citizens of Palm Coast.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

SECTION 1. PURPOSE AND LEGISLATIVE FINDINGS. The above recitals are hereby adopted as the legislative purpose of this Ordinance and as the City Council’s legislative findings.

SECTION 2. APPLICABILITY

(a) The provisions of this Ordinance shall apply to all persons, corporations, partnerships, joint adventures, or other bodies or firms selling or purchasing within the City electricity service, regardless of the place of residence or place of business of any such seller or purchaser, and the

tax imposed by this Ordinance shall apply to each and every purchase of such utility service or commodities in the City, except those specifically exempted by this article or by law.

(b) To the extent that any provision of this Ordinance conflicts with, and is preempted by, general law, the conflicting provisions of general law shall apply and govern.

SECTION 3. LEVY; AMOUNT.

(a) There shall be imposed and levied by the City, pursuant to Section 166.231, Florida Statutes, a tax upon each and every purchase of electricity service, within the City in the amount of _____ percent of each payment received by the seller for the utility service or commodity.

(b) The tax shall be paid by the purchaser to the seller for the use of the City at the time of paying the charge for the service, but not less often than monthly. The _____ percent tax levied in this Section may be computed on the aggregate amount of sales during the monthly period; however, the amount of tax collection shall be calculated to the nearest whole cent.

SECTION 4. EXEMPTIONS. The United States and the State, and all political subdivisions, agencies, boards, commissions and lawful authorities thereof, and school districts are hereby exempt from the payment of the tax levied under SECTION 3 LEVY; AMOUNT and in accordance with Section 166.231, Florida Statutes.

SECTION 5. COLLECTION BY SELLER; REMITTANCE TO CITY.

(a) It shall be the duty of every seller of electricity within the City to collect from the purchaser, for use by the City, the tax levied by this Ordinance at the time of collecting the selling price charged for each transaction, and to report and pay over on or before the 15th day of each calendar month to the City all taxes levied and collected during the preceding month.

(b) It shall be unlawful for any seller to collect for any service without at the same time collecting the tax levied by this Ordinance, unless the seller elects to assume and pay the tax without collecting it from the purchaser. Any seller failing to collect the tax at the time of collecting for any service where the seller has not elected to assume and pay the tax shall be liable to the City for the amount of the tax; however, the seller shall not be liable for the payment of the tax on uncollected bills.

SECTION 6. RECORDS OF SALES. Each and every seller of electricity shall keep complete records showing all sales in the City of electricity services. These records shall show the price charged upon each sale, the date of the sale and the date of payment, and shall be kept open for inspection by the duly authorized agents of the City during business hours on all business days. Pursuant to Chapter 166, Florida Statutes, the duly authorized agents of the City shall have the right, power and authority to inspect, audit and make transcripts of these records.

SECTION 7. FAILURE OF SELLER TO PAY TAXES TO CITY. If any seller of electricity services taxed by this Ordinance fails to pay any taxes collected pursuant to this Ordinance within ten (10) days after seller is required to pay the same to the City, the seller shall be liable to and shall pay, in addition to the tax, a penalty equal to one percent (1%) per day for each day the payment is in default. If any seller is in default for more than ten (10) days, the City may elect to bring suit to collect payment of the taxed owed to the City and shall be entitled to reasonable attorney's fees if it prevails in such suit. The City may also bring suit to restrain, enjoin or otherwise prevent the violation of this Ordinance. In no event, however, shall any seller be liable to the city for the payment of any tax upon uncollected bills owed by the purchaser.

SECTION 8. NONPAYMENT OF TAX BY PURCHASER. Any purchaser failing to pay the tax imposed by this Ordinance shall be liable to the City for a penalty equal to one percent (1%) of the total charge for the utility service or commodities for each day of the default, but not to exceed an amount equal to the tax not paid. The penalty shall be collected by the seller and paid over to the City.

SECTION 9. NOTICE TO DEPARTMENT OF REVENUE/INITIAL LEVY DATE.

(a) The City Clerk is directed to notify the Department of Revenue, pursuant to Florida Statutes Section 166.233(2), by November 30th, 2018.

(b) The levy amounts will begin on April 1, 2019 and continue thereafter.

SECTION 10. SEVERABILITY. If any provision of this Ordinance or the application thereof is finally determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed to be severable and the remaining provisions shall continue in full force and effect provided that the illegal, invalid or unenforceable provision is not material to the logical and intended interpretation of this Article.

SECTION 11. CODIFICATION. It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Palm Coast, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, “Ordinance” may be changed to “Section,” “Article,” or other appropriate word.

SECTION 12. CONFLICTS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 13. EFFECTIVE DATE. This Ordinance shall take effect immediately upon adoption by the City Council of the City of Palm Coast.

APPROVED on first reading the 16th day of October 2018, at a public hearing.

ADOPTED on the second reading the 6th day of November 2018, at a public hearing.

ATTEST:

CITY OF PALM COAST

Virginia A. Smith, City Clerk

Millissa Holland, Mayor

Approved as to form and legality

William E. Reischmann, Jr., Esquire