



The Town of Hilton Head Island
Finance & Administrative Committee

Tuesday, October 15, 2019, 2:00 p.m.

Conference Room 3

AGENDA

As a courtesy to others please turn off / silence ALL mobile devices during the Finance & Administrative Committee Meeting. Thank You.

1. Call to Order

2. FOIA Compliance - Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Approval of Minutes

a. Finance & Administrative Committee, September 17, 2019

4. Unfinished Business-None

5. New Business

a. Language for public speaking at Town Council meetings.

b. Language for providing compensation to the Mayor for hours worked during storm response.

c. Discussion of MOU with Palmetto Electric Cooperative regarding Franchise Agreement.

6. Adjournment

Please note that a quorum of Town Council may result if four (4) or more of their members attend this meeting



Town of Hilton Head Island
Finance & Administrative Committee Meeting

Tuesday, September 17, 2019 at 2:00 p.m.

Conference Room 3

MEETING MINUTES

Present from the Committee: Tom Lennox, *Chairman*; Bill Harkins and Tamara Becker
Council Members

Present from Town Council: John McCann, *Mayor*; David Ames and Glenn Stanford; *Council Members*

Present from Town Staff: Josh Gruber, *Assistant Town Manager*; Steven Markiw, *Deputy Director of Finance*; Cindaia Ervin, *Finance Assistant*

Present from Media: None

1. Call to Order

The Chairman called the meeting to order at 2:00 p.m.

2. FOIA Compliance

Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

3. Approval of Minutes

a. Finance & Administrative Committee Meeting, August 28, 2019

Mr. Harkins moved to approve the minutes from August 28, 2019. Mr. Lennox seconded. The motion was approved by a vote of 2-0-1. Mrs. Becker abstained as she was not present at the meeting.

4. Unfinished Business-None

5. New Business

a. General Discussion Regarding Disaster Planning Reserves.

Tom Lennox, Chairman, introduced Steven Markiw, Deputy Director of Finance. Mr. Markiw presented information to the Committee regarding disaster planning reserves for the Town. He spoke about the current policy for reserves which allowed the Town to be able to have \$38.6M in capacity for an emergency response. Hurricane responses have cost the Town \$55M over the last three years. Hurricane Matthew alone has cost the Town \$48M which was paid for by \$20.1M in reserves and the sale of a \$20M Bond Anticipation Note.

Mr. Markiw illustrated how the Town's conservative disaster reserve policy has helped when disasters arise. Josh Gruber, Assistant Town Manager, stated that expenditures did not happen immediately as there were checks and balances from both parties prior to final payment. This helped the Town to carry on normal operations without the financial burden of a hurricane right away. Currently the Town is awaiting \$1.2M to complete Hurricane Matthew expenditures. Mr. Markiw informed the Committee that the Town expects FEMA to conduct an audit on funds received. This is to ensure that what was submitted was correct for payment. At this time there is no indication that any funds would need to be paid back as both sides have a vigorous internal audit process. Since Hurricane Matthew, Town Council approved increasing the Town's disaster reserve policy from 35-30% to 35-40%. With this new plan from the Town is now more than ready to respond to \$60M disaster. The Committee and Council Members present were delighted to hear the positive progress of the Town's financial status post Hurricane Matthew. Mr. Lennox, thanked Mr. Markiw and those present for the discussion regarding the disaster planning reserves.

6. Adjournment

At 2:45 pm Mr. Harkins moved to adjourn. Mrs. Becker seconded. The motion to adjourn was approved by vote of 3-0.

Submitted by: Cindaia Ervin, Secretary

Approved: _____

Tom Lennox, Chairman

STATE OF SOUTH CAROLINA)
)
TOWN OF HILTON HEAD ISLAND)

FRANCHISE AGREEMENT

FOR AND IN CONSIDERATION OF the payment of monies herein established, the Town of Hilton Head Island, by its Town Council, does hereby grant unto Palmetto Electric Cooperative, Inc., its successors and assigns, the exclusive right to use the public rights-of-ways within its municipal boundaries for the purpose of erecting, constructing, maintaining, and operating facilities for the utilization of electric power, energy and communications within or without the Town, thereon and thereunder, for a period of twenty-five (25) years from the date hereof, conditioned upon the following:

SECTION 1. As hereinafter used, the term “Town” shall mean the Town of Hilton Head Island and “Palmetto” shall mean Palmetto Electric Cooperative, Inc.

SECTION 2. It is expressly agreed that the grant of this Franchise shall be premised upon the continuation of the undergrounding (placement underground) of all existing and future non-transmission lines owned by Palmetto pursuant to the terms and conditions of this Franchise and the related Underground Service Agreement (“Service Agreement”) between Town and Palmetto dated September 27, 2004 (Exhibit A).

SECTION 3. In addition, it is expressly agreed that the grant of this Franchise shall be premised upon monthly payment by Palmetto in a franchise fee account to the Town of three (3) percent of the total gross revenue received by Palmetto from its members within the Town’s municipal boundaries (Exhibit B) for the provision of electric power and energy each franchise year, to the extent permitted by applicable South Carolina law (a franchise year begins _____ and ends _____).

SECTION 4. No franchise fee will be levied on electricity used and paid for by the Town.

The Town agrees to exempt Palmetto from payment of any business license fee for the delivery of electricity and energy. Any other non-energy related products or businesses and other revenue accruing to Palmetto in the Town will be subject to further Town-approved fees and/or business license fee assessed to these types of non-energy related products or businesses.

SECTION 5. This grant, without in any way limiting its generality, shall include full rights, powers, privileges, easements, licenses, and franchises to do any or all of the following acts:

(a) To place, construct, maintain, repair, and alter poles, lamps, wires and wiring, guys, pipes, conduits, meters, transformers, and all other necessary, usual, convenient or incidental fixtures, machinery or equipment in, upon, along, across, under and over all present or future highways, roads, streets, avenues, boulevards, alleys, lanes, courts, driveways, traveled places, squares, parks, and public places of every character and description within the present or future corporate limits of the Town; and to extend, alter, repair, remove, and relocate the same from time to time as in the judgement of Palmetto as may be necessary, convenient, or expedient for the purpose of furnishing electricity within or without the Town, but all use of the public places shall be conducted with due regard for the primary public purpose of those places. Palmetto expressly agrees that it will not place facilities without written permission of the Town in, over, upon, under or across those strips of land owned by the Town which are located between the high water mark of the Atlantic Ocean and the oceanfront property line of privately owned property.

(b) At its own expense, to make such temporary or permanent excavations in, upon, along, across, under or over any of the public parts of Town, as mentioned in SECTION 5 (a) hereof, as in the judgment of Palmetto as may be necessary, desirable, convenient, or expedient for the due prosecution of its business; provided, that upon the completion of any such work, Palmetto shall repair all injury and damage done by it at its own expense; provided further, that nothing herein contained shall be construed

to authorize Palmetto to close permanently to traffic any street or other traveled place in the Town, or any of the public places specified in SECTION 5 (a) hereinabove; and, provided further, that all such work will be completed with reasonable dispatch and in accordance with sound engineering and safety practices. The surface of any street, alley, highway, or public place disturbed by Palmetto in building, constructing, renewing, or maintaining its system shall be restored within a reasonable time after the completion of the work to the same good order and condition as when said work commenced, and the restoration of the roadway shall be accomplished to the satisfaction of the Town, or of any Town official to whom such duties have been or may be delegated. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

(c) The right, license, privilege, and permission is hereby granted to Palmetto to cut and trim trees upon and over-hanging the streets, alleys, sidewalks, and public places of the Town so as to prevent any aspect of such trees from coming in contact with the wires, cables or equipment of Palmetto.

SECTION 6. Palmetto shall at all times be subject to the Town's ordinances, including all zoning ordinances, now in existence or which may be hereafter passed.

SECTION 7. To the extent permitted by law, Palmetto shall indemnify and hold the Town harmless from and against any and all claims, losses, damages, expenses and/or injuries (including judgments, decrees, attorneys' fees, and court costs) occasioned to or sustained by any persons, firms, or corporations, or their property, by reason of the existence, maintenance, operation, or continuance of this Agreement and the exercise of all rights herein contracted for, except as herein otherwise provided. Further, to the extent permitted by law, Town shall indemnify Palmetto for any and all damages caused by Town or its bike path invitees to Palmetto's electric service facilities where the Town's bike paths are in right of way used by Palmetto to maintain its facilities.

SECTION 8. In the event that Palmetto shall default in the observance or performance of any one or more of the agreements, duties, or obligations imposed upon it by any of the provisions or conditions of this Agreement, and if any such default or defaults shall continue for a period of six months (exclusive of all times during which Palmetto may be delayed or interfered with, without its connivance, by unavoidable accidents, act of God, or the public enemy, labor strikes, or the orders or judgments of any commission or court entered in any suit or proceeding brought without its connivance) after written notice thereof to Palmetto from the Town, stating the alleged default on the part of Palmetto, then and in each and every such case the Town, in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to Palmetto in and by this Agreement and all rights and privileges of Palmetto under this Agreement shall thereupon be at an end.

In the event that any commission, board, or regulatory body having jurisdiction over this Agreement, or any court of competent jurisdiction, shall, by any final judgment, decree, order, or finding enjoin, prohibit, or adjudge unlawful, the payments and/or obligations required under the provisions of this Agreement, and Palmetto, pursuant thereto, shall cease to make said payments and/or perform said obligations, or shall notify the Town in writing of its intention so to do, then and thereupon the Town or Palmetto, in addition to all other rights and remedies allowed by law, shall have the right, upon the giving of thirty days' written notice to the other of said parties, to terminate the grant made to Palmetto in and by this Agreement and thereupon all rights, privileges, agreements and/or obligations of the Town to Palmetto, and of Palmetto to the Town, arising under this Agreement and its acceptance by Palmetto shall be at an end.

SECTION 9. Palmetto and the Town agree that in the event that any part of this Agreement comes into dispute, prevailing statutory and case law at the time this Agreement was executed by both parties will govern.

SECTION 10. Nothing contained in the Agreement shall be construed to imply or infer that Palmetto waives, relinquishes, gives up, or diminishes any right, privilege, territory, or other entitlement it enjoys under any federal or state statute, case law or regulatory.

SECTION 11. This Agreement shall take effect on the enactment date of proposed ordinance _____ and all the rights, powers, privileges, easements, licenses and franchises herein conferred and granted shall be non-exclusive and shall be for a term of twenty-five (25) years from the effective date hereof and continuing thereafter in twenty-five (25) year terms unless cancelled by written notice by either party not less than one (1) year prior to the expiration date of the initial term or any extension thereof.

SECTION 12. This Franchise Agreement is not severable in part or less than the whole by transfer to successors or assigns of Palmetto; no sale or transfer of the Franchise as allowed hereunder shall be effective until the vendee, assignee, or lessee has filed in the office of the Town Clerk an instrument, duly executed, reciting the fact of such sale, assignment, or lease accepting the terms of this Franchise and agreeing to perform all the conditions thereof.

SECTION 13. A signed, certified and sealed copy of this Agreement shall be delivered to Palmetto and shall constitute a valid and binding Franchise Agreement between the Town of Hilton Head Island, South Carolina and Palmetto Electric Cooperative, Inc., its successors and assigns.

ACCEPTED:

ATTEST:

TOWN OF HILTON HEAD ISLAND

Wiedmeyer
Town Clerk

John J. McCann
Mayor

Krista

Date

ATTEST:

PALMETTO ELECTRIC COOPERATIVE, INC.

Secretary

A. Berl Davis, Jr.
ITS: President and Chief Executive Officer

Date

EXHIBIT A

UNDERGROUND SERVICE AGREEMENT

This Agreement is entered into by and between Palmetto Electric Cooperative, Inc. ("Palmetto") and the Town of Hilton Head, by its Town Council. The purpose of this Agreement is to state clearly the responsibilities and liabilities of the parties hereto concerning the underground placement ("undergrounding") of Palmetto's existing overhead and future non-transmission electric lines within the boundaries of the Town of Hilton Head, South Carolina ("Town"), as referred to in the related Franchise Agreement between Palmetto and Town dated September 27, 2004.

The parties agree as follows:

1. Palmetto will provide underground electric distribution service for all new electrical service after the date of this agreement in the Town pursuant to accepted electric industry construction, safety and reliability standards. In the event of an emergency and Palmetto deems it necessary to temporarily construct overhead facilities it will be allowed to do so.
2. Palmetto shall convert all existing overhead non-transmission and future non-transmission lines to underground within the municipal boundaries of Town within fifteen (15) years from the effective date of this agreement unless delayed by proved reasons beyond Palmetto's control. Existing power lines to be buried are reflected in Exhibit "C" to this agreement. Palmetto and Town agree to work cooperatively as redevelopment and capital projects are constructed in undergrounding areas. Palmetto shall be required to begin undergrounding within twelve (12) months of the effective date of this agreement. Town and Palmetto further agree that they will meet prior to each franchise year to discuss the progress made, to date, in undergrounding Palmetto's non-transmission overhead lines. Changes, if any, in the undergrounding of lines or the schedule for undergrounding completion shall be made on mutually acceptable terms and conditions.
3. In the event that Palmetto shall default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by any of the provisions or conditions of this Agreement, and if any such default or defaults shall continue for a period of six months (exclusive of all times during which Palmetto may be delayed or interfered with, without its connivance, by unavoidable accidents, act of God or other force majeure occurrences such as hurricanes, floods, earthquakes, tornadoes or the public enemy, labor strikes or the orders of judgments of any commission or court entered in any suit or proceeding brought without its connivance) after written notice thereof to Palmetto from the Town, stating the alleged default on the part of Palmetto, then and in each and every such case the Town, in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to Palmetto in and by this Agreement and all rights and privileges of Palmetto under this a Agreement shall thereupon be at an end.
4. Palmetto shall establish a Town of Hilton Head Island Franchisee Fee (FF) interest bearing account and deposit all franchise fee funds into same. Funds from this account shall only be used to pay for all reasonable and necessary costs for undergrounding work as herein described. These costs are determined as accounted for using Palmetto's construction work order accounting system, which includes a credit for salvage materials. Palmetto shall convey to the Town Director of Finance a monthly FF statement. The Town may audit the FF account at its sole discretion upon prior notice to Palmetto. In the event a court of competent jurisdiction determines that Palmetto failed to complete undergrounding due to circumstances within Palmetto's control, as stated in Section 2 above, it shall close its FF account and any unspent funds therein shall be forwarded to the Town.

EXHIBIT A

5. In areas where undergrounding is to occur, service lines to residential and commercial structures shall be buried and meter sockets replaced by certified and licensed electricians as necessary. Before undergrounding begins in a specific area, Palmetto shall send a letter to Town and to its members informing them of the undergrounding steps to be taken and when they generally will occur. Palmetto will inform the Town when an area is ready for conversion of individual residential and commercial structures, which will receive underground service. Town, in turn, will send a letter to Palmetto and to the affected residential and commercial structures informing them of the process to follow in selecting an electrician and the process for reasonable cost reimbursement. Property owners shall be reimbursed the reasonable and necessary costs of the electrical conversion from overhead to underground service and that reimbursement shall be paid from the FF Account.
6. Monthly settlements will be made with the Town reimbursing Palmetto 86.7% of undergrounding costs for that month from the FF account established as referred to in Paragraph 4. At any time the FF account does not have funds adequate to reimburse Palmetto for incurred costs, Palmetto will be paid a carrying charge based on the published prime interest rate. These carrying charges will be paid out of the FF account.
7. Town gives Palmetto the right of ingress and egress to Town's property for any and all construction repair, maintenance, reinstallation, clearing and reclearing of the underground electric service easement.