

**GULF BREEZE CITY COUNCIL
REGULAR MEETING AGENDA**

AUGUST 19, 2013
MONDAY, 6:30 P.M.
COUNCIL CHAMBERS

1. Roll Call
2. Invocation and Pledge of Allegiance
3. Approval of Minutes of August 5, 2013 (Regular Meeting)
Approval of Minutes of August 5, 2013 (CRA Meeting)
4. Ordinance No. 05-13: Ordinance regarding front yard parking and creating
Section 18-78 of the Code of Ordinances.
FIRST READING
5. Resolution No. 15-13: Resolution Approving a Plan of Finance for Acquisition and
Renovation of Low Income Housing Facility by Elderly
Housing, Development and Operations Corporation and
Authorizing Issuance of up to \$10,000,000 in Capital Trust
Agency Bonds
5. **CONSENT AGENDA ITEMS:***
 - A. Discussion and Action Regarding Mobile Data Terminal Project
 - B. Discussion and Action Regarding Stormwater Phase II Projects
 - C. Discussion and action regarding Nature Conservancy Project Submittals per
Assistant Director of Public Services memo dated August 8, 2013.
 - D. Discussion and Action Regarding Natural Gas Service to Shogun Restaurant
 - E. Discussion and Action Regarding Residential Natural Gas Rebates
 - F. Discussion and Action Regarding Signatory on City Bank Accounts
 - G. Discussion and Action Regarding Acceptance of Annual Population Estimate

***These are items considered routine in nature and will be considered by one motion. If any citizen wishes to voice an opinion on one of the items, you should advise the Council immediately.**

ACTION AGENDA ITEMS:

- A. Discussion and Action Regarding Formal Acceptance of Franchise to Operate a Natural Gas System on Santa Rosa Island
 - B. Discussion and Action Regarding the Council Holding a Private Attorney-Client Session Confined to Settlement Negotiations or Strategy Sessions Related to Litigation Expenditures in Connection with a Lawsuit Brought Against the City by Lance Reese and Pete and Mitzi Peters.
-
- 6. New Business
 - 7. Open Forum
 - 8. Adjournment

If any person decides to appeal any decisions made with respect to any matter considered at this meeting or public hearing, such person may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and any evidence upon which the appeal is to be based.

The public is invited to comment on matters before the City Council upon seeking and receiving the recognition from the Chair.

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA**

The 1,229th regular meeting of the Gulf Breeze City Council, Gulf Breeze, Florida was held at the Gulf Breeze City Hall on Monday August 5, 2013 at 6:30 p.m.

Upon call of the roll the following Councilmen were present: Councilwoman Cherry Fitch, Mayor Pro Tem J. B. Schluter, Councilman Joseph Henderson, Councilman David G. Landfair and Mayor Beverly H. Zimmern.

APPROVAL OF MINUTES:

Councilwoman Fitch moved for approval of the minutes for the regular meeting held on Monday, July 15, 2013. Councilman Landfair seconded. The vote for approval was 5-0.

Mayor Pro-Tem Schluter moved for approval of the minutes for the "Special" meeting held on Monday, July 31, 2013. Councilman Landfair seconded. The vote for approval was 5-0.

**RESOLUTION NO. 11-13: APPROVING THE FLORIDA-ALABAMA
TRANSPORTATION PLANNING ORGANIZATION
MEMBERSHIP REAPPORTIONMENT PLAN FOR THE
PENSACOLA FLORIDA ALABAMA URBANIZED AREA.**

Councilman Henderson moved for approval of the Resolution. Councilman Landfair seconded. The vote for approval was 5-0.

**RESOLUTION NO. 12-13: APPROVING A PLAN OF FINANCE FOR HILLS-CITRUS
HOLDINGS – ALZHEIMER'S/ELDERLY CARE
FACILITIES.**

Councilman Landfair moved for approval of the Resolution. Councilwoman Fitch seconded. The vote for approval was 5-0.

CONSENT AGENDA ITEMS:

RECOMMENDATION:

That the City Council approve the following Consent Agenda Items: A, B, C, D, E, F, G, H and I:

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

A. **SUBJECT: DISCUSSION AND ACTION REGARDING TRAFFIC SAFETY-
 GULF BREEZE PARKWAY**

Reference: City Manager memo dated July 25, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE THE EVALUATION OF THE TRAFFIC SAFETY ISSUES LISTED IN THE DESCRIBED MEMO BY FDOT AND STAFF.

B. **SUBJECT: DISCUSSION AND ACTION REGARDING NATURAL GAS
 SERVICE TO PORTOFINO TOWER.**

Reference: Director of Public Services memo dated July 17, 2013.

RECOMMENDATION:

THAT THE CITY COUNCIL AUTHORIZE PAYMENT OF \$15,905.80 TO UTILITY SERVICE COMPANY FOR THE INSTALLATION 882' OF 2" GAS MAIN TO PORTOFINO TOWER #4 AND LIFESTYLE SPA.

C. **SUBJECT: DISCUSSION AND ACTION REGARDING NATURAL GAS
 PIPELINE BASE MAP FOR PENSACOLA BEACH.**

Reference: Director of Public Services memo dated July 17, 2013.

RECOMMENDATION:

THAT THE CITY COUNCIL AUTHORIZE THE INCLUSION OF MAPPING SERVICES IN FEMA ALTERNATIVE PROJECT #5 AT A COST OF \$8,600 AND AUTHORIZE BASKERVILLE DONOVAN TO PROVIDE THE REQUIRED SERVICES.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

D. SUBJECT: DISCUSSION AND ACTION REGARDING FIRE HYDRANT REPLACEMENTS.

Reference: Assistant Director of Public Services memo dated July 25, 2013.

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE WARRINGTON UTILITY AND EXCAVATING TO REPLACE TWO FIRE HYDRANTS WITHIN THE CITY AT A COST OF \$15,000.

E. SUBJECT: DISCUSSION AND ACTION REGARDING PURCHASE OF THERMAL IMAGING CAMERA FOR FIRE DEPARTMENT.

Reference: Fire Chief memo dated July 25, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL AUTHORIZE FIRE DEPARTMENT STAFF TO PURCHASE TWO SCOTT EAGLE ATTACK TIC'S FROM MES FIRE FOR A PURCHASE PRICE OF \$13,844.00.

F. SUBJECT: DISCUSSION AND ACTION REGARDING SELF CONTAINED BREATHING APPARATUS FOR THE FIRE DEPARTMENT.

Reference: Fire Chief memo dated July 25, 2013.

RECOMMENDATION:

THAT THE CITY AUTHORIZE STAFF TO PURCHASE THE SCBA'S AHEAD OF SCHEDULE FROM THE SOLE SOURCED BID FROM MES FIRE FOR A PROJECT COST OF \$86,666.58.

G. SUBJECT: DISCUSSION AND ACTION REGARDING TIGER POINT STAFF-CITY PAYROLL.

Reference: Director of Parks and Recreation memo dated July 25, 2013.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

RECOMMENDATION:

THAT THE CITY COUNCIL AUTHORIZE THE CONVERSION OF TWENTY-ONE FULL TIME TIGER POINT EMPLOYEES TO THE CITY'S PAYROLL.

- H. SUBJECT: DISCUSSION AND ACTION REGARDING COMMUNITY CENTER –LANDSCAPE MAINTENANCE CONTRACT.**

Reference: Director of Parks and Recreation memo dated July 25, 2013.

RECOMMENDATION:

THAT THE CITY COUNCIL AWARD A CONTRACT TO KEN GRIFFIN LANDSCAPE CONTRACTORS FOR THE ROUTINE CARE AND MAINTENANCE OF THE COMMUNITY CENTER'S NEW LANDSCAPE AND IRRIGATION SYSTEM, IN THE ANNUAL AMOUNT OF \$16,478.12.

- I. SUBJECT: DISCUSSION AND ACTION REGARDING PRIVATE ATTORNEY-CLIENT SESSION, CATAWBA RIGHT-OF-WAY.**

Reference: Verbal Report from the City Attorney

RECOMMENDATION:

THAT THE CITY COUNCIL CONVENE IN A PRIVATE ATTORNEY-CLIENT SESSION CONFINED TO SETTLEMENT NEGOTIATIONS OR STRATEGY SESSIONS RELATED TO LITIGATION EXPENDITURES IN CONNECTION WITH A LAWSUIT BROUGHT AGAINST THE CITY BY LANCE REESE AND PETE AND MITZI PETERS DURING THE REGULAR CITY COUNCIL MEETING ON MONDAY, AUGUST 19, 2013.

Councilman Landfair moved for approval of Consent Agenda Items A, B, C, D, E, F,G, H and I. Councilwoman Fitch seconded. The vote for approval was 5 - 0.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

ACTION AGENDA ITEMS:

None

OPEN FORUM:

The following individuals spoke during Open Forum: Mr. Randal Beach, 614 Silverthorn, spoke regarding the purchase of thermal imaging camera for the Fire Department.

The Mayor suspended the meeting at 6:41 p.m. for the Council to meet as the Community Redevelopment Agency. The Mayor reconvened the meeting at 6:43 p.m.

ADJOURNMENT: The Mayor adjourned the meeting at 6:45 p.m.

City Clerk

Mayor

**MINUTES OF A MEETING OF THE BOARD OF DIRECTORS FOR THE
COMMUNITY REDEVELOPMENT AGENCY**

A meeting of the Board of Directors for the Community Redevelopment Agency, Gulf Breeze, Florida, was convened at the Gulf Breeze City Hall on Monday, August 5, 2013, at 6:41p.m.

Upon call of the roll for the Community Redevelopment Agency the following members were present: Councilwoman Cherry Fitch, Councilman David G. Landfair, Councilman Joseph Henderson, Mayor Beverly Zimmern and Mayor Pro Tem J. B. Schluter.

The purpose of the meeting was for the Board of Directors of the Community Redevelopment Agency to consider the following

A. SUBJECT: DISCUSSION AND ACTION REGARDING APPRAISAL SERVICES FOR 801 GULF BREEZE PARKWAY.

Reference: Director of Public Services memo dated July 25, 2013.

RECOMMENDATION:

THAT THE CITY COUNCIL MEET AS THE COMMUNITY REDEVELOPMENT AGENCY AT THE REGULAR CITY COUNCIL MEETING ON AUGUST 5, 2013 AND APPROVE THE EXPENDITURE OF \$5,300 FOR APPRAISALS OF 801 GULF BREEZE PARKWAY.

Councilman Henderson moved for approval. Councilman Schluter seconded. The vote for approval was 5 - 0.

B. SUBJECT: DISCUSSION AND ACTION REGARDING McCLURE DRIVE SIDEWALK AND PAVING CHANGE ORDER.

Reference: Assistant Director of Public Services memo dated July 25, 2013.

RECOMMENDATION:

THAT THE CITY COUNCIL MEET ON AUGUST 5, 2013 AS THE BOARD OF DIRECTORS FOR THE COMMUNITY REDEVELOPMENT AGENCY AND APPROVE AN INCREASE OF \$28,222.51 TO ROADS, INC. OF NORTHWEST FLORIDA FOR THE ADDED WORK ON THE McCLURE DRIVE SIDEWALK AND PAVING PROJECT

ADJOURNMENT:

The Mayor adjourned the meeting at 6:43 p.m.

CITY CLERK

MAYOR

ORDINANCE NO. 05-13

AN ORDINANCE OF THE CITY OF GULF BREEZE ADOPTING SECTION 18-78 OF THE CODE OF ORDINANCES OF THE CITY OF GULF BREEZE PROVIDING FOR REGULATION OF PARKING IN RESIDENTIAL DISTRICTS; ESTABLISHING GENERAL REGULATIONS APPLICABLE TO PARKING OF ALL VEHICLES IN RESIDENTIALLY ZONED DISTRICTS; ESTABLISHING ADDITIONAL REGULATIONS APPLICABLE TO COMMERCIAL VEHICLES AND RECREATIONAL VEHICLES IN RESIDENTIALLY ZONED DISTRICTS; PROVIDING FOR SPECIAL EXCEPTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council recognizes the importance of preserving the integrity and aesthetic quality of the residential areas of Gulf Breeze.

WHEREAS, through a series of public meetings and workshops the City Council has found that Citizens are strongly in favor of additional measures relating to parking of vehicles, including recreational and commercial vehicles, in residential areas in efforts in enhance and maintain the aesthetic appeal of the community.

WHEREAS, the City Council desires to adopt additional parking regulations contemplated herein in efforts to preserve and enhance the aesthetic quality and community standards of the residential areas of Gulf Breeze.

NOW, THEREFORE, be it ordained by the City Council of the City of Gulf Breeze, Florida, as follows:

SECTION 1. Section 18-78 of the Code of Ordinances of the City of Gulf Breeze, Florida, is hereby created to read as follows:

Section 18-78. Parking of Vehicles in Residential Districts.

(a) *Definitions.* As used in this Section, the following words, terms, and phrases shall have the following meanings and be subject to the following requirements:

Commercial Vehicle shall have the same meaning as set forth in Section 18-75 (a).

Driveway means the improved area (i) between a public street and private property intended to provide ingress and/or egress of vehicular traffic from the public street to a definite area of private property, and (ii) on private property intended to provide off-street parking and ingress and egress of vehicles. The boundaries of a driveway must be clearly

delineated by using materials commonly used for construction of driveways or by clearly outlining the driveway by means including, but not limited to, landscape features such as gravel, shells, or border features. Not more than forty percent of the front yard may be so delineated as a driveway; provided however, a delineated driveway may in all instances be of sufficient size so as to accommodate parking of at least one recreational vehicle and three passenger vehicles (i.e., vehicles that are not recreational vehicles or commercial vehicles) notwithstanding that the size of such driveway may exceed forty percent of the front yard. The delineated driveway must be designed and constructed such that it can support the weight of the vehicle that will be regularly parked upon it. There shall be no more than one contiguous driveway in the front yard; provided, however, for corner lots, there may be a second driveway in the side yard of the corner lot provided that the combined area of both driveways does not exceed forty percent of the combined areas of the front yard and side yard.

Front yard shall mean the area about a residential dwelling unit that is bordered by the street in the right-of-way that abuts the front of the lot on which the dwelling unit is located, the side boundary lines of the lot on which the dwelling unit is located, and the plane of the longest front facade of the dwelling unit that is parallel or nearly parallel to the front lot line of the property on which the dwelling unit is located.

Lot means a parcel of land contained within property lines of a specific area. A *corner lot* means a lot located at the intersection of two rights-of-ways and abutting such rights-of-ways on two adjacent sides of the lot.

Park or parking means the standing or storage of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaging in loading or unloading of merchandise or passengers.

Rear yard shall be the area of a residential lot that does not include the front yard and, for a corner lot, the side yard.

Recreational vehicles shall mean boats (including all watercraft that are designed to float including personal watercraft, kayaks, canoes, rowboats, paddle boards, wind surf boards, sailboats, catamarans, etc.), boat trailers, travel trailers, camping trailers, truck campers, motor homes, private motor coaches, utility trailers, flatbed trailers, all terrain vehicles, any vehicle designed as temporary living quarters for recreational, camping, or travel use which either has its own motive power or is mounted on or drawn by another vehicle, van conversions, park trailers, fifth-wheel trailers, and other similar type vehicles.

Right-of-way means land dedicated, deeded, used, to be used or may be used for a street or other purposes by the public, and shall include all of the land lying between any right-of-way lines as delineated on a plat showing such streets, whether improved or unimproved.

Sidewalk means a path or area on public or private property where pedestrians walk or stand, generally parallel to the street.

Side yard applies only to corner lots and shall mean the area about a residential dwelling unit that is bordered by the street in the right-of-way which abuts the side of the lot on which the dwelling unit is located, the plane of the rear boundary line of the lot on which the dwelling unit is located, the plane that is parallel to such side street that is adjacent to that point of the structure of the dwelling unit that is nearest the side street, and the front yard.

Street means the paved surface of any public road in a right-of-way.

Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn including passenger vehicles, recreational vehicles, and commercial vehicles.

(b) *General Parking Regulations Applicable to All Vehicles in Residential Districts.* In addition to other regulations set forth elsewhere in this Code, the following regulations apply to all vehicles in residentially zoned districts in the City:

(1) No vehicle shall be parked in the front yard unless the vehicle is parked on a driveway. For corner lots, no vehicle shall be parked in the front yard or side yard unless the vehicle is parked within a driveway.

(2) No vehicle shall be used for living, sleeping, or housekeeping purposes when parked on a residential lot or at any location not approved for such use. The foregoing notwithstanding, the City Council may authorize recreational vehicles to be used for living, sleeping, or housekeeping purposes after a declared natural disaster, and such authorization must be enacted by resolution of the City Council and must contain a date by which the authorization shall expire unless specifically extended by subsequent resolution. In addition, bona fide house guests of a person residing at a residential dwelling unit may temporarily reside in a recreational vehicle on the lot no more than twice in a six month period with each instance being of a duration of no more than 14 days.

(3) All vehicles permitted by this Section to be parked in the front yard (or side yard with respect to corner lots) must be maintained (i) in a condition such that the vehicle is immediately operable and can be immediately moved offsite in the manner in which such vehicle is intended to be operated (e.g. by its own power if the vehicle is motorized; drawn or towed if the vehicle is not motorized, etc.), and (ii) in a neat, clean and presentable manner with wheels and tires properly mounted, and the area beneath and about the vehicle must be kept in a neat, clean, and presentable condition with no accumulation of undergrowth, weeds, or trash.

(4) Except as specifically authorized by City Council resolution contemplated in subparagraph (2), above, no vehicle shall have temporary or permanent sewer connection.

(5) No vehicle shall be parked on a vacant lot in a residentially zoned district, including lots upon which construction is occurring; provided, however, (i) a recreational vehicle may be located on a construction site to be used as an office, work, or security trailer provided that a permit for such use has been issued by the Department of Community Services and that the recreational vehicle is not used for living, sleeping, or housekeeping purposes; and (ii) commercial vehicles may be temporarily parked on such lots where construction is actively occurring and for which a current and valid building permit for such construction has been issued by the City and is properly displayed on the premises (unless the construction is of the nature that a building permit is not required, in which event there shall be no requirement to obtain and display such a building permit).

(6) No vehicle may block or in any manner obstruct a sidewalk. Any vehicle permitted by this Section to be parked on a street must be parked such that the vehicle is substantially parallel to the edge or curb of the street and shall not be parked in a manner which blocks or creates a hazard for other vehicles.

(c) *Additional Regulations Applicable to Parking of Commercial Vehicles and Recreational Vehicles in Residential Districts.* In addition to other regulations set forth elsewhere in this Code, including those regulations set forth above in this Section 18-78, the following regulations shall also apply to commercial vehicles and residential vehicles in residentially zoned districts in the City:

(1) Any commercial vehicle or residential vehicle permitted by this Section to be parked in the front yard (or side yard for a corner lot) must be owned, rented, or leased by a person residing on the same lot at which such vehicle is parked; provided, however, this restriction shall not apply to recreational vehicles owned, rented, or leased by bona fide house guests of such resident temporarily residing in the recreational vehicle as contemplated in subparagraph (b)(2), above.

(2) No commercial vehicle or recreational vehicle shall be parked on a street. Commercial vehicles and recreational vehicles may be parked in the right-of-way, but not on a street, only for purposes of active loading and unloading and for no more than six hours in any 24 hour period; provided, however, no commercial vehicle or recreational vehicle may be parked in a right-of-way for any period of time between the hours of 7:00 p.m. and the following 7:00 a.m.

(3) There shall be no more than two commercial vehicles or recreational vehicles parked in the front yard (and side yard, if a corner lot). Additional commercial vehicles and recreational vehicles may be parked on a residential lot if such vehicle is parked in an enclosed garage or in the rear yard.

(4) No recreational vehicle may be used for the storage of goods, materials, or equipment other than those items considered to be part of the recreational vehicle essential for its immediate use.

(5) All recreational vehicles permitted by this Section to be parked in the front yard (or side yard, if a corner lot) shall be parked more or less perpendicular to the right-of-way.

(d) *Special Exceptions.* The City Manager or designee may grant a special exception from the provisions of this Section 18-78 upon written application and a finding that (i) literal interpretation of the provisions of this Section would work in unnecessary and undue hardship on the applicant, (ii) granting of the special exception will not cause a condition or circumstance which creates a nuisance for neighbors of the applicant or the general public, and (iii) special conditions or circumstances exist which are peculiar to applicant's land which are not the result of actions of the applicant. Any special exception granted shall be the minimum exception needed to avoid the unnecessary and undue hardship contemplated in the preceding sentence. Before considering an application, the City Manager or designee shall make reasonable efforts to contact and obtain input from owners of property adjacent to applicant's lot. The decision of the City Manager or designee may be appealed to the City Council. The procedure for appeal shall be the same as for a level one development variance request.

SECTION 2. Severability. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by any court to be unconstitutional, inoperative, invalid, or void, such holding shall not in any manner affect the validity of the remaining portions of this Ordinance.

SECTION 3. Conflict. The provisions of this Ordinance shall be deemed to control and supercede over any ordinance or portion thereof in conflict with the terms hereof.

SECTION 4. Effective Date. This Ordinance shall become effective upon its adoption by the City Council.

PASSED ON FIRST READING ON THE 19th DAY OF AUGUST, 2013.

PUBLISHED ON THE 15TH DAY OF AUGUST, 2013.

PASSED ON SECOND READING ON THE _____ DAY OF _____, 2013.

CITY OF GULF BREEZE, FLORIDA

By: _____
BEVERLY ZIMMERN, Mayor

ATTESTED TO BY:

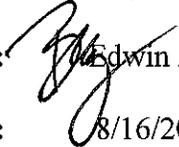
Leslie Guyer, CITY CLERK



City of Gulf Breeze

Memorandum

To : Mayor and City Council

From :  Edwin A. Eddy, City Manager

Date : 8/16/2013

Subject: **Resolution No. 15-13, Approving a Plan of Finance for Acquisition and Renovation of Low Income Housing Facility by Elderly Housing, Development and Operations Corporation and Authorizing Issuance of up to \$10,000,000 in Capital Trust Agency Bonds**

The Capital Trust Agency Board met in June and approved the financing plan as described in the attached Resolution. Normally, a Resolution is prepared immediately following CTA action for City Council review and approval. This project is now ready to move toward closing. Time is of the essence.

The proceeds of the bonds will be used for the acquisition, renovation, and improvement of 110 units of low income, senior citizen housing in Miami Gardens.

RECOMMENDATION:

THAT THE CITY COUNCIL ADOPT RESOLUTION NO 15-13 APPROVING A PLAN OF FINANCE FOR ELDERLY HOUSING, DEVELOPMENT AND OPERATIONS CORPORATION'S ROBERT SHARP TOWERS PROJECT IN MIAMI GARDENS, FLORIDA.

RESOLUTION NO. 15-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, APPROVING A PLAN OF FINANCE FOR THE COSTS OF THE ACQUISITION, CONSTRUCTION, IMPROVEMENT, RENOVATION AND EQUIPPING OF AN EXISTING LOW-INCOME MULTIFAMILY RENTAL HOUSING FACILITY LOCATED IN THE STATE OF FLORIDA; APPROVING THE ISSUANCE OF APPROXIMATELY \$10,000,000 CAPITAL TRUST AGENCY REVENUE BONDS FOR THE PURPOSE OF FINANCING A LOAN PROGRAM TO ASSIST IN FINANCING SUCH FACILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of Gulf Breeze, Florida (the "City"), a municipal corporation of the State of Florida, has heretofore adopted Resolution No. 14-99 dated as of July 19, 1999 (the "Original Resolution"), and entered into an Interlocal Agreement between the City and the Town of Century, Florida, dated as of August 2, 1999, as amended by Amendment No. 1 through No. 38 (including Amendments No. 14-A, 23-A, 24-A and 37-A) (collectively, the "Enabling Agreement"), approving the creation of the Capital Trust Agency (the "Agency"), a separate legal and administrative agency of the State of Florida, organized and existing under the provisions of Chapter 163, Part I, and Chapter 159, Part II, Florida Statutes, Ordinance No. 05-97 of the City, as amended, and its Articles of Incorporation, as amended and other applicable provisions of law (collectively the "Act"), to enable public, private and not-for-profit organizations to obtain public assistance in financing or refinancing certain beneficial projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, pursuant to the Act and in accordance with the provisions of the Original Resolution, the Agency did on June 27, 2013, take official action by adopting its preliminary resolution (the "Agency Resolution") indicating its intent to authorize the financing or refinancing of the hereinafter described project, and the issuance from time to time of revenue bonds (the "Bonds") by the Agency for a loan program for the purpose, among other things, of acquiring, constructing, improving, renovating and equipping an existing low-income multifamily rental housing facility, as further described on the attached Schedule I, namely, the Robert Sharp Towers II located at 115 N.W. 202nd Terrace, Miami Gardens, Florida 33169, Miami-Dade County, Florida (the "Facility"); and

WHEREAS, the City has been advised that the Agency desires to issue an approximately \$10,000,000 aggregate principal amount of Bonds (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), to finance the Facility on behalf of EHD OC Robert Sharp Towers II LP, a Florida limited partnership, or one or more of the subsidiary corporations, limited liability companies or limited partnerships of Elderly Housing, Development and Operations Corporation,

whose principal place of business is 1580 Sawgrass Corporate Parkway, Suite 210, Ft. Lauderdale, Florida 33323 (as applicable, the "Borrower") to fund a program herein described (the "Plan of Finance"); and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires public approval of certain revenue bonds by an applicable elected representative or governmental unit on behalf of which such bonds are to be issued, following a public hearing; and

WHEREAS, (i) notice of such public hearing was given by publication in the *Pensacola News Journal* and (ii) the Bonds and the Plan of Finance have been submitted to such public hearing held on behalf of the City Council of the City of Gulf Breeze, Florida (the "City Council") on August 19, 2013; and

WHEREAS, the City Manager has conducted the public hearing on behalf of the City Council and provided reasonable opportunity for all interested persons to express their views, both orally and in writing and diligently and conscientiously considered all comments and concerns expressed by such individuals, if any; and

WHEREAS, the City Council desires to approve the Bonds and the issuance and sale thereof pursuant to the Plan of Finance and to grant all approvals required or contemplated by Section 147(f) of the Code, to express its approval of the action taken by the Agency and its officials pursuant to the Agency Resolution, and to grant all other approvals required by the Enabling Agreement, as amended and the Original Resolution in connection with the issuance and sale of the Bonds;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA:

SECTION 1. PUBLIC HEARING NOTICE AND REPORT APPROVED.

The City Council hereby approves the form of and the manner of publication of the Notice of Public Hearing (the "Notice") published in the *Pensacola News Journal*, a newspaper of general circulation in the jurisdiction of the City. The City Council hereby approves the report of the public hearing conducted by the City Manager, a copy of which is attached as Exhibit "A" hereto. Such Notice and other means and methods utilized by the City to give notice of purpose, time and date of the public hearing provided reasonable notice sufficient to inform residents of the City of the proposed Bonds.

SECTION 2. BONDS AND PLAN OF FINANCE APPROVED.

For purposes of the Act, the City hereby approves the Plan of Finance described herein, and the issuance of the Bonds described in the Notice. The Agency and its officers, employees, agents and attorneys are hereby authorized from time to time to take all action, to execute and deliver such authorizations, approvals, certificates and documents, and to enter into, on behalf of the Agency, such interlocal agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, reimbursement agreements, and other agreements, approvals or instruments deemed necessary or convenient to effect, implement, maintain and continue the Plan of Finance, the financing or refinancing of the Facility through the issuance from time to time of the Bonds and the purposes for which the Bonds are to be issued. No obligation of the Agency under any such agreement shall constitute an obligation of the City except to the extent the same may be expressly approved by the City. The Bonds shall be limited and special obligations of the Agency, and shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of the City.

SECTION 3. AMENDMENT NO. 39 TO THE ENABLING AGREEMENT RATIFIED.

Pursuant to the Enabling Agreement, there is hereby approved the execution and delivery of an amendment to the Enabling Agreement (the "Amendment") to effect the approvals set forth in Section 1 and Section 2 hereof. Such Amendment shall be in substantially the form attached hereto as Exhibit "B," and the Mayor is authorized to execute and deliver the same on behalf of the City Council, with such changes not inconsistent herewith as the Mayor shall approve, her execution thereof to conclusively establish such approval.

SECTION 4. TEFRA APPROVAL.

After diligent and conscientious consideration of the views expressed by the persons appearing at the public hearing, the City Council hereby approves the Agency's Plan of Finance, and the issuance by the Agency of approximately \$10,000,000 aggregate principal amount of revenue bonds for the all purposes under Section 147(f) of the Code, for all purposes of the Enabling Agreement, as amended, and for all purposes of the Original Resolution.

SECTION 5. REPEALING CLAUSE.

All resolutions or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 6. EFFECTIVE DATE.

This resolution shall take effect immediately upon its adoption this 19th day of August, 2013.

**GULF BREEZE, FLORIDA
CITY COUNCIL**

(SEAL)

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer, City Clerk

EXHIBIT "A"

REPORT OF CITY MANAGER

[Follows]

EXHIBIT "B"

**AMENDMENT NO. 39
OF THE ENABLING AGREEMENT**

[Follows]

AMENDMENT NO. 39 TO INTERLOCAL AGREEMENT

This **AMENDMENT NO. 39 TO INTERLOCAL AGREEMENT** (this "Amendment No. 39") is made and entered into as of the 1st day of August, 2013, by and among the **CITY OF GULF BREEZE, FLORIDA**, a municipal corporation of the State of Florida ("Gulf Breeze") and the **TOWN OF CENTURY, FLORIDA**, a municipal corporation of the State of Florida ("Century"). Gulf Breeze and Century may collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Parties hereto have by Interlocal Agreement, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 38 (including Amendments No. 14-A, 23-A, 24-A and 37-A) (collectively, the "Enabling Agreement"), heretofore provided for the creation of the Capital Trust Agency (the "Agency"), to enable public, private and not-for-profit organizations to obtain public assistance in financing certain projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, EHDOC Robert Sharp Towers II LP, a Florida limited partnership, or one or more subsidiary corporations, limited liability companies or limited partnerships of Elderly Housing, Development and Operations Corporation (as applicable, the "Borrower"), is engaged in, among other things, acquiring, constructing, developing, improving, furnishing, equipping, owning, and operating multifamily rental housing facilities for low income seniors; and

WHEREAS, on June 27, 2013, the Agency approved a request by the Borrower that the Agency issue its revenue bonds in a principal amount of approximately \$10,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), in one or more series from time to time (collectively, the "Bonds") and loan the net proceeds thereof to the Borrower, for the purpose, among other things, of financing and refinancing the acquisition, construction, improvement, renovation and equipping of an existing low-income multifamily rental housing facility known as Robert Sharp Towers II (the "Facility") described on the attached Schedule "I," located in the State of Florida; and

WHEREAS, the Agency will issue its Bonds on a case-by-case basis after review by the Agency, to provide financing and refinancing from time to time for individual projects or groups of projects, or eligible financing programs, based upon the credit pledged therefor from one or more of the projects, the Borrower, the Sponsor, a credit enhancement facility, if any, or from the revenues of any such programs; and

WHEREAS, Section 7 of the Enabling Agreement requires that as a condition precedent to the Agency issuing the Bonds, the Agency must obtain the prior written approval, evidenced by resolution, from the governing bodies of Century and Gulf Breeze approving such issuance and approving an amendment to the Enabling Agreement specifically authorizing such issuance. Such approval evidenced by appropriate

resolutions has been obtained, authorizing the execution and delivery of this Amendment No. 39 to the Enabling Agreement with respect to the financing herein described; and

WHEREAS, the Parties desire to amend the Enabling Agreement to permit and authorize the Agency to issue the Bonds herein described and loan the proceeds to the Borrower in order to provide financing and refinancing for the Facility;

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. ENABLING AGREEMENT AMENDED FOR SERIES 2013 PROJECT.

This Amendment No. 39 is entered into pursuant to Section 7 of the Enabling Agreement for the purpose of authorizing the Agency to issue the Bonds and to finance projects of the type and character of the Facility.

SECTION 2. BONDS, PROGRAM, PLAN OF FINANCE APPROVED.

The Parties do hereby approve and authorize the Bonds, and the issuance of Bonds from time to time, in one or more series, in an aggregate principal amount determined by an appropriate official of the Agency to be sufficient to enable the financing of the Facility. Each installment or issue of such Bonds shall be designated by series, in such manner as the Agency shall determine, so as to separately identify each such installment or issue. The Agency and its officers, employees, agents and attorneys are hereby authorized to enter into, on behalf of the Agency, from time to time, interlocal agreements, cash management agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, escrow agreements, reimbursement agreements, security documents and other agreements, approvals or instruments deemed necessary or convenient to effect or implement the financing and refinancing of the Facility through the issuance of the Bonds, and the purposes and programs for which the Bonds are to be issued and to conform the purposes stated in the Articles of Incorporation of the Agency to authorizations herein contained. No obligation of the Agency under any such agreement or instrument shall constitute an obligation of Century or of Gulf Breeze. The Bonds shall be limited and special obligations of the Agency, payable from the revenues or receipts of the programs or projects, payments by the Borrower, the Sponsor, or other sources relating to the purpose for which they are issued, all in the indentures for the Bonds. The Bonds shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of Century or of Gulf Breeze.

SECTION 3. ADMINISTRATIVE FEES AND EXPENSES FOR THE TOWN OF CENTURY.

Upon the issuance of each series or installment of Bonds, Century shall be paid by either the Agency or Gulf Breeze, solely from amounts received from the Borrower, the sum specified on Schedule "II" attached hereto.

SECTION 4. ENABLING AGREEMENT CONTINUED.

The Enabling Agreement, as amended hereby, is hereby ratified, confirmed and approved and shall

otherwise continue in full force and effect. Nothing in this Amendment No. 39 shall be deemed to adversely affect the authorizations in the Enabling Agreement as it existed prior to the effective date of this Amendment No. 39, or to adversely affect the interests of the holders of any Bonds issued or to be issued pursuant to such authorizations. Except as and only to the extent specifically amended hereby, such Enabling Agreement is hereby incorporated by reference.

SECTION 5. INDEMNITY.

To the extent permitted by law, the Agency and Gulf Breeze shall indemnify and defend Century and hold Century harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds pursuant hereto, or in connection with the acquisition or operation of any project, or for any liability any way growing out of or resulting from the Enabling Agreement, as amended, this Amendment No. 39, the financing agreements and/or bond indentures executed in connection with the Bonds, including, without limitation, all costs and expenses of Century, including reasonable attorney's fees, incurred in the performance of any activities of Century in connection with the foregoing or the enforcement of any agreement of the Agency herein contained. Any such obligation of Gulf Breeze or the Agency shall be payable solely from the amounts available to them for such purposes under the Bond financing or any other plan of finance heretofore or hereafter undertaken by the Agency, and shall not constitute a general obligation or a pledge of the faith and credit of Gulf Breeze or the Agency, or an obligation to pay the same from any sources other than such amounts available to them for such purposes under the Bond financing.

SECTION 6. SEVERABILITY OF INVALID PROVISIONS.

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereto.

SECTION 7. COUNTERPARTS.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 8. EFFECTIVE DATE; AMENDMENTS.

This Amendment shall take effect when duly executed by the Parties and filed in accordance with law. This Amendment may be amended only by written instrument signed by authorized representatives of Century and of Gulf Breeze; provided, however, that no such amendment which would adversely affect the rights of the holders or owners of any then outstanding Bonds of the Agency or of any other member shall take effect until such time as all necessary consents or approvals with respect to such Bonds shall have been obtained, in the case of the rights of bondholders, or the consents and approvals of the affected members, in the case of the rights of members.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 39 to the Enabling Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF GULF BREEZE, FLORIDA

[SEAL]

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer
City Clerk

TOWN OF CENTURY, FLORIDA

[SEAL]

By: _____
Freddie W. McCall, Sr., Mayor

ATTEST:

By: _____
Leslie Gonzalez, Town Clerk

SCHEDULE "I"

The project herein described consist of the acquisition, construction, improvement, renovation and equipping of an existing low-income multifamily rental housing facility known as Robert Sharp Towers II, located at 115 N.W. 202nd Terrace, Miami Gardens, Florida 33169, Miami-Dade County, Florida.

SCHEDULE "II"
PAYMENT TO TOWN OF CENTURY

\$350.00 per million principal amount of each issue, upon issuance thereof, but not less than \$2,500.00.

SCHEDULE I

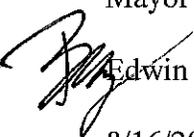
The project herein described consist of the acquisition, construction, improvement, renovation and equipping of an existing 110-unit, low-income multifamily rental housing facility known as Robert Sharp Towers II, located at 115 N.W. 202nd Terrace, Miami Gardens, Florida 33169, Miami-Dade County, Florida, to be financed in an aggregate principal amount of approximately \$10,000,000.



City of Gulf Breeze

Memorandum

To: Mayor and City Council

From:  Edwin A. Eddy, City Manager

Date: 8/16/2013

Subject: **Formal Acceptance of Franchise to Operate a Natural Gas System on Santa Rosa Island**

Attached please find a copy of Escambia County Ordinance Number 2013-23 which grants to the City of Gulf Breeze an exclusive franchise to construct, maintain, and operate a natural gas distribution system on Pensacola Beach.

The City needs to formally accept the granting of the franchise and advise Escambia County of this acceptance.

RECOMMENDATION:

THAT THE CITY COUNCIL FORMALLY ACCEPT THE GRANT OF FRANCHISE BY ESCAMBIA COUNTY, FLORIDA, TO OPERATE, CONSTRUCT, AND MAINTAIN A NATURAL GAS DISTRIBUTION SYSTEM ON SANTA ROSA ISLAND AS GRANTED TO THE CITY OF GULF BREEZE BY ESCAMBIA COUNTY ORDINANCE NUMBER 2013-23.

ESCAMBIA COUNTY
CLERK'S ORIGINAL
7/11/2013 5:34pm PH

ORDINANCE NUMBER 2013- 23

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, GRANTING UNTO THE CITY OF GULF BREEZE, FLORIDA, AN EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE A NATURAL GAS DISTRIBUTION SYSTEM ON THE PORTION OF SANTA ROSA ISLAND LOCATED IN ESCAMBIA COUNTY, FLORIDA; ESTABLISHING A FRANCHISE FEE; REQUIRING INDEMNIFICATION; GRANTING ACCESS TO ESCAMBIA COUNTY RIGHTS-OF-WAY; PROVIDING FOR MODIFICATION AND TERMINATION; IDENTIFYING CONSIDERATIONS; REQUIRING ACCEPTANCE BY THE CITY OF GULF BREEZE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Escambia County Board of County Commissioners has the home rule power and authority to grant franchises for the construction, operation, and maintenance of utilities, including natural gas utility services, in the unincorporated areas of Escambia County; and

WHEREAS, the Board of County Commissioners deems it of paramount importance to insure the availability of natural gas utility services on that portion of Santa Rosa Island located in the unincorporated area of Escambia County; and

WHEREAS, since 1960 the Board of County Commissioners has adopted ordinances, resolutions, and an interlocal agreement with the City of Pensacola, Florida, that awarded unto the City of Pensacola a franchise to provide natural gas utility services to, among other areas, that portion of Santa Rosa Island located in the unincorporated areas of Escambia County; and

WHEREAS, since 1960 the City of Pensacola has failed to construct, operate, or maintain any natural gas utility facilities at or provide natural gas utility services to that portion of Santa Rosa Island located in the unincorporated area of Escambia County, and the City of Pensacola is presently unable to promptly and efficiently provide natural gas utility services to that area nor has it expressed a willingness to do so; and

WHEREAS, the Board of County Commissioners finds that the City of Gulf Breeze, Florida, has the present ability to immediately provide natural gas utility services to that portion of Santa Rosa Island located in the unincorporated area of Escambia County; and

WHEREAS, the Board of County Commissioners is aware that numerous residents and businesses on that portion of Santa Rosa Island located in the unincorporated area of Escambia County currently desire to be provided with natural gas utility service and have

Date: 7/12/2013
Verified By: *Attavis*

requested that the Board grant such permission, authority, and franchise unto the City of Gulf Breeze as appropriate to allow it to provide such utility services; and

WHEREAS, the Board of County Commissioners finds that not only is the City of Gulf Breeze presently qualified and immediately able to provide such natural gas utility services, but that it also has the willingness to do so; and

WHEREAS, pursuant to Ordinance No. 2012-7, the Board of County Commissioners granted unto the City of Gulf Breeze the non-exclusive right, privilege, license, permit, franchise, and easement to operate a natural gas utility facilities at and provide natural gas utility services to that portion of Santa Rosa Island located in the unincorporated area of Escambia County; and

WHEREAS, the City of Pensacola asserted that Escambia County could not lawfully confer the aforesaid franchise rights unto the City of Gulf Breeze; rather, notwithstanding that it had not provided any natural gas utility services at or to Santa Rosa Island since it was initially conferred franchise rights to do so in 1960, the City of Pensacola instead asserted that it had the exclusive rights to provide such services and demanded compensation as a condition for Escambia County conferring any franchise rights unto Gulf Breeze; and

WHEREAS, the City of Pensacola filed a notice of claim and threatened to commence litigation against both Escambia County and the City of Gulf Breeze contending that the City of Pensacola incurred damages as a result of Escambia County's grant of the aforesaid franchise rights unto the City of Gulf Breeze and, further, as a result of the City of Gulf Breeze providing natural gas utility services at and to that portion of Santa Rosa Island located in the unincorporated areas of Escambia County; and

WHEREAS, the City of Pensacola and the City of Gulf Breeze have recently entered into that certain Agreement for Natural Gas Franchise Assignment dated as of the 4th of February, 2013 (the "Agreement"), in which those parties agreed that, among other agreements more particularly set forth therein, and subject to the Escambia County Board of County Commissioners' approval of the terms of the Agreement:

(i) The City of Pensacola will convey, transfer, and assign unto the City of Gulf Breeze all rights, privileges, and authorizations which the Escambia County Board of County Commissioners has conferred unto the City of Pensacola to provide natural gas utility services to and at that portion of Santa Rosa Island located within the unincorporated areas of Escambia County, including but not limited to the rights, authorities, privileges, and franchise to provide such services as contemplated in Escambia County Ordinance No. 95-7;

(ii) The City of Pensacola will waive in favor of and release unto the City of Gulf Breeze any and all rights, claims, and causes of action which Pensacola has or might have to own, operate, and maintain a natural gas utility on that portion of Santa Rosa Island located in the unincorporated area of Escambia County; and

(iii) Subject to the terms and conditions set forth in the Agreement, the City of Gulf Breeze will pay unto the City of Pensacola the sum of \$470,000.00 for the conveyance, transfer, and assignment of all rights, benefits, authorizations, and privileges to provide natural gas utility service, including those rights, benefits, authorizations, and privileges as referenced above provided by Escambia County Board of County Commissioners unto the City of Pensacola to provide natural gas utility services and operate a natural gas utility, to and at that portion of Santa Rosa Island located in the unincorporated areas of Escambia County; and

WHEREAS, in addition to the Escambia County Board of County Commissioners' approval of the terms of the Agreement, the obligations of the City of Pensacola and the City of Gulf Breeze to perform pursuant to the Agreement are further subject to satisfaction or prior written waiver of, among other conditions, the following conditions precedent:

(i) The Escambia County Board of County Commissioners' adoption of an ordinance (a) reaffirming the City of Pensacola's franchise rights for portions of the unincorporated area of Escambia County, Florida, excluding that portion of Santa Rosa Island located in the unincorporated area of Escambia County; and (b) releasing and discharging the City of Pensacola from all obligations to observe, comply with, or perform with respect to that portion of Santa Rosa Island located in the unincorporated areas of Escambia County the requirements of any franchise granted by the Escambia County Board of County Commissioners unto the City of Pensacola;

(ii) The Escambia County Board of County Commissioners' adoption of an ordinance, and the City of Gulf Breeze's acceptance thereof, granting unto the City of Gulf Breeze a franchise to conduct natural gas utility operations to, at, and upon that portion of Santa Rosa Island located in the unincorporated areas of Escambia County which ordinance must contain terms that are substantially similar to those set forth in Escambia County Ordinance No. 95-7 (save and except that the ordinance need not contain the cap or limitation upon the amount or percentage of franchise fees that may be assessed by Escambia County as mentioned in Ordinance No. 95-7, provided that such franchise fees are uniformly imposed upon all utility franchises); and

(iii) Performance or satisfaction of such conditions as the Escambia County Board of County Commissioners may reasonably require in connection with or as a condition for the actions contemplated above; and

WHEREAS, pursuant to Section 98-33(7) of the Escambia County Code of Ordinances, the Board of County Commissioners has the authority to approve the City of Pensacola's transfer and assignment unto the City of Gulf Breeze of the rights, privileges, authorities, and franchises contemplated herein and in the Agreement; and

WHEREAS, the Board of County Commissioners finds that it is in the best interest of Escambia County and its residents and inhabitants to approve the Agreement, consent to the transfer and assignment of the various franchise rights and privileges contemplated

therein, and to adopt this Ordinance awarding a franchise to and in favor of the City of Gulf Breeze; and

WHEREAS, the Escambia County Board of County Commissioners finds that the City of Pensacola and the City of Gulf Breeze have fulfilled the requirements contemplated in Section 98-33(7) for the transfer and assignment of the aforesaid franchise rights, including publication of notice of a public hearing, and the Board hereby adopts this Ordinance for the purposes of conferring the rights, authorizations, permissions, and franchises more particularly contemplated herein; and

WHEREAS, the Escambia County Board of County Commissioners accordingly shall award an exclusive franchise to the City of Gulf Breeze, Florida, for the construction, maintenance, and operation of a natural gas utility system, and to provide natural gas utility services, at, to, and on that portion of Santa Rosa Island located in the unincorporated area of Escambia County, all subject to the terms and conditions more particularly set forth herein; and

WHEREAS, the Escambia County Board of County Commissioners finds that this Ordinance advances and promotes the public health, safety, and welfare of the inhabitants and the general public, and is in the best interests, of Escambia County.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Escambia County, Florida, as follows:

Section 1. Legislative Findings. The aforementioned recitals are hereby incorporated into this Ordinance as legislative findings rendered by the Escambia County Board of County Commissioners in support of this Ordinance.

Section 2. Grant of Franchise for Natural Gas Services At, On, and To Santa Rosa Island. Escambia County, Florida, a political subdivision of the State of Florida ("Grantor"), does hereby grant unto the City of Gulf Breeze, a Florida municipal corporation, its successors and assigns ("Grantee"), the exclusive (as far as the law permits) right, privilege, license, permit, franchise, and easement to erect, install, extend, maintain, and operate a system of works, pipes, pipelines, and all necessary apparatuses, machinery, structures, and appurtenances, in, on, and under the streets, alleys, avenues, bridges, easements, and other public ways and properties for the purposes of transporting, distributing, and selling natural gas and providing natural gas utility services to Grantor, its inhabitants and the public generally for domestic, commercial, and industrial uses and for any and all other purposes for which gas, during the period of this grant, may be used, together with the right to enter upon all public streets and ways and properties of said Grantor for the purpose of installing, removing, repairing, relocating, constructing, maintaining, operating, etc., said facilities and equipment, including the operation, distribution, transmission, and maintenance of a natural gas utility system and providing natural gas utility services, and doing all other acts authorized hereby.

For purposes hereof, the geographic area for which this franchise applies (the "Franchise Territory") shall be that portion of Santa Rosa Island located within the unincorporated area of Escambia County, Florida, together with all appurtenances thereto (e.g., rights to use easements and proprietary rights applicable to rights-of way and bridges thereto and therefrom) and the Franchise Territory shall not include or apply to any other area of Escambia County.

Section 3. Term. This franchise, including all rights, privileges, authorities, licenses, permissions, and easements accompanying the same and being granted hereby, is hereby granted and shall continue in full force and effect for a term continuing until March 1, 2045, and pursuant thereto, the Grantee shall operate and conduct the natural gas utility system in the Franchise Territory in such manner as the Grantee, in its sole discretion, shall determine from time to time without regulation by Grantor. The Grantee shall also have the option of extending this franchise term for an additional fifty (50) years, which extension shall be deemed automatic unless the Grantee advises the Grantor in writing, on or before March 1, 2044, of its intention to terminate its rights under this franchise.

Section 4. Franchise Fee. Grantor does hereby impose, levy, and assess a franchise fee to be collected by Grantee equal to five percent (5%) of Grantee's gross revenues collected monthly from gas sold to its customers located within the Franchise Territory. The franchise fee shall be remitted by Grantee to Grantor monthly, in arrears, for gas delivered on or after the effective date of this Ordinance. Such remittance shall occur within thirty (30) days after the first day of the month for franchise fees collected during the preceding month.

Section 5. Indemnification. Grantor hereby agrees to indemnify and hold harmless Grantee, its officers, agents, and employees, from any liability, loss, or damage which they may suffer as a result of any claims, demands, costs, or judgments against them, whether arising out of legal, equitable, or administrative proceedings as a result of Grantee's collection of the franchise fees mandated by this Ordinance. Grantor further agrees to provide a legal defense for Grantee, its officers, agents, and employees, and defend them with respect to their collection of the franchise fees, including, but not limited to, the remittance of any franchise fees to Grantor.

Grantor shall not be liable or responsible for any accident or damage that may occur in the construction, operation, or maintenance by Grantee of its facilities or apparatus hereunder and the acceptance of this Ordinance shall be deemed an agreement, to the extent permitted by law, on the part of Grantee to indemnify Grantor and hold it harmless against any and all liability, loss, cost, damage, or expense which may accrue to Grantor arising out of Grantee's construction, operation, or maintenance of its facilities hereunder.

Section 6. Access Over Escambia County Rights-of-Way; Location of Grantee's Facilities. Grantee's facilities for the provision of natural gas services shall be located or relocated and so erected as to interfere as little as possible with traffic over Grantor's rights-of-way, including streets, alleys, bridges, and public places within the Franchise Territory, and with reasonable egress from and ingress to abutting property. Grantee further agrees that it will not create any obstructions or conditions in the exercise of this franchise that is or may become dangerous to the traveling public.

Grantee shall repair any damage or injury to the road or highway by reason of the exercise of the privileges granted by this franchise and shall repair any road, highway, easement, or other right-of-way promptly, restoring such road, highway, easement, or other right-of-way to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury.

The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body for Grantor may designate for the purpose, but not so as to unreasonably interfere with the proper operation of the Grantee's facilities and service. When any portion of a right-of-way is excavated by Grantee for the purpose of locating, relocating, repairing, or removing any of its facilities, including, but not limited to, any system of works, pipes, pipelines, and all necessary apparatus, machinery, structures, and appurtenances, Grantee shall, at its expense, replace the portion of the excavated right-of-way within a reasonable time and as soon practicable after such excavation.

Nothing herein shall be construed to make Grantor liable to Grantee for any cost or expense in connection with the construction, reconstruction, repair, or relocation of Grantee's works, pipes, pipelines, and any and all necessary apparatus, machinery, structures, and appurtenances thereto made necessary in Grantor's rights-of-way by the widening, grading, paving, or otherwise improving by Grantor of any of the present and future rights-of-way used or occupied by Grantee, except, however, Grantee shall be entitled to reimbursement of its costs as may be provided by law.

For purposes of this Ordinance, Grantor's rights-of-way include any present and future streets, avenues, alleys, highways, bridges, easements, and other public places and property located within the Franchise Territory.

Section 7. Modification and Termination of Franchise.

A. *Modification of Franchise.* This franchise may be amended or modified by written agreement of the parties hereto. Any written agreement to amend or modify this franchise must be adopted by majority vote of the governing bodies for Grantor and Grantee.

B. *Termination of Franchise.* Failure by the Grantee to comply in any substantial respect with any of the provisions, terms, or requirements of this Ordinance shall be grounds for forfeiture of this franchise, but no such forfeiture shall take effect if the reasonableness and propriety thereof is timely protested and satisfactorily addressed or until a court of competent jurisdiction shall have found that the Grantee has failed to comply in any substantial respect with any of the provisions, terms, or requirements of this Ordinance. Both the Grantor and the Grantee reserve the right of appeal of such court findings. The Grantee shall have six (6) months after the final determination of the question to make restitution or make good the default or failure before forfeiture may result. The Grantor, in its discretion, may grant additional time to the Grantee for restitution and compliance as may be appropriate under the circumstances.

Section 8. Modification of Franchise Fees. The franchise fees provided for in Section 4, above, may be periodically reviewed and changed by a reasonable amount provided that, if there are other utility companies with current franchises from the Grantor, such review shall not occur at intervals any more frequent than undertaken for such other utility companies franchised by Grantor. Grantor shall give written notice to Grantee of its intention to consider changing the franchise fee, whereupon Grantor and Grantee shall commence negotiations to agree upon a reasonable fee.

Grantor further agrees that if during the term of this franchise, the Grantor enters into a franchise with any other utility or utility company which provides for payments of franchise fees at a lower percentage rate (or, if not expressed by a percentage rate, effectively a lower percentage rate) than the rate provided for herein, then the Grantor agrees, upon request of the Grantee, to amend this franchise to provide for payments of franchise fees at the lower percentage rate, and such amended franchise shall also include benefits to Grantee at least equal to those provided by Grantor's franchise agreement or agreements with such other utilities.

The obligation to pay such franchise fee shall be independent of any other entity's payment of franchise fees or obligation to pay such fees, except that the Grantee shall not be obligated to pay a franchise fee to the Grantor during any period within which Gulf Power Company, or its successors or assigns, does not pay a franchise fee to the Grantor. The Grantee's obligation to pay a franchise fee is concurrent with that of Gulf Power, or its successors or assigns, and that in the event Gulf Power, or its successors or assigns, stops paying a franchise fee and later resumes payment, the Grantee will likewise resume payment concurrently with Gulf Power, or its successors or assigns, upon the same terms set out in this Ordinance. Upon expiration or termination of this Ordinance, each party's legal position and status shall be as if this Ordinance had never been adopted.

Section 9. Severability. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

Section 10. Consideration. Consideration for the grant of this franchise are the mutual covenants, conditions, and privileges provided herein, including, but not limited to, Grantor's authorization of Grantee's access to Grantor's rights-of-way within the Franchise Territory and expenditures made by Grantee in reliance thereupon, Grantee's collection and remittance of franchise fees to Grantor, and the benefits to be enjoyed by the residents and inhabitants of, and visitors to, the Franchise Territory.

Section 11. Acceptance by Grantee. As a condition precedent to this Ordinance taking effect, Grantee shall file its acceptance hereof with the Escambia County Clerk of the Court within sixty (60) days after acceptance of this franchise by majority vote of the governing body of Grantee and filing with the Department of State as required by law, and thereupon this Ordinance shall take effect upon receipt of official acknowledgment that this Ordinance has been filed with that office. This Ordinance and Grantee's acceptance of it shall be filed as an interlocal agreement with the Escambia County Clerk of Court.

NOW AND ENACTED this 11th day of July, 2013.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

BY: Gene M. Valentino
Gene M. Valentino, Chairman

ATTEST: PAM CHILDERS
CLERK OF THE CIRCUIT COURT



BY: Pam Childers
Deputy Clerk

This document approved as to form
and legal sufficiency

By [Signature]
Title ASST. COUNTY ATTORNEY
Date JUNE 25, 2013

Date Executed

July 11, 2013

ENACTED: July 11, 2013

FILED WITH DEPARTMENT OF STATE: July 17, 2013

EFFECTIVE: See Section 11