

**GULF BREEZE CITY COUNCIL**  
**REGULAR MEETING AGENDA**

**OCTOBER 5, 2015**  
**MONDAY, 6:30 P.M.**  
**COUNCIL CHAMBERS**

1. **ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE**

2. **APPROVAL OF MINUTES**

September 21, 2015, Regular Council meeting  
September 21, 2015, Community Redevelopment Agency meeting

3. **PROCLAMATIONS AND PRESENTATIONS**

None

4. **RESOLUTIONS AND ORDINANCES**

Ordinance No. 06-15                      An Ordinance amending the Retirement Plan and Trust for the  
Police Officers of the Gulf Breeze Police Department  
*(FIRST READING)*

Resolution No. 28-15                      Approving the issuance of not to exceed \$40,000,000 in bonds  
by Capital Trust Agency for the Tapestry Tallahassee Senior  
Living Project

**PUBLIC HEARING REGARDING**

Resolution No. 27-15                      Approving increasing water and sewer rates and  
implementing a three percent (3%) surcharge for South  
Santa Rosa Utility System utility customers

5. **CONSENT AGENDA ITEMS\***

- A.      Approval to purchase one rubberized speed hump kit and one temporary speed hump at a cost of \$3,170 for trial use as a traffic calming solution
  
- B.      Approval of special event application by Gulf Breeze United Methodist Church for a block party to be held on Sunday, October 25, 2015

\*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.

6. **ACTION AGENDA ITEMS**

A. Approval of an amendment to the bylaws of the Fairpoint Regional Utility System

B. Discussion regarding FY16 Tourist Development Council (TDC)

7. **NEW ITEMS**

8. **INFORMATION ITEMS**

9. **PUBLIC FORUM**

10. **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 recognition from the Chair. If you are a person with a disability who needs accommodation in order to participate in a public hearing you are entitled to the provision of certain assistance. Please contact the City Clerk's office at (850) 934-5115 or at 1070 Shoreline Drive, Gulf Breeze at least one (1) week prior to the date of the public hearing.



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

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Resolution No. 19-15: Approving a plan of finance for the CampoFelice Senior Living Facility and the issuance of up to \$65,000,000 in Capital Trust Agency Bonds.

Councilwoman Bookout moved for approval of Resolution No. 19-15. Councilman Landfair seconded. The vote for approval was unanimous.

**PUBLIC HEARING:**

Resolution No. 22-15: Establishing a Millage Rate of 1.9723

The Mayor opened the Public Hearing. No comments were made by the public. The Public Hearing was closed. Councilwoman Fitch moved for approval of Resolution No. 22-15. Councilman Landfair seconded. The vote for approval was unanimous. The Resolution was approved at 6:50 p.m.

Resolution No. 23-15: Adopting a Budget for Fiscal Year 2016

The Mayor opened the Public Hearing. No comments were made by the public. The Public Hearing was closed. Councilwoman Bookout moved for approval of Resolution No. 23-15. Councilwoman Fitch seconded. The vote for approval was unanimous. The Resolution was approved at 6:52 p.m.

Resolution No. 25-15: Supporting the Florida Department of Transportation permanent closure of the Starbucks median crossing and installation of a 245 foot turn lane for east bound traffic on US Highway 98 East of Andrew Jackson Trail

Councilwoman Bookout moved for approval of Resolution No. 25-15. Councilwoman Fitch seconded. The vote for approval was unanimous.

**CONSENT AGENDA ITEM(S):**

- A. Approving a change order in the amount of \$29,700 to Utility Service Company for the installation of 1720 feet of 6' forcemain for the Nightingale Forcemain Project.

Reference: Assistant Director of Public Services memo dated September 11, 2015

Recommendation: That the City Council approve the change order in the amount of \$29,700 to Utility Service Company for the installation of 1720 feet of 6' forcemain for the Nightingale Forcemain Project.

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

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- B. Authorizing the sole source purchase of the fill station, storage cylinders and installation from Municipal Emergency Services (MES) for an amount not to exceed \$19,999.

Reference: Fire Chief memo dated September 11, 2015

Recommendation: That the City Council authorize the sole source purchase of the fill station, storage cylinders and installation from MES for a total not to exceed \$19,999.

- C. Accepting the City's annual flood plan management status report.

Reference: Director of Community Services memo dated September 11, 2015

Recommendation: That the City Council accept the annual status report on the City's Flood Plan Management.

- D. Appointment of Ben Zimmern to the Board of Adjustment and advertisement for volunteers to fill vacancies on the Development Review Board and Board of Adjustment.

Reference: City Clerk memo dated September 11, 2015

Recommendation: That the City Council appoint Ben Zimmern from an alternate position to a full time board member on the Board of Adjustment and advertise for volunteers to fill vacancies on the Development Review Board and Board of Adjustment.

Councilman Landfair moved for approval of Consent Agenda Items A through D. Councilwoman Fitch seconded. The vote for approval was unanimous.

\*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. Approval of workers' compensation proposal from the Florida League of Cities Municipal Insurance Trust (FMIT) for the period beginning October 1, 2015.

Reference: Deputy City Manager memo dated September 11, 2015

Recommendation: That the City Council accept the proposal for workers' compensation insurance from FMIT for the period beginning October 1, 2015.

Councilwoman Bookout made a motion to approve staff's recommendation. Councilwoman Fitch seconded. The vote for approval was unanimous.

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

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- B. Approval of an interlocal agreement with Santa Rosa County, City of Milton, and the Town of Jay for the distribution of the Local Option Gas Tax.

Reference: Deputy City Manager memo dated September 18, 2015

Recommendation: That the City Council approve the interlocal agreement between Santa Rosa County, the City of Milton, and the Town of Jay regarding the Local Option Gas Tax as presented.

Councilman Landfair made a motion to approve staff's recommendation. Councilwoman Fitch seconded. The vote for approval was unanimous.

Mayor Dannheisser suspended the City Council meeting at 6:58 p.m. for the Council to meet as the Community Redevelopment Agency Board of Directors. Mayor Dannheisser reconvened the council meeting at 7:05 p.m.

**NEW BUSINESS:** None

**INFORMATION ITEMS:** None

**PUBLIC FORUM:** Tom Naile, 112 Windsor Court, Gulf Breeze, inquired about the new turn lane on Hwy 98, the SSRUS 3% surcharge and the operation agreements with Integrity Golf as it pertains to re-employment of current Tiger Point staff.

**ADJOURNMENT:** Mayor Dannheisser adjourned the meeting at 7:23 p.m.

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Leslie A. Guyer, City Clerk

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Matt E. Dannheisser, Mayor

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

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A meeting of the Board of Directors for the Community Redevelopment Agency, Gulf Breeze, Florida, was convened at the Gulf Breeze City Hall Council Chambers on Wednesday, September 21, 2015, at 6:58 p.m.

The following members were present: Councilwoman Renee Bookout, Councilwoman Cherry Fitch, Councilman David G. Landfair, and Mayor Matt Dannheisser. Mayor Pro Tem Joseph Henderson was not in attendance.

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

**ACTION AGENDA ITEM:**

- A. Approval to retain a consultant to review and provide input on the Request for Proposal for the new Pensacola Bay Bridge design build plan

Reference: Deputy City Manager memo dated September 18, 2015

Recommendation: That Community Redevelopment Board authorize a change order in the amount of \$4,500 to Vanasse Hangen Brustlin, Inc. (VHB) to review the raft-design build request for proposal for the Pensacola Bay Bridge replacement and provide a written recommendation to be considered by the Florida Department of Transportation.

Councilman Landfair made a motion to approve staff's recommendation. Councilwoman Fitch seconded. The vote for approval was unanimous.

**NEW ITEMS:** None

**PUBLIC FORUM:** None

**ADJOURNMENT:** Mayor Dannheisser adjourned the meeting at 7:05 p.m.

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Leslie A. Guyer, City Clerk

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Matt E. Dannheisser, Mayor

The Gulf Breeze City Council held an Executive Meeting at Gulf Breeze City Hall on Wednesday, September 30, 2015, at 6:30 p.m.

### **ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE:**

Upon call of the roll the following Councilmembers were present: Councilwoman Renee Bookout, Councilwoman Cherry Fitch, Mayor Pro Tem Joseph Henderson, Councilman David G. Landfair, and Mayor Matt Dannheisser.

### **PROCLAMATIONS**

None

### **RESOLUTIONS AND ORDINANCES**

- A. Adoption of Ordinance No. 06-15 amending the retirement plan and trust for the police officers of the City of Gulf Breeze

Reference: City Manager memo dated September 23, 2015

Recommendation: That the City Council approve Ordinance No. 06-15 on First Reading on Monday, October 5, 2015, and schedule a second reading and public hearing for October 19, 2015.

Mayor Pro Tem Henderson made a motion to place staff's recommendation on the October 5, 2015, Regular Meeting agenda. Councilman Landfair seconded. The vote for approval was unanimous.

- B. Adoption of Resolution No. 27-15 increasing water and sewer rates and implementing a 3% surcharge for South Santa Rosa Utility System utility customers and holding a Public Hearing on said Resolution on Monday, October 5, 2015

Reference: Deputy City Manager memo dated September 25, 2015

Recommendation: That the City Council approve Resolution No. 27-15 establishing new water and sewer rates for South Santa Rosa Utility System utility customers including the 3% surcharge, and that said rates become effective for bills issued after October 6, 2015.

Mayor Dannheisser advised that a public hearing will be held on October 5, 2015, and the resolution will be considered for adoption following the hearing. There were no objections.

### **ACTION AGENDA ITEMS**

- A. Approval of an amendment to the bylaws of the Fairpoint Regional Utility System

Reference: City Manager memo dated September 24, 2015

Recommendation: That the City Council direct staff to draft a resolution approving the amendment to the Bylaws of Fairpoint Regional Utility System and that said resolution be adopted on October 19, 2015.

The Council was advised that the amendment provided with their agenda packets had since been revised. The Deputy City Manager advised that the revised amendment would be distributed along with the October 5, 2015, Regular Meeting agenda packet.

Councilwoman Fitch made a motion to place staff's recommendations on the October 5, 2015, Regular Meeting agenda. Councilwoman Bookout seconded. The vote for approval was unanimous.

- B. Approval to purchase one rubberized speed hump kit and one temporary speed hump at a cost of \$3,170 for trial use as a traffic calming solution

Reference: Assistant to City Manager memo dated September 25, 2015

Recommendation: That the City Council approve the purchase of one rubberized speed hump kit and one temporary speed hump at a total of \$3,170.00 for trial use in traffic calming solutions.

Councilman Landfair made a motion to place staff's recommendations on the October 5, 2015, Regular Meeting agenda. Mayor Pro Tem Henderson seconded. The vote for approval was unanimous.

- C. Approval of special event application by Gulf Breeze United Methodist Church for a block party to be held on Sunday, October 25, 2015

Reference: Deputy Chief memo dated September 24, 2015

Recommendation: That the City Council approve the Gulf Breeze United Methodist Church block party request.

Councilwoman Fitch made a motion to place staff's recommendations on the October 5, 2015, Regular Meeting agenda. Councilman Landfair seconded. The vote for approval was unanimous.

- D. Consideration of FY16 Tourist Development Council (TDC) Budget and preparation of a financial plan for tourist development activities

Reference: Deputy City Manager memo dated September 25, 2015

Recommendation: That the City Council consider allocation of TDC funding and authorize staff to prepare a plan for Fiscal Year 2016.

Mayor Dannheisser asked the Council to consider possible projects and expenditures for the TDC budget for discussion at the October 5, 2015, Regular Meeting. No action was taken on this item.

### **NEW ITEMS**

- A. Adoption of Resolution No. 28-15 modifying the plan of finance for the Tapestry Tallahassee Assisted Living and Memory Care Facility

Reference: Verbal report from City Attorney

Mayor Dannheisser advised that the resolution will be considered for adoption at the October 5, 2015, Regular Meeting. There were no objections.

### **INFORMATION ITEMS**

The Deputy City Manager provided the Council with a Stormwater Status Report detailing the rainfall on September 28, 2015. The report outlined how recent stormwater drainage improvements performed as well as discussed areas that experienced flooding issues and the coordinated effort of several departments.

### **PUBLIC FORUM**

Alan and Stacy Sullivan, 417 Montrose Boulevard, distributed a letter with attachments and discussed rainwater runoff issues with the new house being built at 412 Fairpoint Drive and the City property located at 2 Berry. Mayor Dannheisser asked that Staff investigate the matter and prepare a report prior to the October 5, 2015, Regular Meeting.

Jim Cox, 423 Williamsburg Drive, Gulf Breeze

### **COUNCIL COMMENTS:**

**ADJOURNMENT** Mayor Dannheisser adjourned the meeting at 7:02 p.m.

**ORDINANCE NO. 06-15**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, AMENDING THE RETIREMENT PLAN AND TRUST FOR THE POLICE OFFICERS OF THE CITY OF GULF BREEZE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council established a Retirement Plan and Trust for the Police Officers of the City of Gulf Breeze pursuant to Ordinance Number 04-96; and,

**WHEREAS**, the Retirement Plan and Trust was executed on January 2, 1996; and,

**WHEREAS**, Section 8.01 of the Plan and Trust authorizes the City Council to amend the Plan and Trust, in whole or in part, either retroactively or prospectively, by delivery to the Trustee a written amendment in accordance with the limitations set out in the section; and,

**WHEREAS**, on February 3, 2014 the City Council adopted Ordinance Number 01-14 that amended the Plan and Trust, in part, by providing that calculation of benefits is limited to "base pay"; and

**WHEREAS**, the City Council now desires to amend the Plan and Trust by providing clarification and definition of "base pay".

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Gulf Breeze, as follows:

**SECTION 1:**

The Retirement Plan and Trust dated as of January 2, 1996, is hereby amended as follows:

The calculation of benefits is limited to base pay, which is hereafter defined as (i) annual base salary to include used vacation leave, sick leave and compensatory time; (ii) earned educational incentive; and (iii) holiday pay. Base pay does not include overtime, temporary assignments such as SRO and FTO and any payouts for accrued vacation and/or sick leave.

**SECTION 2: SEVERABILITY**

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by any court of competent jurisdiction to be unconstitutional, inoperative, invalid or void, then said holding shall in no manner effect the validity of the remaining portions of this Ordinance.

**SECTION 3: CONFLICT**

The provisions of this Ordinance shall be deemed to control and prevail over any ordinance or portion thereof in conflict with the terms herein.

**SECTION 4: EFFECTIVE DATE**

This Ordinance shall become effective upon its adoption by the City Council of the City of Gulf Breeze.

PASSED ON FIRST READING ON THE 5<sup>th</sup> DAY OF OCTOBER, 2015.

PUBLISHED ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2015.

PASSED AND ADOPTED ON THE SECOND READING ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2015.

CITY OF GULF BREEZE, FLORIDA

\_\_\_\_\_  
MATT E. DANNHEISSER, MAYOR

ATTEST:

\_\_\_\_\_  
STEPHANIE D. LUCAS, CITY CLERK OR  
LESLIE GUYER, CITY CLERK

# CAPITAL TRUST AGENCY

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315 Fairpoint Drive • Gulf Breeze, Florida 32561 • Office 850-934-4046 • Fax 850-934-4048

October 1, 2015

Memo to: Mayor, City Council, and City Manager  
From: Ed Gray

Request for City Council adoption of Resolution 28-15  
Approving the issuance of not to exceed \$40,000,000 in bonds by the Capital Trust  
Agency – Tallahassee Tapestry Senior Community Project

Earlier this year, the City Council adopted Resolution 08-15 approving the issuance of \$35,000,000 in bonds by the Capital Trust Agency for a senior assisted living facility project in Tallahassee. This prior plan of finance contemplated project ownership by a nonprofit corporation and the management of the facility by a company affiliated with the developer of the project. Bond documents and related financing instruments were very close to complete to allow for the sale of the bonds. In recent weeks, however, the structure has been altered to utilize an allocation of private activity bonds reserved to CTA by the state in lieu of issuing bonds associated with a not for profit entity. Additionally, ownership of the LLC created to own the facility will be a for profit company associated with the developer and manager involved in the project from its inception. By utilizing this structure, the plan of finance is improved due to the for profit owner having greater capability to provide equity as necessary added capital to supplement the bond proceeds. The project scope and design has been finalized with the expectation additional bond proceeds will be necessary. The requested not to exceed amount for bonds to be issued by CTA is \$40,000,000. This project remains a positive addition to the services to be made available to the Tallahassee community. As previously reported, the City of Tallahassee has granted TEFRA approval and the intended change in use of the site, currently a hotel, has been endorsed by the City as positive for the land use.

This request is made to the City Council in an expeditious manner in order to facilitate the bonds being offered to the market by mid October in advance of any impact market volatility may have on the project feasibility. We appreciate the Council's consideration of this resolution adoption.

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RESOLUTION NO. 28-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, SUPPLEMENTING A RESOLUTION ENTITLED "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, DEVELOPMENT, INSTALLATION AND EQUIPPING OF A SENIOR LIVING FACILITY LOCATED IN THE STATE OF FLORIDA; APPROVING THE ISSUANCE NOT EXCEEDING \$35,000,000 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;" PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING FOR A SEVERABILITY CLAUSE, A REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of the City of Gulf Breeze, Florida (the "City"), a municipal corporation of the State of Florida (the "State"), 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. 64 (collectively, the "Enabling Agreement"), approving the creation of the Capital Trust Agency (the "Agency"), a legal entity and public agency of the State, organized and existing under the provisions of Chapter 163, Part I, and Chapter 159, Part II, Florida Statutes, Ordinance No. 05-97 duly enacted by the City Council, 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 and refinancing, including through reimbursement, certain beneficial projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, on February 18, 2015, the Agency adopted Resolution No. 02-15 (the "Agency Inducement Resolution") authorizing the issuance of not to exceed \$35,000,000 of its revenue bonds (the "Bonds") in one or more series, either taxable or tax-exempt, or both, and agreeing to loan the proceeds thereof to Tallahassee NHHL, LLC, a Florida limited liability company, or one or more of its affiliates (as applicable, the "Borrower"), for the primary purpose of acquiring, constructing, developing, furnishing and equipping of an approximately 149-unit senior living facility comprised of approximately 105 assisted living units and approximately 44 assisted living units providing memory care services for the elderly, including related facilities, fixtures, furnishings and equipment, to be known as Tapestry Tallahassee Assisted Living and Memory Care Facility, located at 2516 West Lakeshore Drive, City of Tallahassee, Leon County, Florida 32312 (the "Senior Living Facility"); and

**WHEREAS**, on March 16, 2015, the City Council adopted Resolution No. 08-15 (the "City Approval Resolution"), approving a Plan of Finance as therein described and the issuance of Bonds in the aggregate principal amount not to exceed \$35,000,000, and pursuant to the Enabling Agreement, approved Amendment No. 63 to Interlocal Agreement to effect the approvals set forth in the City Approval Resolution (the "Amendment No. 63"), and provided for certain other approvals as therein described; and

**WHEREAS**, pursuant to the Agency Inducement Resolution, the Agency adopted Resolution No. 04-15 on April 2, 2015, approving the issuance of its Health Care Facility Revenue Bonds (Tapestry Tallahassee Assisted Living and Memory Care Project), Series 2015, in an aggregate principal amount not to exceed \$35,000,000 and providing for certain other approvals and designations as therein described; and

**WHEREAS**, at the request of the Borrower, the Agency now desires to issue the Bonds in an aggregate principal amount not to exceed \$40,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing of the Senior Living Facility) and has requested the City amend the City Approval Resolution and Amendment No. 63 to reflect such revised not to exceed amount; and

**WHEREAS**, the City desires to approve the issuance of the Bonds in an aggregate principal amount not to exceed \$40,000,000 and to approve a corresponding amendment to Amendment No. 63.

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

SECTION 1. DEFINITIONS. Unless the context otherwise requires, terms used in this resolution in capitalized form and not otherwise defined shall have the meanings specified in the City Approval Resolution.

SECTION 2. AUTHORITY FOR THIS SUPPLEMENTAL RESOLUTION. This resolution which is referred to herein as the "Supplemental Resolution," is adopted pursuant to and under the authority of the Act.

SECTION 3. BONDS APPROVED. The issuance by the Agency of not exceeding \$40,000,000 aggregate principal amount of revenue bonds for all purposes of the Enabling Agreement, as amended, and for all purposes of the Original Resolution is hereby approved.

SECTION 4. FIRST AMENDMENT TO AMENDMENT NO 63 TO INTERLOCAL AGREEMENT APPROVED. Pursuant to the Enabling Agreement, there is hereby approved the execution and delivery of a First Amendment to Amendment No. 63 to Interlocal Agreement (the "First Amendment") to effect the approval set forth in Section 3 hereof. Such First

Amendment shall be in substantially the form attached hereto as Exhibit "A," 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, his execution thereof to conclusively establish such approval.

SECTION 5. SEVERABILITY. In case any one or more of the provisions of this Supplemental Resolution shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Supplemental Resolution and they shall be construed and enforced without consideration of such illegal or invalid provisions.

SECTION 6. REPEALER. All provisions of resolutions of the City in conflict with the provisions of this Supplemental Resolution, including, but not limited to, the City Approval Resolution, are, to the extent of such conflict, superseded and repealed.

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SECTION 7. EFFECTIVE DATE. This resolution shall take effect immediately upon its adoption this 5<sup>th</sup> day of October, 2015.

**GULF BREEZE, FLORIDA  
CITY COUNCIL**

(SEAL)

By: \_\_\_\_\_  
Matt E. Dannheisser, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Stephanie D. Lucas, City Clerk

**EXHIBIT "A"**

**FORM OF FIRST AMENDMENT TO AMENDMENT NO. 63 TO ENABLING AGREEMENT**

This **FIRST AMENDMENT TO AMENDMENT NO. 63 TO INTERLOCAL AGREEMENT** (this "First Amendment") is made and entered into as of the 5<sup>th</sup> day of October, 2015, 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**, pursuant to an Interlocal Agreement, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 64 (collectively, the "Enabling Agreement"), the parties hereto have 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**, Tallahassee NHHI, LLC, a Florida limited liability company, or one or more of its affiliates (as applicable, the "Borrower"), has represented to the Agency that, acting for itself or through its affiliates, it is engaged in, among other things, acquiring, constructing, developing, improving, furnishing, equipping and owning senior living facilities; and

**WHEREAS**, on February 18, 2015, the Agency approved a request by the Borrower that the Agency issue its revenue bonds (the "Bonds") in a principal amount not to exceed \$35,000,000 and loan the proceeds thereof to the Borrower, for the purpose, among other things, of financing, including through reimbursement, the acquisition, construction, development, installation and equipping of an approximately 149-unit senior living facility comprised of approximately 105 assisted living units and approximately 44 assisted living units providing memory support services for the elderly, including the site therefor and related facilities, fixtures, furnishings and equipment to be known as Tapestry Tallahassee Assisted Living and Memory Care Facility located in the State of Florida (the "Senior Living Facility"); 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, a 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; and

**WHEREAS**, pursuant to Resolution No. 08-15 adopted by Gulf Breeze on March 16, 2015, and Resolution No. 07-15 adopted by Century on March 16, 2015 (collectively, the "Approval Resolutions"), Gulf Breeze and Century entered into Amendment No. 63 to Interlocal Agreement dated as of March 16, 2015 ("Amendment No. 63"), with respect to the financing herein described; and

**WHEREAS**, the Agency now desires to issue the Bonds in an aggregate principal amount not to exceed \$40,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing of the Senior Living Facility) and has requested Gulf Breeze and Century to amend their respective Approval Resolutions and to amend Amendment No. 63 to reflect such revised not to exceed amount; and

**WHEREAS**, pursuant to Resolution No. 28-15 and Resolution No. 16-15, each adopted October 5, 2015, by Gulf Breeze and Century, respectively, Gulf Breeze and Century have amended their respective Approval Resolutions to provide for the issuance of the Bonds in an amount not to exceed \$40,000,000; and

**WHEREAS**, the Parties desire to amend Amendment No. 63 to authorize the Agency issue the Bonds in an amount not to exceed \$40,000,000;

**NOW, THEREFORE**, the Parties hereby agree as follows:

**SECTION 1. FIRST AMENDMENT TO AMENDMENT NO. 63 TO INTERLOCAL AGREEMENT.**

This First Amendment to Amendment No. 63 to Interlocal Agreement is entered into pursuant to Section 7 of the Enabling Agreement for the purpose of authorizing the Agency to issue the Bonds in an amount not to exceed \$40,000,000.

**SECTION 2. BONDS APPROVED.**

The Parties do hereby approve and authorize the issuance of Bonds from time to time, in one or more series, either taxable or tax-exempt, or both, in an aggregate principal amount not to exceed \$40,000,000 (the exact amount to be determined by an appropriate official of the Agency to be sufficient to enable the financing, including through reimbursement, of the Senior Living Facility).

**SECTION 3. AMENDMENT NO. 63 CONTINUED.**

Amendment No. 63, as amended hereby, is hereby ratified, confirmed and approved and shall otherwise continue in full force and effect. Nothing in this First Amendment shall be deemed to adversely affect the authorizations in the Enabling Agreement or Amendment No. 63 as the same existed prior to the effective date of this First Amendment, 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 Amendment No. 63 is hereby incorporated by reference.

**SECTION 4. 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 5. COUNTERPARTS.**

This First 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 6. EFFECTIVE DATE; AMENDMENTS.**

This First Amendment shall take effect when duly executed by the Parties and filed in accordance with law. This First 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 First Amendment to Amendment No. 63 to Interlocal Agreement to be executed by their duly authorized officers as of the date first above written.

**CITY OF GULF BREEZE, FLORIDA**

[SEAL]

By: \_\_\_\_\_  
Matt E. Dannheisser, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Stephanie D. Lucas, City Clerk

[Signature Page to First Amendment to Amendment No. 63 to Interlocal Agreement]

TOWN OF CENTURY, FLORIDA

[SEAL]

By: \_\_\_\_\_  
Freddie W. McCall, Sr., Mayor

ATTEST:

By: \_\_\_\_\_  
Leslie Gonzalez, Town Clerk

[Signature Page to First Amendment to Amendment No. 63 to Interlocal Agreement]

# City of Gulf Breeze

## Memorandum

**To:** Edwin A. Eddy, City Manager

**From:** Curt Carver, Deputy City Manager

**Date:** 10/2/2015

**Subject:** SSRUS Water and Sewer Rates

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Enclosed please find Resolution 27-15 which provides for an increase to water and sewer rates for SSRUS customers. The increase has two components to it. The first component is a 4.1% increase on volumetric rates and certain base fees. This increase was the recommendation of the SSRUS Board at their August 10<sup>th</sup> meeting that the utility system yield a 5% operational margin. This goal came out of an earlier study prepared by the Florida Rural Water Association that advocated a 15% margin. The 5% margin recommended by the SSRUS Board represented the first phase of an effort to reach the study's recommended operational margin.

The second component of the rate adjustment is a 3% surcharge that is authorized by F.S. 180.191. This section provides that municipalities which operate a water and sewer utility outside its boundaries may charge rates, fees and charges to customers outside the boundaries that are just and equitable and which are based on the same factors used in fixing the rates, fees and charges for customers inside the municipal boundaries. In addition thereto, the municipality can impose a surcharge of not more than 25% of the rates, fees and charges, provided that the total of such rates, fees, and charges for customers outside the boundaries are not more than 50 % in excess of the total amount of the charges for customers inside the city for corresponding service.

The concept for the proposed surcharge came out of recent budget workshops. Discussions reflected the City Council's belief that the utility benefits from the City's ownership of the utility and that SSRUS customers were not subject to the 5% Municipal Public Service Tax (MPST) currently paid by City residents on water and sewer charges. Therefore, the surcharge represents an effort to equitably share in the cost of government services offered to city residents and non-residents alike.

You might recall that we previously surveyed a number of municipalities in Northwest Florida which operate water and/or sewer utilities outside of their boundaries. We inquired whether they added a surcharge. Staff found that the majority of the cities contacted added a surcharge of either 20% or 25%. In Santa Rosa County, both Milton and Jay add a surcharge. The surcharge the City is contemplating is only 3%.

There are a number of reasons for the implementation of the surcharge. These include:

1. The utility benefits from the City’s ownership and management of the utility. These benefits include the ability to issue tax exempt financing, thereby reducing the cost of system debt. The tax exempt status of the City and the operational integration with the City’s utility reduce total system expense, which would not be the case if the system was privately owned as was the case prior to City acquisition of SSRUS.
2. In the City, residents pay ad valorem taxes to both the City and Santa Rosa County. Residents of the County receive a benefit from City provided services. In recognition of this “dual taxation”, Santa Rosa County pays the City “municipal aid”. In recent years, the total amount of this assistance has declined from approximately \$300,000 per year to \$55,000 per year
3. Many City services benefit SSRUS residents without cost. This includes City parks and recreational facilities, and such programs as the Middle School After School program, that are used at no additional cost. The Police Department facilitates traffic movement through the City, which benefits the region. City residents pay for these services in part, through ad valorem taxes.
4. SSRUS customers do not pay a Municipal Public Service Tax (MPST) to the utility, which City customers do.
5. The proposed surcharge is equitable and well below that which is authorized by F.S. 180.191.

The proposed rates are outlined on Exhibit A of the ordinance. The impact of the increase on a monthly bill will vary with consumption. The tables below represents the additional cost of the 4.1% increase plus the surcharge for a typical residential user on both water and sewer depending on their monthly usage:

**4.1% Increase**

<b>Volume</b>	<b>SSRUS Current</b>	<b>SSRUS Proposed</b>	<b>Difference</b>
1,000 Gallons	\$39.14	\$40.74	\$1.60
3,000 Gallons	\$54.70	\$56.94	\$2.24
5,000 Gallons	\$70.26	\$73.14	\$2.88
8,000 Gallons	\$93.60	\$97.44	\$3.84
10,000 Gallons	\$109.16	\$117.04	\$4.48

### 4.1% Increase + Surcharge

Volume	SSRUS Current	SSRUS Proposed	Difference
1,000 Gallons	\$39.14	\$41.97	\$2.83
3,000 Gallons	\$54.70	\$58.65	\$3.95
5,000 Gallons	\$70.26	\$75.33	\$5.07
8,000 Gallons	\$93.60	\$100.36	\$6.76
10,000 Gallons	\$109.16	\$117.04	\$7.88

It is anticipated that the SSRUS recommended rate increase will generate an additional \$204,300 in revenues yielding the desired 5% operating margin. The surcharge is expected to generate \$155,600 in additional revenues. If both components of this proposal are implemented, a SSRUS customer using 5,000 gallons of water and sewer a month, will be billed a total of 6.6% higher than a comparable City customer after taking into account the 5% MPST. At 10,000 gallons, this difference is 5.5%. Obviously this difference is reduced should the City increase the MPST on City ratepayers as contemplated during the budget process earlier this year. Should you have any questions, please do not hesitate to contact me.

**Recommendation: That the City Council approve Resolution Number 27-15 establishing new water and sewer rates for SSRUS, to include the 3% surcharge, and that said rates become effective for bills issued after October 6, 2015.**

Enclosure

## RESOLUTION 27-15

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, INCREASING WATER AND SEWER RATES AND IMPLEMENTING A THREE PERCENT (3%) SURCHARGE FOR UTILITY CUSTOMERS IN THE SOUTH SANTA ROSA UTILITY SYSTEM.**

**WHEREAS**, the City of Gulf Breeze (City) provides water, sewer and reclaimed water service, outside the boundaries of the City, to the residents within the South Santa Rosa Utility System (SSRUS) and must rely upon rates to pay for the costs to operate the water, sewer and reclaimed water services and provide for adequate reserves; and,

**WHEREAS**, the City Council has determined that operating costs of the SSRUS, including but not limited to, personnel costs, equipment maintenance and energy costs have increased; and,

**WHEREAS**, the SSRUS Board has recommended that water and sewer rates be increased to produce an annual operating margin of 5%; and

**WHEREAS**, the City Council recognizes that SSRUS customers benefit from City ownership and management of SSRUS through its ability to issue tax exempt financing and the continued maintenance of the non-profit status of the utility; and

**WHEREAS**, Section 180.191(1)(b), Florida Statutes authorizes a municipality operating a water and sewer utility outside of its boundaries to impose a surcharge of not more than twenty-five percent (25%) of its rates, fees and charges; and

**WHEREAS**, the City Council has determined that a three percent (3%) surcharge on all SSRUS charges in accordance with Section 180.191(1)(b), Florida Statutes is just and equitable and is based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries; and,

**WHEREAS**, the City Council held a Public Hearing on Monday, October 5, 2015 on the proposed rate increase and surcharge.

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

**SECTION 1:** The water, sewer and reclaimed water charges for the SSRU are hereby established as listed in Exhibit 'A' attached hereto

**SECTION 2:** That a three percent surcharge (3%) shall be calculated and charged on all water, sewer and reclaimed rates to SSRUS customers.

**SECTION 3:** That the new rates listed on Exhibit 'A' and the surcharge referred to in Section 2 of this Resolution 27-15 shall be imposed on water, sewer and reclaimed charges accruing on or after October 6, 2015.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, SANTA ROSA COUNTY, FLORIDA** on this \_\_\_\_\_ day of October, 2015.

\_\_\_\_\_  
Matt E. Dannheisser, Mayor

ATTEST

\_\_\_\_\_  
Stephanie D. Lucas, City Clerk or  
Leslie A. Guyer, City Clerk

## RESOLUTION 27-15

### Exhibit A

#### VOLUMETRIC RATES PER THOUSAND GALLONS

	Current	Increase	2016
Water	\$3.36	\$0.14	<b>\$3.50</b>
Sewer	\$4.42	\$0.18	<b>\$4.60</b>

#### Residential and Commercial - Water Base Fee

Meter Size	2015 Base Fee	Increased By	2016 Base Fee
3/4"	\$13.90	\$0.57	<b>\$14.47</b>
1"	\$25.27	-\$0.05	<b>\$25.22</b>
1 1/2"	\$64.62	-\$3.31	<b>\$61.31</b>
2"	\$104.67	-\$6.64	<b>\$98.03</b>
3"	\$211.52	-\$16.55	<b>\$194.97</b>
4"	\$318.37	-\$26.45	<b>\$291.92</b>
6"	\$631.48	-\$58.24	<b>\$573.24</b>

#### Residential and Commercial - Sewer Base Fee

Meter Size	2015 Base Fee	Increased By	2016 Base Fee
3/4"	\$17.46	\$0.72	<b>\$18.18</b>
1"	\$31.71	-\$0.19	<b>\$31.52</b>
1 1/2"	\$75.22	-\$4.06	<b>\$71.16</b>
2"	\$120.53	-\$8.53	<b>\$112.00</b>
3"	\$240.65	-\$21.86	<b>\$218.79</b>
4"	\$360.67	-\$37.69	<b>\$322.98</b>
6"	\$707.97	-\$87.20	<b>\$620.77</b>

#### Reclaimed Rates

	2015 Base Fee	Increased By	2016 Base Fee
	\$6.00	\$0.00	<b>\$6.00</b>



# City of Gulf Breeze

OFFICE OF THE CITY MANAGER

## Memorandum

To : Mayor and City Council

From : Edwin A. Eddy, City Manager

Date : September 24, 2015

Subject: **Amendment to Bylaws of Fairpoint Regional Utility**

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The Board of Directors voted unanimously to amend the Bylaws for Fairpoint Regional Utility System to allow meetings of the Board to be held at the place of business of any of the three members of the corporation. Previous to the amendment, the Bylaws were construed to state that meetings of the Board had to be held at Holley-Navarre Utility.

Any amendment to Bylaws must be approved by the City Council.

### **RECOMMENDATION:**

**THAT THE CITY COUNCIL DIRECT STAFF TO DRAFT A RESOLUTION APPROVING THE AMENDMENT TO THE BYLAWS OF THE FAIRPOINT REGIONAL UTILITY SYSTEM AND THAT SAID RESOLUTION BE ADOPTED ON OCTOBER 19, 2015.**

**AMENDMENT TO THE BYLAWS OF  
FAIRPOINT REGIONAL UTILITY SYSTEM, INC.**

**Preamble**

**WHEREAS**, FAIRPOINT REGIONAL UTILITY SYSTEM, INC. is a Florida not –for-profit Corporation pursuant to Florida Statutes Chapter 617 (“Corporation”) and,

**WHEREAS**, the Corporation has decided to amend Section 2(c) of the Corporation’s By-Laws effective upon the adoption of this Amendment to the By-Laws of Fairpoint Regional Utility System, Inc. (“Amendment”) and that the adoption of the Amendment is in the best interests of the Corporation; and,

**WHEREAS**, this Amendment is to be adopted by all of the members of the Corporation, pursuant to Article VII of the Articles of Incorporation.

**NOW, THEREFORE**, in consideration of the aforementioned, the members of the Corporation agree as follows:

1. Section 2(c) of the By-Laws of the Corporation dealing with meetings of the Corporation is amended to read:

Any annual, special, or regular meeting of the Corporation shall occur either at the principal place of business of the Corporation or at the principal place of business of any of the Corporation’s three members.

2. This Amendment is effective upon its adoption by the members of the Corporation.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

**CERTIFICATION**

WE, THE UNDERSIGNED, hereby certify that we are the duly elected Members of FAIRPOINT REGIONAL UTILITY SYSTEM, INC., a Florida not-for-profit corporation, and this Amendment is hereby adopted per the Corporation's Articles of Incorporation and Chapter 617, Florida Statutes.

**Date of Adoption** of the Amendment was adopted this \_\_\_\_\_ of \_\_\_\_\_, 2015.

**HOLLEY-NAVARRE WATER SYSTEM INC.,  
a Florida not-for-profit Corporation**

By: \_\_\_\_\_  
**President**

**MIDWAY WATER SYSTEM INC.,  
a Florida not-for-profit Corporation**

By: \_\_\_\_\_  
**President**

**CITY OF GULF BREEZE,  
a Florida Municipal Corporation**

By: \_\_\_\_\_  
**Mayor**

# City of Gulf Breeze

## Memorandum

**To:** Edwin A. Eddy, City Manager

**From:** Curt Carver,  Deputy City Manager

**Date:** 9/25/2015

**Subject:** TDC Budget

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On September 21, 2015 the City Council passed Resolution 23-15, which adopted the final budget for FY16. Tourist Development Council (TDC) revenues and related expenses are interwoven in that larger presentation. As you know, Santa Rosa County levies a tourist development tax pursuant to F.S. 125.0104 on short term occupancies of certain living quarters (i.e. hotels, motels and mobile home parks). These funds are to be used by the County TDC for specific tourist related purposes. The County has agreed that the City is in the best position to allocate these funds for tourist development efforts in the City. Accordingly, each year the City approves a separate budget for this purpose in October and provides that budget to the County so that those revenues can be used locally to promote tourism.

F.S. 125.0104 states that the TDC tax revenues are to be used for specific purposes. The relevant section of the statute is enclosed for information purposes. In the past the City has used TDC revenues to support the Arts Festival, sporting and community events, support to the Chamber of Commerce and other tourist development activities. This year I would suggest that maintenance costs associated with Shoreline Park South and Wayside Park be supported by TDC revenues. Should you have any questions concerning this matter, please do not hesitate to contact me.

**Recommendation:** That the City Council consider allocation of TDC funding and authorize staff to prepare a plan for tourist development for FY16.

Enclosure

5) AUTHORIZED USES OF REVENUE.—

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
  - a. Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county or subcounty special taxing district in which the tax is levied; or
  - b. Aquariums or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied;
2. To promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;
3. To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;
4. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency; or
5. To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river. However, any funds identified by a county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan of the state's Beach Management Plan, pursuant to s. 161.091, or funds contractually obligated by a county in the financial plan for a federally authorized shore protection project may not be used or loaned for any other purpose. In counties of fewer than 100,000 population, up to 10 percent of the revenues from the tourist development tax may be used for beach park facilities.

Subparagraphs 1. and 2. may be implemented through service contracts and leases with lessees that have sufficient expertise or financial capability to operate such facilities.

(b) Tax revenues received pursuant to this section by a county of less than 750,000 population imposing a tourist development tax may only be used by that county for the following purposes in addition to those purposes allowed pursuant to paragraph (a): to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more zoological parks, fishing piers or nature centers which are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public. All population figures relating to this subsection shall be based on the most recent population estimates prepared pursuant to the provisions of s. 186.901. These population estimates shall be those in effect on July 1 of each year.

(c) The revenues to be derived from the tourist development tax may be pledged to secure and liquidate revenue bonds issued by the county for the purposes set forth in subparagraphs (a)1., 2., and 5. or for the purpose of refunding bonds previously issued for such purposes, or both; however, no more than 50 percent of the revenues from the tourist development tax may be pledged to secure and liquidate revenue bonds or revenue refunding bonds issued for the purposes set forth in subparagraph (a)5. Such revenue bonds and revenue refunding bonds may be authorized and issued in such principal amounts, with such interest rates and maturity dates, and subject to such other terms, conditions, and covenants as the governing board of the county shall provide. The Legislature intends that this paragraph be full and complete authority for accomplishing such purposes, but such authority is supplemental and additional to, and not in derogation of, any powers now existing or later conferred under law.

(d) Any use of the local option tourist development tax revenues collected pursuant to this section for a purpose not expressly authorized by paragraph (3)(l) or paragraph (3)(n) or paragraph (a), paragraph (b), or paragraph (c) of this subsection is expressly prohibited.