

RESOLUTION 20-05

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH THE GULF POWER COMPANY FOR THE CONVEYANCE OF LAND NEEDED FOR BAY PARKWAY SEGMENT 2, IN THE BASIC AMOUNT OF \$15,000.

BE IT RESOLVED that the appropriate Officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement between the City and Gulf Power Company, for the purchase and sale of certain real property relating to the Bay Parkway Segment 2 Roadway Project, in the amount of Fifteen Thousand Dollars (\$15,000.00), in substantially the form attached as Exhibit A and presented to the Council, with such changes, insertions or omissions as may be approved by the City Manager and whose execution of such Agreement shall be conclusive evidence of such approval.


THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 10th day of October, 2019.

CITY OF PANAMA CITY BEACH

By 
MIKE THOMAS, MAYOR

ATTEST:


MARY JAN BOSSERT, CITY CLERK

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (“**Agreement**”) is made this ____ day of August, 2019, between Gulf Power Company, a Florida corporation (“**Seller**”) and City of Panama City Beach, a municipal corporation (“**Buyer**”).

NOW, THEREFORE, for and in consideration of the mutual covenants, representations, warranties, and agreements contained herein, and for other good and valuable consideration, Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the following described real property upon the terms and conditions hereinafter set forth:

1. **Description of Property.** Seller has fee simple title to that certain real property located in Bay County, Florida, and more particularly described in Exhibit A attached hereto and by this reference made a part hereof (“**Property**”).

2. **Purchase Price; Deposit; Cash Balance.** The total purchase price for the Property (“**Purchase Price**”), plus or minus prorations and subject to such adjustments as are hereinafter provided, is Fifteen Thousand and No/100 Dollars (\$15,000.00). The Purchase Price shall be payable as follows:

2.1 **Deposit.** Five Hundred and No/100 Dollars (\$500.00) (“**Deposit**”) shall be paid and delivered by Buyer in immediately available U.S. funds by wire transfer to Hand Arendall Harrison Sale, LLC, 600 Grand Panama Blvd, Suite 400, Panama City Beach, Florida 32407 (“**Escrow Agent**” and “**Title Agent**”) within three (3) days after the Effective Date (as defined below in Section 3). Escrow Agent agrees to hold the Deposit in escrow in accordance with the terms of this Agreement.

2.2 **Cash Balance.** Fourteen Thousand Five Hundred and No/100 Dollars (\$14,500.00), plus or minus prorations and subject to such adjustments as are hereinafter provided, shall be paid and delivered by Buyer at or prior to the Closing (as defined below in Section 4) in immediately available U.S. funds by wire transfer to Escrow Agent (“**Cash Balance**”).

If this transaction closes, the Deposit shall be credited against the Purchase Price due hereunder or, in the event this transaction does not close, the Deposit shall be disbursed as otherwise provided herein. Following the expiration of the Inspection Period (as defined below in Section 10), the Deposit shall be non-refundable to Buyer except as may be otherwise expressly provided in this Agreement.

3. **Time for Acceptance & Effective Date.** This offer shall expire and become null and void unless Seller receives a fully executed counterpart from Buyer on or before October 10, 2019 at 5:00 p.m., Central Standard Time, whereupon after that time, this Agreement shall be null and void and of no further force and effect unless Seller otherwise agrees to extend such time period. Execution and delivery shall be defined as the receipt of the fully executed Agreement by Seller by means of the U.S. Mail, delivery by a nationally recognized overnight delivery service, hand delivery or email transmission. In the event delivery is by email transmission, the party delivering this Agreement shall deliver to the other party an original copy of the fully executed Agreement within two (2) business days from the date of such email transmission; provided, however, failure to do so shall not affect the validity of the execution and delivery of this Agreement. The date of this Agreement, for purposes of performance, shall be the date when the last one of Seller or Buyer has signed this Agreement, as stated on the signature page (the “**Effective Date**”).

4. **Closing.** This transaction shall be closed and the deed, other closing instruments and

possession shall be delivered to Buyer on or before October 30, 2019 (“Closing” or “Closing Date”), unless extended by other provisions of this Agreement. The precise time and place of Closing shall be determined by Seller and Seller shall have the right to effect the Closing via a “mail away” closing (i.e. in which funds are sent via wire transfer and closing documents are delivered via overnight delivery or courier delivery service to the Escrow Agent).

Upon written notice to Buyer delivered prior to the Closing Date, Seller may extend the Closing Date for up to fourteen (14) business days (“Closing Extension Date”) to secure the partial release of the Mortgage and Deed of Trust with Deutsche Bank Trust Company Americas, which encumbers the Property (“Mortgage”). If Seller is unable to secure the partial release of the Mortgage prior to the expiration of the Closing Extension Date, Buyer has the option to either (i) further extend the Closing Date as needed for Seller to secure the partial release of the Mortgage, or (ii) cancel this Agreement upon delivering written notice to Seller, whereupon the Deposit shall be returned to Buyer, and the parties shall be released from any further obligations or liabilities hereunder, except for those that may expressly survive the termination of this Agreement.

5. **Approval for Mortgage Release.** Buyer understands and agrees that, while this Agreement bears the execution of Seller, final approval of the transaction contemplated herein is subject to approval of the release of the Property from Seller’s existing indenture encumbering the Property (“Mortgage”) by its Board of Directors (or the Real Property Committee of the Board of Directors), and such final approval cannot be obtained until, on/or about forty-five (45) days from the Effective Date. Buyer further understands and agrees that upon notification by Seller that the release of the Property from the Mortgage has not been approved by Seller’s Board of Directors (or the Real Property Committee of the Board of Directors), this Agreement shall be deemed immediately cancelled and of no further force and effect and without Seller being obligated for any loss or damage to Buyer whatsoever other than the refund of Buyer’s Deposit. In the event Seller’s Board of Directors (or the Real Property Committee of the Board of Directors) disapprove such release, this Agreement shall be deemed terminated, whereupon Escrow Agent shall return the Deposit to Buyer, and the parties shall be released from any further obligations or liabilities hereunder, except for those that may expressly survive the termination of this Agreement.

6. **Documents for Closing.** Buyer hereby expressly agrees that title to the Property shall be conveyed from Seller to Buyer by Special Warranty Deed in the form of Exhibit B attached hereto and by this reference made a part hereof (“Deed”). At Closing, Buyer will execute (i) for recording a perpetual easement over the entire Property for the purpose of the installation, operation, maintenance, repair and/or replacement of utility facilities on the Property in the form of Exhibit C attached hereto and by this reference made a part hereof (the “Utility Easement”), and (ii) deliver to the Title Agent an Affidavit of Seller in form attached hereto as Exhibit D. At Closing, Seller and Buyer shall each also execute a settlement statement and appropriate resolutions and approvals approving the sale and purchase, respectively, of the Property.

7. **Closing Costs and Expenses.** The parties shall bear the following costs:

7.1. **Seller’s Costs.** Seller shall be responsible for payment of the following: (i) the costs of recording any instruments or documents necessary to clear title; (ii) its prorata share of real estate taxes and assessments levied on the Property for the year of Closing; and (iii) any other expense agreed in this Agreement to be paid by Seller.

7.2. **Buyer’s Costs.** Buyer shall be responsible for payment of the following: (i) the premiums and any other related fees and costs of obtaining the title commitment and owner’s title

insurance policy for the amount of the Purchase Price; (ii) state surtax and documentary stamp taxes which are required to be affixed to the Deed; (iii) the costs of recording the Deed and any additional documents to be recorded at Closing (except for any corrective instruments); (iv) all expenses and charges in connection with Buyer's inspections of the Property, including applicable tax and lien searches; (v) the costs related to any financing obtained by Buyer, including all closing costs and title insurance costs in connection therewith; (vi) the cost of obtaining any endorsement(s) to the title commitment and owner's title insurance policy; (vii) the cost of the survey, (viii) Escrow Agent's settlement fees; and (viii) any other expense agreed in this Agreement to be paid by Buyer.

Each party shall pay its own legal fees except as provided in Section 19 below.

8. **Prorations.** The real estate taxes for the year in which the transaction is closed shall be prorated as of the date of Closing taking into account the maximum allowable discount and the pro rata amount thereof shall be credited against the balance of the Purchase Price. The proration shall be based upon the previous year's taxes, if the current year's assessment is not available. Seller shall pay all assessments and liens for public improvements against the Property, if any, which are, as of the date of Closing, certified liens. Buyer shall assume and pay all assessments and liens, if any, for public improvements which become certified subsequent to the date of Closing. Either party may request and shall be entitled to a re-proration of taxes when the actual amount for the year of Closing is levied.

9. **Title Evidence.** Within fifteen (15) days from the Effective Date, Buyer, at Buyer's sole cost and expense, shall obtain and deliver to Buyer a title insurance commitment for an owner's title insurance policy from a national title company of its choice in favor of Buyer in the amount of the Purchase Price. Buyer shall have until the expiration of the Inspection Period during which to notify Seller of any title defects (the "Title Defects") to which Buyer objects (the "Title Defect Notice"). If Buyer fails to so notify Seller prior to the expiration of the Inspection Period, Buyer shall be deemed to have accepted title to the Property in its existing condition. If Buyer timely delivers the Title Defect Notice to Seller, then Seller shall, within five (5) business days, notify Buyer of any Title Defects which Seller intends to cure and those that it is unable or unwilling to cure, it being understood that Seller has no obligation to do so as provided in the following paragraph. In the event that Seller fails to notify Buyer, in writing, of Seller's intention to cure any Title Defects, Seller shall be deemed to have elected not to cure such Title Defects.

Notwithstanding any provision contained in this Agreement to the contrary, expressed or implied, Seller shall have no obligation whatsoever to correct any Title Defect of any kind (except such Title Defects as may be created by Seller subsequent to the Effective Date of this Agreement) or any liens affecting the Property unless Seller elects to do so, nor shall Buyer be entitled to any reduction in Purchase Price or set off against the Purchase Price by reason of same. If any Title Defect is disclosed by Buyer to Seller as provided above, and if Seller elects not to correct such Title Defect, then Buyer shall have the option, as its sole remedy, of (i) accepting the title as it then is; or (ii) demanding a refund of the Deposit which shall forthwith be returned to Buyer and thereupon Buyer and Seller shall be released, as to one another, of all further obligations under this Agreement, except for those that may expressly survive the termination of this Agreement. As to those Title Defects agreed to be cured by Seller in writing, curing such Title Defects shall be a condition precedent to Buyer's obligation to close and shall be cured and removed by Seller on or before the Closing Date, provided that Seller shall have the right to extend the Closing Date for an additional thirty (30) days as to such matters. If Seller fails to remove, discharge or correct the agreed Title Defects as of the Closing Date (subject to the thirty (30) day extension), then Buyer, at its option, as its sole remedy, may either (x) accept the title as it then is; or (y) demand a refund of the Deposit which shall forthwith be returned to Buyer and thereupon Buyer and Seller shall be

released, as to one another, of all further obligations under this Agreement, except for those that may expressly survive the termination of this Agreement.

10. **Inspection.** Buyer shall have thirty (30) days from the Effective Date in which to conduct, at Buyer's sole cost and expense, such surveys, inspections and investigations with respect to the Property that Buyer deems necessary and appropriate including, but not limited to, conducting a non-invasive Phase I environmental site assessment, zoning inquiries, ingress and egress matters, and any other land use matters and economic considerations, investigations and inquiries as Buyer may reasonably elect, in order to determine, in Buyer's exclusive business judgment, whether or not the Property meets Buyer's requirements (the "**Inspection Period**"). Notwithstanding the foregoing, if the results of Buyer's Phase I environmental site assessment report suggests a Phase II environmental site assessment with invasive testing or further testing or sampling may be appropriate, Buyer may not conduct a Phase II environmental site assessment without Seller's prior written consent, which consent shall be in Seller's sole discretion. Any tests, examinations or inspections of the Property by Buyer, and all costs and expenses in connection with Buyer's testing, examination and inspection of the Property shall be at the sole cost of Buyer and shall be performed in a manner not to unreasonably interfere with Seller's ownership or use of the Property, the operations of any occupants of the Property, or increase Seller's liability with respect to Seller's ownership of the Property.

If Buyer determines for any reason or no reason whatsoever, in Buyer's exclusive business judgment, that Buyer does not wish to acquire the Property, then Buyer shall have the right, at Buyer's sole option, to terminate this Agreement by giving written notice of termination to Seller prior to the expiration of the Inspection Period that Buyer elects to terminate this Agreement, whereupon Buyer shall be entitled to receive the return of its Deposit, and upon the return of same, this Agreement shall be deemed terminated and of no further force and effect and Seller and Buyer shall be released and relieved from any further liability or obligation hereunder except for matters specifically provided herein to survive the termination hereof. If Buyer shall fail to give such written notice of termination to Seller prior to the expiration of the Inspection Period, then Buyer's right to terminate this Agreement pursuant to the provisions of this section, and to receive the return of its Deposit, shall thereupon lapse and be of no further force and effect, except in the case of Seller's default hereunder.

Seller hereby grants Buyer and Buyer's engineers, consultants, architects, agents and designees, the right to go upon the Property for the purposes of conducting such surveys, investigations and inspections with respect to the Property. When such inspections have been completed, Buyer will restore the Property to substantially the same condition as existed before such entry. Buyer agrees to save and hold Seller harmless from and against any loss, damage, liability, claim or obligation of any kind or nature whatsoever which Seller may incur or which may be asserted against the Property or Seller as a result of Buyer's activities upon or relating to the Property during the Inspection Period. Prior to entry on the Property, Buyer shall provide to Seller evidence of a general liability insurance policy in the amount of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence naming Seller as an additional insured and insuring against any and all liability for any damage in connection with the Property, and Buyer shall not be permitted to enter the Property before delivering a copy of said general liability insurance policy to Seller. All insurance required hereunder shall be written by an insurance company licensed in Florida and reasonably acceptable to Seller, and shall be non-cancelable without ten (10) days prior written notice to Seller.

Buyer shall (i) comply with all laws applicable to its investigation of the Property and all other activities undertaken in connection therewith; (ii) permit Seller to have representatives present during any investigation undertaken hereunder; and (iii) take all actions and implement all protections necessary to

ensure that all actions taken in connection with the investigation, and the equipment, materials and substances generated, used or brought on the Property pose no threat to the safety or health of persons or the environment, and cause no damage to the Property or other property of Seller or other persons.

Buyer shall cause all due diligence items obtained by Buyer, which are capable of being certified to both parties, to be concurrently certified to Buyer and Seller so that in the event Buyer terminates this Agreement, Buyer shall deliver all due diligence materials and property information obtained by Buyer relating to the Property, excluding any of Buyer's attorney's work product, and subject to whatever restrictions on use that are set forth in due diligence materials by the providers, to Seller already certified, and which Buyer represents will have been paid in full.

11. **Representations.** By its execution hereof, Buyer understands and agrees that Seller has made no representations or warranties as to the quantity, quality or condition of the Property described herein, the suitability of the zoning thereof, or the availability of permits relating thereto and Buyer acknowledges that Buyer will fully examine the Property during the Inspection Period and that Buyer will not be relying upon any representation or inducement that may have been made by Seller or Seller's representatives, agents or employees with respect to the quantity, quality or with respect to the present or future condition, environmental or otherwise, zoning or permitting of said Property.

THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS, WHERE-IS" CONDITION AND BASIS WITH ALL FAULTS. TO THE EXTENT PERMITTED BY LAW, SELLER SPECIFICALLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR USE OR ACCEPTABILITY FOR THE PURPOSE INTENDED BY BUYER) WITH RESPECT TO THE PROPERTY OR THE PROPERTY'S CONDITION OR THE CONSTRUCTION, PROSPECTS, OPERATIONS OR RESULTS OF OPERATIONS OF THE PROPERTY. THE DISCLAIMERS HEREOF SPECIFICALLY EXTEND TO, WITHOUT LIMITATION, (1) MATTERS RELATING TO HAZARDOUS MATERIALS AND COMPLIANCE WITH ENVIRONMENTAL LAWS, (2) GEOLOGICAL CONDITIONS, (3) DRAINAGE, (4) SOIL CONDITIONS, (5) ZONING AND SUBDIVISION AND COMPLIANCE WITH ZONING AND SUBDIVISION LAWS, (6) THE VALUE AND PROFIT POTENTIAL OF THE PROPERTY, AND (7) DESIGN, QUALITY, SUITABILITY, STRUCTURAL INTEGRITY AND PHYSICAL CONDITION OF THE PROPERTY AND COMPLIANCE OF THE PROPERTY WITH ANY LAWS (INCLUDING BUILDING CODES AND SIMILAR LAWS, THE AMERICANS WITH DISABILITIES ACT OF 1990 AND THE FAIR HOUSING AMENDMENTS ACT OF 1988, ALL AS APPLICABLE). BUYER IS ACQUIRING THE PROPERTY "AS IS" AND "WHERE IS" AND WITH ALL FAULTS, DEFECTS OR OTHER ADVERSE MATTERS.

TO THE EXTENT PERMITTED BY LAW, BUYER AGREES NEVER TO COMMENCE OR PROSECUTE, OR CONSPIRE OR COLLUDE WITH OTHERS TO COMMENCE OR PROSECUTE, AGAINST SELLER, AND/OR SELLER'S PARTNERS, MEMBERS, PRINCIPALS, REPRESENTATIVES, ATTORNEYS OR EMPLOYEES, ANY ACTION OR OTHER PROCEEDING BASED UPON ANY CLAIM SPECIFICALLY RELEASED IN THIS SECTION 11. THIS RELEASE SHALL BE DEEMED REAFFIRMED AT THE CLOSING.

THE PROVISIONS OF THIS SECTION 11 SHALL SURVIVE CLOSING OR ANY TERMINATION OF THIS AGREEMENT.

12. **Remedies on Default of Buyer.** In the event Buyer is in default under or in breach of any of its terms, covenants, conditions, warranties, representations or obligations hereunder, then at the option of Seller, and as Seller's sole and exclusive remedy, Escrow Agent shall deliver the Deposit to Seller and it shall become the property of Seller, such sum being agreed upon as liquidated damages for the failure of Buyer to perform the duties, liabilities, and obligations imposed upon it by the terms and provisions of this Agreement and because of the difficulty, inconvenience and uncertainty of ascertaining actual damages, and the parties shall thereupon be relieved and released from all other and further obligations under this Agreement.

13. **Remedies on Default of Seller.** In the event Seller refuses or fails to convey the Property to Buyer in violation of Seller's obligations hereunder for any reason other than a default by Buyer under this Agreement, or shall otherwise be in default of its obligations hereunder, then Buyer may, at its option and as its sole and exclusive remedy, terminate this Agreement and receive a full refund of the Deposit held by Escrow Agent. The foregoing shall be the sole and exclusive remedy available to Buyer. In no event shall any member, officer, director, agent or employee of Seller or its partners be personally liable for any of Seller's obligations under this Agreement or the documents to be delivered at the Closing. Without limiting the generality of the foregoing, for all purposes hereof, Buyer waives its right to seek, plead or obtain any judgment for any remedies or damages not specifically contained herein, including, without limitation, consequential, compensatory, punitive, or any other damages.

14. **Condemnation.** In the event of the institution of any proceedings, or if subject to a bona fide threat of such proceedings, judicial, administrative or otherwise, which shall relate to the proposed taking of any portion of the Property by Eminent Domain, Seller may cancel this Agreement, whereupon any Deposit shall be returned to Buyer and this Agreement thereupon shall be of no further force and effect.

15. **Survey.** Buyer, within thirty (30) days of the Effective Date of this Agreement, at its sole cost and expense, shall provide Seller with a copy of a final ALTA survey of the Property by a surveyor licensed to practice as such in the State of Florida showing and certifying the exact location and legal description and acreage of the Property and deliver a copy to Seller for Seller's approval. The final survey shall include the easement referenced in Section 6 above. Buyer shall notify Seller of any survey objections within the said same time period and in the same manner as Buyer has to make its Title Defects as set forth above. Survey objections, if any, shall be treated in the same manner as Title Defects are treated herein.

16. **Provisions to be Included in Deed.** Buyer understands and agrees that the following provisions will be included and made a part of Seller's conveyance by Deed of the Property: BY ACCEPTANCE HEREOF, GRANTEE ACKNOWLEDGES THAT THE PROPERTY MAY BE ADJACENT TO REAL AND/OR PERSONAL PROPERTY OWNED BY GRANTOR AND USED BY IT AS A PUBLIC UTILITY CORPORATION OF THE STATE OF FLORIDA, AND GRANTEE ACCEPTS THE CONVEYANCE OF THE PROPERTY WITH THIS FULL KNOWLEDGE AND SUBJECT TO THE USE OF THE GRANTOR'S ADJACENT LAND AND/OR PERSONAL PROPERTY FOR SUCH PURPOSES OR ANY OTHER LEGALLY AUTHORIZED USE.

17. **OFAC.** Buyer represents and warrants that Buyer is not barred from doing business with

U.S. entities pursuant to the U.S. Department of Treasury's Office of Foreign Asset Control ("OFAC"), including OFAC's Specially-Designated-Nationals ("SDN") list and lists of known or suspected terrorist organizations. If Seller identifies or is informed that Buyer is a valid match for OFAC's SDN list, then this Agreement is void, and the parties shall cancel and revoke this Agreement immediately. In the event of cancellation or revocation of this Agreement under this provision, Seller shall immediately contact OFAC to report the transaction and to determine whether deposit money provided by Buyer, if any, should be returned or blocked, consistent with OFAC regulations

18. **Brokerage.** The parties hereby each represent and warrant to the other that no broker or finder has been engaged by it in connection with this transaction. In the event any claim for any brokerage commission or fee is asserted against Seller or Buyer in connection with this transaction from anyone, the party at fault shall save harmless and defend the other party from and against such claim (including reasonable attorney, paralegal and expert fees and disbursements in all proceedings and at all levels of proceedings). This section shall survive Closing or termination of this Agreement.]

19. **Attorneys' Fees and Costs.** In the event of any litigation arising between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and paralegals' fees and court costs at all trial and appellate levels. This paragraph shall survive expiration or termination of this Agreement coextensively with other surviving provisions of this Agreement.

20. **Parties in Interest.** All the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and assigns of Buyer and Seller.

21. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties and there are no other agreements, representations or warranties other than as set forth herein, and supersedes all prior discussions, negotiations and agreements between the parties, whether oral or written. This Agreement may not be changed, altered or modified except by an instrument in writing duly signed by both parties.

22. **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida.

23. **Notices.** Any notices required or permitted to be given under this Agreement shall be delivered by hand, by e-mail providing a transmission receipt or delivered by a nationally recognized overnight delivery service, and addressed as described below; notices shall be deemed effective only upon receipt or refusal of delivery or, if by e-mail sent after 5:00 p.m. on the next ensuing business day after transmission.

Seller: Gulf Power Company
700 Universe Boulevard, B2A/JB
Juno Beach, Florida 33408
Attn: Corporate Real Estate

With a copy to Gulf Power Company
700 Universe Boulevard, LAW/JB
Juno Beach, Florida 33408
Attn: Seth S. Sheitelman
E-mail: seth.sheitelman@fpl.com

Buyer: City of Panama City Beach, a municipal corporation
110 South Arnold Road
Panama City Beach, Florida 32413

Escrow Agent: Hand Arendall Harrison Sale, LLC
600 Grand Panama Blvd, Suite 400
Panama City Beach, Florida 32407
Attn: Amy E. Myers

24. **Insertion of Corrections or Modifications.** Typewritten or handwritten provisions inserted on this Agreement or on the exhibits hereto (and initialed by the parties) shall control all printed provisions in conflict therewith.

25. **Time.** Time is of the essence in this Agreement. Unless expressly stated otherwise, all time periods herein shall be calculated using calendar days. For purposes of this Agreement, any time period that falls on a Saturday, Sunday or legal holiday under laws of the State of Florida, will be extended to the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time where the Property is located.

26. **Counterparts; Electronic Transmission.** This Agreement may be executed simultaneously or in counterparts, each of which together shall constitute one and the same Agreement. A facsimile or similar electronic transmission of a counterpart signed by a party hereto shall be regarded as an original signed by such party for all purposes.

27. **Assignment.** The rights of Buyer hereunder may not be assigned by Buyer without the prior written consent of Seller.

28. **Agreement not to be Recorded.** This Agreement shall not be recorded in any public records by either party hereto.

29. **Advice of Counsel.** Each party acknowledges that it has been advised, or has had the opportunity to be advised, by its own counsel with respect to the transaction governed by this Agreement.

30. **Jurisdiction; Jury Trial Waiver.** ALL DISPUTES BETWEEN BUYER AND SELLER ARISING UNDER OR RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT OR EQUITY OR OTHERWISE, SHALL BE RESOLVED ONLY IN THE FEDERAL OR STATE COURTS IN BAY COUNTY, FLORIDA; AND EACH PARTY HERETO SUBMITS TO THE JURISDICTION OF SUCH COURTS AND WAIVES ANY OBJECTION TO THE VENUE AND JURISDICTION OF SUCH COURTS. BUYER AND SELLER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. BUYER ACKNOWLEDGES THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO SELLER IN ENTERING INTO THIS AGREEMENT AND THAT BUYER HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY IN CONNECTION WITH THIS

JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER.

31. **Radon Gas.** Pursuant to Florida Statutes Section 404.056(5), Seller hereby makes, and Buyer hereby acknowledges, the following notification:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

32. **Risk of Loss.** The Property shall be conveyed to Buyer in the same condition as on the Effective Date of this Agreement, ordinary wear and tear excepted, free of all tenancies or occupancies. Risk of loss to the Property between the Effective Date and the Closing Date, shall be upon the Seller and the doctrine known as the "Doctrine of Equitable Conversion" shall not be applicable to this transaction.

33. **Construction.** This Agreement shall not be construed more strictly against one party than against the other, merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Seller and Buyer have contributed substantially and materially in the negotiation and preparation of this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits, schedules, addendums or amendments hereto.

34. **Headings and Gender.** All headings in this Agreement are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

35. **Severability.** In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

36. **Confidentiality.** Buyer agrees to treat all information received with respect to the Property, whether such information is obtained from Seller or from Buyer's own due diligence investigations, in a confidential manner. Buyer shall not disclose any such information to any third parties, other than such disclosure to Buyer's counsel, consultants, accountants and advisers as may be required in connection with the transactions contemplated hereby (such disclosure to be made expressly subject to this confidentiality requirement) or as otherwise required to disclose by law. Seller and Buyer agree to keep this Agreement confidential and not make any public announcements or disclosures with respect to the subject matter of this Agreement prior to Closing without the written consent of the other party.

37. **Escrow Agent.** The Escrow Agent shall not be liable for any actions taken in good faith, but only for its gross negligence or willful misconduct. The parties hereby hold the Escrow Agent harmless from and against any loss, liability, claim or damage whatsoever (including reasonable attorneys' fees and paralegals' fees and court costs at trial and all appellate levels) the Escrow Agent may incur or be exposed to in its capacity as escrow agent hereunder except for gross negligence or willful misconduct. If there be any dispute as to disposition of any proceeds held by the Escrow Agent pursuant

to the terms of this Agreement, the Escrow Agent is hereby authorized to interplead said amount or the entire proceeds with any court of competent jurisdiction and thereby be released from all obligations hereunder. The Escrow Agent shall not be liable for any failure of the depository.

38. **Waiver.** No party shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by any party in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any such right.

39. **No Partnership.** Nothing in this Agreement shall be deemed in any way to create between the parties any relationship of partnership, joint venture or association; and the parties disclaim the existence thereof.

(Remainder of page intentionally left blank to allow for signatories)

IN WITNESS WHEREOF, Seller and Buyer have caused these presents to be executed, all of which has been done on the date shown below for each party.

Seller:

Gulf Power Company,
a Florida corporation

By: _____
Name: _____
Title: _____
Date: _____

Buyer:

City of Panama City Beach, a municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

Agreed to and Accepted by:

Escrow Agent:

Hand Arendall Harrison Sale, LLC

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
To Agreement of Purchase and Sale

Legal Description of Property

A PARCEL LYING IN SECTION 16, TOWNSHIP 3 SOUTH, RANGE 16 WEST, BAY COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUR INCH SQUARE CONCRETE MONUMENT NO. LB0340 MARKING THE SOUTHWEST CORNER OF SECTION 8, TOWNSHIP 3 SOUTH, RANGE 16, WEST, BAY COUNTY, FLORIDA; THENCE PROCEED NORTH 02 DEGREES 19 MINUTES 58 SECONDS EAST, ON THE WEST LINE OF SAID SECTION 8, FOR A DISTANCE OF 1,972.90 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF PIER PARK LOOP ROAD (150' R/W), SAID POINT ALSO BEING 200' NORTH OF THE NORTH BOUNDARY LINE OF A 100 FOOT WIDE GULF POWER COMPANY ELECTRIC TRANSMISSION LINE AS RECORDED IN DEED BOOK 153, PAGE 567 OF THE PUBLIC RECORDS OF BAY COUNTY, FLORIDA; THENCE LEAVING SAID WEST LINE, PROCEED SOUTH 59 DEGREES 09 MINUTES 16 SECONDS EAST, ON SAID NORTH RIGHT OF WAY LINE (AND A LINE 200 FEET NORTH OF AND PARALLEL TO SAID NORTH LINE OF A GULF POWER COMPANY ELECTRIC TRANSMISSION LINE), FOR A DISTANCE OF 2,454.28 FEET; THENCE LEAVING SAID NORTH RIGHT OF WAY LINE, PROCEED NORTH 30 DEGREES 50 MINUTES 44 SECONDS EAST, FOR A DISTANCE OF 50.00 FEET; THENCE SOUTH 59 DEGREES 09 MINUTES 16 SECONDS EAST, ON A LINE 250 FEET NORTH OF AND PARALLEL TO SAID NORTH LINE OF A GULF POWER COMPANY ELECTRIC TRANSMISSION LINE, FOR A DISTANCE OF 7,775.63 FEET; THENCE LEAVING SAID LINE, PROCEED SOUTH 30 DEGREES 50 MINUTES 44 SECONDS WEST, FOR A DISTANCE OF 250.00 FEET TO THE NORTH LINE OF SAID GULF POWER COMPANY ELECTRIC TRANSMISSION LINE AND THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 30 DEGREES 50 MINUTES 44 SECONDS WEST, FOR A DISTANCE OF 56.90 FEET TO A POINT ON A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 850.00 FEET, THROUGH A CENTRAL ANGLE OF 02 DEGREES 54 MINUTES 22 SECONDS; THENCE PROCEED SOUTHERLY ALONG SAID CURVE FOR AN ARC DISTANCE OF 43.11 FEET, (CHORD BEARING AND DISTANCE = SOUTH 29 DEGREE 23 MINUTES 32 SECONDS WEST, FOR A DISTANCE OF 43.11 FEET) TO THE SOUTH LINE OF SAID GULF POWER COMPANY ELECTRIC TRANSMISSION LINE; THENCE NORTH 59 DEGREES 09 MINUTES 16 SECONDS WEST, ON SAID SOUTH LINE, FOR A DISTANCE OF 150.16 FEET TO A POINT ON A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1,000.00 FEET, THROUGH A CENTRAL ANGLE OF 02 DEGREES 28 MINUTES 12 SECONDS; THENCE LEAVING SAID SOUTH LINE, PROCEED NORTHEASTERLY ALONG SAID CURVE FOR AN ARC DISTANCE OF 43.11 FEET, (CHORD BEARING AND DISTANCE = NORTH 29 DEGREES 36 MINUTES 38 SECONDS EAST, FOR A DISTANCE OF 43.11 FEET); THENCE NORTH 30 DEGREES 50 MINUTES 44 SECONDS EAST, FOR A DISTANCE OF 56.90 FEET TO THE NORTH LINE OF A GULF POWER COMPANY ELECTRIC TRANSMISSION LINE; THENCE SOUTH 59 DEGREES 09 MINUTES 16 SECONDS EAST, ON SAID NORTH LINE, FOR A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.344 ACRES, MORE OR LESS.

EXHIBIT B
To Agreement of Purchase and Sale

Prepared by and return to:
Seth S. Sheitelman, Esquire
Gulf Power Company
700 Universe Boulevard (LAW/JB)
Juno Beach, FL 33408

Parcel Identification No.: a portion of _____

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made and entered into as of this ____ day of _____, 20__ by Gulf Power Company, a Florida corporation (“**Grantor**”), having a mailing address at 700 Universe Boulevard, Juno Beach, Florida 33408, to the City of Panama City Beach, a municipal corporation (“**Grantee**”), having a mailing address at 110 South Arnold Road, Panama City Beach, Florida 32413.

WITNESSETH:

GRANTOR, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, to it paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell, remise, release, convey and confirm and forever specially warrants to Grantee all its right, title, and interest in and to that certain land, situated in Bay County, Florida and more particularly described on **Exhibit “A”** attached hereto and by this reference expressly made a part hereof (“**Property**”).

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

THIS CONVEYANCE is subject to: real property taxes for the current year and all subsequent years, comprehensive land use plans, zoning restrictions, prohibitions and other requirements imposed by governmental authority, conditions, restrictions, covenants, reservations and easements of record, if any, but without intent to reimpose same; and further subject to easements from Grantee to Grantor of even date to be recorded simultaneously herewith.

TO HAVE and to hold the same in fee simple forever.

GRANTOR hereby covenants with Grantee that it is lawfully seized of the Property in fee simple, that it has good right and lawful authority to sell and convey the Property, that it hereby fully warrants the title to the Property and will defend the same against the lawful claims of all persons claiming by, through or under Grantor, but no others.

BY ACCEPTANCE HEREOF, Grantee acknowledges that the Property may be adjacent to real and/or personal property owned by Grantor and used by it as a public utility corporation of the State of Florida, and Grantee accepts the conveyance of the Property with full knowledge and subject to the use of Grantor’s adjacent land and/or personal property for such purposes or any other legally authorized use.

[Signature Appears on Following Page]

IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal as of the day and year first above written

Executed in the presence of:

Grantor:

Gulf Power Company,
a Florida corporation

Name: _____

By: _____
Name: _____
Title: _____

Name: _____

ACKNOWLEDGEMENT

STATE OF FLORIDA)
)ss:
COUNTY OF _____)

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, as _____, of Gulf Power Company, a Florida corporation, personally known to me to be the person who subscribed to the foregoing instrument or who has produced _____, as identification, and acknowledged that he executed the same on behalf of said corporation and that he was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC, STATE OF FLORIDA

EXHIBIT A
To Special Warranty Deed

Legal Description of Property

A PARCEL LYING IN SECTION 16, TOWNSHIP 3 SOUTH, RANGE 16 WEST, BAY COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CONTAINING 0.344 ACRES, MORE OR LESS.

EXHIBIT C
To Agreement of Purchase and Sale

Prepared by and after Recording

Return to:

Seth S. Sheitelman, Esq.
Gulf Power Company
700 Universe Boulevard
Juno Beach, Florida 33408

EASEMENT
(Corporate)

KNOW ALL MEN BY THESE PRESENTS that the City of Panama City Beach, a municipal corporation, whose address is 110 South Arnold Road, Panama City Beach, Florida 32413 (“**Grantor**”) in considerations, receipt of which is hereby acknowledged, does hereby grant to the Gulf Power Company, a Florida corporation, whose address is P.O. Box 14000, Juno Beach, Florida 33408-0420, and to its successors and assigns (“**Grantee**”) (the term “assigns” meaning any person, firm or corporation owning by way of assignment all rights under the Agreement or a portion of such rights with Grantee or its other assigns retaining and exercising the other rights), an easement forever for a right-of-way to be used for the construction, operation and maintenance of one or more overhead and underground electric transmission and distribution lines, including but not limited to, wires, poles, “H” frame structures, towers, cables, conduits, anchors, guys, roads, trails and equipment associated therewith, attachments and appurtenant equipment for communication purposes and one or more pipelines, and appurtenant equipment for the transmission of substances of any kind (all of the foregoing hereinafter referred to as “**facilities**”), over, under, in, on, upon and across the lands of the Grantor situated in the County of Bay and the State of Florida and being more particularly described on **Exhibit A** attached hereto and made a part hereof (“**Easement Area**”); together with the right and privilege from time to time to reconstruct, inspect, alter, improve, enlarge, add to, change the voltage, as well as the nature or physical characteristics of, replace, remove or relocate such facilities or any part of them upon, across, over or under the Easement Area with all rights and privileges necessary or convenient for the full enjoyment or the use thereof for the herein described purposes, including, but not limited to, the right to cut and keep clear all trees and undergrowth and other obstructions within the Easement Area and on lands of Grantor adjoining the Easement Area that may interfere with the proper construction, operation and maintenance of such facilities or any part of them, the right to mark the location of any underground facilities by above ground and other suitable markers and the right of ingress and egress for personnel and equipment of Grantee, its contractors, agents, successors or assigns over the adjoining lands of Grantor, for the purpose of exercising and enjoying the rights granted by this easement and any or all of the rights granted hereunder.

By the execution hereof, Grantor covenants that it has the right to convey this easement and that Grantee and its successors and assigns shall have quiet and peaceful possession, use and enjoyment of this easement and the rights granted hereby.

(Signature and Notary on Following Page)

IN WITNESS WHEREOF, Grantor has executed this Agreement this ____ day of _____, 20____.

Grantor:

Signed, sealed and delivered
in the presence of:
corporation

City of Panama City Beach, a municipal

Signature
Print Name: _____

By: _____
Its: _____
Print Name: _____

Signature:
Print Name: _____

ACKNOWLEDGMENT

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

On this ____ day of _____, 20__ before me, the undersigned notary public, personally appeared _____ of City of Panama City Beach, a municipal corporation, personally known to me to be the person who subscribed to the foregoing instrument or who has produced _____ as identification, and acknowledged that he/she executed the same on behalf of said corporation and that he/she was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC, STATE OF FLORIDA
Print name: _____
Commission No.: _____
My Commission Expires: _____

EXHIBIT A
To Easement

Legal Description of Easement Area

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CONTAINING 0.344 ACRES, MORE OR LESS.

Seller:

**Gulf Power Company,
a Florida corporation**

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
To Affidavit of Seller

Legal Description of Property

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