

RESOLUTION NO. 2175-16

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, CREATING A PROPERTY ASSESSED CLEAN ENERGY PROGRAM AND JOINING THE CLEAN ENERGY GREEN CORRIDOR PROGRAM IN ACCORDANCE WITH SECTION 163.08, FLORIDA STATUTES; APPROVING A NON-EXCLUSIVE MEMBERSHIP AGREEMENT PURSUANT TO SECTION 163.01, FLORIDA STATUTES BETWEEN THE CITY AND THE GREEN CORRIDOR PROPERTY ASSESSMENT CLEAN ENERGY DISTRICT; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2010, the Florida Legislature adopted HB 7179 (Section 163.08, F.S.)(the “Bill”), which allows local governments to create Property Assessed Clean Energy (PACE) programs in order to provide the upfront financing for energy conservation and efficiency (i.e. energy-efficient heating, cooling, or ventilation systems), renewable energy (i.e. solar panels), wind resistance (i.e. impact resistant windows) and other improvements that are not inconsistent with state law (the “Qualifying Improvements”); and

WHEREAS, PACE programs not only assist residents and business owners in reducing their carbon footprint and energy costs, but also stimulate the local economy by the creation of needed construction jobs; and

WHEREAS, the Bill authorizes local governments that create PACE programs to enter into a partnership in order to provide more affordable financing for the installation of the Qualifying Improvements; and

WHEREAS, given the wide spread energy and economic benefits of PACE programs, the City Commission desires to join the Clean Energy Green Corridor PACE District in order to provide the upfront financing to property owners for Qualifying Improvements and to enter into an interlocal with the District for the purpose of financing such improvements; and

WHEREAS, the City Commission finds that this Resolution is in the best interest and welfare of the residents of the City of Winter Park.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.


Section 2. Creation of PACE Program. The City Commission hereby creates a PACE Program pursuant to Section 163.08, Florida, for the purpose of providing upfront financing to property owners for Qualifying Improvements.

Section 3. Adoption of Membership Agreement. The City Commission hereby approves an membership agreement pursuant to Section 163.01, Florida Statutes between the City of Winter Park and the Green Corridor Clean Energy Property Assessed (PACE) District in substantially the form attached hereto as Exhibit "A," relating to the Clean Energy Green Corridor (the "Membership Agreement"). This Membership Agreement is non-exclusive and shall not affect any existing PACE Program that the City has or the ability of the City to create, join or participate in any other similar programs.

Section 4. Authorization. The City Manager or designee is hereby authorized to execute the Membership Agreement.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

ADOPTED this 11th day of July 2016.



Steve Leary, Mayor

ATTEST:



Cynthia Bonham, City Clerk

MEMBERSHIP AGREEMENT BETWEEN THE GREEN CORRIDOR PROPERTY ASSESSMENT CLEAN ENERGY (PACE) DISTRICT AND CITY OF WINTER PARK

This Membership Agreement (the “Membership Agreement”) is entered into this 11th day of July , 2016 by and between the Green Corridor Property Assessment Clean Energy (PACE) District, a public body corporate and politic (the “Green Corridor”), and City of Winter Park, Florida, a [municipality] of the State of Florida (the “City”) (collectively, the “Parties”) for the purpose of providing a PACE program within the City of Winter Park.

RECITALS

WHEREAS, on August 6, 2012, the Green Corridor was created as a separate legal entity pursuant to Section 163.01(7), Florida Statutes, to finance qualifying improvements in accordance with Section 163.08, Florida Statutes; and

WHEREAS, on July 11, 2016, the City Commission of the City of Winter Park adopted Resolution No. 2175-16 agreeing to join the Green Corridor as a non-voting member in order to finance qualifying improvements in the City of Winter Park in accordance with Section 163.08, Florida Statutes; and

WHEREAS, the Parties have determined that entering into this Membership Agreement is in the best interest and welfare of the property owners within the Green Corridor and the City of Winter Park.

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

1. **Recitals Incorporated.** The above recitals are true and correct and incorporated herein.
2. **Purpose.** The purpose of this Membership Agreement is to facilitate the financing of qualifying improvements for property owners within the City of Winter Park in accordance with Section 163.08, Florida Statutes, by virtue of the City’s joining the Green Corridor as a non-voting member and utilizing the Green Corridor’s existing program (the “Program”).
3. **Qualifying Improvements.** The City shall allow the Green Corridor to provide financing of qualifying improvements, as defined in Section 163.08, Florida Statutes, on properties within the City of Winter Park.
4. **Non-Exclusive.** The Green Corridor Program is non-exclusive, meaning City specifically reserves the right to join any other entity providing a similar program under Section 163.08, Florida Statutes, or create its own program under Section 163.08, Florida Statutes. Green Corridor acknowledges that the City has in fact already created and authorized other similar Property Assessment Clean Energy (PACE) programs within the City of Winter Park, and may continue to create and

authorize additional PACE programs and contract with other agencies concerning the same matters addressed herein.

5. Program Guidelines: The Parties agree that, unless the City desires to implement its own local program guidelines as described below, the Program to be offered in the City of Winter Park will be wholly governed by the Green Corridor's Program Guidelines in regards to property owners that use the Program. The Green Corridor's Program Guidelines do not apply to property owners that use a different PACE program. If the City desires to implement its own local program guidelines, it may do so upon sixty (60) day's written notice to the Green Corridor. Any such local program guidelines can be amended and changed only by the authorized designee of the City. These local program guidelines shall be consistent with the Green Corridor's guidelines. The City may adopt more restrictive guidelines than that of the Green Corridor. However, if there is a conflict between the Green Corridor's guidelines and the City's guidelines, the Green Corridor's guidelines shall control.
6. Boundaries. Pursuant to this Membership Agreement, the boundaries of the Green Corridor shall include the legal boundaries of the City of Winter Park, which boundaries may be limited, expanded, or more specifically designated from time to time by the City by providing written notice to the Green Corridor. As contemplated in the Interlocal Agreement (as defined in Section 8) and as supplemented by this Membership Agreement, the Green Corridor will, on a non-exclusive basis, levy voluntary non ad valorem special assessments on the benefitted properties within the boundaries of the City of Winter Park to help finance the costs of qualifying improvements for those individual properties. Those properties receiving financing for qualifying improvements shall be assessed from time to time, in accordance with Section 163.08, Florida Statutes and other applicable law. Notwithstanding termination of this Membership Agreement or notice of a change in boundaries by the City of Winter Park as provided for above, those properties that have received financing for qualifying improvements shall continue to be a part of the Green Corridor, until such time that all outstanding debt has been satisfied.
7. Financing Agreement. The Parties agree that the Green Corridor may enter into a financing agreement, pursuant to Section 163.08, Florida Statutes, with property owner(s) within the City who obtain financing through the Green Corridor for qualifying improvements for energy efficiency, renewable energy, or wind resistance as described in Section 163.08, Florida Statutes. Green Corridor, not the City, shall be solely responsible for all matters associated with the origination, funding, financing, collection and administration of each the Green Corridor's financing agreements and authorized non-ad valorem assessments.
8. Amended and Restated Interlocal Agreement. The Parties agree that the City shall be subject to all terms, covenants, and conditions of the Amended and Restated Interlocal Agreement recorded in the Official Records of Miami-Dade County at Official Records Book 28217, Page 0312, which created the Green

Corridor (the "Interlocal Agreement"). In the event of any conflict between the Interlocal Agreement and this Membership Agreement, this Membership Agreement shall control the rights and obligations of the City. In no event shall Green Corridor or any of its members (voting or nonvoting) have the right or power to assess, charge or seek any dues, fees or any other compensation from the City or otherwise monetarily obligate the City arising out of or concerning the City's membership, the Interlocal Agreement and this Membership Agreement. In no event shall the City be liable for or obligated to pay or perform any debts, liabilities, conditions or obligations arising as a result of any financing agreement, financing documents, special assessment, financed improvements or any act or omission of any property owner or its/their agents. In no event shall the City be obligated or responsible for any debts, obligations or liabilities arising out of or resulting from any acts or omissions of Green Corridor or its members, directors, officers, employees, contractors and agents.

9. Responsibilities of the Green Corridor; Indemnification. The Green Corridor shall be solely responsible for all matters associated with origination, funding, financing, collecting and administration of each of the Green Corridor's authorized non-ad valorem assessments, including responding to any complaints or inquiries by participants, tax certificate holders, lenders or others relating to the Program's special assessments, the Program's financing agreements, the Program's qualifying improvements, or any other aspect of the Program. Green Corridor shall be solely responsible for professionally coordinating interface with the tax collector and property appraiser. Green Corridor shall ensure and be responsible for compliance with all laws, rules and regulations in the imposition and collection of any special assessments levied upon property owned by participating property owners who have entered into a financing agreement. The Parties understand and agree that indemnification of the Green Corridor members is provided for in Section 16 of the Interlocal Agreement, and that such provisions shall apply to the City. Nothing in this Membership Agreement or the Interlocal Agreement shall be deemed nor construed as a waiver or avoidance of any common law or statutory sovereign immunity or of any other defenses, privileges and immunities enjoyed by the City and Green Corridor and their respective elected and appointed officers, employees and agents under the law.

10. Agreements with Tax Collector, Property Appraiser and Municipalities. [The Green Corridor acknowledges that the City has no authority to bind the County Tax Collector and the County Property Appraiser, and the Green Corridor will be required to enter into separate agreement(s) with the County Tax Collector and/or the County Property Appraiser, which shall establish the fees (if any) to be charged by the Tax Collector and Property Appraiser for the collection or handling of the Program's special assessments.
11. Resale or Refinancing of a Property. The Green Corridor recognizes that some lenders may require full repayment of the Program's special assessments upon resale or refinancing of a property subject to the Program's special assessments.

The Green Corridor agrees to provide written disclosure of this matter to all City of Winter Park property owners that may utilize the Program.

12. Term. This Membership Agreement shall remain in full force and effect from the date of its execution by both Parties and for a period of three years thereafter, subject to early termination as provided herein. Thereafter, the term of this Agreement shall then be renewed for successive three-year periods, unless either Party provides notice to the other in writing of its intent to terminate at the end of the initial term or any renewal term. Further, any Party may terminate this Membership Agreement at any time upon ninety (90) days prior written notice. Green Corridor's obligations under this Membership Agreement shall survive termination in regards to financing agreements that have not be satisfied prior to termination of this Membership Agreement until such time as outstanding debt has been satisfied.
13. Consent. This Membership Agreement and any required resolution or ordinance of an individual Party shall be considered the City's consent to joining the Green Corridor and participation therein, as required by Section 163.08, Florida Statutes.
14. Voting Rights. The Parties agree that the City shall be a non-voting member of the Green Corridor for the term of this Membership Agreement.
15. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

If to Green Corridor:
Paul Winkeljohn, Executive Director
Green Corridor
5385 Nob Hill Rd.
Sunrise, FL 33351

If to City of Winter Park:
Attn: City Manager
401 Park Ave SWinter Park, FL 32789


With a Copy to:
City Attorney
A. Kurt Ardaman
1947 Lee Road
Winter Park, FL 32789

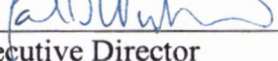
16. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by the Parties hereto.
17. Joint Effort. The preparation of this Membership Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.
18. Merger. This Membership Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Membership Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no change, amendment, alteration, or modification in the terms and conditions contained herein shall be effective unless contained in a written document, executed with the same formality, and of equal dignity herewith by all Parties to this Membership Agreement.
19. Assignment. The respective obligations of the Parties set forth in this Membership Agreement shall not be assigned, in whole or in part, without the written consent of the other Party hereto.
20. Records. The Parties shall each maintain their own respective records and documents associated with this Membership Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
21. No Third Party Beneficiaries. It is the intent and agreement of the Parties that this Agreement is solely for the benefit of the Parties and no person not a party hereto shall have any rights or privileges hereunder.
22. Severability. In the event a portion of this Membership Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.
23. Venue. The exclusive venue of any legal or equitable action against the City that arises out of or relates to this Membership Agreement shall be the appropriate state court in Miami-Dade County.
24. Effective Date. This Membership Agreement shall become effective upon the execution by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Membership Agreement on this 11th day of July, 2016.


ATTEST:

GREEN CORRIDOR PROPERTY
ASSESSMENT CLEAN ENERGY
(PACE) DISTRICT

By: 
District Secretary

By: 
Executive Director

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: 
Weiss Serota Helfman Cole &
Bierman, P.L., District Attorney

ATTEST:

CITY OF WINTER PARK, FLORIDA

By: 
Cynthia S. Bonham, City Clerk

By: 
Steve Leary, Mayor