

Action Item  X  
Information Only

## **BUSINESS ITEM 3**

Ygrene Energy Fund – PACE Program

### **Issue/Background:**

The State of Florida and Pasco County provide a funding mechanism for residents to improve their homes and pay for those improvements through their ad valorem (property taxes).

In November, 2016, City Council passed Resolution 728-16 providing this opportunity to ReNew Pace, a firm that works with property owners to finance energy efficiency projects on their homes by the repayment on tax bills. A second company, Ygrene Energy Fund is seeking the same authorization from City Council to offer these services within the city limits. Ygrene has an existing agreement with Pasco County.

### **Attachments:**

Resolution for Council consideration.

### **Analysis:**

We have received a request from a city resident to provide for Ygrene to assist in the improvements and financing of improvements to her home. This second resolution will provide residents with more opportunity to make these improvements and offer a wider selection process for city residents.

### **Staff Recommendation:**

Staff recommends approval.

**RESOLUTION NO. 734-17**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA CREATING A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM AND JOINING THE GREEN CORRIDOR PROPERTY ASSESSMENT CLEAN ENERGY (PACE) DISTRICT AS A NON-VOTING MEMBER; AUTHORIZING THE EXECUTION OF A NON-EXCLUSIVE MEMBERSHIP AGREEMENT WITH THE GREEN CORRIDOR PROPERTY ASSESSMENT CLEAN ENERGY (PACE) DISTRICT; PROVIDING DIRECTIONS TO THE CLERK; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Section 163.08, Florida Statutes (the "PACE Act") authorizes counties, municipalities, and certain separate local government entities to establish and administer financing programs pursuant to which owners of real property may obtain funding for energy conservation and efficiency, renewable energy and wind resistance improvements (as referred to therein, the "Qualifying Improvements"), and repay such funding through voluntary special assessments, sometimes referred to as non-ad valorem assessments, levied upon the improved property pursuant to financing agreements between the owner thereof and the local government; and

**WHEREAS**, pursuant to the PACE Act, local governments may enter into a partnership with other local governments for the purpose of providing and financing Qualifying Improvements, and a PACE program may be administered by a third party at the discretion of the local government; 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**, on August 6, 2012, the Town of Cutler Bay, Village of Palmetto Bay, Village of Pinecrest, City of South Miami, Miami Shores Village, City of Coral Gables, and City of Miami, entered into an interlocal agreement, which is recorded in the Official Records of Miami-Dade County at Book 28217 Pages 0312-333, creating a separate legal entity known as the Green Corridor Property Assessment Clean Energy (PACE) District (the "District"); and

**WHEREAS**, given the wide spread energy and economic benefits of PACE programs, the City Council desires for the City of Zephyrhills to join the District as a non-voting member by entering into a Membership Agreement, in substantially the form attached hereto as Exhibit "A," ("Membership Agreement") in order for property owners within the City of Zephyrhills to obtain from the District the upfront financing for Qualifying Improvements; and

**WHEREAS**, the City Council deems it in the best interest of the citizens and residents of the City of Zephyrhills, Florida to adopt this Resolution.

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

**Section 1. Recitals.** The foregoing recitals are incorporated in this Resolution as though fully set forth herein and are approved and adopted.

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

**Section 3. Approval of Membership Agreement.** The City Council hereby approves of the Membership Agreement with the District, in substantially the form attached hereto as Exhibit "A."

**Section 4. Authorization.** The City Council hereby authorizes the Council President to execute the Membership Agreement with the District, in substantially the form attached hereto as Exhibit "A," subject to approval by the City Attorney as to form and legality.

**Section 5. Directions to Clerk.** The City Clerk is directed to send a certified copy of this Resolution to the District's Manager at Governmental Management Services – South Florida, LLC, 5385 N. Nob Hill Road, Sunrise, Florida 33351 within ten (10) days of adoption.

**Section 6. Effective Date.** This Resolution shall be effective immediately upon adoption.

**PASSED and ADOPTED** this 10<sup>th</sup> day of July, 2017.

\_\_\_\_\_  
W. Alan Knight, Council President

Attest:

\_\_\_\_\_  
Lori L. Hillman, City Clerk

Approved as to form and legality:

\_\_\_\_\_  
Matthew E. Maggard, City Attorney

Moved By: \_\_\_\_\_

Seconded By: \_\_\_\_\_

Final Vote at Adoption:

Councilmember Burgess \_\_\_\_\_

Councilmember Compton \_\_\_\_\_

Councilmember Knight \_\_\_\_\_

Councilmember Proctor \_\_\_\_\_

Councilmember Smith \_\_\_\_\_

MEMBERSHIP AGREEMENT BETWEEN THE GREEN CORRIDOR PROPERTY  
ASSESSMENT CLEAN ENERGY (PACE) DISTRICT AND THE CITY OF  
ZEPHYRHILLS, FLORIDA

This Membership Agreement (the "Membership Agreement") is entered into this 10<sup>th</sup> day of July, 2017 by and between the Green Corridor Property Assessment Clean Energy (PACE) District, a public body corporate and politic (the "Green Corridor"), and Zephyrhills, 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 Zephyrhills, Florida.

**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 November 28, 2016, the City of Zephyrhills adopted Resolution 728-16 agreeing to join the Green Corridor as a non-voting member in order to finance qualifying improvements in the City of Zephyrhills 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 Zephyrhills, Florida.

**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 Zephyrhills, Florida 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 of Zephyrhills 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 Zephyrhills.
4. Non-Exclusive. The Green Corridor Program is non-exclusive, meaning the City of Zephyrhills 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.
5. Program Guidelines: The Parties agree that, unless the City of Zephyrhills desires to implement its own local program guidelines as described below, the Program to be offered in the City will be wholly governed by the Green Corridor's Program Guidelines. 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 Zephyrhills, 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 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 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.
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.
9. Responsibilities of the Green Corridor; Indemnification. The Green Corridor shall be solely responsible for all matters associated with origination, funding, financing 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. The Parties understand 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.
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.} The Green Corridor also acknowledges that the County has no authority to bind the incorporated municipalities in the County, and the Green Corridor will be required to enter into separate agreements with the incorporated municipalities in the County to the extent the Green Corridor wishes to extend the Program into such municipalities.} The Green Corridor also acknowledges that all incorporated municipalities in the County will be included in the Program, unless a municipality notifies the County that it elects not to participate in the Program. In such case, the County will promptly notify the Green Corridor that the municipality will not be included in the Program, and that the Green Corridor will have no authority to operate the Program within such municipality.]
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 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. Any Party may terminate this Membership Agreement upon ninety (90) days prior written notice.

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 Zephyrhills:

Steven F. Spina, city manager  
5335 8<sup>th</sup> Street  
Zephyrhills, FL 33542

With a Copy to:  
Matthew E. Maggard, city attorney  
5335 8<sup>th</sup> Street  
Zephyrhills, FL 33542

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 of Zephyrhills that arises out of or relates to this Membership Agreement shall be the appropriate state court in Pasco County, Florida.
24. Effective Date. This Membership Agreement shall become effective upon the execution by the Parties hereto.

{signature page follows}

IN WITNESS WHEREOF, the Parties hereto have made and executed this Membership Agreement on this 10<sup>th</sup> day of July, 2017.

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 ZEPHYRHILLS, FLORIDA

By: \_\_\_\_\_ Lori L. Hillman, City Clerk

By: \_\_\_\_\_ W. Alan Knight, Council President

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_ Matthew E. Maggard, City Attorney

[SIGNATURE PAGE TO MEMBERSHIP AGREEMENT]