

RESOLUTION NO. 2011-63

A RESOLUTION OF THE VILLAGE OF PINECREST, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH OTHER MUNICIPALITIES RELATING TO THE GREEN CORRIDOR PROPERTY ASSESSMENT CLEAN ENERGY (PACE) DISTRICT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council adopted Resolution 2010-5 supporting the enactment of legislation establishing a Property Assessment Clean Energy ("PACE") program; and

WHEREAS, The Florida Legislature created Florida's PACE program in 2010; and

WHEREAS, Section 163.08, Florida Statutes, under the "PACE Act" provides and allows for providing funding and financing for certain clean energy, renewable energy and wind resistant qualifying improvements and associated programs by local governments for "Property Assessed Clean Energy;" and

WHEREAS, Section 163.08 provides that a local government may levy non-ad valorem assessments to fund qualifying improvements, which a property owner may apply to the Village for funding to finance a qualifying improvement and enter into a financing agreement with the Village; and

WHEREAS, costs incurred by the Village for such purpose may be collected as a non-ad valorem assessment to be collected pursuant to Section 197.3632, Florida Statutes; and

WHEREAS, pursuant to the Village's home rule powers, the Village may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements; and

WHEREAS, a qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government; and,

WHEREAS, the Town of Cutler Bay has established the South-Dade Green Corridor District (the "District) under the powers delineated under section 163.01, Florida Statutes, "the Florida Interlocal Cooperation Act of 1969" and the PACE Act; and

WHEREAS, on or about August 16, 2011, the Town of Cutler Bay executed a third-party administration agreement with Ygrene Florida Energy Fund, LLC, to be the administrator of the Green Corridor program, to develop, implement and administer proposed programs providing planning, development, financing, marketing, and management for efficient, effective and voluntary PACE programs; and

WHEREAS, the Town of Cutler Bay is seeking to partner with the Village and other local municipalities to create a separate legal entity under Section 163.01(7)(g), Florida Statutes, for purposes of offering a PACE program to constituents of the member governments thereof; and

WHEREAS, pursuant to Section 163.08, Florida Statutes, a municipality or its created special district may finance energy related "qualifying improvements" through voluntary assessments; and

WHEREAS, pursuant to section 163.08, Florida Statutes, the improved property that has been retrofitted with energy-related qualifying improvements receive special benefit of alleviating the property's burden from energy consumption and assists in the fulfillment of the state's energy and hurricane mitigation policies; and

WHEREAS, the Interlocal Agreement proposes the establishment of the District as a means of implementing and financing a qualifying improvements program for energy conservation and efficiency improvements within the District; and

WHEREAS, the Interlocal Agreement clarifies the various obligations for future cooperation between all the municipalities participating in the District, including financing of qualifying improvements within the District; and

WHEREAS, the Village Council wishes to enter into an interlocal agreement with the Town of Cutler Bay and other municipalities to participate in the District in order to provide financing for qualifying improvements as provided for in F.S. 163.08;

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF PINECREST, FLORIDA, AS FOLLOWS:

Section 1. That the Village Council hereby authorizes the Village Manager to execute the attached Interlocal Agreement with other area municipalities relating to the South-Dade Green Corridor District.

Section 2. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 11th day of October, 2011.


Cindy Lerner, Mayor

Attest:


Guido H. Inguanzo, Jr., CMC
Village Clerk



Approved as to Form and Legal Sufficiency:



Cynthia A. Everett

Village Attorney

Motion by: Councilmember Corradino

Second by: Councilmember Cutler

Vote: Councilmembers Corradino, Cutler, Harter, Vice Mayor Ross, and Mayor Lerner voting Yes

**INTERLOCAL AGREEMENT
BETWEEN
THE TOWN OF CUTLER BAY, FLORIDA,**

AND _____,

This Interlocal Agreement is entered into between the Town of Cutler Bay, Florida, a Florida municipal corporation, hereinafter referred to as "Cutler Bay;"

and

_____, Florida, a Florida municipal corporation, hereinafter referred to as the "City B;"

and

_____, Florida, a Florida municipal corporation, hereinafter referred to as the "City C;"

and

the Green Corridor Property Assessment Clean Energy (PACE) District, hereinafter referred to as the "District."

RECITALS

WHEREAS, Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into interlocal agreements for the mutual benefit of governmental units; and

WHEREAS, Section 163.01 (7), Florida Statutes, allows for the creation of a "separate legal entity" constituted pursuant to the terms of the interlocal agreement to carry out the purposes of the interlocal agreement for the mutual benefit of the governmental units; and

WHEREAS, Cutler Bay, City B, and City C desire to enter into an interlocal agreement for establishment of the District as a separate legal entity (Collectively, the "Parties"); and

WHEREAS, Section 166.021, Florida Statutes, authorizes Cutler Bay, City B and City C to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Section 163.08, Florida Statutes, provides that a "local government," defined as a county, municipality or a dependent special district as defined in Section 189.403, Florida Statutes, may finance energy related "qualifying improvements" through voluntary assessments; and

WHEREAS, Section 163.08, Florida Statutes, provides that improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption and assists in the fulfillment of the state's energy and hurricane mitigation policies; and

WHEREAS, Section 163.08(5), Florida Statutes, provides that local governments may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements; and

WHEREAS, the Parties to this Interlocal Agreement have expressed a desire to enter into this Interlocal Agreement in order to authorize the establishment of the District as a means of implementing and financing a qualifying improvements program for energy conservation and efficiency improvements within the District; and

WHEREAS, Cutler Bay, City B and City C have determined that it is necessary and appropriate to create the District and to clarify various obligations for future cooperation between Cutler Bay, City B and City C related to the financing of qualifying improvements within the District; and

WHEREAS, Cutler Bay, City B and City C have determined that it shall serve the public interest to enter into this Interlocal Agreement to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage to provide for the financing of qualifying improvements within the District.

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

Section 1. Recitals Incorporated. The above recitals are true and correct and incorporated herein.

Section 2. Purpose. The purpose of this Interlocal Agreement is to consent to and authorize the creation of the District, pursuant to Section 163.08, Florida Statutes in order to facilitate the financing of qualifying improvements for property owners within the District. The District shall be a separate legal entity, pursuant to Section 163.01, Florida Statutes.

Section 3. Qualifying Improvements. The District shall allow the financing of qualifying improvements as defined in Section 163.08, Florida Statutes.

Section 4. Enabling Ordinance or Resolution. The Parties to this Interlocal Agreement agree to approve and keep in effect such resolutions and ordinances as may be necessary to approve, create and maintain the District. Said ordinances and resolutions shall include all of the provisions as provided for in Sections 163.01 and 163.08, Florida Statutes, for the creation of a partnership between local governments as a separate legal entity. The District shall be created upon the execution of this Interlocal Agreement by the Parties hereto and the adoption of an ordinance or resolution of support by the Parties establishing the District. Additional local

governments may join in and enter into this Interlocal Agreement by approval of the Board (as defined in Section 6 below), execution of this Interlocal Agreement and adoption of an ordinance or resolution of support establishing the District.

Section 5. District Boundaries. The boundaries of the District shall be the legal boundaries of the local governments that are Parties to this Interlocal Agreement. As contemplated in this Interlocal Agreement, the District will assist the local governments in levying voluntary assessments on the benefitted properties within the boundaries of the District to help finance the costs of qualifying improvements for those individual properties. Upon petition by the landowners of individual properties desiring to be benefitted, those properties receiving financing for qualifying improvements shall be assessed from time to time, in accordance with the applicable law. Notwithstanding a local government's termination of participation within this Interlocal Agreement, those properties that have received financing for qualifying improvements shall continue to be a part of the District, until such time that all outstanding debt has been satisfied.

Section 6. Governing Board of the District. The District shall be governed by a governing board of the District (the "Board,") which shall be comprised of current elected officials of the Parties to this Interlocal Agreement and one at large member. The maximum number of members of the Board serving at any given time shall be no more than seven (7) and the minimum number of members shall be not less than three (3). The initial Board which shall serve for an initial four (4) year term and shall consist of one (1) representative(s) appointed by Cutler Bay, one (1) representative(s) appointed by City B, and one (1) representative(s) appointed by City C. The initial at large member of the Board shall be appointed by a majority vote of the Board at its first regularly scheduled meeting. All subsequent renewal terms shall be for four (4) years. Following the initial Board appointments, the Parties to this Interlocal Agreement shall nominate appointees to be elected to the Board by current sitting Board members. In the event a Board member loses his or her elected seat, that Party to this Interlocal Agreement shall appoint a replacement elected official to fulfill the remaining term of that member. The Board's administrative duties shall include all duties necessary for the conduct of the Board's business and the exercise of the powers of the District as provided in Section 11.

Section 7. Decisions of the Board. Decisions of the Board shall be made by majority vote of the Board. The Board may adopt rules of procedure. In the absence of the adoption of such rules of procedure, the fundamental parliamentary procedures of Roberts Rules of Order shall apply.

Section 8. District Staff and Attorney. The Town Manager of Cutler Bay shall serve as the staff to the District. In addition, the Town Attorney for Cutler Bay shall serve as the counsel to the District. The Parties agree to designate the Town Manager of Cutler Bay, as their authorized agent for purposes of signing any agreements authorized by the Board. After the District has been operating for two years, the Board may choose to hire different District staff and/or Attorney.

Section 9. Authorized Official. The Parties agree to each identify a local official or designee of the respective Party who is authorized to enter into a financing agreement, pursuant to Section 163.08(8), Florida Statutes, with property owner(s) who obtain financing through the District.

Section 10. Procurement. The Parties agree and understand that the initial procurement for a Third Party Administrator will be performed by the Town of Cutler Bay in accordance with its adopted procurement procedures. Upon the Town of Cutler Bay selecting the Third Party Administrator (TPA), the Town will enter into an agreement with the TPA, which will be subsequently assigned to the District.

Section 11. Powers of the District. The District shall exercise any or all of the powers granted under Sections 163.01 and 163.08, Florida Statutes, as may be amended from time to time, which include, without limitation, the following:

- a. To finance qualifying improvements within the District boundaries;
- b. In its own name to make and enter into contracts;
- c. To employ agencies, employees, or consultants;
- d. To acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- e. To acquire, hold, or dispose of property;
- f. To incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the Parties to this Interlocal Agreement;
- g. To adopt resolutions and policies prescribing the powers, duties, and functions of the officers of the District, the conduct of the business of the District, and the maintenance of records and documents of the District;
- h. To maintain an office at such place or places as it may designate within the District or within the boundaries of a Party to this Interlocal Agreement;
- i. To cooperate with or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by Section 163.08, Florida Statutes, and to accept funding from local and state agencies;
- j. To exercise all powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized in Section 163.08, Florida Statutes; and

- k. To apply for, request, receive and accept gifts, grants, or assistance funds from any lawful source to support any activity authorized under this Agreement.

Section 12. Quarterly Reports. A quarterly report of the District shall be completed in accordance with generally accepted Government Auditing Standards by an independent certified public accountant. At a minimum, the quarterly report shall include a balance sheet, statement of revenues, expenditures and changes in fund equity and combining statements prepared in accordance with generally accepted accounting principles. All records such as, but not limited to, construction, financial, correspondence, instructions, memoranda, bid estimate sheets, proposal documentation, back charge documentation, canceled checks, reports and other related records produced and maintained by the District, its employees and consultants shall be deemed public records, and shall be made available for audit, review or copying by a Party to this Interlocal Agreement upon reasonable notice.

Section 13. Term. This Interlocal Agreement shall remain in full force and effect from the date of its execution; provided, however, that any Party may terminate its involvement in the District and its participation in this Interlocal Agreement upon ten (10) days' written notice to the other Parties. Should a Party terminate its participation in this Interlocal Agreement, be dissolved, abolished, or otherwise cease to exist, the District and this Interlocal Agreement shall continue until such time as all remaining Parties agree to terminate.

Section 14. Consent. This Interlocal Agreement and any required resolution or ordinance of an individual Party shall be considered the Parties' consent to the creation of the District as required by Sections 163.01 and 163.08, Florida Statutes.

Section 15. Liability. The Parties hereto shall each be individually and separately liable and responsible for the actions of its officers, agents and employees in the performance of their respective obligations under this Interlocal Agreement. Except as specified herein, the Parties shall each individually defend any action or proceeding brought against their respective agency pursuant to this Interlocal Agreement and shall be individually responsible for all of their respective costs, attorneys' fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. For any action or proceeding brought against the District pursuant to this Interlocal Agreement, the Parties shall each contribute pro rata for all costs, attorneys' fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. The Parties shall each individually maintain throughout the term of this Interlocal Agreement any and all applicable insurance coverage required by Florida law for governmental entities.

Section 16. 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 it must be given 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 Cutler Bay: Town Manager
 Town of Cutler Bay
 10720 Caribbean Boulevard, Suite 105
 Town of Cutler Bay, Florida 33189

With a Copy to: Weiss Serota Helfman
 Pastoriza Cole & Boniske, P.L.
 2525 Ponce de Leon Boulevard
 Suite 700
 Coral Gables, Florida 33134

If to City B: _____

If to City C: _____

Section 13. 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 and the District.

Section 14. Filing. It is agreed that this Interlocal Agreement shall be filed with the Clerk of the Circuit Court of Miami-Dade County, as required by Section 163.01(11), Florida Statutes.

Section 15. Joint Effort. The preparation of this Interlocal 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.

Section 16. Merger. This Interlocal 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 Interlocal 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 Interlocal Agreement.

Section 17. Assignment. The respective obligations of the Parties set forth in this Interlocal Agreement shall not be assigned, in whole or in part, without the written consent of the other Parties hereto.

Section 18. Records. The Parties shall each maintain their own respective records and documents associated with this Interlocal Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

Section 19. Governing Law and Venue. This Interlocal Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Venue for any claim, objection or dispute arising out of the terms of this Interlocal Agreement shall be proper exclusively in Miami-Dade County, Florida.

Section 20. Severability. In the event a portion of this Interlocal Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

Section 21. Effective Date and Joinder by District. This Interlocal Agreement shall become effective upon the execution by the Parties hereto. It is agreed that, upon the formation of the District, the District shall thereafter join this Interlocal Agreement and that the District shall thereafter be deemed a Party to this Interlocal Agreement as if it were an original Party thereto.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Interlocal Agreement on this ____ day of _____, 2011.

ATTEST:

TOWN OF CUTLER BAY, a municipal corporation of the State of Florida

BY: _____
Town Clerk

BY: _____
Town Manager

(Affix Town Seal)

Approved by Town Attorney
as to form and legal sufficiency

Town Attorney