

RESOLUTION 25-021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANIBEL (THE "CITY"), FLORIDA, AUTHORIZING A COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) PROGRAM WITHIN THE CORPORATE LIMITS OF THE CITY; APPROVING A LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT (AGREEMENT) WITH THE FLORIDA RESILIENCY AND ENERGY DISTRICT; UTILIZING VOLUNTARY NON-AD VALOREM ASSESSMENTS TO FINANCE QUALIFYING IMPROVEMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the Florida PACE Act, codified in Sections 163.08 through Section 163.087, Florida Statutes (the "PACE Act"), commercial property owners may voluntarily finance improvements to real property related to waste systems, resiliency, flood and water damage mitigation, energy conservation and efficiency, renewable energy and water conservation efficiency improvements ("Qualifying Improvements"), and repay such financing through voluntary special assessments, sometimes referred to as non-ad valorem assessments ("Special Assessments"); and

WHEREAS, the Florida Resiliency and Energy District ("District") is a separate legal entity and unit of local government within the State of Florida which was established by interlocal agreement for the express purpose of providing a platform to facilitate the financing of Qualifying Improvements throughout Florida; and

WHEREAS, the upfront costs of Qualifying Improvements may impede installation and existing financing options may be insufficient for commercial property owners to access cost-effective financing for Qualifying Improvements due to requirements associated with traditional debt or equity financing options; and

WHEREAS, the District has created a financing, levy, and collection process to implement its C-PACE program to assist commercial property owners who desire to improve their real property with Qualifying Improvements; and

WHEREAS, pursuant to the PACE Act, the District may only offer its C-PACE program for commercial properties located within the jurisdiction of the CITY if the CITY has authorized the District to do so; and

WHEREAS, by approving the Agreement with the District, C-PACE program funding will be available to assist Sanibel's qualifying commercial property owners to rebuild, harden, or renovate their properties thereby improving community resiliency; and

WHEREAS, the CITY Council finds it to be in the best interest of its residents to approve the Agreement and authorize the District's C-PACE program and to facilitate the financing of Qualifying Improvements to commercial properties located within the municipal boundaries of the CITY.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA:

SECTION 1. The Limited Purpose Party Agreement the Florida Resiliency and Energy District, a copy of which is attached as Exhibit "A", is hereby approved and the City Manager is authorized to execute the Agreement on behalf of the City.

SECTION 2. The CITY Council hereby authorizes the District to offer its C-PACE program in accordance with the PACE Act, to eligible commercial property owners within the boundaries of the CITY.

SECTION 3. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

PASSED IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA, THIS 30TH DAY OF JULY 2025.

Attest:

Scotty Lynn Kelly, City Clerk

Mike Miller, Mayor

Approved as to form and legality:

John D. Agnew, City Attorney

Date filed with City Clerk: _____

Vote of Council Members:

Miller	_____
Smith	_____
DeBruce	_____
Henshaw	_____
Johnson	_____

EXHIBIT A

This instrument was prepared by or under the supervision of (and after recording should be returned to):

Ryan Bartkus
Florida Resiliency and Energy District
c/o Florida Development Finance Corporation
156 Tuskawilla Road, Suite 2340
Winter Springs, Florida 32708

(SPACE reserved for Clerk of Court)

LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT BETWEEN THE FLORIDA RESILIENCY AND ENERGY DISTRICT AND THE CITY OF SANIBEL

This Limited Purpose Party Membership Agreement (the “Agreement”) is entered into this ____ day of _____, 2025 by and between the **FLORIDA RESILIENCY AND ENERGY DISTRICT (“FRED”)**, a public body corporate and politic created as a separate legal entity pursuant to Section 163.01(7), Florida Statutes, and the City of Sanibel, a municipal corporation of the State of Florida (“CITY”) (collectively, the “Parties”) for the purpose of providing a Commercial Property Assessed Clean Energy (“CPACE”) program within the legal boundaries of the CITY.

WITNESSETH

WHEREAS, pursuant to the Florida PACE Act, codified in Section 163.08 through Section 163.087, Florida Statutes (the “PACE Act”), property owners may voluntarily finance improvements related to waste systems, resiliency, energy efficiency and conservation, renewable energy and water conservation efficiency improvements (“Qualifying Improvements”) with the assistance of local governments, through the execution of financing agreements and the related imposition of voluntary, non-ad valorem special assessments; and

WHEREAS, an Interlocal Agreement, dated September 6, 2016, as amended and supplemented from time to time (the “Interlocal Agreement”) was initially entered into between the Town of Lake Clarke Shores and the City of Fernandina Beach (each a “Founding Member”) and subsequent parties thereto (the “Public Agencies”) and, in the limited capacity described therein, the Florida Development Finance Corporation (“FDFC” and together with the Public Agencies, the “Parties”), for the purpose of facilitating the financing of Qualifying Improvements for properties located within FRED's aggregate legal boundaries via the levy and collection of voluntary non-ad valorem special assessments on improved property; and

WHEREAS, the CITY finds that the financing of Qualifying Improvements through the FRED CPACE Program provides a special benefit to participating real commercial property within its legal boundaries; and

WHEREAS, by entering into this Agreement, the CITY shall have no obligation or liability to FRED nor to any property owner or representative thereof voluntarily participating in the FRED CPACE program, nor to any other party, with respect to any

performance, obligations, or other responsibilities related to or concerning any actions or inactions of FRED or its authorized agents or representatives; and

WHEREAS, the Parties to this Agreement desire to supplement the Interlocal Agreement to include CITY as a Limited Member, as such term is defined in the Interlocal Agreement, on the date last signed below.

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

SECTION 1. DEFINITIONS. Any capitalized terms used in this Agreement, but not otherwise defined herein, shall have the meaning specified for such term in the Interlocal Agreement.

SECTION 2. PURPOSE. The purpose of this Agreement is to facilitate the financing of Qualifying Improvements to commercial properties through a CPACE program, in accordance with the PACE Act and provide an efficient process for real property owners within the legal boundaries of the CITY to access the CPACE program and authorize FRED to administer the CPACE program within such legal boundaries.

SECTION 3. RIGHTS OF PARTIES. FRED, together with its member Parties and the CITY, with the intent to be bound thereto, hereby agree that the CITY shall become a Party to the Interlocal Agreement together with only those rights and obligations of Parties to the Interlocal Agreement as are necessary to fulfill the purposes described in this Agreement, including access to financing and processing of non-ad valorem special assessments by FRED, within the legal boundaries of the CITY, as more specifically described below, and in accordance with federal, state, and local laws, rules, regulations, ordinances, and all operational program standards of the CITY.

SECTION 4. INCORPORATION OF RECITALS AND LEVY OF SPECIAL ASSESSMENTS. The Parties hereby acknowledge and agree with each recital to this Agreement and incorporate such findings herein as their own. The non-ad valorem special assessments arising from a commercial property owner's voluntary participation in the CPACE program shall be levied by FRED on properties within the legal boundaries of the CITY and the receipt and distribution of any non-ad valorem special assessments imposed by FRED are purely ministerial acts.

SECTION 5. QUALIFYING IMPROVEMENTS. FRED may provide access to financing for Qualifying Improvements to real property within the legal boundaries of the CITY, in accordance with the CPACE Act, the terms of the Interlocal Agreement, as well as applicable federal, state, and City law.

SECTION 6. FINANCING AGREEMENT. Before extending any financing or subjecting any participating real property within the legal boundaries of the CITY to the non-ad valorem special assessment authorized therein, FRED and FDFC, through their designees, shall, on a non-exclusive basis pursuant to the PACE Act and this Agreement, enter into a financing agreement (the "Financing Agreement") with property owner(s) within the legal boundaries of the CITY who qualify for financing through FRED.

The Financing Agreement shall include a thorough explanation of the PACE financing process and specify at what point in the process the special assessment will be added to the real property's owner's property tax bills and shall contain any other terms and conditions as may be required by the PACE Act. The Parties hereto acknowledge and agree that the CITY shall have no obligations under any such Financing Agreements.

SECTION 7. BOUNDARIES OF THE CPACE PROGRAM. For the limited purposes of administering the CPACE program and imposing non-ad valorem special assessments as described in this Agreement, the legal boundaries of FRED shall include the legal boundaries of the CITY, which legal boundaries may be limited, expanded to reflect annexation, or more specifically designated from time to time by the CITY by providing written notice to FRED. Upon execution of this Agreement and written request thereafter, the CITY agrees to provide FRED the current legal description of the legal boundaries (if available) of the CITY.

SECTION 8. ELIGIBLE PROPERTIES. Within the legal boundaries of the CITY, commercial real property, including multi-family residential with five (5) or more dwelling units, as defined in the PACE Act, may be eligible for participation in the CPACE program within the limits otherwise prescribed in the PACE Act.

SECTION 9. SURVIVAL OF SPECIAL ASSESSMENTS. During the term of this Agreement, FRED may levy voluntary non-ad valorem special assessments on participating properties within the legal boundaries of the CITY to help secure the financing of costs of Qualifying Improvements constructed or acquired on such properties based on the finding of special benefit by the CITY. Those properties receiving financing for Qualifying Improvements shall be assessed by FRED until such time as the financing for such Qualified Improvement is repaid in full, in accordance with the PACE Act and other applicable law. Notwithstanding termination of this Agreement or notice of a change in the legal boundaries of the CITY as provided for herein, those properties that have received financing for Qualifying Improvements shall continue to be a part of FRED, until such time that all outstanding debt has been satisfied.

SECTION 10. TERM. This Agreement shall remain in full force and effect from the date of its execution by both Parties. Any Party may terminate this Agreement for convenience upon thirty (30) days' prior written notice ("Termination Notice") in accordance with the terms of the Interlocal Agreement. Beginning on the date FRED receives a Termination Notice from the CITY ("Termination Date"), FRED shall not approve any new applications affecting property within the legal boundaries of the CITY referenced in the Termination Notice. Notwithstanding termination of this Agreement, however, property owners whose applications were received prior to the Termination Date, and who received funding through the CPACE program, shall continue to be a part of FRED, for the sole purpose of FRED imposing assessments for the repayment of such property's outstanding debt, until such time that all outstanding debt has been satisfied.

SECTION 11. CONSENT This Agreement, together with the Resolution by the Sanibel City Council approving this Agreement, shall be considered the Parties'

continued consent to authorize FRED to administer the CPACE program within the legal boundaries of the CITY, required by the PACE Act.

SECTION 12. COORDINATOR. The CITY Manager's Office within the CITY shall serve as the CITY's primary point of contact and coordinator. The CITY will advise FRED of any changes to the CITY's own primary contact and coordinator within 30 days of such changes.

SECTION 13. LIMITED OBLIGATIONS. Neither FRED nor FDFC is authorized to issue bonds, or any other form of debt, on behalf of the CITY without a separate interlocal agreement or other authority provided by State law. To the extent that FRED or FDFC issues CPACE-related bonds under its own authority in connection with this Agreement, the security for such bonds may be secured by non-ad valorem special assessments imposed by FRED on participating properties within the legal boundaries of the CITY. The issuance of such bonds shall not directly or indirectly or contingently obligate the CITY to levy or to pledge any form of taxation whatever, or to levy ad valorem taxes on any property within their territorial limits to pay the bonds, and the bonds shall not constitute a lien upon any property or other assets owned by the CITY. For any such bonds, the bond disclosure document, if any, shall include references to the fact that the CITY is not an obligated party, and also adequately disclose material attendant risks with CPACE programs.

SECTION 14. LIABILITY, INDEMNIFICATION AND SOVEREIGN IMMUNITY.

(A) The CITY and FRED are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(0), Florida Statutes, and this covenant of the parties hereto, the local governments who are either or both the founders or members of FRED shall not be held jointly liable for the torts of the officers or employees of the FRED, or any other tort attributable to FRED, and that FRED alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. CITY and FRED acknowledge and agree that FRED shall have all of the applicable privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State. The CITY is completely independent of FRED. To the extent provided by law, FRED shall indemnify, defend and hold harmless the CITY from any and all damages, claims, and liability arising from the negligence or intentional misconduct of FRED relating to operation of the CPACE program. Nothing in this Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(B) Neither the CITY, nor the local governments who are either or both the founders or members of the Agency, nor any subsequently joining or participating local government as members of FRED shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of FRED, the governing board of FRED or any other agents, employees, officers or officials of FRED, except to the extent

otherwise mutually and expressly agreed upon in writing, and neither FRED, the governing board of FRED or any other agents, employees, officers or officials of FRED have any authority or power to otherwise obligate either the CITY, the local governments who are either or both the founders or members of FRED, nor any subsequently subscribing or participating local government in the business of FRED in any manner.

(C) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the parties shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Agreement.

SECTION 15. AGREEMENTS WITH TAX COLLECTOR AND PROPERTY APPRAISER. This Agreement shall be subject to the express condition precedent that FRED enter into separate agreement(s), as may be necessary, with the Lee County (Florida) Tax Collector (tax collector) and the Lee County Property Appraiser (property appraiser) , which, if necessary, shall provide for the collection of any non-ad valorem special assessments imposed by FRED within the legal boundaries of the CITY. If required by the tax collector and property appraiser, and if the terms and conditions are acceptable to the CITY, the CITY agrees to enter into those agreements as a third-party to facilitate the collection of the non-ad valorem special assessments imposed by FRED.

SECTION 16. AGENTS OF FRED. FRED shall ensure that its agents, administrators, subcontractors, successors and assigns are, at all times, in compliance with the terms of this Agreement and applicable CITY, state and federal laws.

SECTION 17. 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, or by electronic mail, 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 FRED:

The Florida Resiliency and Energy District
c/o Florida Development Finance Corporation
156 Tuskawilla Road, Suite 2340
Winter Springs, FL 32708
info@fdcbonds.com

and Issuer's Counsel with Nelson Mullins Riley & Scarborough LLP
Joseph Stanton, Esq.
Nelson Mullins Riley & Scarborough LLP
390 North Orange Avenue, Suite 1400
Orlando, FL 32801-4961
407.839.4200 (t)
jstanton@nelsonmullins.com

If to CITY:

City Manager
City of Sanibel
800 Dunlop Rd.
Sanibel, FL 33957
239-472-3700]

And City Attorney
City of Sanibel
800 Dunlop Rd.
Sanibel, FL 33957
239-472-3700

SECTION 18. AMENDMENTS. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this agreement that is approved by the Sanibel City Council and executed by the CITY and FRED or other delegated authority authorized to execute same on their behalf.

SECTION 19. JOINT EFFORT. The preparation of this 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 20. ASSIGNMENT. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Party hereto.

SECTION 21. THIRD PARTY BENEFICIARIES. None of the Parties intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement; provided, however, that counsel to the Parties may rely on this Agreement for purposes of providing any legal opinions required by the issuance of debt to finance the Qualifying Improvements.

SECTION 22. RECORDS. The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

SECTION 23. RECORDING. This Limited Purpose Party Membership Agreement shall be filed by FRED with the Clerk of the Circuit Court in the Public Records of Lee County and recorded in the public records of Seminole County, as an amendment to the Interlocal Agreement, in accordance with Section 163.01(11), Florida Statutes.

SECTION 24. SEVERABILITY. In the event a portion of this Agreement is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

SECTION 25. EFFECTIVE DATE. This Agreement shall become effective upon the execution by both Parties hereto.

SECTION 26. LAW, JURISDICTION, AND VENUE. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Twentieth Judicial Circuit in and for Lee County, Florida, the United States District Court for the Middle District of Florida or United States Bankruptcy Court for the Middle District of Florida, as appropriate.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the City by its [____], its seal affixed hereto, as attested by its Clerk as of the _____ day of _____, 2025.

Sanibel, Florida

By: _____
Dana A. Souza, City Manager

APPROVED AS TO FORM:

By: _____
John D. Agnew, City Attorney

ATTEST:

By: _____
[____], Clerk

[SIGNATURE PAGE TO LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT]

WITNESS:

FLORIDA DEVELOPMENT FINANCE
CORPORATION on behalf of FLORIDA RESILIENCY
AND ENERGY DISTRICT

Signature

Signature: _____

Print Name: _____

As its: _____

Print Name

Address: 156 Tuskawilla Road, Suite 2340
Winter Springs, Florida 32708

WITNESS:

Signature

Print Name

Address: 156 Tuskawilla Road, Suite 2340
Winter Springs, Florida 32708

STATE of FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [] physical presence
or [] online notarization, this ____ day of _____, 2025, by
_____, _____ of the Florida
Development Finance Corporation, on behalf of the Florida Resiliency and Energy District,
who is personally known to me/has produced _____ as identification.

Printed/Typed Name: _____

Notary Public – State of Florida

Commission Number: