

RESOLUTION NO. 2022 0822(1)

A RESOLUTION OF THE FLORIDA PACE FUNDING AGENCY AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$5,000,000,000 FLORIDA PACE FUNDING AGENCY REVENUE BONDS (QUALIFYING IMPROVEMENT FINANCE PROGRAM) IN VARIOUS SERIES FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE THE COST OF QUALIFYING IMPROVEMENTS AS MAY BE AUTHORIZED BY THE LEGISLATURE; AUTHORIZING THE EXECUTION AND DELIVERY OF TRUST INDENTURES; MAKING FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FINANCING OF SUCH QUALIFIED IMPROVEMENTS; AUTHORIZING EXECUTION AND DELIVERY OF TRUST INDENTURES UNDER WHICH SUCH BONDS MAY BE ISSUED; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF THE BONDS; PROVIDING FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING THE VALIDATION OF SUCH BONDS; AUTHORIZING AND DIRECTING THE REPRESENTATIVES AND OFFICERS OF THE FLORIDA PACE FUNDING AGENCY TO TAKE ALL NECESSARY ACTION IN CONNECTION WITH THE SALE AND DELIVERY OF THE BONDS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING FOR A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

BE IT RESOLVED BY THE FLORIDA PACE FUNDING AGENCY AS FOLLOWS:

SECTION 1. AUTHORITY AND PURPOSE. This Resolution (the "Second Master Bond Resolution") of the Florida PACE Funding Agency (the "Agency") is adopted pursuant to general law and that certain Amended and Restated Interlocal Agreement Relating to the Establishment of the Florida PACE Funding Agency (the "Charter Agreement") made and entered into, initially by and between local governments acting as incorporators thereof (collectively, the "Incorporators"), the provisions of Section 163.01, Florida Statutes (the "Interlocal Act"), Section 163.08, Florida Statutes (the "Supplemental Act") and other applicable provisions of general law.

SECTION 2. PEER REVIEW AND AUTHORITATIVE REFERENCE. It is hereby ascertained, determined and declared as follows:

(A) This Resolution has been developed after a decade of mixed experiences by the Agency toward its mission.¹ The initial development of the Agency's financing program focused upon working with general purpose local governments (counties and municipalities with home rule powers) who would subscribe or contract with the Agency to facilitate the financing and funding of qualifying improvements to real property ("Qualifying Improvements") for interested property owners, where the Agency as a focused special purpose local government (initially without express general law power to independently impose non-ad valorem assessments for Qualifying Improvements) was prepared to assist both local governments and property owners who voluntarily entered into repayment terms of a non-ad valorem assessment imposed by the applicable local county or municipality to accomplish the financing and funding of Qualifying Improvements. The initial financing program structure is reflected in the 2011 Final Judgment validating the Agency's initial bonds.

(B) In 2012, the Legislature changed, broadened and re-assigned the statutory authorization of the Agency (and other separate legal entities) to allow the Agency to independently offer of its service statewide and to directly impose the non-ad valorem assessments authorized by the Supplemental Act. The change in law in turn caused the Agency to change its charter and financing program. The Agency now directly assists property owners who voluntarily determine to employ non-ad valorem funding and financing toward securing supplemental improvements to real property which is provided for in general law and declared to accomplish compelling state interests by the Legislature. The Agency began issuing debt and funding Qualifying Improvements in 2016, and to date has funded just over \$300,000,000 of such Qualifying Improvements in thirty-three (33) counties in Florida. By general law requirement the Agency uses

¹ The mission of the Agency is announced in the Agency Charter, at section. 2.01(G) and (H), and fairly summarized as follows: To provide an independent, uniform and efficient local platform capable of serving private property owners in Florida, by securing economies of scale, market-based competition and uniform implementation on a state-wide basis as authorized by general law and its Charter to facilitate the provision of service, and the funding and financing of Qualifying Improvements to only interested property owners desiring to voluntarily achieve the compelling state interests expressed in the Supplemental Act. The Agency's mission is to fundamentally include a judicially-confirmed structure which eliminates responsibility or liability for the Agency's actions with regard to any other governmental official or entity, while benefitting local commerce, fulfilling the state's energy and hurricane mitigation policies, and allows for cooperation and sharing information with general purpose local governments; focuses upon education of interested and participating property owners, along with providing for direct written disclosure and constructive notice which meets and exceeds relevant industry standards and the extraordinary direct and constructive notice provided by the Supplemental Act.

the uniform method to collect and enforce all Agency non-ad valorem assessments as provided for in Section 197.3632, Florida Statutes. No properties subjected to non-ad valorem assessment by the Agency have been to date sold at tax deed sale or struck to a county.

(C) In continually reviewing its service and financing program, the Agency, among other things, sought out peer review from knowledgeable persons with credible authoritative understanding of matters economic, community development, engineering, environmental, including the Agency's general law powers on issues of the breadth of Qualifying Improvements authorized by the Legislature, sizing for this Second Master Bond Resolution, and insight on better securing uniformity of commerce and acting upon the Legislature's non-exclusive general law invitation and urging to the Agency (and other similar separate legal entities) to serve² interested private property owners statewide.

(D) In continually revisiting its service, the Agency has, among other things, sought out learned peer review concerning the desirability and applicability of financing and funding seawalls or coastal armament as Qualifying Improvements and, among other things, considered the following:

(1) Based on information and estimates recently provided by Dr. Frederick Bloetscher to the Agency, the State of Florida has by far more seawall structures (at least 9,000 linear miles) than any other state. Dr. Bloetscher informs of industry data indicating the estimate of repairs and replacement needed and likely candidates for repair, retrofit and replacement for these wind-resistant improvements presently surpasses \$40,000,000,000 in only ten (10) of Florida's counties.

(2) Many general purpose local governments (counties and municipalities) have adopted building codes which preclude permitting for

² Consistent with general law provisions of section 163.01(7)(g), Florida Statutes, section 1.01 of the Agency's Charter defines the term "serve" as follows: "*Serve*", "*service*" or the "*provision of service*" as such terms are used herein relate to a governmental function or purpose identified by law, which serve and achieve what the Legislature has determined as a compelling state interest necessary for the prosperity and welfare of the state and its property owners and inhabitants, and shall include and mean all actions authorized by the Supplemental Act and this Charter, including, but not limited to, the funding and financing of Qualifying Improvements through the execution of financing agreements and the related imposition of voluntary non-ad valorem assessments to finance facilities on behalf of private property owners within or outside of any Incorporator, all of which have been authorized and declared by the Legislature to benefit the people of the state, increase their commerce and prosperity, improve their health and living conditions, and to allow for the performance of essential governmental functions by the Agency.

construction or substantial re-modeling of coastal or near shore buildings without increasing the height or otherwise fortifying existing seawall structures. The Agency is prepared to provide an efficient and facilitative approach to the implementation and administration of assisting property owners and improvement vendors of their choice, in securing the funding for such improvements in a manner which furthers the compelling state interest of, among other things, promoting storm, wind and hurricane preparedness, all in a manner which results in substantial employment and positive economic activity and commerce throughout Florida.

(3) The ultimate scope or success of utilizing the Agency's financing program for seawall improvement is not easily estimated with precision. However, assuming only five percent (5%) of the estimated seawall repairs and replacement needed in Florida are subject to application for financing by affected private property owners, then the potential aggregate of Bonds and other debt instruments issued in several series would equal or exceed \$5,000,000,000.

(4) The review and analysis provided by Dr. Bloetscher is accepted by the Agency as competent, substantial evidence supporting the Agency's determination that seawalls, costal armaments and similar infrastructure facilities (herein, collectively "seawalls") provide a substantial benefit to the protection of structures and property resulting from wind driven wave action, and are therefore a wind resistance improvement and a measure to offset the effects of wind and storms. In the context of the Supplemental Act, the proviso using the "*which includes, but is not limited to*" language in subsection (2)(b)3 of the Supplemental Act combined with the reasoned nexus supplied by Dr. Bloetscher (that wind driven water and associated wind resistance features of seawalls supports the determination that financing of qualifying improvements such as seawalls is authorized by the Supplemental Act), reasonably implies such proviso is permissive, rather than exclusionary. Accordingly, the Board determines to authorize the addition of seawalls to the Agency's qualifying improvement financing program.

(E) The Agency has consulted with Dr. Owen M. Beitsch as to the appropriate principal amount of bonds that may be issued in light of the passage of a decade since his initial sizing advice, and observations toward increasing understanding of the assignment of responsibilities as the result of the 2012 change by the Legislature in the Supplemental Act. Based on information and estimates recently provided by Dr. Beitsch to the Agency, the State of Florida conservatively has at least five million buildings which are over 20 years old and likely candidates for retrofit with energy-related or wind-resistant improvements. The Agency will provide an efficient and facilitative approach to the implementation and administration of assisting private property owners and improvement vendors of their choice, in securing the funding for

such improvements in a manner which effects a compelling state interest of, among other things, conserving energy, reducing use of fossil fuel, reducing production of greenhouse gases, promoting energy security, promoting storm, wind and hurricane mitigation, all in a manner which results in substantial employment and positive economic activity throughout Florida. The ultimate maximum scope or success of such a qualifying improvement financing program is not easily estimated with precision. However, assuming only five percent (5%) of the owners of the foregoing estimated number of commercial, industrial, and residential buildings in Florida which are over 20 years old desire to and voluntarily apply for such retrofit improvements over the next several years, and the average of each such improvement is \$15,000, along with estimates concerning seawall related qualifying improvements, then the potential aggregate of Bonds and other debt instruments issued in several series would conservatively exceed \$5,000,000,000.

(F) The general law provisions of the Supplemental Act address enormous and pervasive circumstances, cite to compelling state interests and present a subject which is in substantial degree a matter of state concern. Toward furtherance of uniformity of application of general law statewide with regard to financing assistance activities provided to property owners as expressly encouraged and authorized by the Supplemental Act, the Agency determines to respectfully and collegially exert its independent status under applicable general law, including the Agency's express general law advantages associated with its status as an independent special purpose local government requiring adherence to general law and only that reasonably implied from the Legislature's pronouncement of general law, to accomplish its unique assignment of authority, responsibility, and scope of ability to independently, concurrently and non-exclusively act throughout the entire state in carrying out its mission under this Second Master Bond Resolution.

SECTION 3. FINDINGS AND DETERMINATIONS. It is hereby ascertained, determined and declared as follows:

(A) The Agency was incorporated in 2011; obtained judicial validation of its "Not to Exceed \$2,000,000,000 Florida PACE Funding Agency Revenue Bonds" without appeal in *Florida PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct., Aug. 25, 2011) (the "2011 Final Judgment"); and, proceeded to cater as a financing conduit, without cost or expense, to municipal and county general purpose local governments while not having the powers itself to impose non ad-valorem assessments pursuant to the Supplemental Act. The 2011 Final Judgment remains in full force and effect; however, general law concerning the Supplemental Act has since changed.

(B) Although incorporated by interlocal agreement, which forms the Agency charter, the Agency as a separate legal entity was formed accordingly under the express general law authority of section 163.01(7)(g), Florida Statutes (herein the "Separate Legal Entity Act"). The 2011 Final Judgment emphatically and expressly provided and confirmed the Agency was configured to be independent, separate and distinct from its incorporators and constituent local government members or subscribers, as a separate legal entity and public body corporate and politic.

(C) In the 2012 regular legislative session, the Legislature expanded the general law provisions of the Supplemental Act from general purpose local governments or their dependents to include independent special purpose local governments. s.1, ch. 2012-117, Laws of Florida. The Legislature accomplished this expansion by adding *separate legal entities* formed under the general law provisions of section 163.01(7)(g), Florida Statutes, to the definition of "local governments" able to impose and levy non-ad valorem assessments under the general law provisions of the Supplemental Act upon *voluntary application to do so by private property owners*. By general law the Legislature distinguishes and classifies the Agency as "independent" and as a special purpose (as opposed to a general purpose) local government in section 189.012(2), (3) and 6) of chapter 189, Florida Statutes (the "Uniform Special District Accountability Act"). The Florida Department of Economic Opportunity, which is charged by the Legislature with such determinations in Part VI, Oversight and Accountability, of the Uniform Special District Accountability Act, classifies the Agency as an "independent" special district.³

(D) In 2017, the Agency and all of its incorporators, acted to update, amend, codify and restate the Agency's Charter Agreement. Proof of such action is recorded in Official Record Book 5132, at page 2574 of the Official Records of Osceola County, Florida, and Official Record Book 2200, at page 415, of the Official Records of Flagler County, Florida. As an independent special purpose local government and separate legal entity established pursuant to the Separate Legal Entity Act, and uniquely authorized by the Supplemental Act to impose non-ad valorem assessments by general law, the Agency is expressly authorized by general law to finance facilities on behalf of any person relating to its government function or purpose and may non-exclusively and independently serve populations within or outside of the members or incorporators of the Agency under the general law provisions of section 163.01(7)(g)1., Florida Statutes. The Legislature has determined in section 163.08(1)(c), Florida Statutes, that the financing of Qualifying Improvements through the execution of financing agreements and the related imposition of voluntary assessments pursuant to the Supplemental Act (herein "Financing Agreements") are reasonable and necessary

³ See <http://specialdistrictreports.floridajobs.org/webreports/alphalist.aspx>.

to serve and achieve compelling state interests statewide and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

(E) The Agency was organized for the purpose, among other things, of issuing revenue bonds and other debt obligations to provide funds for financing the cost of “qualifying improvements” as may be defined in the Supplemental Act, as amended, now generally including renewable energy, energy efficiency and conservation and wind resistance improvements to real property (but in the future may include any such additional Qualifying Improvements authorized and allowed by the Legislature).

(F) Pursuant to general law authority, including the Agency’s Charter adopted pursuant to the Separate Legal Entity Act and other applicable provisions of law, the Agency is authorized to issue revenue bonds and other debt obligations, the proceeds from the sale of which shall be made available to finance Qualifying Improvements located throughout the State of Florida, whether or not located within the bounds of the Agency’s incorporators.

(G) Proceeds from the sale of the bonds and other debt obligations shall be deposited in one or more funds to be created and established pursuant to the Indentures (as hereinafter defined), and shall be duly applied toward the financing of Qualifying Improvements.

(H) The most desirable means of funding the qualifying improvement finance program contemplated by this Second Master Bond Resolution is by the issuance of revenue bonds and other debt obligations in an aggregate principal amount not to exceed \$5,000,000,000, to be issued at such times, in such amounts and in such designated series as may be hereafter provided by subsequent resolution of the Agency.

(I) Such revenue bonds and other debt obligations may be issued as fixed and/or variable rate instruments, in either case with the interest thereon either excludable or not excludable from the gross income of the holders thereof for purposes of federal income taxation.

(J) In order to secure the issuance of and the payment of the principal of and interest on the bonds, the Agency shall hereafter enter into one or more trust indentures (the “Indentures”) with one or more banking institutions or trust companies which shall provide for, among other things, the form of the bonds and other debt instruments, the manner in which funds shall be disbursed, the manner in which the bonds and other debt obligations are to be issued including, without limitation, the setting of interest rates and interest accrual periods thereon, and the manner in which

the principal of, premium, if any, and interest on the bonds and other debt obligations shall be paid as the same shall become due and payable whether by tender, maturity, redemption or acceleration.

SECTION 4. QUALIFYING IMPROVEMENT FINANCE PROGRAM. A qualifying improvement finance program (the "Program") to be administered by the Agency, wherein proceeds from the sale of the Agency's revenue bonds and other debt obligations are made available to provide financing of Qualifying Improvements and the repayment of the bonds and other debt obligations through non-ad valorem assessments imposed by the Agency in accordance with the Supplemental Act, is hereby authorized and approved.

SECTION 5. AUTHORIZATION OF THE BONDS. There is hereby authorized, pursuant to the Interlocal Act, the issuance of the Agency's revenue bonds and other debt obligations designated as "Florida PACE Funding Agency [Tax-Exempt] [Tax-Exempt AMT] [Taxable] [Commercial Paper] Revenue [Bonds] [Notes] (Qualifying Improvement Finance Program)(Various Series)" in an aggregate principal amount not to exceed \$5,000,000,000 outstanding from time to time (the "Bonds"), a portion of which may be issued from time to time in the form of a revolving line of credit or similar borrowing allowing for the repayments and reborrowing of a designated sum of money. The Bonds shall be issued at such time or times, in such amount or amounts, be designated as such series, be in substantially such form, mature at such time or times, all as authorized by subsequent resolution of the Agency on or before the award and sale of each respective series of Bonds and upon such terms and conditions as set forth in or as established pursuant to the terms of the Indentures. The interest payment dates, tender periods and interest rate or rates, including both variable and fixed rates will be established by subsequent resolution of the Agency on or before the award and sale of each series of Bonds and in accordance with the guidelines and procedures as established by each Indenture not to exceed the maximum interest rate or discount rate permitted by Florida law.

SECTION 6. AUTHORIZATION OF EXECUTION AND DELIVERY OF INDENTURES. The Chairman, Vice-Chairman, the Secretary-Treasurer and Executive Director of the Agency or such other designated person of the Agency as may be hereafter selected by the Agency (each a "Designated Officer") are hereby authorized and directed to execute and deliver, as security for the payment of the principal of, premium, if any, and interest on the Bonds, the Indentures to be entered into by and between the Agency and banking institutions or trust companies to be selected and approved by subsequent resolution of the Agency prior to the issuance of each series of the Bonds from among qualified institutions (the "Trustee") in the form or forms approved by the Agency, with such changes, insertions and omissions as may be

approved by the Designated Officer executing each such Indenture, their execution thereof being conclusive evidence of such approval.

SECTION 7. FINANCING AGREEMENTS. The Agency shall be required to enter into Financing Agreements with participating property owners, evidencing and pursuant to which non-ad valorem special assessments will be levied on their property to provide funds to pay the costs of Qualifying Improvements. The Financing Agreements shall be in compliance with and satisfy the requirements of the Supplemental Act, shall clearly set forth the agreement and consent of all owners of any property to the levy of a non-ad valorem assessment pursuant to the Program (each a "Program Special Assessment"), and acknowledge satisfaction of any notice and due process requirements necessary to render the Program Special Assessments valid and enforceable. The text and form of Financing Agreements shall be provided by the Agency and shall address and include all requirements of the Supplemental Act with such insertions and variations as may be necessary and desirable, as same are authorized or permitted by the Supplemental Act, this Resolution, or by subsequent resolution or resolutions of the Agency adopted prior to the execution thereof, and as may be necessary to reflect the characteristics of any particular installment or series of Bonds and Qualifying Improvement. Each Financing Agreement shall be recorded in the Official Records of the county in which the related property is located, as required by the Supplemental Act.

SECTION 8. MANNER OF PAYMENT. The principal of, premium, if any, and interest on the Bonds issued pursuant to the Program shall be payable solely from and secured to the extent and as provided in this Second Master Bond Resolution and the Indentures. Pursuant to the Indentures, the debt service on the Bonds shall be payable solely from the proceeds of non-ad valorem assessments imposed by the Agency pursuant to Financing Agreements with affected property owners as provided for in the Supplemental Act, and the funds and accounts described in and as pledged and as limited under the Indentures. The Bonds and the obligations and covenants of the Agency under the Indentures and other documents (collectively, the "Program Documents") shall not be or constitute a debt, liability, or general obligation of the Agency, any county, any municipality, the State of Florida, or any political subdivision or municipality thereof, nor a pledge of the full faith and credit or any taxing power of the Agency, any county, any municipality, the State or any political subdivision or municipality thereof, but shall constitute special obligations payable solely from the non-ad valorem assessments as evidenced by the Financing Agreements and secured under the Indenture, in the manner provided therein. The holders of the Bonds shall not have the right to require or compel any exercise of the taxing power of the Agency, any county, any municipality, the State of Florida or of any political subdivision thereof to pay the principal of, premium, if any, or interest on the Bonds or to make any other

payments provided for under the Indentures, or the other Program Documents. The issuance of the Bonds pursuant to the Interlocal Act shall not directly, indirectly, or contingently obligate the Agency, any county, any municipality, the State of Florida or any political subdivision or municipality thereof to levy or to pledge any form of taxation or assessments whatsoever therefore.

SECTION 9. NO THIRD PARTY BENEFICIARIES. Except as herein or in the Program Documents otherwise expressly provided, nothing in this Second Master Bond Resolution or in the Program Documents, expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation other than the Agency, the holders of the Bonds, and the Trustee any right, remedy or claim, legal or equitable, under and by reason of this Second Master Bond Resolution or any provision thereof or of such documents; this Second Master Bond Resolution, such documents and all provisions thereof being intended to be and being for the sole and exclusive benefit of the Agency, the holders of the Bonds and the Trustee.

SECTION 10. LIMITATION ON USE OF BOND PROCEEDS. The proceeds of the Bonds may be used by the Agency only for purposes of funding Qualifying Improvements and expenses incidental thereto, as authorized by and in the manner set forth in the Supplemental Act.

SECTION 11. AUTHORIZED AMOUNT OF BONDS. Bonds issued pursuant to this Second Master Bond Resolution, the Indentures, or any subsequent resolution of the Agency to redeem and/or refund any revenue bonds or other indebtedness of the Agency shall be deemed to be a continuation of the debt refunded or redeemed and shall not be considered to be an issuance of an additional principal amount of debt chargeable against the amount of Bonds originally authorized to be issued.

SECTION 12. PREREQUISITES PERFORMED. All acts, conditions and things relating to the passage of this Second Master Bond Resolution required by the Constitution or laws of the State of Florida to happen, exist, and be performed precedent to and in the passage hereof have happened, exist and have been performed as so required.

SECTION 13. GENERAL AUTHORITY. The Agency and its Chairman, Vice-Chairman, Secretary-Treasurer, Executive Director or other Designated Officers are hereby authorized to do all acts and things required of them to be consistent with the requirements of this Second Master Bond Resolution, any resolutions relating to the Program hereinafter enacted and the Program Documents for the full, punctual and complete performance of all the terms, covenants and agreements contained in

the Bonds, such resolutions, the Program Documents and this Second Master Bond Resolution.

SECTION 14. DIRECTION TO COUNSEL. Special Counsel and the Executive Director for the Agency are hereby authorized and directed to promptly prepare and file proceedings and to take all such appropriate action for the validation of the Bonds herein authorized and the legality of all proceedings and matters in connection therewith in conformity with applicable law.

SECTION 15. RESOLUTION CONSTITUTES A CONTRACT. This Second Master Bond Resolution constitutes a contract between the Agency and the holders from time to time of any of the Bonds then outstanding, and all covenants and agreements set forth herein and in the Program Documents to be performed by the Agency shall be for the equal and ratable benefit and security of all holders of outstanding Bonds without privilege, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as set forth in the Program Documents.

SECTION 16. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions contained herein shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof and shall in no way affect the validity of any of the other provisions of this instrument.


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SECTION 17. EFFECTIVE DATE. This Second Master Bond Resolution is executed in accordance with Section 2.06(A)(26) of the Agency’s Amended and Restated Charter Agreement adopted by each respective Incorporator as passed and adopted by the Board of County Commissioners of Flagler County, and as passed and adopted by the City Commission of the City of Kissimmee, and as provided for and confirmed in Agency Resolution No. 2017-0407(1) as passed and adopted by the Board of Directors of the Agency, effective in all respects on February 20, 2017. This Second Master Bond Resolution is effective in all respects upon the passage and adoption by the Board of Directors.

PASSED AND ADOPTED in Public Session of the Board of Directors of the Florida PACE Funding Agency, this 22nd day of August, 2022.



**BOARD OF DIRECTORS OF THE
FLORIDA PACE FUNDING AGENCY**

Attest:


Secretary

By: 

Chair