

## MEMORANDUM

Agenda Item No. 8(L)(1)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

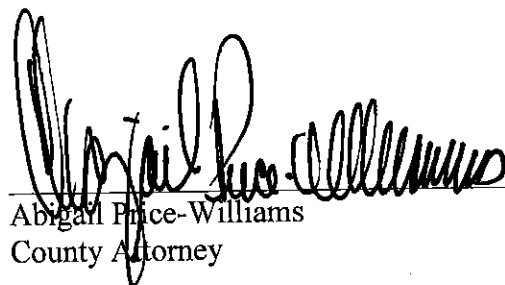
**DATE:** October 2, 2018

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution approving agreement between Miami-Dade County and Florida PACE Funding Agency for a Property Assessed Clean Energy (PACE) Program within the unincorporated area; approving indemnification agreement between Miami-Dade County and Counterpointe Energy Solutions LLC for the benefit of Miami-Dade County; and authorizing the County Mayor to execute these agreements, execute indemnification agreements with future administrators of Florida PACE Funding Agency for the benefit of Miami-Dade County, and exercise certain provisions in the agreements

Resolution No. R-1004-18

The accompanying resolution was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.



Abigail Price-Williams  
County Attorney

APW/lmp

# Memorandum



**Date:** October 2, 2018

**To:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the name in the 'From' field.

**Subject:** Resolution Approving Agreements between Florida PACE Funding Agency, Counterpointe Energy Solutions LLC, and Miami-Dade County for a Property Assessed Clean Energy Program

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## **Recommendation**

Pursuant to Resolution No. R-324-16, the Board of County Commissioners (Board) directed the Administration to develop and negotiate turnkey agreements with qualifying Property Assessed Clean Energy (PACE) Districts that had been created pursuant to Section 163.01(7), Florida Statutes. Furthermore, it was the Board's intent to enter into agreements with multiple PACE Districts to foster competition and create more choices for property owners. The Board outlined additional requirements in Resolution No. R-324-16 for each PACE District that is authorized to operate within Miami-Dade County.

It is recommended that the Board approve the attached Agreements with Florida PACE Funding Agency, a PACE District, and its administrator, Counterpointe Energy Solutions LLC, for a PACE program, and authorize the County Mayor or County Mayor's designee to execute the Agreements. The Agreements between Miami-Dade County and Florida PACE Funding Agency and Counterpointe Energy Solutions LLC are attached to the resolution as Exhibit A and Exhibit B, respectively.

## **Scope**

Florida PACE Funding Agency will be authorized to operate a PACE program within all of unincorporated Miami-Dade County.

## **Fiscal Impact/Funding Source**

There is no anticipated fiscal impact to the County with the approval of these Agreements. The Agreements with Florida PACE Funding Agency and Counterpointe Energy Solutions LLC include terms that will allow the County Mayor or County Mayor's designee to exercise the provisions in the above-mentioned agreements related to audits, enforcement, indemnification, collecting and receiving data and information, termination, and any and all duties of the Property Appraiser or Tax Collector. Per the Agreement with Florida PACE Funding Agency, such costs can be offset by administrative fees that could be established and approved by the Board through separate action, as necessary.

## **Track Record/Monitor**

These Agreements will be monitored by Patricia Gomez in the Office of Resilience within the Department of Regulatory and Economic Resources.

## **Background**

The purpose of a PACE District is to facilitate the financing of qualifying improvements for residential, commercial, and industrial property owners in accordance with Section 163.08 of the Florida Statutes. The attached Agreements between Miami-Dade County and Florida PACE Funding Agency, along with its administrator, Counterpointe Energy Solutions LLC, are the fourth set of agreements presented to this Board pursuant to Resolution No. R-324-16.

Resolution No. R-324-16 directed that agreements with each PACE District include terms that require the PACE District to acknowledge the role of the County in bringing PACE benefits to property owners, but

also makes clear that PACE contractual agreements with property owners are not directly entered into with the County, and that the County is not responsible for operating or administering the PACE District's program in any way. This requirement has been incorporated into the attached Agreement with Florida PACE Funding Agency. In addition to including this language on all customer communications and agreements, Florida PACE Funding Agency and Counterpointe Energy Solutions LLC are also required to provide contact information for participants who have concerns or questions.

Additionally, the Agreement with Florida PACE Funding Agency authorizes the County to impose administrative fees to recoup the County's administrative expenses associated with implementing the PACE District. However, no such fees are imposed in this Agreement and would require future Board action for implementation. The County will incorporate this term in all agreements with future PACE Districts operating in unincorporated Miami-Dade County.

Counterpointe Energy Solutions LLC, as the administrator of Florida PACE Funding Agency, has agreed to indemnify the County pursuant to the Agreement between the County and the Florida PACE Funding Agency.

Pursuant to Resolution No. R-324-16, the experience and expertise of Florida PACE Funding Agency, its administrator and direct affiliates, was considered. Florida PACE Funding Agency was created in 2011 and began funding and financing PACE assessments in early 2014 focused on both commercial and residential properties. Its residential PACE program is marketed under the AllianceNRG Program brand. This residential program has bilingual-employees (Spanish and Creole) and has also trained local contractors and educated Miami-Dade residents on PACE financing. As of July 2018, Florida PACE Funding Agency operates its programs in 33 counties within the State of Florida, covering approximately 50 percent of the State by population, and is currently negotiating over 10 additional agreements. Counterpointe Energy Solutions is also a program administrator for residential and commercial PACE programs in California.

In the future, should other entities or PACE Districts meet the necessary State and Board criteria, additional PACE agreements may also be presented to the Board for consideration.

Attachment

  
\_\_\_\_\_  
Jack Osterholt  
Deputy Mayor

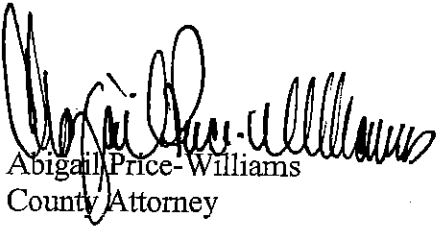


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** October 2, 2018

**FROM:**   
Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 8(L)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(L)(1)  
10-2-18

RESOLUTION NO. R-1004-18

RESOLUTION APPROVING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FLORIDA PACE FUNDING AGENCY FOR A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM WITHIN THE UNINCORPORATED AREA; APPROVING INDEMNIFICATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND COUNTERPOINTE ENERGY SOLUTIONS LLC FOR THE BENEFIT OF MIAMI-DADE COUNTY; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THESE AGREEMENTS, EXECUTE INDEMNIFICATION AGREEMENTS WITH FUTURE ADMINISTRATORS OF FLORIDA PACE FUNDING AGENCY FOR THE BENEFIT OF MIAMI-DADE COUNTY, AND EXERCISE CERTAIN PROVISIONS IN THE AGREEMENTS

**WHEREAS**, in Resolution No. R-324-16, this Board directed the County Mayor or County Mayor's designee to develop, negotiate and present agreements between Miami-Dade County and Property Assessed Clean Energy ("PACE") providers to this Board for approval; and

**WHEREAS**, the attached agreements between Miami-Dade County and the Florida PACE Funding Agency and between Miami-Dade County and Counterpointe Energy Solutions LLC, as the administrator for Florida PACE Funding Agency, have been recommended for approval by the County Mayor or County Mayor's designee as stated in the Mayor's memorandum, which is incorporated by reference to this resolution,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board:

**Section 1.** Approves the agreement between Miami-Dade County and Florida PACE Funding Agency (Exhibit A) and the agreement between Miami-Dade County and Counterpointe (FL) LLC, as the administrator of Florida PACE Funding Agency (Exhibit B), and authorizes the County Mayor or County Mayor's designee to execute the above-mentioned agreements, in substantially the form attached.

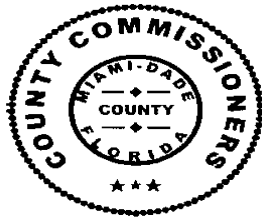
**Section 2.** Authorizes the County Mayor or County Mayor's designee to execute agreements with future administrators of Florida PACE Funding Agency, in a form approved by the County Attorney's Office, to provide that such future administrator of Florida PACE Funding Agency shall indemnify and hold harmless Miami-Dade County.

**Section 3.** Authorizes the County Mayor or County Mayor's designee to exercise the provisions in the above-mentioned agreements related to audits, enforcement, indemnification, collecting and receiving data and information, notices, termination, and any and all duties of the Property Appraiser or Tax Collector.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Esteban L. Bovo, Jr., Chairman	aye		
Audrey M. Edmonson, Vice Chairwoman	aye		
Daniella Levine Cava	aye	Jose "Pepe" Diaz	aye
Sally A. Heyman	aye	Eileen Higgins	aye
Barbara J. Jordan	aye	Joe A. Martinez	aye
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 2<sup>nd</sup> day of October, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "AR", is written over a horizontal line.

Abbie Schwaderer-Raurell

## Exhibit A

### SUBSCRIPTION AGREEMENT BETWEEN THE FLORIDA PACE FUNDING AGENCY AND MIAMI-DADE COUNTY

WHEREAS, this Subscription Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between the Florida PACE Funding Agency (the "District" or "FPFA"), created as a separate legal entity pursuant to Section 163.01(7), Florida Statutes, and Miami-Dade County, a political subdivision of the State of Florida ("Miami-Dade County" or the "County") (collectively, the "Parties") for the purpose of providing a Property Assessed Clean Energy ("PACE") program within Unincorporated Miami-Dade County; and

WHEREAS Flagler County and the City of Kissimmee, both of which are Florida local governments, entered into an Amended and Restated Interlocal Agreement, effective as of February 20, 2017, as incorporators, relating to the establishment of the Florida PACE Funding Agency, as a means of implementing and financing a Qualifying Improvements program, known as a PACE, for energy conservation and efficiency, renewable energy, and wind-resistance improvements pursuant to Section 163.08, Florida Statutes, and to provide additional services consistent with law; and

WHEREAS, Miami-Dade County desires to have the FPFA act, provide its services, and conduct its affairs for the purpose of facilitating financing of qualifying improvements for properties located within the unincorporated area of Miami-Dade County, as further defined and detailed herein.

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

1. The foregoing recitals are incorporated into this Agreement and approved.
2. Purpose. The purpose of this Agreement is to facilitate the financing of qualifying improvements through a PACE program, in accordance with Section 163.08, Florida Statutes, for Miami-Dade County property owners within unincorporated Miami-Dade County, including for residential, commercial, and industrial properties.
3. No Membership. The District and Miami-Dade County hereby agree that Miami-Dade County is not becoming a member of the District by virtue of this Agreement and nothing herein is intended to imply otherwise.
4. Qualifying Improvements. The District may provide "Qualifying Improvements" to real property within unincorporated Miami-Dade County, in accordance with Section 163.08, Florida Statutes, and subject to the terms of this Agreement, as well as applicable federal, state, and County law. "Qualifying Improvements" shall be as defined in the Article CXXXVIII of the Code of Miami-Dade County, as amended from time to time, provided that all such Qualifying Improvements are also included within Section 163.08, Florida Statutes.



5. Financing Agreement. Before extending any financing or subjecting any participating re-al property within Miami-Dade County to the non-ad valorem special assessment authorized therein, the District shall, on a non-exclusive basis pursuant to the Section 163.08, Florida Statutes and this Agreement, enter into a financing agreement with property owner(s) within unincorporated Miami-Dade County who qualify for financing through the District. This financing agreement shall include a thorough explanation of the PACE program financing process and specify at what point in the process the special assessment will be added to the property's owner's property taxes.
6. Assessment by District. The Parties acknowledge and agree that the non-ad valorem assessments arising from a property owner's voluntary participation in the PACE program are imposed by the District and not by the County.
7. Agreements with Tax Collector and Property Appraiser. This Agreement shall be subject to the express condition precedent that the District enter into separate agreement(s) with the County, on behalf of the Tax Collector, and the County's Property Appraiser, which shall provide for the assessment and collection of any non-ad valorem assessments imposed by the District and establish Jurisdiction Cost Recovery Reimbursements (if any) to be charged for the collection and/or handling of those non-ad valorem assessments. Additionally, the Parties agree that the Property Appraiser's and Tax Collector's assessment, collection, and distribution of any such non-ad valorem assessments imposed by the District are purely ministerial acts.
8. Non-Exclusive. The program is non-exclusive, meaning the County specifically reserves the right to authorize other entities to provide a similar program under Section 163.08, Florida Statutes, or create its own program under Section 163.08, Florida Statutes.
9. Boundaries of the Program. For purposes of the PACE program authorized by this Agreement, the boundaries of the District shall include the legal boundaries of unincorporated Miami-Dade County, which boundaries may be limited, expanded, or more specifically designated from time to time by Miami-Dade County by providing written notice to the District.
10. Properties. Within the unincorporated area of Miami-Dade County, residential, commercial, and industrial properties may be eligible.
11. PACE program guidelines and other materials. All PACE materials for use within unincorporated Miami-Dade County, or otherwise related to this Agreement, including but not limited to program guidelines, rules, consumer agreements, consumer financing agreements, and promotional materials, shall be fully consistent with the Code of Miami-Dade County, Miami-Dade County resolutions and Miami-Dade County implementing orders, all of which may be amended from time to time, and with this Agreement and applicable federal and state laws. The District acknowledges and agrees that PACE materials for use within unincorporated Miami-Dade County, or otherwise related to this Agreement, shall be modified accordingly and reviewed on a continuing basis for consistency with applicable Miami-Dade County, state and federal laws. It shall be the obligation of the District to establish and maintain such consistency. Miami-Dade County will endeavor to provide the District with a courtesy notice of Miami-Dade County legislative changes that relate to PACE programs, however, failure by Miami-Dade County to send such courtesy notice or failure by the District to receive such courtesy notice shall not affect any action or proceeding and shall be

of no legal consequence.

12. Local program guidelines. The Parties agree that Miami-Dade County may, in the future, implement its own local program guidelines or affirmatively modify the program guidelines to be utilized in unincorporated Miami-Dade County, which may be more restrictive than those of the District. If Miami-Dade County decides to exercise these rights, it shall give sixty (60) days written notice to the District. Notwithstanding anything stated herein to the contrary, the PACE materials, including the District's program guidelines, shall be fully consistent with applicable County, state and federal laws, as amended from time to time.
13. Prepayment penalties. To the extent that the District may charge or impose prepayment penalties, the District may not allow or charge any prepayment penalties except in the case when an assessment is paid off in full within five (5) years after the effective date of financial agreements with the property owner. Where the District may charge or impose prepayment penalties, the District shall offer and inform property owners of the District's hardship exception, for instance where a property owner becomes disabled or deceased. Any such prepayment penalties, as well as information about the hardship exception, shall be clearly disclosed within all property owner financing agreements and in all PACE materials, including but not limited to program guidelines, program rules, consumer agreements, and consumer informational documents. For commercial properties, prepayment penalties may be charged or imposed by the District to the extent permitted by the Code of Miami-Dade County and other applicable legal requirements.
14. District Disclosures. The PACE materials, including but not limited to the financing agreement with the property owner, consumer agreement, and program guidelines, shall clearly disclose, in plain language, the interest rate to be charged, including points, as well as any and all fees or penalties that may be separately charged to the property owner, including prepayment penalties, potential late fees, and potential increases in the applicable interest rate. To the extent that additional fees are not specifically disclosed in a written agreement with the property owner, the subsequent charging or collecting of any such additional fees by the District or its agents, administrators, or subcontractors shall be prohibited. The District shall place the following sentence or similar language (without the County's logo) on all agreements:

While Miami-Dade County's authorization was essential to bringing PACE benefits to property owners in unincorporated Miami-Dade County, please be aware that Miami-Dade County government is not operating or administering the PACE program in any way. All contractual PACE agreements are between property owners and the Florida Green Finance District, a non-County entity. All concerns about this PACE Program should therefore be addressed to: [District to fill in appropriate contact / remedy information].

In addition, the District shall explain to the property owner under what circumstances the annual PACE assessment would need to be paid in one annual payment as opposed to installments, so that the property owner may understand what the required payments would be.

15. Miami-Dade County Disclosures. Miami-Dade County may compile and make available on a

publicly-accessible website the following minimum information about each PACE district or entity with which the County has executed an interlocal agreement: (a) the name of the PACE district or entity; (b) the name, phone number, and website URL for the administrator of the PACE district or entity; (c) the effective date of the interlocal agreement between the PACE district or entity and Miami-Dade County; (d) the start date for reporting to the County; and (e) any non-compliance issues with the interlocal agreement, including non-compliance with required reporting format and timelines.

16. Consumer assistance. In order to assist those persons who may have difficulty reading or understanding the PACE materials, such as the financing agreement, program guidelines and other consumer agreements, the District shall provide optional one-on-one in-person assistance regarding the PACE program, program terms, program process, program documents, and all other pertinent information. Information regarding this option for personal assistance shall be printed in English, Spanish, and Haitian Creole on PACE promotional materials.
17. Disclosures related to lenders. While the District will provide required forms for lender notification, the District shall make clear that the ultimate responsibility for addressing issues with existing lenders remains with property owners. A statement to this effect should be placed in the PACE materials, including all agreements with the property owner. In addition, the PACE materials, including all agreements with the property owners, shall include a statement that strongly urges the property owner to increase monthly escrow immediately after financing is released.
18. Administrative Fees. Miami-Dade County may impose administrative fees to cover the Miami-Dade County's administrative costs related to this Agreement. Such administrative fees may be established by the Miami-Dade County Board of County Commissioners by separate action, and may be charged to the District. Miami-Dade County will endeavor to provide the District with a courtesy notice of Miami-Dade County action on administrative fees changes that relate to PACE programs, however, failure by Miami-Dade County to send such courtesy notice or failure by the District to receive such courtesy notice shall not affect any action or proceeding and shall be of no legal consequence.
19. Responsibilities of the District. The District shall be solely responsible for all matters associated with origination, funding, financing and administration of each of the District's authorized non-ad valorem assessments, including responding to any complaints or inquiries by participants, tax certificate holders, lenders or others relating to the special assessments, the financing agreements, the qualifying improvements, or any other aspect of the PACE program. Nothing stated herein shall infringe or restrict Miami-Dade County's rights pursuant to this Agreement, including but not limited to Miami-Dade County's right to audit.
20. Survival of Assessments. During the term of this Agreement, the District may, on a non-exclusive basis, levy voluntary non-ad valorem special assessments on participating properties within the boundaries of unincorporated Miami-Dade County 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 Agreement or notice of a change in boundaries by Miami-Dade County as provided for

herein, 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.

21. Audits. The District agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Audit and Management Services Department of Miami-Dade County, the Office of the Commission Auditor, the Miami- Dade County Office of the Inspector General, or any agent of Miami-Dade County. The District shall retain sufficient books and records demonstrating compliance with this Agreement and State and County requirements, for a period of seven years from the date of each special assessment, and shall allow Miami-Dade County representatives access to such books and records upon request.

Miami-Dade County and/or its authorized representatives shall have the right to audit, examine, and make copies of or extracts from the records of the District or its employees, agents, assigns, successors, administrators, and subcontractors such records as deemed necessary to assess compliance with this Agreement, as well as applicable State law and Miami-Dade County Code.

The District shall, at any time requested by the Miami-Dade County, whether during or after completion of this Agreement and for a period of seven years after the completion of this Agreement, at the District's own expense, make such records available for inspection and audit. Such records shall be made available, to the extent permissible by County, state or federal law at a designated Miami-Dade County office during normal business hours, subject to 14 days written notice.

Further, the District shall ensure Miami-Dade County has these rights with its employees, agents, assigns, successors, administrators, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the District and any administrators and subcontractors to the extent that those subcontracts or agreements relate to this Agreement or operations in unincorporated Miami-Dade County.

22. Term. This Agreement shall remain in full force and effect from the date of its execution by both Parties. Either Party may terminate this Agreement for convenience upon ninety (90) days prior written notice ("Termination Notice"). Beginning on the date the District receives a Termination Notice from Miami-Dade County ("Termination Date"), the District shall not approve any new applications affecting property within the legal boundaries of the unincorporated Miami-Dade County referenced in the Termination Notice. Notwithstanding termination of this Agreement, however, property owners whose applications were approved prior to the Termination Date, and who received funding through the Program, shall continue to be a part of the District, for the sole purpose of paying their outstanding debt, until such time that all outstanding debt has been satisfied.
23. Termination for cause. In the event that Miami-Dade County determines that the District has violated any of the terms of this Agreement, Miami-Dade County shall have the right to terminate this Agreement for cause via thirty (30) days written notice to the District.
24. Consent. This Agreement, once effective, together with the resolution by the Miami- Dade County Board of County Commissioners approving this Agreement, shall be considered the

- Parties' consent to authorize the District to administer the PACE program within unincorporated Miami-Dade County, as required by Section 163.08, Florida Statutes.
25. County Coordinator. The Office of Resilience within Miami-Dade County's Department of Regulatory and Economic Resources shall serve as Miami-Dade County's primary point of contact and coordinator. Miami-Dade County will advise the District of any changes to Miami-Dade County's primary contact and coordinator within 30 days of such changes.
  26. Carbon or Similar Credits. In the event that the financing agreement or any other PACE agreement with the property owner provides for the transfer of any carbon or similar mitigation credits derived from Qualifying Improvements to the District, any such carbon or similar mitigation credits derived from unincorporated Miami-Dade County, shall be shared in equal parts between the District and Miami-Dade County.
  27. Contingency Plans. In the event that Florida's PACE statute is ruled unconstitutional or otherwise struck down by a court or if the PACE assessments are determined by a court to not be special assessments, the District agrees and acknowledges that Miami-Dade County may not be able to place the impacted PACE assessments on the tax rolls or collect PACE assessments, and that such a determination shall be made in the sole discretion of Miami-Dade County. The District agrees and acknowledges that it may be advisable for the District to have contingency plans in place should Florida's PACE statute be ruled unconstitutional or otherwise struck down by a court or if the PACE assessments are determined by a court to not be special assessments.
  28. Bonds. The District, is authorized to issue bonds, or any other form of debt, on behalf of Miami-Dade County. To the extent that the District issues bonds under its own authority in connection with this Agreement, the pledge will be based on the PACE assessments, and Miami-Dade County shall not be obligated in any way. For any such bonds, the bond disclosure document shall include references to the fact that Miami-Dade County is not an obligated party, and also that PACE programs are new and relatively untested and that there may be certain attendant risks.
  29. Opinion of Bond Counsel. Prior to the effective date of this Agreement, the District shall deliver to Miami-Dade County an "Opinion of Bond Counsel," stating that, based on counsel's review of the bond validation judgment and the underlying bond documents the Program's structure complies with the bond validation judgment and the underlying bond documents. The District acknowledges that Miami-Dade County is relying on the Opinion of Bond Counsel in its decision to execute this Agreement.
  30. Resale or Refinancing of a Property. The District recognizes that some lenders may require full repayment of the PACE program's non-ad valorem assessments upon resale or refinancing of a property. The District agrees to provide written disclosure of this matter in all PACE materials, including, but not limited to, the financing agreement with the property owner, consumer agreement, and program guidelines, and promotional materials.
  31. Agents of District. The District shall ensure that its agents, administrators, subcontractors, successors and assigns are, at all times, in compliance with the terms of this Agreement and applicable Miami-Dade County, state and federal laws. Miami-Dade County will endeavor to provide the District with a courtesy notice of Miami-Dade County legislative changes that

relate to PACE programs, however, failure by Miami- Dade County to send such courtesy notice or failure by the District to receive such courtesy notice shall not affect any action or proceeding and shall be of no legal consequence.

32. Reporting. The District shall provide quarterly reports to Miami-Dade County to include at a minimum: a) dates of reporting period; b) a list of PACE projects started and/or completed during reporting period (i.e. quarterly), separated by building type (e.g., office, retail, multifamily, agricultural, single family) and by sector type (commercial, industrial, or residential); c) for each PACE project identified, specify: (1) the qualifying improvements made to the property; (2) the energy baseline of each PACE project and the projected energy savings in kWh and/or the amount of potential renewable energy in kWh to be generated by the PACE project and number of audits performed detailing type of project, sector type and audit results; (3) start date and completion date for each PACE project; (4) financial information about each PACE project such as cost per kWh generated/saved; and (5) any other resource saving, such as water; d) number of applications declined during the reporting period and why each was declined in the aggregate, by category, and not on an individual basis; e) jobs created for the reporting period, including local versus non-local jobs and permanent versus temporary jobs; f) description of the standardized third-party methodologies, with citations and URL links as appropriate, and supporting assumptions used to verify data, and any changes in the methodologies and assumptions from the previous reporting period. The fourth quarter report shall include a cumulative yearly summary of all reported data. If the District does not currently have the ability to provide reports that contain this minimum reporting information as listed above, it shall modify its data collection and maintenance procedures and systems within one year in order to comply with this fundamental component of the Agreement. Proposed format for data reporting shall be submitted to Miami-Dade County as soon as possible, and no later than four months in advance of the first reporting period, so that Miami-Dade County can determine whether all reporting requirements have been included. Miami-Dade County shall provide written modifications to the submitted proposed reporting format within three months in advance of the first reporting period. If the County wishes to change the reporting format or require the inclusion of additional data, the County shall provide the request in writing and allow the District one year, if needed, to modify its analytical and reporting process to achieve compliance. The County agrees that it seeks aggregate data, and the District does not believe that such data would be personally identifiable information, as defined in federal law. If, however, a request for data by the County to the District would trigger disclosure or confidentiality requirements under federal law, the District agrees to promptly advise the County in writing before providing such data so that the parties may confer. The District and any and all of the District's administrators are obligated to take all steps, including restructuring their application, making disclosures to their customers or requiring their affiliates to make such disclosures, in order to comply with the obligations, including data reporting obligations, in this agreement. In order to facilitate reporting to Miami-Dade County, the District shall include the following two statements or substantially similar language in a PACE agreement with the property owner:

This PACE Program may share data pertaining to your PACE project and assessment with government entities and officials for the purposes of identifying demand for the Program, identifying environmental and economic benefits created by the Program,

and reviewing matters related to Program Consumer Protection. Government entities and officials may include municipalities, counties, and the state in which your property is located. If you wish to opt out and withhold your information from government entities and officials, please contact us by email (*email address to be filled in by District*) or phone: (*phone to be filled in by District-(XXX) XXX-XXXX.*) Although you may opt out from sharing personal data, data from your PACE project and assessment will still be provided to government entities and officials in an aggregated format.

To allow the PACE Program Administrator to better understand energy patterns and measure energy savings for our customers, the Property Owner authorizes electric, gas, water or other utility providers to release billing and consumption data for the Property or agrees to provide utility records to assist the District in tracking utility savings resulting from the Qualifying Improvements. If the PACE Program Administrator shares any results of the analysis, the Property Owner data will only be presented in a manner that does not specifically identify the Property Owner or the Property address.

33. Reporting Standards. It is the responsibility of the District to develop reports consistent with each of the categories of data required in paragraph 32 above and to test and verify the data collection and reporting methods and models used. The District shall describe the methodologies and supporting assumptions and/or sources, and any changes from the previous reporting period, within each quarterly report to Miami-Dade County. All reports shall exclude any sensitive customer information. Failure to report specified information as well as failure to report by the deadline shall be considered non-compliance with this Agreement.
34. 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 the District:**

Executive Director  
Florida PACE Funding Agency  
c/o City of Kissimmee  
101 N. Church St., Fifth Floor  
Kissimmee, FL 34741

**With a copy to:**

Program Counsel for the Florida PACE Funding Agency  
P.O. Box 14043  
Tallahassee, FL 32317

**If to Miami-Dade County:**

County Coordinator, Miami-Dade Office of Resilience 111  
NW 1<sup>st</sup> Street, 12<sup>th</sup> floor  
Miami, Florida 33128

35. 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 and executed by Miami-Dade County and the District or other delegated authority authorized to execute same on their behalf.
36. 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.
37. Merger. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous 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 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.
38. 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.
39. Third Party Beneficiaries. Neither Miami-Dade County nor the District 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.
40. 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.
41. 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.
42. Indemnification. The District shall indemnify and hold harmless Miami-Dade County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which Miami-Dade County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the District or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. The District shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of Miami-Dade County, where applicable, including



appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28, Florida Statutes, subject to the provisions of that Statute whereby the District shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment or portions thereof, which, when totaled with all other claims or judgment paid by the District arising out of the same incident or occurrence, exceed the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the District.

43. Administrator Indemnification. Any and all administrators of the District shall be required to execute a separate indemnification agreement with Miami-Dade County. The District acknowledges and agrees that as of the execution of this Agreement, Counterpointe Energy Solutions (FL) LLC is the only administrator for the District, and that Counterpointe Energy Solutions (FL) LLC has executed the separate indemnification agreement with Miami-Dade County for the benefit of Miami-Dade County. If the District changes its administrator or adds a new administrator, the District shall ensure that any and all administrators also provide Miami-Dade County with a separate indemnification agreement, on a form to be approved by the Miami-Dade County Attorney's Office, within ten (10) business days of assuming administrative responsibilities for the District.
44. Effective Date. This Agreement shall become effective upon the execution by both Parties hereto.
45. 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 Eleventh Judicial Circuit in and for Miami-Dade County, Florida, the United States District Court for the Southern District of Florida or United States Bankruptcy Court for the Southern District of Florida, as appropriate.
46. Sovereign Immunity. Nothing herein shall constitute a waiver of Section 768.28 of the Florida Statutes or shall be construed as impacting or modifying the protections set forth therein.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement  
on this \_\_\_\_ day of \_\_\_\_\_, 2018.

MIAMI-DADE COUNTY, FLORIDA

By: \_\_\_\_\_  
County Mayor or Designee Date

For the Board of County Commissioners  
Miami-Dade County, Florida

Stephen P. Clark Center  
111 N.W. 1st. Street  
Miami, Florida 33128

HARVEY RUVIN, CLERK  
Attest:

By: \_\_\_\_\_  
Deputy Clerk Date

FLORIDA PACE FUNDING AGENCY

By: [Signature] 7/17/18  
Michael H. Steigerwald Date

Executive Director

Florida PACE Funding Agency  
City of Kissimmee  
401 N. Church St., Fifth Floor  
Kissimmee, FL 34741

Donald T. Smallwood, Assistant Secretary  
Attest:

By: [Signature] 7/17/18  
Assistant Secretary Date



**AGREEMENT BETWEEN COUNTERPOINTE ENERGY  
SOLUTIONS (FL) LLC, AS ADMINISTRATOR OF THE FLORIDA  
PACE FUNDING AGENCY, AND MIAMI-DADE COUNTY**

This Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_, 2018 by and between Counterpointe Energy Solutions (FL) LLC, as the administrator of the Florida PACE Funding Agency, and Miami-Dade County, a political subdivision of the State of Florida ("Miami-Dade County") (collectively, the "Parties").

**WHEREAS**, Miami-Dade County and the Florida PACE Funding Agency have proposed to enter into an agreement to authorize the Florida PACE Funding Agency to operate within the boundaries of Unincorporated Miami-Dade County for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

**WHEREAS**, Counterpointe Energy Solutions (FL) LLC is the third party administrator for the Florida PACE Funding Agency, and Counterpointe Energy Solutions (FL) LLC would be operating on behalf of the Florida PACE Funding Agency within Unincorporated Miami-Dade County; and

**WHEREAS**, Counterpointe Energy Solutions (FL) LLC is a Delaware limited liability company; and

**WHEREAS**, Counterpointe Energy Solutions (FL) LLC has agreed to provide Miami-Dade County with a separate indemnification agreement for the benefit of Miami-Dade County,

Miami-Dade County and Counterpointe Energy Solutions (FL) LLC hereby enter into the following agreement:

1. The foregoing recitals are incorporated into this Agreement and approved.
2. Counterpointe Energy Solutions (FL) LLC shall indemnify and hold harmless Miami-Dade County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which Miami-Dade County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by Counterpointe Energy Solutions (FL) LLC or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. Counterpointe Energy Solutions (FL) LLC shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of Miami-Dade County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Counterpointe Energy Solutions (FL) LLC expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend Miami-Dade County or its officers, employees, agents and instrumentalities as herein provided.
3. 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 conjunction with this Agreement shall be in the state courts of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, the United States District Court for the Southern District of Florida or United States Bankruptcy Court for the Southern District of Florida, as appropriate.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2018.

MIAMI-DADE COUNTY, FLORIDA

By: \_\_\_\_\_  
County Mayor or Designee Date

For the Board of County Commissioners  
Miami-Dade County, Florida

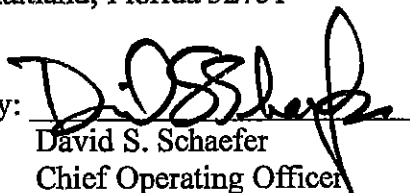
Stephen P. Clark Center  
111 N.W. 1st. Street  
Miami, Florida 33128

HARVEY RUVIN, CLERK  
Attest:

By: \_\_\_\_\_  
Deputy Clerk Date

COUNTERPOINTE ENERGY SOLUTIONS (FL)  
LLC, A DELAWARE LIMITED LIABILITY  
COMPANY

2600 Maitland Center Parkway, Suite 163  
Maitland, Florida 32751

By:  \_\_\_\_\_  
David S. Schaefer Date 7/13/15  
Chief Operating Officer