




Interoffice Memorandum

April 5, 2022

TO: Mayor Jerry L. Demings
— AND —
County Commissioners

FROM: Jeff Benavides, LEED AP, Chief Sustainability and Resilience Officer 
County Administrator's Office

SUBJECT: BCC Agenda Item - Consent Agenda
April 5, 2022 BCC Meeting
Non-Exclusive Commercial Property Assessed Clean Energy (C-PACE)
Interlocal Agreement with Florida Resiliency and Energy District

Following a Public Hearing on November 16, 2021, the Board adopted Ordinance No. 2021-43, enacting a new Chapter 25, Article XII of the Orange County Code entitled the Commercial Property Assessed Clean Energy (C-PACE) Program Ordinance. The Ordinance has enabled an independent and voluntary financing tool to help commercial building owners finance qualifying improvements to their property through non-ad valorem property tax assessments as the repayment mechanism.

The Ordinance authorizes independent C-PACE Local Governments, established pursuant to Sections 163.01(7) and 163.08, Florida Statutes, to operate in Orange County in accordance with local minimum standards and limitations. As separate legal entities and public bodies, the Ordinance requires each entity to enter into a Non-Exclusive C-PACE Interlocal Agreement with Orange County. The County is neither joining these entities, nor participating in, nor responsible for, any part of the entities' C-PACE Programs.

There is no fiscal impact to Orange County to execute this Interlocal Agreement.

The County Attorney's Office and Risk Management Division reviewed the agreement and find them acceptable as to form.

Action Requested: **Approval and execution of Non-Exclusive C-PACE Interlocal Agreement between Orange County, Florida and Florida Resiliency and Energy District for the purposes of Authorizing a C-PACE Program to Fund and Finance Qualifying Improvements and authorization for the Mayor or designee to execute any necessary modifications, amendments and extension to this agreement. All Districts.**

Attachment

cc: Byron W. Brooks, AICP, County Administrator
Jeffrey Newton, County Attorney
Chris Testerman, AICP, Deputy County Administrator
Dylan Schott, Assistant County Attorney
Alan Plante, Manager, Building Safety
Fred Winterkamp, Manager, Fiscal & Business Services

Non-Exclusive C-PACE Interlocal Agreement
between
Orange County, Florida
and
Florida Resiliency and Energy District
for the purposes of
Authorizing a C-PACE Program to Fund and Finance Qualifying Improvements

This Non-Exclusive C-PACE Interlocal Agreement ("**Agreement**"), is entered into by and between **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, located at 201 South Rosalind Avenue, Orlando, Florida 32801 (the "**County**") and **FLORIDA RESILIENCY AND ENERGY DISTRICT**, a separate legal entity created pursuant to Section 163.01(7), Florida Statutes, located at 156 Tuskawilla Road, Suite 2340, Winter Springs, Florida 32708 (the "**Entity**"). The County and Entity may be referred to individually as "party" or collectively as "parties."

Recitals:

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and provide services and facilities in accordance with the geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, Section 163.08, Florida Statutes (the "**PACE Act**"), provides that a local government (defined to include a separate legal entity created pursuant to Section 163.01(7), Florida Statutes) may fund qualifying improvements through financing agreements for property to be subject to a voluntary non-ad valorem assessment as the repayment mechanism, commonly known as "Property Assessed Clean Energy" or "PACE" assessments; and

WHEREAS, the Entity was created as a separate legal entity pursuant to Section 163.01(7), Florida Statutes, to finance qualifying improvements, including energy conservation and efficiency, renewable energy, and wind resistance improvements, in accordance with the PACE Act; and

WHEREAS, on November 16, 2021, the Orange County Board of County Commissioners adopted Ordinance No. 2021-43 enacting a new Chapter 25, Article XII of the Orange County Code entitled the Commercial Property Assessed Clean Energy (C-PACE) Program Ordinance ("**Ordinance**") that authorizes C-PACE Local Governments to operate C-PACE Programs in

Orange County in accordance with certain minimum standards and limitations and pursuant to a C-PACE Interlocal agreement; and

WHEREAS, the County has determined that it is in the interest of the public welfare to enter into this Agreement to authorize the Entity to implement and finance a C-PACE Program in Orange County in accordance with the PACE Act, the Ordinance, and the terms of this Agreement; and

WHEREAS, the parties agree that the Entity, as a C-PACE Local Government, and County are independent of one another and, other than the County authorizing the Entity to operate within Orange County pursuant to the requirements of general law, the Ordinance, and this Agreement, that the County is not in any way joining or becoming a member of the Entity, nor participating in, nor responsible for, any part of the Entity's C-PACE Program.

NOW THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, receipt of which is hereby acknowledged by each party, the parties hereby agree as follows:

Section 1. Recitals.

The above recitals are true and correct and are incorporated as material part of this Agreement by reference.

Section 2. Purpose.

The purpose of this Agreement is to facilitate the funding and financing of Qualifying Improvements for Eligible Participants within the County in accordance with the PACE Act and the Ordinance by authorizing the Entity, as a C-PACE Local Government, to implement its C-PACE Program within the unincorporated County and in all municipalities that opt in to this C-PACE Program by adopting an ordinance or resolution ("**Participating Municipalities**"). Where the PACE Act, the Ordinance, and any applicable State of Florida ("**State**") or Federal law provides different standards on the Entity in the operation of the C-PACE Program, the strictest requirement will control.

Section 3. Definitions.

All capitalized terms in this Agreement shall have the same meaning set forth in the Ordinance, if defined therein, or as otherwise specifically defined in this Agreement.

Section 4. Qualifying Improvements.

The County authorizes the Entity to make available funding and financing of Qualifying Improvements, including energy conservation and efficiency, renewable energy, and wind resistance improvements, as defined in the PACE Act, as may be amended by law, on Commercial Properties within the C-PACE Program Boundaries.

Section 5. Non-Exclusive Agreement.

The authorization for the Entity to implement its C-PACE Program within the C-PACE Program Boundaries is non-exclusive which means that the County specifically reserves the right to either

operate its own C-PACE Program or enter into additional C-PACE Interlocal agreements with any other C-PACE Local Government pursuant to the PACE Act authorizing said C-PACE Local Government to provide a similar C-PACE Program with the County's C-PACE Program Boundaries.

Section 6. C-PACE Assessment; Role of Tax Collector.

The parties acknowledge and agree that the C-PACE Assessment arising from an Eligible Participant's voluntary participation in the Entity's C-PACE Program is imposed by the Entity and not the County. Additionally, the parties acknowledge that the collections and distribution of any C-PACE Assessment imposed by the Entity are strictly ministerial acts by the Tax Collector done pursuant to general law.

Section 7. Creation of State, County, or Municipal Debts Prohibited.

- A. **No Financial Commitment.** The Entity's implementation of a C-PACE Program pursuant to this Agreement shall be without any form of payment or other financial compensation between the parties. Any costs or expenses incurred by the Entity will be the sole responsibility of the Entity.
- B. The County and any Participating Municipalities shall not incur nor be requested to authorize any obligations secured by C-PACE Assessments associated with Qualifying Improvements imposed by the Entity pursuant to the PACE Act and the Ordinance. Neither the Entity nor any other special purpose local government acting pursuant to the PACE Act, the Ordinance, or this Agreement shall be empowered or authorized in any manner to create debt as against the County or any Participating Municipalities and shall not pledge the full faith and credit of the County or any Participating Municipalities in any manner whatsoever.
- C. No revenue bonds or debt obligations of the Entity or any other special purpose local government acting pursuant to the PACE Act shall ever pledge or imply any pledge that the County will be obligated to pay the same or the interest thereon nor state or imply that such obligations will be payable from the full faith and credit or the taxing power of the State, County, or Participating Municipalities as a result of the Ordinance or this Agreement. The issuance of bonds by the Entity under the provisions of law, the Entity's governance documents, or any agreement or resolution shall not, as the result of the Ordinance or this Agreement, be deemed in any manner, directly or indirectly or contingently, to obligate the County or any Participating Municipalities to levy or to pledge any form of ad valorem taxation or other county or municipal revenues or to make any appropriation for their payment whatsoever.

Section 8. Opinion of Bond Counsel.

Prior to the execution of this Agreement, the Entity shall deliver to the County any bond validation judgements and underlying bond documents related to any Entity bonds. Upon the County's request, the Entity will deliver to the County an "Opinion of Bond Counsel" directed to the County stating that, based on the counsel's review of State law, any bond validation judgements, and any underlying bond documents, the Entity's C-PACE Program structure complies with all applicable State law, bond validation judgements, and underlying bond documents. The Entity

acknowledges that the County may rely on the Opinion of Bond Counsel in its decision to maintain this Agreement and the Entity's C-PACE Program.

Section 9. C-PACE Program Requirements.

The parties agree that the Entity's C-PACE Program to be offered in the County's C-PACE Program Boundaries will be governed by the Ordinance, the PACE Act, and this Agreement. The Entity shall inform every Eligible Participant that, by law, the C-PACE Assessment must be respectively imposed, levied and collected pursuant to Sections 163.08, 197.3632, and 197.3635, Florida Statutes, and that the C-PACE Assessment: (A) is not subject to discount for early payment; (B) is not imposed by the County, any Participating Municipalities, the property appraiser, or the tax collector; and (C) is levied and imposed solely by the Entity and only upon the voluntary application of the Eligible Participant as expressly authorized by the PACE Act and in compliance with the Ordinance and this Agreement.

Section 10. C-PACE Program Boundaries.

- A. To facilitate voluntary funding and financing alternatives and choices for private property owners associated with compelling state interests as described in the PACE Act and Qualifying Improvements for Commercial Properties, the Entity is authorized, on a non-exclusive basis, to impose, levy, and collect non-ad valorem special assessments on the benefitted properties within the geographical boundaries of unincorporated Orange County and within the jurisdictions of Participating Municipalities pursuant to their respective opt-in ordinance or resolution and in accordance with Section 25-354 of the Orange County Code. Those Eligible Participants receiving funding and financing for Qualifying Improvements shall be assessed from time to time in accordance with the PACE Act, and in compliance with the Ordinance, any opt-in ordinance or resolution of each Participating Municipality and other applicable law.
- B. Notwithstanding termination of this Agreement, Eligible Participants whose applications were approved and who received funding through the Entity's C-PACE Program prior to this Agreement's termination date shall continue to be a part of the C-PACE Program for the sole purpose of paying their outstanding C-PACE Assessment payments until such a time that all outstanding C-PACE Assessment payments have been satisfied.

Section 11. C-PACE Financing Agreement.

- A. Within the C-PACE Program Boundaries the Entity shall enter into a C-PACE Financing Agreement, in a manner consistent with the PACE Act and the Ordinance, with Eligible Participants who apply for and obtain funding and financing under the power and authority provided by the PACE Act through the Entity.
- B. Prior to entering into a C-PACE Financing Agreement with an Eligible Participant, the Entity shall verify that holders or loan servicers of any mortgage or lien encumbering or otherwise secured by the Commercial Property have signed written consents consenting to the C-PACE Assessment considered for the Commercial Property pursuant to the C-PACE Financing Agreement. The Entity shall have in its possession, and produce upon request, a documented, executed form of lender consent for each C-PACE project.

Section 12. Metrics Reporting.

- A. The Entity shall track its C-PACE Program metrics and report those metrics to the County with the first report due one (1) year after the execution of this Agreement. The Entity shall use the *C-PACE Metrics Report* attached to this Agreement as “**Exhibit A**”, or a substantially similar report, or a report approved by the County’s Chief Sustainability Officer, to provide the aforementioned metrics to the County. Following the submission of the first metrics report, each subsequent metrics report must be submitted electronically to the County on a quarterly basis no later than three (3) weeks after March 31st, June 30th, September 30th and December 31st while this Agreement is in effect.
- B. Metrics reports must include, at a minimum, the information required by Section 25-356(10), Orange County Code.
- C. The *C-PACE Metrics Reports* must be in a format that allows the County to extract the data and information contained therein.

Section 13. Maintenance, Retention, and Access to Records.

- A. The Entity shall establish and utilize generally accepted accounting principles in the maintenance of all records relating to this Agreement. Such practices shall follow the general acceptable accounting principles and shall fully and accurately reflect, track, and document the Entity’s financial activities. The Entity shall operate according to financial procedures and auditing and financial reporting requirements that are applicable to political subdivisions under state law, including, but not limited to, Chapter 218, Florida Statutes, and all other financial matters pertaining to political subdivisions.
- B. The Entity shall furnish the County with any and all data needed for the purpose of monitoring, evaluation, auditing, and quality assurance. This data shall include information on the C-PACE projects funded or financed, or work performed, and any other data that may be required by the County, in its sole discretion, to adequately evaluate the Entity’s implementation of its C-PACE Program under this Agreement.
- C. All records that were created, utilized, or maintained for the purpose of fulfillment of the Entity’s obligations pursuant to this Agreement, whether paper or electronic (“**Relevant Records**”), shall be retained by the respective record holder for a period of seven (7) years in accordance with Section 25-356(12), Orange County Code.
- D. In the event of litigation, claims, or audit findings, all Relevant Records shall be retained for a period of seven (7) years after the resolution of any such event.
- E. The Entity shall permit the County or any of its authorized representatives to access, review, or reproduce any and all Relevant Records.
- F. The Entity shall ensure that its C-PACE Administrators (if any) abide by the terms of this Section.

Section 14. Monitoring and Auditing Requirements.

- A. **Monitoring.** The Entity hereby acknowledges that the County may monitor the Entity's C-PACE Program programmatic and financial activities. By executing this Agreement, the Entity hereby agrees to permit the County or its designee to perform such program and financial monitoring periodically. Within ninety (90) days upon receiving notification of the County's intent to monitor the Entity's C-PACE Program, the Entity will provide the County or its designee with the following information and documents used in its C-PACE Program:
1. C-PACE Financing Agreement documents (template);
 2. Notice to Property Owner (template);
 3. Anti-Kickback Policies and Procedures;
 4. Lender Notification and Consent;
 5. Metrics Report (template);
 6. Eligibility Criteria;
 7. Rates, fees, and charges charged by or through the Entity;
 8. Agreements with the Orange County Tax Collector and Property Appraiser, as applicable, in a manner compliant with general law; and
 9. Any other information requested by the County that is related to the Entity's C-PACE Program.
- B. **Authorization to Audit.** The County or its authorized representative shall have the right to periodically audit the Entity's:
1. Financial records related to the Entity's C-PACE Financing Agreements, C-PACE Assessments imposed and payments made, and other Relevant Records related to the Entity's C-PACE Program;
 2. C-PACE Program delivery; and
 3. Compliance with the terms, conditions, and obligations set forth in the PACE Act, the Ordinance, and this Agreement.
- C. **Letter of Findings.**
1. If during a monitoring session or audit the County or its designee discovers any defect in the Entity's performance under this Agreement (whether programmatic, financial, etc.), a "Letter of Findings" shall be provided to the Entity.
 2. The Entity shall respond to any such Letter of Findings with a Corrective Action Plan and Implementation Schedule, as discussed, and agreed to by the parties

within thirty (30) calendar days of the date of the Letter of Findings. Failure to submit a Corrective Action Plan and Implementation Schedule shall constitute a material breach and may result in termination of this Agreement.

- D. Failure to comply with any requirements of this Section shall be deemed a breach of this Agreement and may result in the termination of this Agreement.

Section 15. Sovereign Immunity; Indemnification; Liability.

- A. **Sovereign Immunity.** All of the privileges and immunities from liability and exemptions from laws, ordinances, and rules that apply to the activity of officials, officers, agents, or employees of the parties and any Participating Municipalities shall apply to the officials, officers, agents, or employees of the parties and any Participating Municipalities when performing their respective functions and duties under the provisions of this Agreement. The County, any Participating Municipalities, and the Entity are and shall be subject to the limitations of liability provided in Section 768.28, Florida Statutes, and any other relevant provisions of Florida law governing sovereign immunity. Nothing in this Agreement is intended to waive or alter the sovereign immunity of the parties including, but not limited to, the express monetary limits of liability set forth in Section 768.28, Florida Statutes. The local governments who are either incorporators or members of the Entity or any subsequently served or participating local government, including particularly the County or any Participating Municipalities, shall not be held jointly liable for the torts of the officers or employees of the Entity, or any other tort attributable to the Entity, and the Entity 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.
- B. **Indemnification.** To the extent provided by law, the Entity agrees to protect, defend, reimburse, indemnify, and hold harmless the County and any Participating Municipalities, their agents, employees and elected officers ("**Indemnified Parties**"), and each of them free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature (collectively, a "**Claim**") whether arising in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, by reason of any act, omission or fault, whether active or passive, of the Entity, its agents, employees, or officials or anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. The Entity's indemnity and hold harmless obligations, or portions or applications thereof, contained herein shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the County or any Participating Municipalities, their respective agents, employees, or officers, not shall the liability limits set forth in Section 768.28, Florida Statutes, be waived. Nothing in this Agreement is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. In the event any Claim is brought against an Indemnified Party, the Entity shall, upon written notice from an Indemnified Party, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.

- C. **Independent Parties.** The Entity is an independent special purpose local government. Neither the County nor any Participating Municipality that has authorized the Entity to implement a C-PACE Program within its respective jurisdiction shall, in any manner, be obligated to pay any debts, obligations, or liabilities arising as a result of any actions of the Entity, its Board of Directors, or any other agents, employees, officers, or officials of the Entity. In addition, the Entity, its Board of Directors, or any other agents, employees, officers or officials of the Entity shall have no authority or power to otherwise obligate either the County or any Participating Municipalities within the County served by the Entity.

Section 16. Insurance by the Entity.

Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, the Entity agrees to maintain commercial insurance or to be self-insured for General Liability and Automobile Liability with coverage limits in the amounts as set forth in Section 768.28, Florida Statutes. The Entity also agrees to maintain commercial insurance or to be self-insured for Workers' Compensation & Employers' Liability in accordance with Chapter 440, Florida Statutes. Upon request, the Entity will provide an affidavit or Certificate of Insurance evidencing self-insurance or commercial insurance up to the sovereign immunity limits, which the County agrees to find acceptable for the coverage mentioned above.

Section 17. C-PACE Administrator Indemnification; Additional Insured.

- A. **Indemnification Agreement.** The Entity shall obtain from any and all of its C-PACE Administrators a separate indemnification agreement for the benefit of the County and any Participating Municipalities as to the C-PACE Administrator's actions and activities taken on behalf of the Entity concerning all of the subject matter of this Agreement. The form of the indemnification agreement must be approved administratively by the County prior to the C-PACE Administrator assuming responsibilities for the Entity pursuant to this Agreement.

Section 18. Agreements with Tax Collector, Property Appraiser, and Municipalities.

- A. The Entity acknowledges that the County has no authority to bind the County Tax Collector or County Property Appraiser, but the Entity may be required by statute to enter into a written agreement with the Tax Collector and Property Appraiser associated with collecting or handling the C-PACE Assessments in accordance with Section 197.3632, Florida Statutes.
- B. The Entity acknowledges that unless and until a Participating Municipality in the County has adopted an ordinance or resolution authorizing the Entity's C-PACE Program to be implemented within its respective jurisdiction, the Entity shall have no authority under this Agreement or the Ordinance to operate its C-PACE Program within such municipality.
- C. The Entity, as a duly authorized separate legal entity, not the County or any Participating Municipalities, is the local government imposing the subject non-ad valorem assessments and shall be solely responsible for compliance with all applicable law and all matters associated with origination, funding, financing, administration, and collection (in concert with the uniform method of collection set forth in Section 197.3632, Florida Statutes) of each of the resulting non-ad valorem assessments.

- D. The Entity, as a special purpose local government authorized by the PACE Act to impose a C-PACE Assessment, is required by general law to use the uniform method of collecting special assessments pursuant to Sections 197.3632 and 197.3635, Florida Statutes, and shall be solely responsible for professionally coordinating all interface with the Tax Collector and Property Appraiser and minimize, to the greatest extent reasonably possible, the time, effort, and attention of these public officials to accomplish the public purposes and direction of the PACE Act.

Section 19. Responsive Communications; Interlocal Cooperation.

- A. **Written Communications.** The parties will promptly respond in writing to all written communications, including email, from each other. Such response shall be deemed prompt if made in a reasonable and complete manner within ten business (10) days of receipt of any such written communication. This Section shall not be construed as containing any obligation for the County to receive complaints or concerns about the Entity or its designee's performance, policies, systems, or procedures. The County will promptly refer all such complaints or concerns directly to the Entity or the Entity's C-PACE Administrator, if applicable, for a response.
- B. **Customer Service.** The Entity and its C-PACE Administrator shall maintain and abide by customer service procedures that provide a high level of customer service and complaint resolution. At a minimum this includes:
1. Access to customer service representatives by email and phone during normal business hours;
 2. All complaints and resolutions must be logged with the Entity and contain the following information at a minimum: date and time of complaint, customer and contractor information, details of complaint, when and what actions were taken by the Entity or the Entity's C-PACE Administrator, if applicable, and final resolution; and
 3. All disputes and complaints must be investigated and resolved in a timely manner. Reports involving active disputes or complaints must be provided to the County upon request and a quarterly summary provided automatically.

Section 20. Term and Termination.

- A. **Term.** This Agreement shall become effective upon execution by both parties and filing with the clerk of the circuit court of each county where the parties are located, whichever date is latest, in accordance with Section 163.01(11), Florida Statutes. This Agreement shall remain in effect unless and until it is suspended or terminated by the parties in accordance with the Ordinance and the terms of this Agreement.
- B. **Termination.** Either party may terminate this Agreement upon sixty (60) days written notice. No termination of this Agreement shall preclude the Entity from exercising its power or authority to collect any of the C-PACE Assessments owed pursuant to a properly signed and performed C-PACE Financing Agreement. The terminating party, after a reasonable period of 30 days to allow for any afforded opportunity to cure, shall be

responsible for filing a notice of termination with the clerk of the circuit court of each applicable county.

- C. **Opportunity to Cure.** Without creating an obligation to provide an opportunity to cure or accept the Entity's proposed cure if such an opportunity is provided, the County reserves the right to provide the Entity the opportunity to cure any stated breach of this Agreement, the Ordinance, or the PACE Act. If the County provides such opportunity to cure, the County shall:
1. Provide the opportunity to cure as a part of the County's termination notice; and
 2. Allot an appropriate deadline by which the Entity must provide its proposed cure to the County.
- D. The applicable provisions, authority, and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the C-PACE Program and responsibilities of the Entity then underway shall remain in effect and survive any termination until such time as those obligations and all associated remaining responsibilities of the Entity are fulfilled (including, but not limited to, the collection of assessments in due course). Provided, however, the Entity's powers employed and exercised shall be non-exclusive, and the County, pursuant to the Ordinance, is free to and reserves the right to enter into or otherwise encourage or commence any other C-PACE Local Government acting pursuant to the PACE Act to administer a C-PACE Program with the C-PACE Program Boundaries.

Section 21. Authorization.

This Agreement and the Ordinance shall be considered the County's authorization for the Entity to implement a C-PACE Program within the C-PACE Program Boundaries pursuant to the PACE Act and the Ordinance.

Section 22. Notices.

Service of all notices under this Agreement shall be in writing and sent by certified or registered mail or courier service, postage prepaid, and addressed to the addresses set forth below until such addresses are changed by written notice. Notices sent by certified/registered mail or courier with signature receipt requested shall be deemed effective as of date of receipt.

To the County:

Orange County Administration
Infrastructure, Community, and Development Services
201 South Rosalind Avenue, 5th Floor
Orlando, Florida 32801

AND

Orange County Chief Sustainability Officer
201 South Rosalind Avenue, 5th Floor
Orlando, Florida 32801

To the Entity:

Florida Resiliency and Energy District

Section 23. General Provisions.

- A. **Assignments and Successors.** The actions and activities to be conducted pursuant to this Agreement and by general law achieve a compelling state interest and are governmental in nature. Each party binds itself, and its successors, and assigns to the other party of this Agreement and to the successors and assigns of such other party, in respect to all covenants of this Agreement. Neither party shall assign or transfer its interest in this Agreement except by the written consent of the other, which consent shall be in the sole determination of the party with the right to consent.
- B. **Attorneys' Fees and Costs.** Unless otherwise expressly stated in this Agreement, the parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Agreement and any action or proceeding arising out of or relating to this Agreement (an "**Action**").
- C. **Conflicts.** The parties shall comply with all applicable local, state, and federal laws, regulations, and executive orders. Should there be conflict between the various applicable laws and this Agreement, the most restrictive shall govern.
- D. **Construction and Representations.** Each party acknowledges that it has had the opportunity to be represented by counsel of such party's choice with respect to this Agreement. In view of the foregoing, and notwithstanding any otherwise applicable principles of construction or interpretation, this Agreement shall be deemed to have been drafted jointly by the parties and in the event of any ambiguity, shall not be construed or interpreted against the drafting party. Neither party has relied upon any representations or statements made by the other party to this Agreement which are not specifically set forth in this Agreement.
- E. **Counterparts and Electronic Transmission of Signatures.** This Agreement may be executed in counterparts, both of which shall be deemed an original and which taken together shall constitute one agreement. Any counterpart may be delivered by any party by electronic transmission of the full Agreement as executed by that party to the other party as mutually agreed upon by the parties, and delivery shall be effective and complete upon completion of such transmission.
- F. **Governing Law.** This Agreement shall be considered as having been entered into in the State of Florida, United States of America, and shall be construed and interpreted in accordance with the laws of that state.
- G. **Headings.** The headings or captions of sections or subsections used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.
- H. **Jury Waiver.** Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right that party does or might have to a trial by jury related to any Action.

- I. **Nondiscrimination.** The Entity agrees that no otherwise qualified individual shall solely, by reason of such person's race, sex, color, creed, national origin, or handicap, be excluded from participation in the C-PACE Program, or be subjected to any form of discrimination by the Entity. The Entity further agrees that it shall not discriminate as to race, color, religion, sex, national origin, age, handicap, or marital status in connection with its performance under this Agreement.
- J. **No Third-Party Claims.** Nothing in this Agreement, express or implied, shall confer to a third-party – or be construed as conferring to a third-party in any way – any legal or equitable right, benefit, claim, obligation, or remedy of any nature arising under or by reason of this Agreement.
- K. **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.
- L. **Remedies.** No remedy conferred upon any party in this Agreement is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any rights, power, or remedy hereunder shall preclude any other or further exercise thereof.
- M. **Severability.** The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant, or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate Agreement language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.
- N. **Signatory.** Each signatory below represents and warrants that such person has full power and is duly authorized by their respective party to enter into and perform under this Agreement. By executing this Agreement, each party represents that such person has reviewed this Agreement and intends to fully abide by the conditions and terms of this Agreement.
- O. **Survivorship.** Those provisions which by their nature are intended to survive the expiration, cancellation, or termination of this Agreement, including, by way of example only, the indemnification and public records provisions, shall survive the expiration, cancellation, or termination of this Agreement.
- P. **Use of County and Entity Logos.** Both parties are prohibited from use of any and all of the other party's emblems, logos, or identifiers without written permission from that party. For more information about the use of the County's logos, refer to Section 2-3, Orange County Code.

- Q. **Venue.** Unless otherwise required by law, each of the parties hereby irrevocably submits to the jurisdiction of any federal or state court of competent jurisdiction sitting in Orange County, Florida, regarding any Action, and further agrees that any such Action shall be heard and determined in such Florida federal or state court. Each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of any Action in Orange County, Florida.
- R. **Waiver.** No delay or failure on the part of any party to this Agreement to exercise any right or remedy accruing to such party upon the occurrence of an event of violation shall affect any such right or remedy, be held to be an abandonment thereof, or preclude such party from the exercise thereof at any time during the continuance of any event of violation. No waiver of a single event of violation shall be deemed to be a waiver of any subsequent event of violation.
- S. **Written Modification.** No modification of this Agreement shall be binding upon any party to this Agreement unless it is reduced to writing and is signed by a duly authorized representative of each party to this Agreement.

Section 24. Attachments.

The documents provided for below are hereby incorporated by both reference and attachment and therefore form a material part of this Agreement:

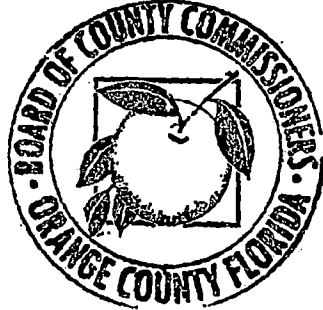
- A. **Exhibit A:** C-PACE Metrics Report.

Section 25. Entire Agreement.

This Agreement, and any documents incorporated, referenced, or attached to this Agreement, sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement. In regards to such subject matter, this Agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the parties hereto by their duly authorized representatives.



ORANGE COUNTY, FLORIDA

By: The Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings, Orange County Mayor

Date: April 5, 2022

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of the County Commissioners

By: *Phil Diamond*

Date: April 5, 2022

FLORIDA RESILIENCY AND ENERGY DISTRICT

William F. Spivey Jr.

3/7/22

Signature
WILLIAM F. SPIVEY JR
Printed Name

Date
EXECUTIVE DIRECTOR
Official Title

STATE OF FLORIDA

COUNTY OF Seminole

The foregoing instrument was acknowledged before me on this 7th day of March 2022, by William F. Spivey, Jr., in his or her official capacity as the Executive Director of Florida Resiliency and Energy District.

Jennifer Jenkins
Signature Notary Public
Print, Type/Stamp Name of Notary
Jennifer Jenkins

- Personally Known
- Produced Identification
Type of Identification Produced: _____



Exhibit A
C-PACE Metrics Report