

RESOLUTION NO. _____

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2
3 **A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE**
4 **VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE**
5 **GREEN CORRIDOR DISTRICT; AUTHORIZING THE EXECUTION**
6 **OF AN INTERLOCAL AGREEMENT BETWEEN THE TOWN OF**
7 **CUTLER BAY AND THE VILLAGE OF PALMETTO BAY, AND ANY**
8 **OTHER INTERESTED MUNICIPALITIES; PURSUANT TO 163.01 THE**
9 **"FLORIDA INTERLOCAL COOPERATION ACT OF 1969", TO**
10 **ESTABLISH THE GREEN CORRIDOR DISTRICT AS A SEPARATE**
11 **LEGAL ENTITY; TO FINANCE ENERGY RELATED "QUALIFIED**
12 **IMPROVEMENTS" THROUGH VOLUNTARY ASSESSMENTS; TO**
13 **ALLOW IMPROPER PROPERTY TO BE RETROFITTED WITH**
14 **ENERGY RELATED QUALIFYING IMPROVEMENTS TO ALLEVIATE**
15 **THE PROPERTY'S BURDEN FROM ENERGY CONSUMPTION; AND**
16 **TO CREATE THE DISTRICT AS A MEANS OF IMPLEMENTING AND**
17 **FINANCING A QUALIFYING IMPROVEMENT PROGRAM FOR**
18 **ENERGY CONSERVATION AND EFFICIENCY IMPROVEMENTS**
19 **WITHIN THE DISTRICT; PROVIDING AN EFFECTIVE DATE.**
20 **[Sponsored by Mayor Shelley Stanczyk].**

21
22 **WHEREAS**, Section 163.08, Florida Statutes, under the "PACE Act" provides and allows
23 for providing funding and financing for certain clean energy, renewable energy and wind resistant
24 qualifying improvements and associated programs by local governments for "Property Assessed
25 Clean Energy;" and,
26

27 **WHEREAS**, the Town of Cutler Bay proposes the development of a "Green Corridor"
28 District under the powers delineated under section 163.01, Florida Statutes, "the Florida Interlocal
29 Cooperation Act of 1969" and the PACE Act; and,
30

31 **WHEREAS**, on or about August 16, 2011, the Town of Cutler Bay executed a third-party
32 administration agreement with Ygrene Florida Energy Fund, LLC, to be the administrator of the
33 Green Corridor program, to develop, implement and administer proposed programs providing
34 planning, development, financing, marketing, and management for efficient, effective and voluntary
35 PACE programs; and,
36

37 **WHEREAS**, the Town of Cutler Bay is seeking to partner with the Village and other local
38 municipalities to create a separate legal entity under Section 163.01(7),(g), Florida Statutes, for
39 purposes of offering a PACE program to constituents of the member governments thereof; and,
40

41 **WHEREAS**, pursuant to Section 189.403, Florida Statutes, a municipality or its created
42 special district may finance energy related "qualifying improvements" through voluntary
43 assessments; and,
44

1 **WHEREAS**, pursuant to section 163.08, Florida Statutes, the improved property that has
2 been retrofitted with energy-related qualifying improvements receive special benefit of alleviating the
3 property's burden from energy consumption and assists in the fulfillment of the state's energy and
4 hurricane mitigation policies; and,
5

6 **WHEREAS**, the Interlocal Agreement proposes the establishment of the District as a
7 means of implementing and financing a qualifying improvements program for energy conservation
8 and efficiency improvements within the District; and,
9

10 **WHEREAS**, the Interlocal Agreement clarifies the various obligations for future
11 cooperation between all the municipalities participating in the District program, including financing
12 of qualifying improvements within the district; and,
13

14 **WHEREAS**, the Village of Palmetto Bay desires to execute the attached Interlocal
15 Agreement and supports the establishment of the District.
16

17 **WHEREAS**, the Mayor and Village Council desire to authorize the execution of the
18 attached Interlocal Agreement with the Town of Cutler Bay, in which the Town Manager shall act as
19 the staff of the proposed District, and the Town Attorney shall act as the counsel to the District.
20

21 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE
22 COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:
23

24 **Section 1.** The above whereas clauses are incorporated by reference.
25

26 **Section 2.** The Village of Palmetto Bay authorizes the execution of the attached
27 Interlocal Agreement with Cutler Bay and supports the creation of the Green Corridor District.
28

29 **Section 3.** This resolution shall take effect immediately upon approval.
30

31 PASSED and ADOPTED this ____ day of September, 2011
32
33

34 Attest:

35 _____
36 Meighan Alexander
37 Village Clerk

38 _____
39 Shelley Stanczyk
40 Mayor

41 APPROVED AS TO FORM:
42
43

44 _____
45 Eve A. Boutsis
 Village Attorney

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FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Howard Tendrich _____

Council Member Joan Lindsay _____

Vice-Mayor Brian W. Pariser _____

Mayor Shelley Stanczyk _____

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

AND _____,

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

and

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

and

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

and

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Board (as defined in Section 6 below), execution of this Interlocal Agreement and adoption of an ordinance or resolution of support establishing the District.

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

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

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

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

Section 9. Authorized Official. The Parties agree to each identify a local official or designee of the respective Party who is authorized to enter into a financing

agreement, pursuant to Section 163.08(8), Florida Statutes, with property owner(s) who obtain financing through the District.

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

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

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

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

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

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

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

Section 16. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or it must be given by written certified U.S. mail, with return receipt requested, addressed to the Party for whom it is intended, at the place

specified. For the present, the Parties designate the following as the respective places for notice purposes:

If to Cutler Bay: Town Manager
 Town of Cutler Bay
 10720 Caribbean Boulevard, Suite 105
 Town of Cutler Bay, Florida 33189

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

If to City B: _____

If to City C: _____

Section 13. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by the Parties hereto and the District.

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

Section 15. Joint Effort. The preparation of this Interlocal Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

Section 16. Merger. This Interlocal Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the

matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Interlocal Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all Parties to this Interlocal Agreement.

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

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

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

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

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

[Remainder of page intentionally left blank.]

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

ATTEST:

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

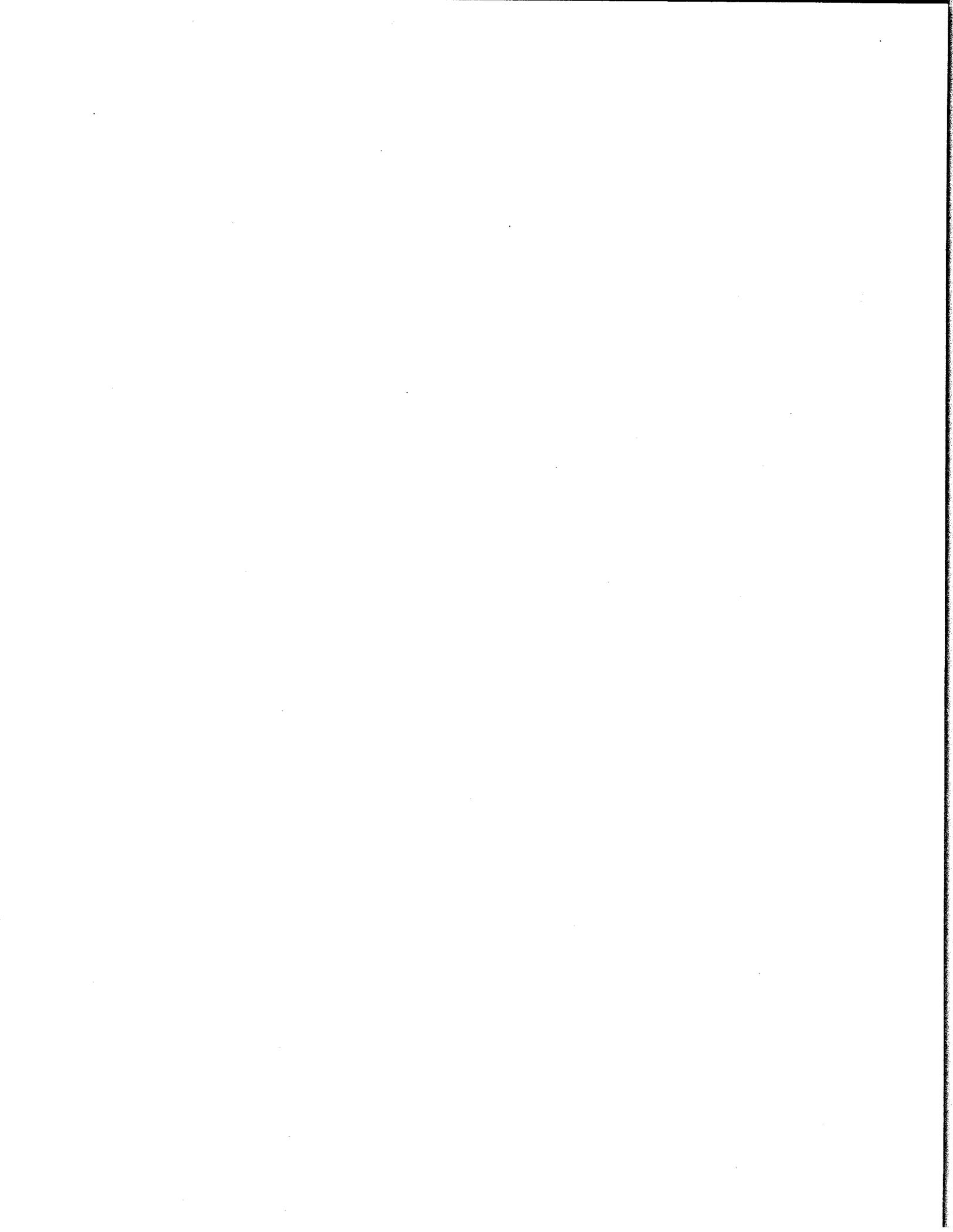
BY: _____
Town Clerk

BY: _____
Town Manager

(Affix Town Seal)

**Approved by Town Attorney
as to form and legal sufficiency**

Town Attorney





To: Steven Alexander
Cc: Chad Friedman
From: Dan M. Schaefer
Date: July 27, 2011

RE: Green Corridor District Risk Mitigation and Insurance

Collection Risk:

The District and its constituent communities do not have any general fund or other financial exposure associated with the bond financing contemplated by the program, other than collection risk in the event of property tax defaults by participating property owners. The Florida property tax collection system, through its tax certificate auction procedure, is particularly efficient. To eliminate the small remaining risk associated with the collection risk, Ygrene has provided in the agreement for an indemnity. Under the indemnity, Ygrene has agreed to purchase the tax certificate associated with any default on property encumbered by an HB7179 lien resulting from a project financed by the District program.

Financial Cost:

Ygrene has contracted to set up and administer the program without cost to the District or its constituent communities. This contractual obligation includes all costs associated with program set-up, bond validation, staffing, training, operation and funding. It also provides for reimbursement to the District for out of pocket costs and staff time associated with preparation of ordinances and/or resolutions, bond validation procedures and review and execution of financing agreements.

Legal Risk:

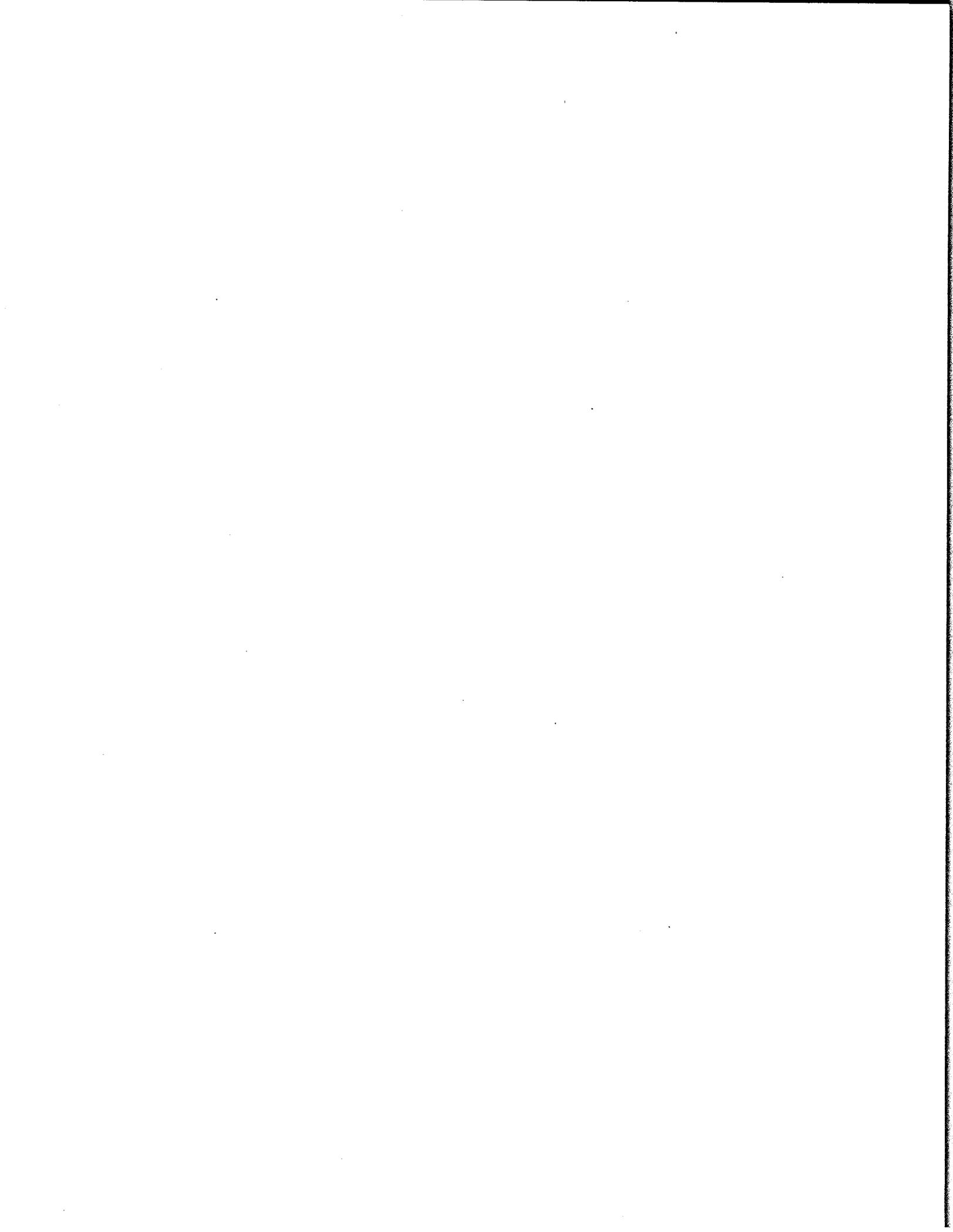
Ygrene has contractually agreed to indemnify the District against any and all liability arising out of the administration of the program. In addition, Ygrene has agreed to indemnify the District against legal attacks against HB7179 and the rights of states to authorize priority liens associated with voluntary non-ad valorem assessments.

Political Risk:

Political risks associated with operation of the program primarily relate to the potential for fraud, poor quality workmanship, failure of the projects to meet the expectations of the property owners, failure of the program to meet economic stimulus and energy savings goals of the communities and complaints from the banking industry about lien priority. Ygrene's program addresses all of these risks with a comprehensive and multi-pronged approach centered around contractor training, certification and oversight, strict underwriting standards, strict control over qualifying improvements and their installation, powerful software tools, broad based marketing and the strong financial support of Barclays Capital. We will provide highlights from the Proposal to further explain these program features.

Property Owner and Investor Risk:

Ygrene provides insurance for improvements installed and financed under the program. This policy is not intended as primary coverage for property owners, but rather acts to pay the assessment in the event of uninsured destruction of the improvements. This relieves property owners from finding themselves in the position of having to make the assessment payments without the benefit of the improvements to mitigate energy costs. In Florida, this is particularly relevant for photovoltaic installations in storm-prone areas.





Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Mayor and Town Council

From: Steven Alexander

Date: July 26, 2011

Re: PACE Program third party administrator agreement recommendation

Background

Cutler Bay was instrumental in the conception, authoring and adoption of House Bill 7179 in the 2010 Florida legislative session, which created Florida's Property Assessment Clean Energy (PACE) program. House Bill 7179 created Section 163.08, F.S., which provides, in part, that local governments may levy non-ad valorem assessments to fund "qualifying improvements." Qualifying improvements are defined as: (1) energy conservation and efficiency improvements (e.g. installation of energy efficient cooling systems; (2) renewable energy improvements (e.g. installation of solar panels); and (3) wind resistant improvements (e.g. hurricane shutters). The PACE program is a completely "voluntary" program and it is up to the property owner to decide if he or she would like to apply to participate. On May 26, 2010, the Town Council established the South Dade Green Corridor District, which is a PACE program in order to effectuate the intent and purpose of 2010-139 Laws of Florida (House Bill 7179).

Interlocal Agreement

In November 2010, the Town Council passed Resolution 10-67, as amended by Resolution 11-35, (Collectively, the "Resolution") to provide a vehicle to enter into an agreement with other municipalities in order to provide for the upfront financing for qualifying improvements as provided for in Section 163.08, Florida Statutes relating to PACE. The Town Manager was authorized to take any and all steps necessary to execute the necessary documents to carry out the intent and purpose of the Resolution thus establishing the Green Corridor PACE district (the "District").





The Interlocal Agreement's major points included, but are not limited to:

- (1) the creation of a governing board, with one at large member;
- (2) the Cutler Bay Town Manager & Attorney to initially serve as the staff and counsel to the board to provide a smooth transition;
- (3) Cutler Bay to procure the third party administrator on behalf of the District and assign the agreement to the District; &
- (4) each local government would be required to designate an official to execute the necessary financing documents with residents in order to levy the voluntary special assessments within the District.

Request for Proposal (RFP) & Selection

Cutler Bay agreed in the Interlocal agreement to issue a RFP on the behalf of the District for a third party administrator to manage and finance the improvements within the District. The RFP was advertised on November 11, 2010. On December 3, 2010, a mandatory pre-bid meeting was held at Cutler Bay Town Center at which several interested parties attended. During the pre-bid conference it appeared that some of the interested parties might consolidate their efforts and expertise to make a new multifaceted team approach. Bids were required to be submitted by January 7, 2011. Only one bid was timely received and subsequently, Town staff including the Town Attorney has performed substantial vetting of the respondent. On February 16, 2011, the Town Council selected Ygrene Florida Energy Fund, LLC (the "Ygrene") and authorized the Town Manager to negotiate an agreement with Ygrene.

Third Party Administrator Agreement

Ygrene and the Town have been fine tuning the Third Party Administrator Agreement (the "Agreement") over the last couple of months. The Agreement's major points include, but are not limited to, the following:

- (1) Ygrene will provide all of the funding for the operation of the District;
- (2) The term of the agreement is for five years with automatic renewals for successful five year terms. The District may terminate the Agreement anytime after the initial term;
- (3) Commencement of the program will occur when: (a) at least two members join the District; (b) an aggregate population of at least 500,000





is within the District. The number of people within the District can be less if agreed to by Ygrene; and (c) there is a successful bond validation; and

(4) Ygrene will indemnify the District and the local governments included therein against: (a) any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with performance or non-performance of any provision of the Agreement; (b) a legal challenge relating to the special assessment being a lien of equal dignity to taxes; & (c) any collection risk associated with a property tax default of property that is specially assessed within the District.

RECOMMENDATION:

Staff recommends the approval of the Agreement.



**THIRD PARTY ADMINISTRATION AGREEMENT
BETWEEN
THE TOWN OF CUTLER BAY AND YGRENE FLORIDA ENERGY FUND LLC**

THIS AGREEMENT (the "Agreement") is entered into as of the ____ day of _____, 2011 (the "Effective Date"), by and between the Town of Cutler Bay (hereinafter, the "Town") and Ygrene Florida Energy Fund, LLC, a Florida limited liability company with principal offices in Tampa, Florida (hereinafter "Ygrene" or "Administrator").

WHEREAS, section 163.08, Florida Statutes, (the "PACE Act") provides and allows for providing funding and financing for certain clean energy, renewable energy and wind resistant qualifying improvements and associated programs by local governments ("PACE program"); and

WHEREAS, Administrator has proposed to develop and desires to implement and administer programs providing planning, development, financing, marketing, and management for efficient, effective and voluntary PACE programs; and

WHEREAS, Town will partner with one or more other local governments to create a separate legal entity under section 163.01(7)(g), Florida Statutes, (the "District") for purposes of offering a PACE program to constituents of the member governments thereof; and

WHEREAS, the Town and Administrator are prepared to enter into this Agreement with the understanding that the Town will shortly create and establish the District with one or more other local governments by interlocal agreement and assign this Agreement to the District; and

WHEREAS, upon any assignment, all references to the Town herein shall be deemed to refer to and bind the District, unless the context clearly indicates otherwise.

NOW, THEREFORE, in consideration of the foregoing premises, which are hereby incorporated into this Agreement as integral parts hereof and not mere recitals hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Administrator and the Town agree as follows:

1. Scope of Services.

- 1.1 The Administrator shall undertake activities, furnish professional services, perform tasks, and provide deliverables (the "Services") as the exclusive third party administrator of the PACE program for the District, generally as described in the Functions and Responsibilities for Green Corridor PACE District, attached hereto and made a part hereof as Exhibit "A" (the "Proposal").
- 1.2 In the event the District wishes to expand or otherwise enhance the PACE program services provided by Administrator under the Agreement, and the Administrator determines that it is unable or unwilling to fulfill the requirements of the expanded services, then, the exclusivity provided in paragraph 1.1 above notwithstanding, the District may, without interference with Administrator's rights and obligations under the

Agreement, engage other vendors for the sole purpose of providing the expanded services.

2. Term/Commencement Date.

- 2.1 On the Effective Date, the Administrator will commence implementation of those Services required to (i) assist in the formation of the District; (ii) assist in attracting sufficient District membership that the aggregate population of the District is 500,000 or more; and (iii) assist the District to complete successful bond validation for the District. The following shall be conditions precedent to the commencement of additional services by the Administrator: (i) formation of the District; (ii) an aggregate population of at least 500,000 in the District; and (iii) successful bond validation of the District program (the "Commencement Conditions"). Notwithstanding the foregoing, the Administrator, in its discretion, may agree, in writing, to less than an aggregate population of 500,000 within the District. In the event that the Administrator agrees, in writing, to less than an aggregate population of 500,000 within the District, number (ii) of the Commencement Conditions shall be considered satisfied.
- 2.2 The Administrator will commence provision of the remainder of the Services within ten calendar days following fulfillment of the Commencement Conditions (the "Commencement Date").
- 2.3 The Agreement shall remain in effect for five (5) years from the Commencement Date (the "Initial Term"), and shall automatically renew for successive five (5) year Terms, unless terminated as provided in Section 8 herein.
- 2.4 The Parties agree that time is of the essence and each party will cooperatively act to advance completion of the Commencement Conditions.

3. Consideration.

- 3.1 As consideration for entering into this agreement, and for its performance hereunder, Administrator shall be entitled to impose and collect fees and charges in accordance with the Proposal. Such consideration recognizes that Administrator will not receive or collect fees or charges from the District for its services.

4. Sub consultants.

- 4.1 The Administrator shall be responsible for all payments to any third party subcontractors, service providers or sub consultants that are reasonably related to this Agreement, and shall maintain responsibility for all work related to the Services.
- 4.2 The District acknowledges and agrees to the Administrator's use of the sub consultants submitted in response to the Town's Request for Proposals, authorized pursuant to Resolution 10-68. The District acknowledges that Administrator may also use and employ other vendors, underwriters, providers, consultants, advisors or counsel in the

development and administration of its work product and services over time. Whenever Administrator determines to use such other assistance, it shall notify the District and seek its prior approval in writing, provided, however, such approval shall not be unreasonably withheld. Failure by the District to respond to such requests of Administrator, in writing, within 30 business days of submittal, and delineate specific reasons for refusal, shall be deemed approval. This time frame may be extended by mutual agreement of the parties.

- 4.3 Nothing in this Agreement shall prevent Administrator from performing similar PACE program services in other jurisdictions, either within or outside the State of Florida.

5. District Responsibilities

- 5.1 Upon acceptance of assignment of this Agreement from the Town, the District shall assume and undertake all of the obligations and responsibilities under the Agreement.
- 5.2 The District and its constituent local government members ("Members") understand that the Florida law authorizing PACE programs reserves authority and responsibility for establishing the program and executing financing agreements with property owners to local government. Consequently, the District and/or the Members, as appropriate, shall timely take the following actions:
- a. Authorize and adopt resolutions and/or ordinances required to implement the program;
 - b. Adopt resolutions and approve documents authorizing the Administrator to commence legal proceedings on behalf of the District to validate program related obligations and to engage counsel for the purpose;
 - c. Within a reasonable time following submittal by Administrator, execute documents required by the PACE Act including, but not necessarily limited to, financing agreements;
 - d. Other actions required by the PACE Act and/or financing authorities to be performed by the governmental jurisdictions sponsoring the PACE program.

6. Administrator's Responsibilities

- 6.1 The Administrator shall exercise the same degree of care, skill and diligence in the performance of the Services as that ordinarily provided by an administrator under similar circumstances. If, at any time during the term of this Agreement, it is determined that the Administrator's deliverables or services are incorrect, not properly rendered, defective, or fail to conform to the requirements of law, upon written notification on behalf of the District, the Administrator shall at Administrator's sole expense, immediately correct the work.
- 6.2 Administrator shall require contractors to exercise a high level of skill and integrity in the installation of PACE improvements in the District. To this end, participating contractors will be required to (i) insure that roof structures are adequate and

appropriate for installation of roof-mounted photovoltaic systems; (ii) comply with Administrator's guidelines for the removal and disposition of CFC's and other greenhouse gases; (iii) apply best commercially reasonable industry standards in the installation of all improvements financed under the program; and (iv) attend training programs designated by Administrator from time to time.

6.3 Administrator shall establish procedures that account for and accrue the carbon credits that result from projects financed under the District PACE program. The Administrator and the District shall equally split the ownership of carbon credits accounted for and accrued within the District. Therefore, for every 2 carbon credits accounted for and accrued within the District, the District will own one carbon credit and the Administrator will own the other carbon credit.

6.4 The Administrator hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services as an independent contractor.

7. Disclosure/Conflict of Interest.

7.1 So long as Administrator fulfills its obligations to provide the Services, District acknowledges and agrees that Administrator, its sub consultants or any other provider, vendor, consultant, underwriter, or third party used or employed by Administrator, is permitted, individually or collectively, to advance without conflict any other PACE program, or assist any other PACE program sponsor, and that there is and shall be no objection by the District to such actions.

7.2 The Administrator agrees that neither it nor its sub consultants shall represent any persons or entities in any action before the District.

8. Termination.

8.1 Following the Initial Term, either party may notify the other of its intent to terminate the Agreement. In such event, the Agreement will terminate on the second (2nd) anniversary of the termination notice, at which date Administrator shall cease providing the Services.

8.2 In the event the District terminates the Agreement under the provisions of paragraph 8.1 above, Administrator shall be entitled to continue to offer the Services during the transition period so long as (i) Administrator does not approve any projects, completion of which will extend beyond the termination date; (ii) Administrator provides for ongoing management of assessments related to any projects completed under Administrator's auspices; (iii) Administrator continues to provide all of the Services in a professional manner in accordance with the Agreement; (iv) Administrator continues to work in good faith with the District to provide a smooth transition for either the termination of the program or transfer to another administrator.

- 8.3 The District and Administrator acknowledge and agree that, as of the Effective Date, the Commencement Conditions have not been satisfied. The Town and Administrator agree that time is of the essence and each party will diligently and cooperatively act to satisfy the Commencement Conditions and advance Administrator's delivery of the Services within the timeframes and sequences set forth herein. Should the Commencement Conditions not be satisfied within one year following the Effective Date, Administrator may, in its sole discretion, cancel the Agreement by written notice to the District, in which case it shall be null and void and of no further force or effect.
- 8.4 In the event that (i) conditions in U.S. financial markets, (ii) changes in PACE law, or (iii) changes in District's authority to provide assessment lien priority render PACE financing infeasible, Administrator may suspend the program for a period of up to six months. Should the Administrator determine at the conclusion of the suspension period that conditions do not warrant resumption of the program Administrator may request from the District an extension of the program suspension for an additional six months. The District may, at its option, grant the extension or cancel the Agreement.
- 8.5 A breach of this Agreement shall mean a material failure to comply with any of the provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall, within 30 days after receiving written notice of such breach, proceed diligently and in good faith to take all commercially reasonable actions to cure such breach and shall continue to take all such actions until such breach is cured. Unless otherwise provided herein, the parties to this Agreement may proceed at law or in equity to enforce their rights under this Agreement.

9. **Nondiscrimination.**

- 9.1 During the term of this Agreement, Administrator shall not discriminate against any of its employees or applicants for employment, if any, because of their race, age, color, religion, sex, sexual orientation, national origin, marital status, physical or mental disability, or political affiliation and to abide by all Federal and State laws regarding nondiscrimination.

10. **Attorney's Fees and Waiver of Jury Trial.**

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

11.1 Administrator shall defend, indemnify, and hold harmless the District, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with Administrator's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Administrator and third parties made pursuant to this Agreement. In addition, the foregoing obligations shall expressly include all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with the voluntary non-ad valorem assessments constituting a lien of equal dignity to taxes as authorized by the PACE Act. The obligations provided for in this paragraph shall exclude liability resulting from acts of, or failure to take action by, the District, its officers, agents and employees.

The District shall promptly notify the Administrator of any claim giving rise to a right to indemnity and shall fully cooperate with the Administrator in defense of such claims. So long as the Administrator has agreed that the District is entitled to indemnification, the Administrator shall have the right to control the defense of the claim, including, without limitation, the right to designate counsel and to select a single counsel to jointly represent the interests of the District and the Administrator (unless an actual present conflict would preclude joint representation) and including the right to control all negotiations, litigation, arbitration, settlements, compromises, and appeals of the claim. The District shall cooperate in defense of the claim and may, but is not required to, retain at its cost additional separate counsel to participate in or monitor the defense of the claim by Administrator.

11.2 Administrator shall indemnify the District and the Members from and against collection risk related to the bonds issued for PACE assessments in the District. In the event of a property tax default by the owner(s) of any property against which a District PACE assessment has been recorded, Administrator agrees to purchase the tax lien certificate.

11.3 Administrator agrees that the indemnification provisions provided for in Section 11.1 above shall extend to any Member of the District.

11.4 The provisions of this section shall survive termination of this Agreement.

12. Notices/Authorized Representatives.

12.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Town:

Steven J. Alexander, Town Manager
Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105

Cutler Bay, Florida 33189

With a copy to:

Mitchell Bierman, Esq., Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd.
Coral Gables, Florida 33134

For the Administrator:

Dan Schaefer
Ygrene Florida Energy Fund, LLC
400 N Tampa St # 2200
Tampa, FL 33602

12.2 Either party may, by notice in writing given to the other, designate any further or different representatives or addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or confirmed electronic facsimile transmission) or three (3) days after the date mailed.

12.3 Each party shall be entitled to reasonably rely upon direction or communication received from the above designated representatives or any successor or additional designees.

13. Governing Law.

13.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be exclusively in the proper court in Miami-Dade County, Florida.

14. Entire Agreement/Modification/Amendment.

14.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

14.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

14.3 Administrator represents that it is authorized to do business in the State of Florida. The execution, delivery and performance of this Agreement by Administrator has been duly authorized, and this Agreement is binding on Administrator and enforceable against Administrator in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

15. Ownership and Access to Records and Audits.

- 15.1 The parties acknowledge that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether patentable or not) which relate directly to PACE District program Services and are conceived, developed or made by Administrator or District, directly for the PACE District program during the term of this Agreement, are deemed to be within the public domain, and subsequently may be used by each party without warranty of any kind.
- 15.2 All records, books, documents, maps, data, deliverables, papers and financial information associated with the District PACE program to be administered by Administrator (the "Records") are public records and shall be available to be inspected and copied by the District. In the event of public record requests, all such requests shall be administered and handled by the District as the custodian.
- 15.3 The District, by its designee, shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any of the Records.
- 15.4 After notice and reasonable opportunity to cure, the District may cancel and terminate this Agreement for refusal by the Administrator to comply with the requirements of Chapter 119, Florida Statutes (Public Records).

16. Assignment.

- 16.1 The parties agree that this Agreement shall be assigned to the District upon the Town and one other local government joining the District. This Agreement shall not be assignable by Administrator unless such assignment is first approved, in writing, by the District, or its duly authorized representative, which approval shall not be unreasonably withheld.

17. Severability.

- 17.1 In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

18. Independent Contractor.

- 18.1 The Administrator shall be and remain an independent contractor and not an employee, partner, agent, joint venture or principal of District with respect to all of the acts and services performed by and under the terms of this Agreement. Accordingly, neither party shall have any authority to represent or bind the other. Further, Administrator shall not be entitled to the rights and benefits afforded to District's employees, including, but not limited to, disability or unemployment insurance, workers' compensation, medical or disability insurance, vacation or sick leave or any other

employment benefit. Administrator shall file all tax returns and reports required to be filed by Administrator on the basis that Administrator is an independent contractor, rather than an employee, and Administrator shall indemnify the District for the amount of any employment taxes required to be paid by the District as the result of not withholding employment taxes from the compensation under this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. Compliance with Laws.

19.1 The Administrator shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all permits from all jurisdictional agencies to perform the Services under this Agreement.

20. Waiver

20.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. Survival of Provisions

21.1 Any terms or conditions of this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. Prohibition of Contingency Fees.

22.1 The Administrator warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Administrator, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Administrator, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement, except its attorneys, accountants and consultants.

23. Public Entity Crimes Affidavit

23.1 Administrator shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

24. Insurance.

- 24.1 Administrator shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the District against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the District, its officials, employees, agents and volunteers. Any insurance maintained by the District shall be in excess of the Administrator's insurance and shall not contribute to the Administrator's insurance. The insurance coverage shall include a minimum of the amounts set forth in this Section.
- 24.2 Comprehensive Automobile and Vehicle Liability Insurance This insurance shall be written in comprehensive form and shall protect the Administrator and the District against claims for injuries to members of the public and/or damages to property of others arising from the Administrator's use of motor vehicles. The limit of liability shall not be less than \$500,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 24.3 General Liability Insurance This insurance shall be written in comprehensive form and shall protect the Administrator and the District against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Administrator or any of its agents, employees, consultants, business partners or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 24.4 Certificate of Insurance Administrator shall provide the District with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the type of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The District reserves the right to require the Administrator to provide a certified copy of such policies, upon written request by the District. If a policy is due to expire prior to the completion of the term of this Agreement, renewal Certificates of Insurance or policies shall be furnished thirty(30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days written notice shall be provided to the District before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the District.
- 24.5 Additional Insured The District is to be specifically included as an Additional Insured for the liability of the District resulting from operations performed by or on behalf of Administrator in performance of this Agreement. Administrator's insurance, including that applicable to the District as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the District shall be in excess of and shall not contribute to Administrator's insurance.

24.6 Deductibles All deductibles or self-insured retentions must be declared to and be approved by the District or its duly authorized representative. The Administrator shall be responsible for the payment of any deductible or self-insured retention in the event of any claim.

25. Counterparts

25.1 This Agreement may be executed in several counterparts, each of which shall be deemed original and such counterparts shall constitute one and the same instrument.

26. Miscellaneous

26.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Proposal, the terms of this Agreement shall govern.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

TOWN:
TOWN OF CUTLER BAY

ADMINISTRATOR:
YGRENE FLORIDA ENERGY FUND, LLC.

By: _____
Steven J. Alexander, Town Manager

By: _____
Dennis R. Hunter, Manager

Attest: _____
Town Clerk

By: _____
Dan M. Schaefer, Manager

Approved as to Form and Legal Sufficiency:

By: _____
Town Attorney

**EXHIBIT A
THE PROPOSAL**

**Functions and Responsibilities for Green Corridor Property Assessment Clean Energy
(PACE) District (the "District")**

Ygrene proposes, in cooperation with Town and/or District to provide PACE administration and financing services to the District in accordance with the following:

I. TASK LIST

Task 1: Design Localization

Task 1.1: PACE Enabling Ordinance via District Interlocal Agreement

The first required action item is a procedural ordinance and/or authorizing resolution. Consistent with the Florida law and Section 163.08, Florida Statutes (the "PACE ACT"), Ygrene and its qualified Counsel ("Counsel") will provide a comprehensive set of documents that include, by way of example, the following components:

- A determination that the establishment of the program would be in the public interest as required by the law.
- A statement indicating that the jurisdiction proposes to make voluntary contractual non-ad valorem assessment ("PACE Assessment") financing available to property owners.
- An identification of the types of renewable energy sources, wind resistance and energy efficiency improvements ("Qualifying Improvements") that may be financed.
- A description of the boundaries (including a map) of the area within which contractual assessments may be offered.
- A description of the proposed financing program.
- Designation of a date, time and place for the public hearing on the matter, if required.
- A statement of assessment underwriting standards that is consistent with HB7179, reflects the legitimate concerns of mortgage lenders and cognizance of the secondary mortgage market, is designed to ensure appropriate capital markets participation, and forms the basis for Florida to demonstrate a PACE financing program that provides a model for use in other states.
- Consultation with the appropriate county officials to ensure arrangements for placing the assessments on the tax roll and all the necessary documentation.
- Under the direction of Willdan Financial Services, Barclays Capital and Counsel, development of standard or uniform protocols to create and maintain non-ad valorem assessment rolls, and transfer proceeds to cover debt service and associated program costs.

Task 1.2: PACE Report

Pursuant to adoption of a procedural ordinance and/or authorizing resolution for the District, Ygrene will provide a Report that will contain matters sufficient to fulfill legal requirements including:

- **Program Jurisdiction:** Description, map or diagram indicating the boundaries where PACE assessments can be legally offered.

- **Draft Financing Agreement:** A draft form of financing agreement consistent with the PACE Act and anticipated market acceptance specifying the terms and conditions for a property owner to fund and finance Qualifying Improvements. The final form of financing agreement will be subject to approval and execution by appropriate District officials and Counsel.
- **Policy Statement:** Please reference Task 1.3 for a detailed account of what this task entails.
- **District's PACE Finance Plan:** A description of the funding source(s) to be offered through the District for work financed by the voluntary non-ad valorem assessment under the program. Ygrene will rely on Counsel for legal analysis and advice as to the best means and methods to achieve program validity and address legal matters related to the assessments and the bonds to be issued. The Finance Plan may delineate amounts to be advanced based on funds available to the local government from any source, and may include the issuance or sale of bonds, obligations, or other financing arrangements. The Finance Plan shall include a method for determining the interest rate and time period during which affected property owners would pay any assessment. The Finance Plan will provide for the establishment of any necessary reserve fund or funds, and will provide for the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the assessments among the consenting property owners and other matters necessary to attract funding and financing.
- **Payment Schedules:** Based upon information provided by the District, Ygrene will create and provide payment schedules, to both the District and affected property owners, that identify the amount and timing of payments to be made during the agreed upon term of the assessments based upon the program interest rate. This schedule will be the basis for the assessment installments that will be submitted annually to the appropriate county tax collector for inclusion on property tax bills.
- **Assessment Applicant Criteria for the Approval/Denial Process:** Applicant qualification requirements will be determined based upon the State Law and underwriting guidelines.
- **County Tax Roll Results Report:** Ygrene will prepare and periodically update a report on the results of consultations with appropriate county officials concerning arrangements and additional fees, if any, to be charged for placing the PACE assessments on the property tax bills.

Task 1.3: PACE Policy Statement

Ygrene and Counsel will provide the District with draft policies for use in contractual assessments between the District and property owners for financing of Qualifying Improvements. These policies will be a requirement of the program and must be adopted by the District to be effective. The policy statement will include, but is not limited to, the following:

Authorized Officials: The governing body of the District will identify and delegate power to the local official(s), or designee(s), who are authorized to enter into financing agreements with participating property owners. Procedures shall provide, among other requirements, for timely execution of financing agreements.

Project Identification: Ygrene will identify the types of properties authorized to be included in the program, i.e. residential, commercial/industrial. Ygrene will provide and propose a comprehensive list of Qualifying Improvements that may be financed through the program.

Method for Prioritizing Property Owner Requests: Unless otherwise directed by the District and subject to financial underwriting guidelines, Ygrene will process and prioritize property owner requests for participation in the program on a first-come, first-served basis, without regard to size of project or type of property.

Program Timelines: Ygrene will specify various program timelines, including deadlines for setting up the District program. Additionally, Ygrene will set performance goals for such program components as application processing, approval notification, assessment processing, project funding and other customer service related guidelines.

Task 1.4: Program Forms

Ygrene will provide a portfolio of program forms (bi-lingual) to be used by residents who wish to participate in the program. These forms will also be provided on the District's website, and may include:

- PACE Frequently Asked Questions (FAQ)
- Schedule of Fees
- List of Qualifying Improvements
- Assessment Underwriting Terms
- Application & Documentation Checklist
- Application Form
- Financing Agreement
- Truth-In-Lending Form
- FHFA/FNMA/FMAC PACE Status Disclosure Form
- Lender Notification (Residential Properties)
- Lender Notification and Acknowledgement (Commercial and Industrial Properties)
- Project Bid and Contract Form
- Funding Request Checklist
- Utility Authorization Form
- Closing Checklist

Task 1.5: PACE Presentation to District Directors (from 1.2)

Once the program elements are completed and approved by the District, Ygrene will assist staff in presenting such information and materials to the District board, will prepare and suggest the related staff report, and participate in the required public hearing.

Task 1.6: Update and Amend PACE Report

As necessary, in a manner consistent with the PACE Act, and as directed following the public hearing, Ygrene will make requested changes and/or amendments to program elements.

TASK 2: Marketing

Task 2.1: Establish a Community Outreach and Participation Plan

Ygrene will implement the four-step marketing plan for the District:

- Step 1: Contractor Certification:** Ygrene will train and certify contractors as a prerequisite to their participation in the program. The certification approach utilizes State standards, nationally recognized programs and systems training. Ygrene's training program emphasizes customer service, market outreach, technical expertise and professionalism.
- Step 2: Property Segmentation:** Based on data analysis and statistical modeling, Ygrene can segment District properties into groups based on age, geographic location, assessed value and other attributes. This provides the basis for a District outreach program for each group of properties that utilizes the internet, local media and local canvassing with a targeted message.
- Step 3: Localized District Website Portal:** Ygrene's WebTool provides options that allow the District to localize the user experience and to establish a message that is consistent with

local political and economic development objectives. Ygrene works with staff prior to setting up and launching the localized Site.

Step 4: Outreach/Energy Centers: Ygrene will open an Outreach/Energy Center that will serve the program needs in the District for education, outreach, customer service, contractor liaison and information resources. Here, property owners can get their questions answered and obtain the necessary forms to apply for the program. District residents can learn how to save energy and money. Contractors can take classes to help them improve their service and increase their businesses. The Outreach/Energy Center will be designed, furnished and staffed by Ygrene to meet the specific needs of the PACE program in the District.

Task 2.2: Website Development

Ygrene will deliver a localized web portal for the District. The WebTool is designed to be localized, yet still provide national and statewide standardization necessary to ensure uniform legal and financial underwriting. The website components and services may include some of the following components:

Video on PACE: A short, educational video on how PACE works

Frequently Asked Questions (FAQ) Page (regularly updated)

Assessment Calculator: A computerized tool that allows interested residents to input their desired project and determine both the annual assessment payments and the expected energy savings. By modeling different project components, property owners can determine an optimum retrofit and renewable energy profile for their property.

Estimate: A computerized tool that allows interested property owners, by entering basic information about their property, to determine the amount of financing they can qualify for under the program.

Project Application: Everything necessary to apply for financing under the program.

Qualifying Improvements: A description of the project components a property owner can select under the program.

Program Forms: All program forms are available through the website. They can be completed electronically, or printed and filled out manually. Forms and personal assistance are also available at the Outreach/Energy Center.

Authorized Contractor Bid Request: This on-line tool provides real time information about contractor qualifications, the jobs they are supervising and resources for contacting them and soliciting bids.

Project Evaluation: Property owners can report their program experiences with respect to project results, contractor performance, and Administrator performance. Ygrene also provides real-time data for District analysis of jobs, energy and greenhouse gas impacts from the program.

Contact Information: Lists phone number(s) and email address(es) for all program personnel and for qualified contractors.

Contractor Communication and Coordination: An online tool that allows contractors to monitor current projects and those in the pipeline.

Contact Information: An Outreach/Energy Center resource that provides quick access to specialty subcontractors, when needed; and updates contractors on new tools, training, equipment and developments in the field.

Documents: A comprehensive document management system that allows password protected access to all program and project documents, at any time, by both Ygrene personnel and authorized District representatives.

TASK 3: Contractor Certification and Training

Based on State or other licensing requirements, Ygrene registers and authorizes all participating contractors. Ygrene provides and requires both direct and indirect training to ensure that program participants are professional, knowledgeable and qualified to undertake PACE projects. In addition, Ygrene will provide oversight, evaluations and conflict resolution. This software includes the following capabilities:

- Enables all licensed building contractors to register and participate in the program.
- Provides a platform where contractors are able to:
 - Manage the project submission and approval process
 - Track the progress of payments due under their contracts
- Provides a set of standards to calculate the SIR through audit and bid tools.
- Acquires historic energy usage for each property and quantifies energy use reductions once project improvements are completed.
- Provides immediate access to a wide range of data and reports related to the operation, status and success of the overall program.

TASK 4: Administration

The PACE administration function includes processing applications, providing customer service and administration, management of assessments and payments, recruitment, training and oversight of the contractors who perform approved energy efficiency, renewable energy and wind resistance work.

Task 4.1: Property Owner Applications

Ygrene will evaluate applications and process them on a first-come, first-served basis. Ygrene will use an electronic system that will track submitted applications, monitor the status of those applications and verify that assessments, once processed and approved, meet policy guidelines. Ygrene will also timely communicate pre-approval, approval, or denial notifications to applicants.

Task 4.2: Qualifying Project and Authorized Contractor Selection

Once an application has been submitted, the property owner will coordinate with their contractor of choice to select items from the Qualifying Improvements list that they are interested in installing. Since the District program requires compliance with the list of Qualifying Improvements, Ygrene's software tools limit funded projects only to Qualifying Improvements authorized by the District. At all steps in the process, personal assistance is available to property owners, at the Outreach/Energy Center, on the phone or via email, to complete applications and select a contractor.

Task 4.3: Energy Savings Calculations – Audit

Contractors will be equipped with audit tools in order to establish that the Savings to Investment Ratio (SIR) of the proposed project is greater than one. Quantifiable energy reductions may, in some circumstances, result in eligibility for increased assessment allocations for projects.

Task 4.4: Owner Bid Approval

Following project submittal, Ygrene will monitor project status throughout the bid acceptance process. Once the property owner accepts a project bid, Ygrene prepares and submits the financing agreement.

Task 4.5: Assessment Processing

Once submitted for funding approval and assessment documentation, the project status will be updated electronically and Ygrene will authorize the property owner and the contractor to obtain permits and commence construction.

Task 4.6: Utility Rebate Processing

As part of the processing, contractors can review each project and verify whether proposed measures may qualify for utility or other incentives. Ygrene will develop a "utility rebate" guide to assist property owners during the process of choosing qualified measures. If the PACE Assessment is for a measure that qualifies for an incentive/rebate, the applicant will be made aware of the options.

Task 4.7: Final Approval

Upon project completion, contractors will be required to obtain a final inspection from the building department that issued the building permits. Following notification of receipt of the final inspection, and verification that all liens have been released, the Property owner will approve the project and submit for payment and recording of the financing assessment.

Task 4.8: Record Notices of Assessment for Specific Properties

Ygrene will coordinate the timely recording of each financing agreement as required by the PACE Act.

Task 4.9: Program Status and Reporting

Ygrene's WEB tool allows on-demand status and program data updates to the District and other authorized persons on a real time basis. Available information includes:

- Website Analytics
- Number of calls to 800#
- Number of assessment applications requested
- Number of assessment applications filled out/turned in
- Number of assessment applications processed
- Number of assessment applications approved
- Program funding levels and total fund status
- Authorized Contractors and Certification Levels
- Final Inspections
- Energy saved through completed projects
- Greenhouse Gas reductions achieved through completed
- Estimated job creation impact of completed projects

Task 4.10: Property Owner Services in the District

Ygrene will provide dedicated customer service appropriate to property types (residential and/or commercial/industrial):

- Dedicated toll-free property owner information line
- Outreach/Energy Center open to public
- Collateral materials
- On-line WebTool to monitor projects and assist completion
- Dedicated property owner service representatives fluent in English and Spanish;
- Reporting on owner satisfaction

TASK 5: Support

Ygrene's provides ongoing customer service and support, even after projects are completed.

Task 5.1: Website Development and Management

Ygrene has developed an overall web architecture, WebTool and database and is dedicated to continuing to improve and expand its capability. Ygrene will provide all website maintenance, technical support and updates for ongoing PACE programs.

Task 5.2: Ongoing Assessment Tracking and Management

Through Willdan Financial Services, Ygrene will coordinate ongoing management and verification of assessments throughout the amortization term of the financing.

Task 5.3: Provide Certification, Training and On-going Support for Contractors

Ygrene will maintain an updated database of contractors and make training and education programs available within the District to ensure high quality, effective installation of improvements, to share best practices, and to provide a pathway for skill upgrades.

Task 5.4: District Staff and Property Owner Support

Provide password protected, on-line access to real-time project data for properly authorized District staff. Provide in-person, telephone and email access to information regarding assessments and annual installments for property owners and program participants.

Task 5.5: Status Meetings and Coordination

Ygrene will participate in and/or attend appropriate District Board and advisory committee meetings and provide access to an administrative system that provides reports and status on the program's operations for each District participant.

II. CREATION AND COLLECTION OF NON-AD VALOREM PACE ASSESSMENTS IN FLORIDA

Ygrene sub-contractor, Willdan Financial Services ("Willdan"), in consultation with Counsel, will manage the legal and procedural considerations for placing PACE assessments on county property tax rolls. Highly experienced service providers to cities and counties in several states, Willdan and Counsel have the expertise and credentials to oversee this important PACE task on behalf of Ygrene and the District.

III. PROGRAM TIMELINES

Upon execution of the TPA agreement, Ygrene will provide a timeline for estimated completion of the Task List. Actual dates for commencement and completion will be based upon District and Counsel schedules and agreements among the Parties.

IV. QUALIFYING IMPROVEMENTS

The following list represents improvements that will be Qualifying Improvements under the District PACE Program. Additional and/or alternative measures may be approved on a case-by-case basis and/or as the list is modified from time to time in compliance with State Law or instructions from the District.

1. Energy Efficiency

- a. Air Sealing and Ventilation
 - Air Filtration
 - Building Envelope
 - Duct Leakage and Sealing
 - Bathroom, ceiling, attic, and whole house fans
- b. Insulation
 - Defect Correction
 - Attic, floor, walls, roof, ducts
- c. Weather- Stripping
- d. Home Sealing
- e. Geothermal Exchange Heat Pumps
- f. HVAC Systems
- g. Evaporative Coolers
 - Cooler must have a separate ducting system from air conditioning and heating ducting system
- h. Natural gas storage water heater
 - Energy Star listed
- i. Tankless water heater
- j. Solar water heater system
- k. Reflective insulation or radiant barriers
- l. Cool roof
- m. Windows and glass doors
 - U value of 0.40 or less and solar heat gain coefficient of 0.40 or less
- n. Window filming
- o. Skylights
- p. Solar tubes
- q. Additional building openings to provide additional natural light
- r. Lighting
 - Energy Star listed (no bulb, only retrofits)
- s. Pool equipment
 - Pool circulating pumps

2. Other Non - residential Building Measures

The following measures are allowed for commercial and non-residential buildings, in addition to all applicable energy efficiency measures listed above:

- a. Occupancy- Sensor Lighting Fixtures
 - SMART Parking Lot Bi- Level Fixture
 - SMART Parking Garage Bi- Level Fixtures
 - SMART Pathway Lighting

- SMART Wall Pack Fixtures
- b. Task Ambient Office Lighting
- c. Classroom Lighting
- d. Refrigerator Case LED Lighting with Occupancy Sensors
- e. Wireless, daylight lighting controls
- f. Kitchen Exhaust Variable Air Volume Controls
- g. Wireless HVAC Controls & Fault Detection

3. Solar Equipment

District funding will be available for photovoltaic and solar thermal equipment. As with efficiency measures, if a rebate is available to the property owner, that amount must be deducted from the financing requested. Eligible solar equipment for both residential and commercial properties includes:

- a. Solar thermal hot water systems
- b. Solar thermal systems for pool heating
- c. Photovoltaic systems (electricity)
- d. Emerging technologies – following the Custom Measures Track

4. Wind Resistance Measures

Wind hardening measures can be deployed through this Program. The measures described qualify.

- a. Improving the strength of the roof deck and foundation attachment
- b. Creating a secondary water barrier to prevent water intrusion.
- c. Installing wind-resistant shingles or other roofing.
- d. Installing gable-end bracing.
- e. Reinforcing roof-to-wall connections.
- f. Installing storm shutters.
- g. Installing perimeter-opening protections.
- h. Raising building elevations.

5. Custom Measures

The Custom Measures Track is a process by which [Program Name] staff can evaluate and approve funding for projects that are not “off the shelf” improvements listed in the Qualifying measures. These custom projects may involve large scale industrial or commercial energy efficiency improvements; processing or industrial mechanical systems; and renewable energy generation from sources such as geothermal and fuel cells. The following are examples of custom measures that will be considered for [Program Name] funding:

6. Custom Energy Efficiency Measures

- a. Building energy management controls
- b. HVAC duct zoning control systems
- c. Irrigation pumps and controls
- d. Lighting controls

e. Industrial and process equipment motors and controls

7. Custom Energy Generation Measures

- a. Fuel Cells
- b. Wind turbine power system
- c. Natural gas
- d. Hydrogen fuel
- e. Other fuel sources (emerging technologies)
- f. Co- generation (heat and energy)

V. DISTRICT UNDERWRITING TERMS

Following is a draft of the underwriting terms and disclosure for the District PACE program. In consultation with Counsel, Ygrene will develop the final form of this document that will be signed by all participants as a requirement of the program.

In order to apply for financing (“financing” or “funding”) under the District PACE Program (the “Program”) the property owner (the “Property Owner”) must read and accept these District PACE Program Terms (the “Program Terms”).

These Program Terms, along with the documents property owners execute in connection with the Program, including but not limited to the Application, Assessment Agreement, Notice of Assessment, Project Contract, and Escrow Instructions - Project Approval described in “Funding” below (collectively the “Program Documents”), establish the terms of the District PACE Program. Property owners should become familiar with and understand the provisions of the Program Documents. By executing the Program Documents, the property owner agrees to all of the terms of the Program. The District reserves the right to amend these Program Terms from time to time as described in “Changes to the Program Terms; Severability” below.

1. Purpose of the Program

The Program is intended to assist property owners in the District in financing the acquisition and installation of energy efficiency, wind resistance and renewable energy improvements (the “Qualifying Improvements”). With the assistance of Counsel, the District will authorize bonds to provide the source of financing for the Program. The bonds and the costs of administering the Program will be paid through special assessments added to the property tax bills paid by the property owners who choose to participate in the Program. There may be other types of financing available to property owners and the District does not guarantee that the Program is the best financing option. Property owners should obtain help in selecting the option that is most appropriate for their particular situation.

2. Summary of the Program Process

As discussed in more detail below, in order to receive funding from the Program, property owners must complete the following steps for all property types:

- a. Determine that they meet the eligibility requirements. (see “Eligibility” below).
- b. Apply online or submit a paper application for the Program. (see “Application; Approval or Denial; Application Fee” below).
- c. Agree to these Program Terms and pay an application fee as part of the application process.

- d. Notify any and all lenders holding a security lien of their intent to place a senior lien on the property and, in the case of multi-family residential property of more than four units and/or non-residential property, secure the lender(s) agreement to do so.
- e. The Administrator must approve the completed application. (see "Application; Approval or Denial; Application Fee" below).
- f. A Certified Contractor must submit a bid for the installation of Qualifying Improvements on the property. (see "Qualifying Improvements; Certified Contractors; Maximum Funding" below).
- g. The District will record a Notice of Special Tax Lien against the property at the time of project approval.
- h. The District will authorize the release of funds to the property owner after project completion. Property owners may choose to assign payment directly to their contractor. (see "Funding Request" below).
- i. Be expected to pay the special assessments in the amounts and at the times specified in the Funding Approval. (see "Financing Cost; Interest Rate; Special Assessments" below).

The District has contracted with Ygrene Energy Fund to administer the program (the "Administrator"). The District will share information with the Administrator and other third parties as necessary to administer the Program. See "Disclosure of Property Owner Information" below.

3. Eligibility

The Program is available to all privately owned improved property. The financing terms and conditions set forth in these Program Terms are applicable to financings of \$250,000.00 or less for retrofit projects in residential and non-residential properties (including multifamily properties of more than 4 units). The financing terms and conditions set forth in these Program Terms are not necessarily applicable to projects of more than \$250,000.00. The District will establish the financing terms and conditions appropriate to larger projects at the time of financing approval. Low-income applicants are encouraged to apply and may qualify for assistance with the application fee or audit costs. In order to participate in the Program, a property owner must meet and/or complete the following requirements and steps:

- a. The property to be improved with the Qualifying Improvements (the "subject property") must be located in the District.
- b. The subject property may be used for residential or non-residential purposes. If the subject property is used for residential purposes, the property owner is not required to occupy the subject property as a primary residence.
- c. The property owner must provide written notice of the proposed senior lien to any and all lenders with existing liens on the subject property. Property owners of a non-residential property (including residential property of more than four units) must obtain the written consent of existing lenders. The forms for these notifications (Lender Notification (Residential) and Lender Notification and Acknowledgement) are available on-line or from the Administrator and must be submitted to the Administrator prior to project approval.
- d. All holders of fee simple title to the subject property must sign the Program Documents. Therefore, before submitting an Application, property owners must ensure that all property owners will agree to participate in the Program on the terms set forth in these Program Terms.
- e. Property owners will be required to participate in appropriate federal, state and District incentive programs, to the extent the subject property and/or the project are eligible for such programs at the time of application.
- f. The property owner must agree to provide the Administrator with access to the property's utility usage history and information to enable the Program to monitor energy savings. The Utility Authorization Form is available on-line or from the Administrator for this purpose.
- g. Property owners must be current in the payment of all obligations secured by the subject property, including loans, property taxes, assessments and tax liens; and have maintained currency for all

such obligations for the past 3 years (or since the current owner(s) took title to the subject property if less than 3 years). The Administrator may review public records and private credit histories, including County real property records, to verify compliance with this requirement. Certain allowances may be made for property tax payment delays that do not reflect financial distress. Cases of non-residential property owners who are currently appealing a property tax assessment will be reviewed and eligibility will be determined on a case-by-case basis.

- h. The value of the property, based on just value (or market value in cases where just value can be shown to unreasonably underestimate the property value), must be equal to or greater than the sum of (i) the total debt, including mortgages and equity lines of credit, secured by the property, (ii) the principal amount of any Program indebtedness attributable to the property, and (iii) the aggregate principal amount of any fixed assessment liens on the property.
- i. The aggregate principal amount of the Program funding attributable to the property cannot exceed 20% of the value of the property (based on just value, appraised value, or market value calculated according to a method identified by the Administrator).
- j. It is critical to the health of the Program that property owners pay their special assessments and other property-related obligations in full on a timely basis. Consequently, the District reserves the right, in its sole discretion, to request supplemental information from owners and to deny applications based on any negative reports.

4. Initial Application; Approval or Denial; Application Fee.

All property owners interested in applying to the Program must submit the Initial Application Documents listed below along with a \$50 application fee (applications submitted on behalf of property owners by approved contractors, multi-family residential properties of more than four units and commercial/industrial projects are exempt from application fees). At the time of application, property owners must agree to the Program Terms. Project applications for larger financing amounts or building types not covered by these Program Terms will receive an administrative point of contact from the Administrator, who will assist in the process.

- a. Initial Application Documents
 - i. Application Form, either submitted online or printed and signed
 - ii. Lender notification
 - For residential properties of 4 units or less, proof of mailing of the Residential Lender Notification form.
 - For residential properties with more than 4 units and for non-residential properties, properly executed Lender Notification and Acknowledgement form from existing lender(s).
- b. Upon receipt of the Application documents and underwriting by the Administrator, applicants will receive either a Notice of Approval or a Notice of Denial.
- c. Upon receipt of a Notice of Approval, applicants must obtain Residential Lender Notification forms or Lender Notification and Acknowledgement forms, available either on-line or from the Administrator, and submit them to their lender(s). Property owners will be required to provide to the Administrator with Proof of Mailing for Lender Notification and Acknowledgement forms.
- d. Upon receipt of a Notice of Approval, applicants can proceed to submit their proposed project for approval (See "Project Approval" below).
- e. Should an application be denied, the notice will include recommend remedial action that may be available to the applicant.

5. Qualifying Improvements; Certified Contractors; Maximum Funding.

The following general provisions apply to all projects submitted for funding under the Program:

- a. Program financing may only be used to finance those improvements that are described in the list of Qualifying Improvements. Property owners are responsible to ensure that improvements

installed on their property qualify under the program. Contractor/installer agreements will be required to address performance and other system-related issues to assist property owners.

- b. The Program is a financing program only. Neither the District nor the Administrator is responsible for installation of the Qualifying Improvements or their performance.
- c. The Qualifying Improvements must be installed by contractors who meet the eligibility criteria set forth for the specific category of work being financed, and who are listed on the Certified Contractors list that may be obtained on-line or from the Administrator. If property owners choose to work with a contractor that is either not a Certified Contractor or who fails to become a Certified Contractor, they will not be eligible for Program financing.
- d. For a proposed project to qualify for funding, the Certified Contractor must submit evidence that the project fulfills the requirement of providing a savings-to-investment ratio (SIR) of at least one. This means that the energy cost savings attributable to the installation of the Qualifying Improvements must equal the funded cost of those improvements over their useful life.
- e. **Maximum Funding.** The Program requires a minimum funding request of \$2,500. The Program will approve maximum funding requests in an amount equal to the lesser of (i) maximum amount allowed under FL law for the property or (ii) the final cost of installing the Qualifying Improvements (including allowable fees) less any federal, state, District and Utility rebates, plus the additional items identified in "Financing Cost; Interest Rate" below. The funding limits are per property per financing request. The Program will not provide financing for any costs in excess of the maximum amounts allowed under FL law. Participants are invited to submit projects that may exceed the basic ratio of cost vs. fair value, based upon the savings-to-investment ratio achieved by the Qualifying Improvements. Such projects may require alternative legal and financial processing.

6. Project Approval.

Upon receipt of a Notice of Approval of a Program application and following notification and/or request for lender acknowledgement (approval), the property owner may select a contractor and proceed to apply for project funding. Following are the steps required to obtain authorization for funding under the Program:

- a. Select a contractor from the Certified Contractor List. This list is available on-line and/or from the Administrator. Applicants may wish to obtain bids and advice from more than one Certified Contractor.
- b. Work with Certified Contractor(s) to determine the scope and cost of your project, analyze its energy and savings and financial benefits to confirm a SIR of at least one, and verify that the proposed work qualifies for funding under the Program. Once Qualifying Improvements are selected, obtain a formal bid from one or more Certified Contractors.
- c. Following review of the project bid(s) select a Certified Contractor to complete the approval process with the Program Administrator. Even if the project requires using more than one Certified Contractor for various aspects of the work (i.e. – retrofit and solar), applicants must select a lead contractor to process the project.
- d. Upon review of the proposed project and the bid(s) submitted for the work, the Administrator will issue either a Project Approval Letter or a Project Denial Letter. This communication will be provided by email unless directed otherwise by the applicant.
- e. Once the project is approved, applicants will be required to execute the Assessment Agreement. This is the contract that authorizes the Administrator and the District to place the assessment on the property that will secure the project financing. The assessment must be in place prior to commencement of construction.
- f. Once the assessment is recorded, applicants will receive a Notice to Proceed. Upon receipt of this notice, applicants can sign construction contracts and authorize commencement of the project. If construction begins prior to receipt of a Notice to Proceed, applicants run the risk of not qualifying for Program funding.

- g. If the project is denied, the Project Denial Letter will outline remedial action that may be available to the applicant.

7. Funding

- a. Once the Certified Contractor has completed installation of the Qualifying Improvements, property owners must submit a funding request and the project verification documents listed below in order to receive funding from the Program. The Administrator will review the funding request and the project verification documents, and produce final Program forms. The final Program forms will be transmitted via email, or by mail if so directed by the property owner. All required forms must be returned to the Administrator prior to funding. The project verification documents and final Program forms are listed below.
 - i. A final sign-off on the building permit for the project from the authorized building official in the appropriate District participating jurisdiction.
 - ii. Final invoices and lien releases from all Certified Contractors (including any sub-contractors) who worked on the project.
 - iii. An executed Project Approval signed and notarized by all property owners. By executing the Project Approval, owners annex their property to the Special Tax District, agree to pay the special assessments in specified amounts for the period specified in the Project Approval, consent to recordation of a Notice of Special Tax Lien against the subject property, and release the Administrator and the District from any liability associated with installation of the Qualifying Improvements or their performance.
 - iv. Utility Authorization to Release Information.
 - v. Assignment of Right to Receive Financing Proceeds form if the payment is to be assigned to someone other than the property owner.
 - vi. Settlement Statement
 - vii. Truth-in-Lending Disclosure Statement
 - viii. FHFA/FNMA/FMAC Status Disclosure Form
- b. If the documents listed above are not submitted to the Administrator within 7 calendar days after transmittal of the final Program forms, the funding request will expire. In that event, an updated funding request will be required. If the interest rate has changed between the date of the original funding request and any subsequent updated funding request, the interest rate will be reset (See "Financing Costs; Interest Rate below).
- c. Upon completion of a final project audit, the Administrator will make a final determination of eligibility of the project and calculation of the final assessment details. Upon acceptance by the property owner, the Administrator and the District will amend the recorded tax lien as appropriate and approve issuance of checks as directed by the property owner
- d. In the event a property owner cancels financing after submitting a request for funding, all expenses incurred by the Program for recording tax liens, preparing bond documents and removing tax liens will be the responsibility of the property owner.

8. Financing Costs; Interest Rate.

- a. In order to receive funding, property owners agree to pay special assessments in an amount equal to (i) the principal amount received from the Program, (ii) interest on the principal amount received from the Program and (iii) initial and on-going administrative expenses. The District expects to levy special assessments on the owner's property tax bill, although it may bill separately for the Program installments.
- b. Principal. This is the total of all financed project costs. These may include costs associated with implementing the project such as permits, audit expenses, application fees and capitalized interest (see "Capitalized Interest" below).
- c. Interest Rate. The rate of interest charged on the amount funded will be fixed for the full term of the assessment. The rate will be determined on the date of submission of a valid funding request.

Property owners can monitor interest rates on the Program website or by contacting the Administrator.

- d. **Capitalized Interest.** Because of administrative delays involved in placing the special tax assessments on County tax rolls, the payments may not appear on property tax bills in the first year. In this case the first tax year's tax installment may be added to the assessment. This will be itemized on the Settlement Statement.

9. Repayment Terms; Special Assessments; Foreclosure Terms.

- a. **Repayment Terms.** Following recordation of the Notice of Assessment, the property owner will be obligated to pay the special assessments specified in the Project Approval and the Notice of Assessment.
- b. **Special Assessments and Foreclosure.** A property owner must pay the taxes associated with the agreed-upon special assessment regardless of personal financial circumstances, the condition of the property, or the performance of the Qualifying Improvements. Property owners should not apply for financing if they are not certain they can meet the assessment obligations. The failure to pay property taxes in full or in part will result in financial repercussions including penalties, interest and possibly foreclosure. If property owners use an escrow account to pay their property taxes, they must notify the escrow company of the special tax payments. In such cases, property owners will need to increase monthly payments to the escrow account by an amount equivalent to the annual special assessments, divided by 12 months.

10. Compliance with Existing Mortgages.

Recordation of the Notice of Assessment will establish a continuing lien as security for the obligation to pay the special assessments. The lien securing the obligation to pay special assessments will be senior to all private liens, including existing mortgage(s). Many mortgage and loan documents limit the ability of a property owner to place senior liens upon property without the consent of the lender, or authorize the lender to obligate borrowers to prepay the senior obligation. Recently, the Federal Housing Finance Agency has issued policy guidelines that question the validity and assessment status of PACE assessments. Program participants should confirm with their lender(s) that participation in the Program does not adversely impact their rights with respect to any existing loan documents. For residential projects, the Program requires property owners to notify their lenders prior to a funding request, to provide the Administrator with a copy of the letter and proof of mailing and to certify that the lender has not objected to the property participating in the Program. For non-residential projects and residential properties containing more than 4 units, property owners must notify the lender and receive written consent for the priority assessment lien from the lender prior to submitting a funding request. The Administrator provides required forms for lender notification and consent, but ultimate responsibility for addressing issues with existing lenders remains with property owners.

11. Transfer or Resale of the Subject Property.

If Program participants sell their property prior to the end of the agreed-upon special tax period, the new owner will assume the special tax obligation. Ownership of any Qualifying Improvements on the subject property will transfer to the new owner at the close of escrow. Qualifying Improvements financed through the Program may not be removed from the property. Program participants agree to make all legally required disclosures regarding the existence of the special tax lien on the property in connection with any sale.

12. Rebates and Taxes.

Participation in this Program does not reduce rebates available through federal, state, utility sponsored and District rebate programs. More information on available programs can be found on-line or through Certified Contractors and other vendors. Participants should consult with their tax advisors with respect to the state and federal tax benefits and consequences of participating in the Program.

Neither the District nor the Administrator is responsible for the tax considerations of participating in the Program.

13. Changes in State and Federal Law.

The District's ability to continue to finance the Program is subject to a variety of state and federal laws. If those laws or the judicial interpretation thereof changes after a property owner applies for the Program, but before the District fulfills the funding request, the District may be unable to fulfill the request. In such event, the District shall have no liability as a result of any such change in law or judicial interpretation.

14. Changes in Program Terms; Severability.

The District reserves the right to change the Program Terms at any time without notice. However, no such change will affect a participant's obligation to pay special assessments as set forth in the Project Approval. Participation in the Program will be subject to the Program Terms in effect from time to time.

VI. FINANCIAL MODEL

1. Barclay's Capital:

Ygrene and Barclay's Capital ("Barclays") have agreed that Barclays will provide interim (warehouse) financing and long term (bond) financing for the District program. Ygrene will form an affiliated corporation ("Ygrene Funding") to provide credit administration and underwriting services for this funding agreement. Besides providing assessment funding that will respond to virtually any level of demand, the Barclay's agreement finances the administrative, marketing, legal and other costs of operating PACE programs. Like other financing programs, PACE is subject to market forces and interest rate fluctuations that will require adjustments of rates and terms during operation of the Program to maintain viability.

2. Operating Capital:

Ygrene's initial target interest rate for property owners participating in the District program is 7.00% ("Program Interest Rate"). This is based on a current estimated cost of funds from Ygrene Funding of 6.50% (the estimated "Funding Rate"). This example results in an interest rate spread of one half of one percent (0.5%) to provide for the operating and administrative costs of the District program ("Operating Capital"). Ygrene uses the Operating Capital for program administration, marketing and program development, legal and bond counsel, District cost reimbursement, overhead and profit.

The actual Funding Rate is calculated as the on-the-run U.S. Treasury 10-year bond rate plus 3.25%. If the Funding Rate increases, the Program Interest Rate will increase by a like amount to provide adequate Operating Capital. Ygrene will endeavor to keep the Program Interest Rate as low as possible.

3. Fee Schedule:

In addition to the Operating Capital, Ygrene relies on Program fees to fund operations. This fee structure minimizes up-front costs for property owners.

Residential property fees:

<u>Fee Description</u>	<u>Amount</u>	<u>Collected</u>
Initial application:	\$ 50.00	with application
Processing & Underwriting:	\$ 125.00	at disbursement
Energy audit:	\$ 50.00	at disbursement
Jurisdiction cost recovery:	\$ 100.00	at disbursement
Recording & Disbursement:	\$ 95.00	at disbursement
Insurance:	TBD	TBD

Commercial/Industrial property fees:

<u>Fee Description</u>	<u>Amount</u>	<u>Collected</u>
Initial application:	Waived	N/A
Processing & Underwriting:	\$ 250.00	at disbursement
Energy Audit:	TBD	at disbursement
Jurisdiction cost recovery:	\$ 100.00	at disbursement
Recording & Disbursement:	\$ 250.00	at disbursement
Insurance:	TBD	TBD

This fee schedule is subject to change and must be approved by the District prior to the Commencement Date. Fees for energy audits are paid directly to contractors, are included in the project cost, and on commercial/industrial properties will be priced on a case-by-case basis. Insurance fees and methods of collection are under review and must be approved by the District prior to the Commencement Date. Of the fees listed, only the residential application fee is collected directly from property owners. The fee is waived when a Certified Contractor submits the application on a property owner's behalf. The remaining fees are paid through the assessment funding.

In the event either the District or its constituent members enacts fees or other charges that have the effect of increasing Administrator's costs for providing the Services, Administrator may increase the fee provided for in this schedule to offset the increased costs.

4. Contractor Training & Administration:

Funding for program operations is enhanced by a 3.0% Project Oversight fee charged to Certified Contractors to reimburse the Program for training, lead generation, marketing services, Energy Center meeting space and services, etc.

5. Carbon Credits/Offsets

Ygrene will aggregate and accumulate carbon credits that result from PACE projects financed through the Program. A possible future source of Program revenue could result from the development of a market for these credits.

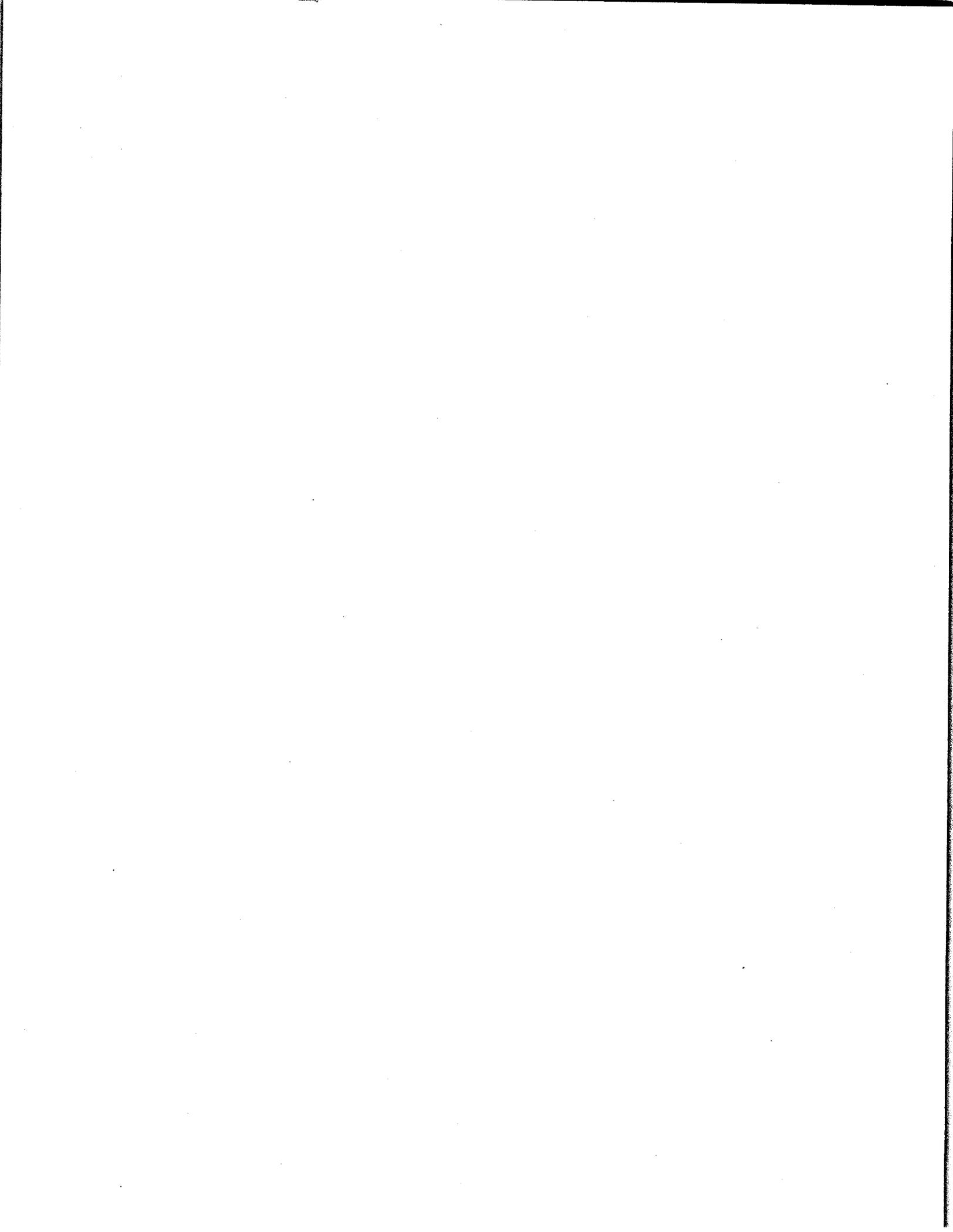
VII. PROGRAM FORMS

Following is a partial list of forms and documents that may be required for the establishment, operation, administration, financing and reporting for the District PACE Program. These forms are maintained through a document management program that allows ongoing, password-protected access for authorized District representatives. Forms will be added, edited and deleted as necessary for the operation of the District program.

Interlocal Agreement
Task List
Program Report

PACE Frequently Asked Questions
Schedule of Fees
List of Qualifying Improvements
Assessment Underwriting Terms
Application & Documentation Checklist
Application Form
Financing Agreement
Truth in Lending Form
FHFA/FNMA/FMAC PACE Status Disclosure Form
Lender Notification (Residential)
Lender Notification and Acknowledgement (Commercial & Industrial)
Project Bid & Contract Form
Funding Request Checklist
Utility Authorization Form
Closing Checklist
Utility Authorization Form
Closing Checklist

Notice of Assessment
Assessment Agreement
FL Assessment Underwriting Terms
Underwriting Policy
Project Submission Checklist
Project Approval Letter
Project Denial Letter
Notice to Proceed
Draw Request Form
Lien Release Form
Change Order Request Form
Final Building Permit Checklist
Assignment of Right to Receive Financing Proceeds
Wire Request Form
Escrow Instructions
Appraisal Report
Project Energy Savings Calculations & CO2e Reductions Form
SIR Report



**THIRD PARTY ADMINISTRATION AGREEMENT
BETWEEN
THE TOWN OF CUTLER BAY AND YGRENE FLORIDA ENERGY FUND LLC**

THIS AGREEMENT (the "Agreement") is entered into as of the 16 day of August 2011 (the "Effective Date"), by and between the Town of Cutler Bay (hereinafter, the "town") and Ygrene Florida Energy Fund, LLC, a Florida limited liability company with principal offices in Tampa, Florida (hereinafter "Ygrene" or "Administrator").

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

WHEREAS, administrator has proposed to develop and desires to implement and administer programs providing planning, development, financing, marketing, and management for efficient, effective and voluntary PACE programs; and

WHEREAS, town will partner with one or more other local governments to create a separate legal entity under section 163.01(7)(g), Florida Statutes, (the "District") for purposes of offering a PACE program to constituents of the member governments thereof; and

WHEREAS, the town and administrator are prepared to enter into this agreement with the understanding that the town will shortly create and establish the district with one or more other local governments by interlocal agreement and assign this agreement to the district; and

WHEREAS, upon any assignment, all references to the town herein shall be deemed to refer to and bind the district, unless the context clearly indicates otherwise.

NOW, THEREFORE, in consideration of the foregoing premises, which are hereby incorporated into this agreement as integral parts hereof and not mere recitals hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the administrator and the town agree as follows:

1. Scope of Services.

- 1.1 The administrator shall undertake activities, furnish professional services, perform tasks, and provide deliverables (the "Services") as the exclusive third party administrator of the PACE program for the district, generally as described in the Functions and Responsibilities for Green Corridor PACE district, attached hereto and made a part hereof as Exhibit "A" (the "Proposal").
- 1.2 In the event the district wishes to expand or otherwise enhance the PACE program services provided by administrator under the agreement, and the administrator determines that it is unable or unwilling to fulfill the requirements of the expanded services, then, the exclusivity provided in paragraph 1.1 above notwithstanding, the

district may, without interference with administrator's rights and obligations under the agreement, engage other vendors for the sole purpose of providing the expanded services.

2. Term/Commencement Date.

- 2.1 On the effective date, the administrator will commence implementation of those Services required to (i) assist in the formation of the district; (ii) assist in attracting sufficient district membership that the aggregate population of the district is 500,000 or more; and (iii) assist the district to complete successful bond validation for the district. The following shall be conditions precedent to the commencement of additional services by the administrator: (i) formation of the district; (ii) an aggregate population of at least five hundred thousand (500,000) in the district; and (iii) successful bond validation of the district program (the "Commencement Conditions"). Notwithstanding the foregoing, the administrator, in its discretion, may agree, in writing, to less than an aggregate population of five hundred thousand (500,000) within the district. In the event that the administrator agrees, in writing, to less than an aggregate population of five hundred thousand (500,000) within the district, number (ii) of the commencement conditions shall be considered satisfied.
- 2.2 The administrator will commence provision of the remainder of the Services within ten calendar days following fulfillment of the Commencement Conditions (the "Commencement Date").
- 2.3 The agreement shall remain in effect for five (5) years from the Commencement Date (the "Initial Term"), and shall automatically renew for successive five (5) year terms, unless terminated as provided in Section 8 herein.
- 2.4 The parties agree that time is of the essence and each party will cooperatively act to advance completion of the commencement conditions.

3. Consideration.

- 3.1 As consideration for entering into this agreement, and for its performance hereunder, administrator shall be entitled to impose and collect fees and charges in accordance with the proposal. Such consideration recognizes that administrator will not receive or collect fees or charges from the district for its services.

4. Sub consultants.

- 4.1 The administrator shall be responsible for all payments to any third party subcontractors, service providers or sub consultants that are reasonably related to this agreement, and shall maintain responsibility for all work related to the services.
- 4.2 The district acknowledges and agrees to the administrator's use of the sub consultants submitted in response to the town's Request for Proposals, authorized pursuant to

Resolution 10-68. The district acknowledges that administrator may also use and employ other vendors, underwriters, providers, consultants, advisors or counsel in the development and administration of its work product and services over time. Whenever administrator determines to use such other assistance, it shall notify the district and seek its prior approval in writing, provided, however, such approval shall not be unreasonably withheld. Failure by the district to respond to such requests of administrator, in writing, within thirty (30) business days of submittal, and delineate specific reasons for refusal, shall be deemed approval. This time frame may be extended by mutual agreement of the parties.

- 4.3 Nothing in this agreement shall prevent administrator from performing similar PACE program services in other jurisdictions, either within or outside the State of Florida.

5. District Responsibilities

- 5.1 Upon acceptance of assignment of this agreement from the town, the district shall assume and undertake all of the obligations and responsibilities under the agreement.
- 5.2 The district and its constituent local government members ("Members") understand that the Florida law authorizing PACE programs reserves authority and responsibility for establishing the program and executing financing agreements with property owners to local government. Consequently, the district and/or the members, as appropriate, shall timely take the following actions:
- a. Authorize and adopt resolutions and/or ordinances required to implement the program;
 - b. Adopt resolutions and approve documents authorizing the administrator to commence legal proceedings on behalf of the district to validate program related obligations and to engage counsel for the purpose;
 - c. Within a reasonable time following submittal by administrator, execute documents required by the PACE Act including, but not necessarily limited to, financing agreements;
 - d. Other actions required by the PACE Act and/or financing authorities to be performed by the governmental jurisdictions sponsoring the PACE program.

6. Administrator's Responsibilities

- 6.1 The administrator shall exercise the same degree of care, skill and diligence in the performance of the services as that ordinarily provided by an administrator under similar circumstances. If, at any time during the term of this agreement, it is determined that the administrator's deliverables or services are incorrect, not properly rendered, defective, or fail to conform to the requirements of law, upon written notification on behalf of the district, the administrator shall at administrator's sole expense, immediately correct the work.

appropriate for installation of roof-mounted photovoltaic systems; (ii) comply with Administrator's guidelines for the removal and disposition of CFC's and other greenhouse gases; (iii) apply best commercially reasonable industry standards in the installation of all improvements financed under the program; and (iv) attend training programs designated by Administrator from time to time.

6.3 Administrator shall establish procedures that account for and accrue the carbon credits that result from projects financed under the District PACE program. The Administrator and the District shall equally split the ownership of carbon credits accounted for and accrued within the District. Therefore, for every 2 carbon credits accounted for and accrued within the District, the District will own one carbon credit and the Administrator will own the other carbon credit.

6.4 The Administrator hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services as an independent contractor.

7. **Disclosure/Conflict of Interest.**

7.1 So long as Administrator fulfills its obligations to provide the Services, District acknowledges and agrees that Administrator, its sub consultants or any other provider, vendor, consultant, underwriter, or third party used or employed by Administrator, is permitted, individually or collectively, to advance without conflict any other PACE program, or assist any other PACE program sponsor, and that there is and shall be no objection by the District to such actions.

7.2 The Administrator agrees that neither it nor its sub consultants shall represent any persons or entities in any action before the District.

8. **Termination.**

8.1 Following the Initial Term, either party may notify the other of its intent to terminate the Agreement. In such event, the Agreement will terminate on the second (2nd) anniversary of the termination notice, at which date Administrator shall cease providing the Services.

8.2 In the event the District terminates the Agreement under the provisions of paragraph 8.1 above, Administrator shall be entitled to continue to offer the Services during the transition period so long as (i) Administrator does not approve any projects, completion of which will extend beyond the termination date; (ii) Administrator provides for on-going management of assessments related to any projects completed under Administrator's auspices; (iii) Administrator continues to provide all of the Services in a professional manner in accordance with the Agreement; (iv) Administrator continues to work in good faith with the District to provide a smooth transition for either the termination of the program or transfer to another administrator.

work in good faith with the district to provide a smooth transition for either the termination of the program or transfer to another administrator.

- 8.3 The district and administrator acknowledge and agree that, as of the effective date, the commencement conditions have not been satisfied. The town and administrator agree that time is of the essence and each party will diligently and cooperatively act to satisfy the commencement conditions and advance administrator's delivery of the Services within the timeframes and sequences set forth herein. Should the commencement conditions not be satisfied within one year following the effective date, administrator may, in its sole discretion, cancel the agreement by written notice to the district, in which case it shall be null and void and of no further force or effect.
- 8.4 In the event that (i) conditions in U.S. financial markets, (ii) changes in PACE law, or (iii) changes in district's authority to provide assessment lien priority render PACE financing infeasible, administrator may suspend the program for a period of up to six months. Should the administrator determine at the conclusion of the suspension period that conditions do not warrant resumption of the program administrator may request from the district an extension of the program suspension for an additional six months. The district may, at its option, grant the extension or cancel the agreement.
- 8.5 A breach of this agreement shall mean a material failure to comply with any of the provisions of this agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall, within 30 days after receiving written notice of such breach, proceed diligently and in good faith to take all commercially reasonable actions to cure such breach and shall continue to take all such actions until such breach is cured. Unless otherwise provided herein, the parties to this agreement may proceed at law or in equity to enforce their rights under this agreement.

9. **Nondiscrimination.**

- 9.1 During the term of this agreement, administrator shall not discriminate against any of its employees or applicants for employment, if any, because of their race, age, color, religion, sex, sexual orientation, national origin, marital status, physical or mental disability, or political affiliation and to abide by all Federal and State laws regarding nondiscrimination.

10. **Attorney's Fees and Waiver of Jury Trial.**

- 10.1 In the event of any litigation arising out of this agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. Indemnification.

11.1 Administrator shall defend, indemnify, and hold harmless the district, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with administrator's performance or non-performance of any provision of this agreement, including, but not limited to, liabilities arising from contracts between the administrator and third parties made pursuant to this agreement. In addition, the foregoing obligations shall expressly include all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with the voluntary non-ad valorem assessments constituting a lien of equal dignity to taxes as authorized by the PACE Act. The obligations provided for in this paragraph shall exclude liability resulting from acts of, or failure to take action by, the district, its officers, agents and employees.

The district shall promptly notify the administrator of any claim giving rise to a right to indemnity and shall fully cooperate with the administrator in defense of such claims. So long as the administrator has agreed that the district is entitled to indemnification, the administrator shall have the right to control the defense of the claim, including, without limitation, the right to designate counsel and to select a single counsel to jointly represent the interests of the district and the administrator (unless an actual present conflict would preclude joint representation) and including the right to control all negotiations, litigation, arbitration, settlements, compromises, and appeals of the claim. The district shall cooperate in defense of the claim and may, but is not required to, retain at its cost additional separate counsel to participate in or monitor the defense of the claim by administrator.

11.2 Administrator shall indemnify the district and the members from and against collection risk related to the bonds issued for PACE assessments in the district. In the event of a property tax default by the owner(s) of any property against which a district PACE assessment has been recorded, administrator agrees to purchase the tax lien certificate.

11.3 Administrator agrees that the indemnification provisions provided for in Section 11.1 above shall extend to any member of the district.

11.4 The provisions of this section shall survive termination of this agreement.

12. Notices/Authorized Representatives.

12.1 Any notices required by this agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the town:

Steven J. Alexander, town Manager

Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105
Cutler Bay, Florida 33189

With a copy to: Mitchell Bierman, Esq., town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd.
Coral Gables, Florida 33134

For the Administrator: Dan Schaefer
Ygrene Florida Energy Fund, LLC
400 N Tampa St # 2200
Tampa, Florida 33602

12.2 Either party may, by notice in writing given to the other, designate any further or different representatives or addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or confirmed electronic facsimile transmission) or three (3) days after the date mailed.

12.3 Each party shall be entitled to reasonably rely upon direction or communication received from the above designated representatives or any successor or additional designees.

13. Governing Law.

13.1 This agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this agreement shall be exclusively in the proper court in Miami-Dade County, Florida.

14. Entire agreement/Modification/Amendment.

14.1 This writing contains the entire agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

14.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this agreement, unless executed with the same formality as this document.

14.3 Administrator represents that it is authorized to do business in the State of Florida. The execution, delivery and performance of this agreement by administrator has been duly authorized, and this agreement is binding on administrator and enforceable against administrator in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

15. Ownership and Access to Records and Audits.

- 15.1 The parties acknowledge that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether patentable or not) which relate directly to PACE district program Services and are conceived, developed or made by administrator or district, directly for the PACE district program during the term of this agreement, are deemed to be within the public domain, and subsequently may be used by each party without warranty of any kind.
- 15.2 All records, books, documents, maps, data, deliverables, papers and financial information associated with the district PACE program to be administered by administrator (the "Records") are public records and shall be available to be inspected and copied by the district. In the event of public record requests, all such requests shall be administered and handled by the district as the custodian.
- 15.3 The district, by its designee, shall, during the term of this agreement and for a period of three (3) years from the date of termination of this agreement, have access to and the right to examine and audit any of the records.
- 15.4 After notice and reasonable opportunity to cure, the district may cancel and terminate this agreement for refusal by the administrator to comply with the requirements of Chapter 119, Florida Statutes (Public Records).

16. Assignment.

- 16.1 The parties agree that this agreement shall be assigned to the district upon the town and one other local government joining the district. This agreement shall not be assignable by administrator unless such assignment is first approved, in writing, by the district, or its duly authorized representative, which approval shall not be unreasonably withheld.

17. Severability.

- 17.1 In case any one or more of the provisions contained in this agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

18. Independent Contractor.

- 18.1 The administrator shall be and remain an independent contractor and not an employee, partner, agent, joint venture or principal of district with respect to all of the acts and services performed by and under the terms of this agreement. Accordingly, neither party shall have any authority to represent or bind the other. Further, administrator shall not be entitled to the rights and benefits afforded to district's employees, including, but

not limited to, disability or unemployment insurance, workers' compensation, medical or disability insurance, vacation or sick leave or any other employment benefit. administrator shall file all tax returns and reports required to be filed by administrator on the basis that administrator is an independent contractor, rather than an employee, and administrator shall indemnify the district for the amount of any employment taxes required to be paid by the district as the result of not withholding employment taxes from the compensation under this agreement. This agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. Compliance with Laws.

19.1 The administrator shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out services under this agreement, and in particular shall obtain all permits from all jurisdictional agencies to perform the Services under this agreement.

20. Waiver

20.1 The failure of either party to this agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. Survival of Provisions

21.1 Any terms or conditions of this agreement that require acts beyond the date of the term of the agreement, shall survive termination of the agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. Prohibition of Contingency Fees.

22.1 The administrator warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the administrator, to solicit or secure this agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the administrator, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement, except its attorneys, accountants and consultants.

23. Public Entity Crimes Affidavit

23.1 Administrator shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

24. Insurance.

- 24.1 Administrator shall secure and maintain throughout the duration of this agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the district against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the district, its officials, employees, agents and volunteers. Any insurance maintained by the district shall be in excess of the administrator's insurance and shall not contribute to the administrator's insurance. The insurance coverage shall include a minimum of the amounts set forth in this section.
- 24.2 Comprehensive Automobile and Vehicle Liability Insurance This insurance shall be written in comprehensive form and shall protect the administrator and the district against claims for injuries to members of the public and/or damages to property of others arising from the administrator's use of motor vehicles. The limit of liability shall not be less than five hundred thousand dollars (\$500,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 24.3 General Liability Insurance This insurance shall be written in comprehensive form and shall protect the administrator and the district against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the administrator or any of its agents, employees, consultants, business partners or subcontractors. The limit of liability shall not be less than one million dollars (\$1,000,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 24.4 Certificate of Insurance Administrator shall provide the district with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the type of policy(ies) provided, but also shall refer specifically to this agreement and shall state that such insurance is as required by this agreement. The district reserves the right to require the administrator to provide a certified copy of such policies, upon written request by the district. If a policy is due to expire prior to the completion of the term of this agreement, renewal Certificates of Insurance or policies shall be furnished thirty(30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar day's written notice shall be provided to the district before any policy or coverage is cancelled or restricted. Acceptance of the certificate(s) is subject to approval of the district.
- 24.5 Additional Insured The district is to be specifically included as an additional insured for the liability of the district resulting from operations performed by or on behalf of administrator in performance of this agreement. Administrator's insurance, including that applicable to the district as an additional insured, shall apply on a primary basis and any other insurance maintained by the district shall be in excess of and shall not contribute to administrator's insurance.

24.6 Deductibles All deductibles or self-insured retentions must be declared to and be approved by the district or its duly authorized representative. The administrator shall be responsible for the payment of any deductible or self-insured retention in the event of any claim.

25. Counterparts

25.1 This agreement may be executed in several counterparts, each of which shall be deemed original and such counterparts shall constitute one and the same instrument.

26. Miscellaneous

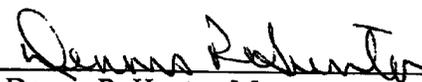
26.1 In the event of any conflict or inconsistency between the terms of this agreement and the terms of the proposal, the terms of this agreement shall govern.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and date first above written.

TOWN:
TOWN OF CUTLER BAY

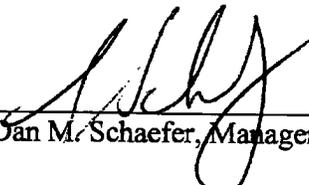
ADMINISTRATOR:
YGRENE FLORIDA ENERGY FUND, LLC.

By: 
Steven J. Alexander, Town Manager

By: 
Dennis R. Hunter, Manager

Attest: 
Esther B. Coulson, Town Clerk



By: 
Dan M. Schaefer, Manager

Approved as to Form and Legal Sufficiency:

By: 
Town Attorney

**EXHIBIT A
THE PROPOSAL**

**Functions and Responsibilities for Green Corridor Property Assessment Clean Energy
(PACE) District (the "District")**

Ygrene proposes, in cooperation with Town and/or District to provide PACE administration and financing services to the District in accordance with the following:

I. TASK LIST

Task 1: Design Localization

Task 1.1: PACE Enabling Ordinance via District Interlocal Agreement

The first required action item is a procedural ordinance and/or authorizing resolution. Consistent with the Florida law and Section 163.08, Florida Statutes (the "PACE ACT"), Ygrene and its qualified Counsel ("Counsel") will provide a comprehensive set of documents that include, by way of example, the following components:

- A determination that the establishment of the program would be in the public interest as required by the law.
- A statement indicating that the jurisdiction proposes to make voluntary contractual non-ad valorem assessment ("PACE Assessment") financing available to property owners.
- An identification of the types of renewable energy sources, wind resistance and energy efficiency improvements ("Qualifying Improvements") that may be financed.
- A description of the boundaries (including a map) of the area within which contractual assessments may be offered.
- A description of the proposed financing program.
- Designation of a date, time and place for the public hearing on the matter, if required.
- A statement of assessment underwriting standards that is consistent with HB7179, reflects the legitimate concerns of mortgage lenders and cognizance of the secondary mortgage market, is designed to ensure appropriate capital markets participation, and forms the basis for Florida to demonstrate a PACE financing program that provides a model for use in other states.
- Consultation with the appropriate county officials to ensure arrangements for placing the assessments on the tax roll and all the necessary documentation.
- Under the direction of Willdan Financial Services, Barclays Capital and Counsel, development of standard or uniform protocols to create and maintain non-ad valorem assessment rolls, and transfer proceeds to cover debt service and associated program costs.

Task 1.2: PACE Report

Pursuant to adoption of a procedural ordinance and/or authorizing resolution for the District, Ygrene will provide a Report that will contain matters sufficient to fulfill legal requirements including:

- **Program Jurisdiction:** Description, map or diagram indicating the boundaries where PACE assessments can be legally offered.

- **Draft Financing Agreement:** A draft form of financing agreement consistent with the PACE Act and anticipated market acceptance specifying the terms and conditions for a property owner to fund and finance Qualifying Improvements. The final form of financing agreement will be subject to approval and execution by appropriate District officials and Counsel.
- **Policy Statement:** Please reference Task 1.3 for a detailed account of what this task entails.
- **District's PACE Finance Plan:** A description of the funding source(s) to be offered through the District for work financed by the voluntary non-ad valorem assessment under the program. Ygrene will rely on Counsel for legal analysis and advice as to the best means and methods to achieve program validity and address legal matters related to the assessments and the bonds to be issued. The Finance Plan may delineate amounts to be advanced based on funds available to the local government from any source, and may include the issuance or sale of bonds, obligations, or other financing arrangements. The Finance Plan shall include a method for determining the interest rate and time period during which affected property owners would pay any assessment. The Finance Plan will provide for the establishment of any necessary reserve fund or funds, and will provide for the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the assessments among the consenting property owners and other matters necessary to attract funding and financing.
- **Payment Schedules:** Based upon information provided by the District, Ygrene will create and provide payment schedules, to both the District and affected property owners, that identify the amount and timing of payments to be made during the agreed upon term of the assessments based upon the program interest rate. This schedule will be the basis for the assessment installments that will be submitted annually to the appropriate county tax collector for inclusion on property tax bills.
- **Assessment Applicant Criteria for the Approval/Denial Process:** Applicant qualification requirements will be determined based upon the State Law and underwriting guidelines.
- **County Tax Roll Results Report:** Ygrene will prepare and periodically update a report on the results of consultations with appropriate county officials concerning arrangements and additional fees, if any, to be charged for placing the PACE assessments on the property tax bills.

Task 1.3: PACE Policy Statement

Ygrene and Counsel will provide the District with draft policies for use in contractual assessments between the District and property owners for financing of Qualifying Improvements. These policies will be a requirement of the program and must be adopted by the District to be effective. The policy statement will include, but is not limited to, the following:

Authorized Officials: The governing body of the District will identify and delegate power to the local official(s), or designee(s), who are authorized to enter into financing agreements with participating property owners. Procedures shall provide, among other requirements, for timely execution of financing agreements.

Project Identification: Ygrene will identify the types of properties authorized to be included in the program, i.e. residential, commercial/industrial. Ygrene will provide and propose a comprehensive list of Qualifying Improvements that may be financed through the program.

Method for Prioritizing Property Owner Requests: Unless otherwise directed by the District and subject to financial underwriting guidelines, Ygrene will process and prioritize property owner requests for participation in the program on a first-come, first-served basis, without regard to size of project or type of property.

Program Timelines: Ygrene will specify various program timelines, including deadlines for setting up the District program. Additionally, Ygrene will set performance goals for such program components as application processing, approval notification, assessment processing, project funding and other customer service related guidelines.

Task 1.4: Program Forms

Ygrene will provide a portfolio of program forms (bi-lingual) to be used by residents who wish to participate in the program. These forms will also be provided on the District's website, and may include:

- PACE Frequently Asked Questions (FAQ)
- Schedule of Fees
- List of Qualifying Improvements
- Assessment Underwriting Terms
- Application & Documentation Checklist
- Application Form
- Financing Agreement
- Truth-In-Lending Form
- FHFA/FNMA/FMAC PACE Status Disclosure Form
- Lender Notification (Residential Properties)
- Lender Notification and Acknowledgement (Commercial and Industrial Properties)
- Project Bid and Contract Form
- Funding Request Checklist
- Utility Authorization Form
- Closing Checklist

Task 1.5: PACE Presentation to District Directors (from 1.2)

Once the program elements are completed and approved by the District, Ygrene will assist staff in presenting such information and materials to the District board, will prepare and suggest the related staff report, and participate in the required public hearing.

Task 1.6: Update and Amend PACE Report

As necessary, in a manner consistent with the PACE Act, and as directed following the public hearing, Ygrene will make requested changes and/or amendments to program elements.

TASK 2: Marketing

Task 2.1: Establish a Community Outreach and Participation Plan

Ygrene will implement the four-step marketing plan for the District:

- Step 1: Contractor Certification:** Ygrene will train and certify contractors as a prerequisite to their participation in the program. The certification approach utilizes State standards, nationally recognized programs and systems training. Ygrene's training program emphasizes customer service, market outreach, technical expertise and professionalism.
- Step 2: Property Segmentation:** Based on data analysis and statistical modeling, Ygrene can segment District properties into groups based on age, geographic location, assessed value and other attributes. This provides the basis for a District outreach program for each group of properties that utilizes the internet, local media and local canvassing with a targeted message.
- Step 3: Localized District Website Portal:** Ygrene's WebTool provides options that allow the District to localize the user experience and to establish a message that is consistent with

local political and economic development objectives. Ygrene works with staff prior to setting up and launching the localized Site.

Step 4: Outreach/Energy Centers: Ygrene will open an Outreach/Energy Center that will serve the program needs in the District for education, outreach, customer service, contractor liaison and information resources. Here, property owners can get their questions answered and obtain the necessary forms to apply for the program. District residents can learn how to save energy and money. Contractors can take classes to help them improve their service and increase their businesses. The Outreach/Energy Center will be designed, furnished and staffed by Ygrene to meet the specific needs of the PACE program in the District.

Task 2.2: Website Development

Ygrene will deliver a localized web portal for the District. The WebTool is designed to be localized, yet still provide national and statewide standardization necessary to ensure uniform legal and financial underwriting. The website components and services may include some of the following components:

Video on PACE: A short, educational video on how PACE works

Frequently Asked Questions (FAQ) Page (regularly updated)

Assessment Calculator: A computerized tool that allows interested residents to input their desired project and determine both the annual assessment payments and the expected energy savings. By modeling different project components, property owners can determine an optimum retrofit and renewable energy profile for their property.

Estimate: A computerized tool that allows interested property owners, by entering basic information about their property, to determine the amount of financing they can qualify for under the program.

Project Application: Everything necessary to apply for financing under the program.

Qualifying Improvements: A description of the project components a property owner can select under the program.

Program Forms: All program forms are available through the website. They can be completed electronically, or printed and filled out manually. Forms and personal assistance are also available at the Outreach/Energy Center.

Authorized Contractor Bid Request: This on-line tool provides real time information about contractor qualifications, the jobs they are supervising and resources for contacting them and soliciting bids.

Project Evaluation: Property owners can report their program experiences with respect to project results, contractor performance, and Administrator performance. Ygrene also provides real-time data for District analysis of jobs, energy and greenhouse gas impacts from the program.

Contact Information: Lists phone number(s) and email address(es) for all program personnel and for qualified contractors.

Contractor Communication and Coordination: An online tool that allows contractors to monitor current projects and those in the pipeline.

Contact Information: An Outreach/Energy Center resource that provides quick access to specialty subcontractors, when needed; and updates contractors on new tools, training, equipment and developments in the field.

Documents: A comprehensive document management system that allows password protected access to all program and project documents, at any time, by both Ygrene personnel and authorized District representatives.

TASK 3: Contractor Certification and Training

Based on State or other licensing requirements, Ygrene registers and authorizes all participating contractors. Ygrene provides and requires both direct and indirect training to ensure that program participants are professional, knowledgeable and qualified to undertake PACE projects. In addition, Ygrene will provide oversight, evaluations and conflict resolution. This software includes the following capabilities:

- Enables all licensed building contractors to register and participate in the program.
- Provides a platform where contractors are able to:
 - Manage the project submission and approval process
 - Track the progress of payments due under their contracts
- Provides a set of standards to calculate the SIR through audit and bid tools.
- Acquires historic energy usage for each property and quantifies energy use reductions once project improvements are completed.
- Provides immediate access to a wide range of data and reports related to the operation, status and success of the overall program.

TASK 4: Administration

The PACE administration function includes processing applications, providing customer service and administration, management of assessments and payments, recruitment, training and oversight of the contractors who perform approved energy efficiency, renewable energy and wind resistance work.

Task 4.1: Property Owner Applications

Ygrene will evaluate applications and process them on a first-come, first-served basis. Ygrene will use an electronic system that will track submitted applications, monitor the status of those applications and verify that assessments, once processed and approved, meet policy guidelines. Ygrene will also timely communicate pre-approval, approval, or denial notifications to applicants.

Task 4.2: Qualifying Project and Authorized Contractor Selection

Once an application has been submitted, the property owner will coordinate with their contractor of choice to select items from the Qualifying Improvements list that they are interested in installing. Since the District program requires compliance with the list of Qualifying Improvements, Ygrene's software tools limit funded projects only to Qualifying Improvements authorized by the District. At all steps in the process, personal assistance is available to property owners, at the Outreach/Energy Center, on the phone or via email, to complete applications and select a contractor.

Task 4.3: Energy Savings Calculations – Audit

Contractors will be equipped with audit tools in order to establish that the Savings to Investment Ratio (SIR) of the proposed project is greater than one. Quantifiable energy reductions may, in some circumstances, result in eligibility for increased assessment allocations for projects.

Task 4.4: Owner Bid Approval

Following project submittal, Ygrene will monitor project status throughout the bid acceptance process. Once the property owner accepts a project bid, Ygrene prepares and submits the financing agreement.

Task 4.5: Assessment Processing

Once submitted for funding approval and assessment documentation, the project status will be updated electronically and Ygrene will authorize the property owner and the contractor to obtain permits and commence construction.

Task 4.6: Utility Rebate Processing

As part of the processing, contractors can review each project and verify whether proposed measures may qualify for utility or other incentives. Ygrene will develop a “utility rebate” guide to assist property owners during the process of choosing qualified measures. If the PACE Assessment is for a measure that qualifies for an incentive/rebate, the applicant will be made aware of the options.

Task 4.7: Final Approval

Upon project completion, contractors will be required to obtain a final inspection from the building department that issued the building permits. Following notification of receipt of the final inspection, and verification that all liens have been released, the Property owner will approve the project and submit for payment and recording of the financing assessment.

Task 4.8: Record Notices of Assessment for Specific Properties

Ygrene will coordinate the timely recording of each financing agreement as required by the PACE Act.

Task 4.9: Program Status and Reporting

Ygrene’s WEB tool allows on-demand status and program data updates to the District and other authorized persons on a real time basis. Available information includes:

- Website Analytics
- Number of calls to 800#
- Number of assessment applications requested
- Number of assessment applications filled out/turned in
- Number of assessment applications processed
- Number of assessment applications approved
- Program funding levels and total fund status
- Authorized Contractors and Certification Levels
- Final Inspections
- Energy saved through completed projects
- Greenhouse Gas reductions achieved through completed
- Estimated job creation impact of completed projects

Task 4.10: Property Owner Services in the District

Ygrene will provide dedicated customer service appropriate to property types (residential and/or commercial/industrial):

- Dedicated toll-free property owner information line
- Outreach/Energy Center open to public
- Collateral materials
- On-line WebTool to monitor projects and assist completion
- Dedicated property owner service representatives fluent in English and Spanish;
- Reporting on owner satisfaction

TASK 5: Support

Ygrene's provides ongoing customer service and support, even after projects are completed.

Task 5.1: Website Development and Management

Ygrene has developed an overall web architecture, WebTool and database and is dedicated to continuing to improve and expand its capability. Ygrene will provide all website maintenance, technical support and updates for ongoing PACE programs.

Task 5.2: Ongoing Assessment Tracking and Management

Through Willdan Financial Services, Ygrene will coordinate ongoing management and verification of assessments throughout the amortization term of the financing.

Task 5.3: Provide Certification, Training and On-going Support for Contractors

Ygrene will maintain an updated database of contractors and make training and education programs available within the District to ensure high quality, effective installation of improvements, to share best practices, and to provide a pathway for skill upgrades.

Task 5.4: District Staff and Property Owner Support

Provide password protected, on-line access to real-time project data for properly authorized District staff. Provide in-person, telephone and email access to information regarding assessments and annual installments for property owners and program participants.

Task 5.5: Status Meetings and Coordination

Ygrene will participate in and/or attend appropriate District Board and advisory committee meetings and provide access to an administrative system that provides reports and status on the program's operations for each District participant.

II. CREATION AND COLLECTION OF NON-AD VALOREM PACE ASSESSMENTS IN FLORIDA

Ygrene sub-contractor, Willdan Financial Services ("Willdan"), in consultation with Counsel, will manage the legal and procedural considerations for placing PACE assessments on county property tax rolls. Highly experienced service providers to cities and counties in several states, Willdan and Counsel have the expertise and credentials to oversee this important PACE task on behalf of Ygrene and the District.

III. PROGRAM TIMELINES

Upon execution of the TPA agreement, Ygrene will provide a timeline for estimated completion of the Task List. Actual dates for commencement and completion will be based upon District and Counsel schedules and agreements among the Parties.

IV. QUALIFYING IMPROVEMENTS

The following list represents improvements that will be Qualifying Improvements under the District PACE Program. Additional and/or alternative measures may be approved on a case-by-case basis and/or as the list is modified from time to time in compliance with State Law or instructions from the District.

1. Energy Efficiency

- a. Air Sealing and Ventilation
 - Air Filtration
 - Building Envelope
 - Duct Leakage and Sealing
 - Bathroom, ceiling, attic, and whole house fans
- b. Insulation
 - Defect Correction
 - Attic, floor, walls, roof, ducts
- c. Weather•Stripping
- d. Home Sealing
- e. Geothermal Exchange Heat Pumps
- f. HVAC Systems
- g. Evaporative Coolers
 - Cooler must have a separate ducting system from air conditioning and heating ducting system
- h. Natural gas storage water heater
 - Energy Star listed
- i. Tankless water heater
- j. Solar water heater system
- k. Reflective insulation or radiant barriers
- l. Cool roof
- m. Windows and glass doors
 - U value of 0.40 or less and solar heat gain coefficient of 0.40 or less
- n. Window filming
- o. Skylights
- p. Solar tubes
- q. Additional building openings to provide addition natural light
- r. Lighting
 - Energy Star listed (no bulb, only retrofits)
- s. Pool equipment
 - Pool circulating pumps

2. Other Non - residential Building Measures

The following measures are allowed for commercial and non•residential buildings, in addition to all applicable energy efficiency measures listed above:

- a. Occupancy•Sensor Lighting Fixtures
 - SMART Parking Lot Bi•Level Fixture
 - SMART Parking Garage Bi•Level Fixtures
 - SMART Pathway Lighting

- SMART Wall Pack Fixtures
- b. Task Ambient Office Lighting
- c. Classroom Lighting
- d. Refrigerator Case LED Lighting with Occupancy Sensors
- e. Wireless, daylight lighting controls
- f. Kitchen Exhaust Variable Air Volume Controls
- g. Wireless HVAC Controls & Fault Detection

3. Solar Equipment

District funding will be available for photovoltaic and solar thermal equipment. As with efficiency measures, if a rebate is available to the property owner, that amount must be deducted from the financing requested. Eligible solar equipment for both residential and commercial properties includes:

- a. Solar thermal hot water systems
- b. Solar thermal systems for pool heating
- c. Photovoltaic systems (electricity)
- d. Emerging technologies – following the Custom Measures Track

4. Wind Resistance Measures

Wind hardening measures can be deployed through this Program. The measures described qualify.

- a. Improving the strength of the roof deck and foundation attachment
- b. Creating a secondary water barrier to prevent water intrusion.
- c. Installing wind-resistant shingles or other roofing.
- d. Installing gable-end bracing.
- e. Reinforcing roof-to-wall connections.
- f. Installing storm shutters.
- g. Installing perimeter-opening protections.
- h. Raising building elevations.

5. Custom Measures

The Custom Measures Track is a process by which [Program Name] staff can evaluate and approve funding for projects that are not “off the shelf” improvements listed in the Qualifying measures. These custom projects may involve large scale industrial or commercial energy efficiency improvements; processing or industrial mechanical systems; and renewable energy generation from sources such as geothermal and fuel cells. The following are examples of custom measures that will be considered for [Program Name] funding:

6. Custom Energy Efficiency Measures

- a. Building energy management controls
- b. HVAC duct zoning control systems
- c. Irrigation pumps and controls
- d. Lighting controls

- e. Industrial and process equipment motors and controls

7. Custom Energy Generation Measures

- a. Fuel Cells
- b. Wind turbine power system
- c. Natural gas
- d. Hydrogen fuel
- e. Other fuel sources (emerging technologies)
- f. Co-generation (heat and energy)

V. DISTRICT UNDERWRITING TERMS

Following is a draft of the underwriting terms and disclosure for the District PACE program. In consultation with Counsel, Ygrene will develop the final form of this document that will be signed by all participants as a requirement of the program.

In order to apply for financing (“financing” or “funding”) under the District PACE Program (the “Program”) the property owner (the “Property Owner”) must read and accept these District PACE Program Terms (the “Program Terms”).

These Program Terms, along with the documents property owners execute in connection with the Program, including but not limited to the Application, Assessment Agreement, Notice of Assessment, Project Contract, and Escrow Instructions - Project Approval described in “Funding” below (collectively the “Program Documents”), establish the terms of the District PACE Program. Property owners should become familiar with and understand the provisions of the Program Documents. By executing the Program Documents, the property owner agrees to all of the terms of the Program. The District reserves the right to amend these Program Terms from time to time as described in “Changes to the Program Terms; Severability” below.

1. Purpose of the Program

The Program is intended to assist property owners in the District in financing the acquisition and installation of energy efficiency, wind resistance and renewable energy improvements (the “Qualifying Improvements”). With the assistance of Counsel, the District will authorize bonds to provide the source of financing for the Program. The bonds and the costs of administering the Program will be paid through special assessments added to the property tax bills paid by the property owners who choose to participate in the Program. There may be other types of financing available to property owners and the District does not guarantee that the Program is the best financing option. Property owners should obtain help in selecting the option that is most appropriate for their particular situation.

2. Summary of the Program Process

As discussed in more detail below, in order to receive funding from the Program, property owners must complete the following steps for all property types:

- a. Determine that they meet the eligibility requirements. (see “Eligibility” below).
- b. Apply online or submit a paper application for the Program. (see “Application; Approval or Denial; Application Fee” below).
- c. Agree to these Program Terms and pay an application fee as part of the application process.

- d. Notify any and all lenders holding a security lien of their intent to place a senior lien on the property and, in the case of multi-family residential property of more than four units and/or non-residential property, secure the lender(s) agreement to do so.
- e. The Administrator must approve the completed application. (see "Application; Approval or Denial; Application Fee" below).
- f. A Certified Contractor must submit a bid for the installation of Qualifying Improvements on the property. (see "Qualifying Improvements; Certified Contractors; Maximum Funding" below).
- g. The District will record a Notice of Special Tax Lien against the property at the time of project approval.
- h. The District will authorize the release of funds to the property owner after project completion. Property owners may choose to assign payment directly to their contractor. (see "Funding Request" below).
- i. Be expected to pay the special assessments in the amounts and at the times specified in the Funding Approval. (see "Financing Cost; Interest Rate; Special Assessments" below).

The District has contracted with Ygrene Energy Fund to administer the program (the "Administrator"). The District will share information with the Administrator and other third parties as necessary to administer the Program. See "Disclosure of Property Owner Information" below.

3. Eligibility

The Program is available to all privately owned improved property. The financing terms and conditions set forth in these Program Terms are applicable to financings of \$250,000.00 or less for retrofit projects in residential and non-residential properties (including multifamily properties of more than 4 units). The financing terms and conditions set forth in these Program Terms are not necessarily applicable to projects of more than \$250,000.00. The District will establish the financing terms and conditions appropriate to larger projects at the time of financing approval. Low-income applicants are encouraged to apply and may qualify for assistance with the application fee or audit costs. In order to participate in the Program, a property owner must meet and/or complete the following requirements and steps:

- a. The property to be improved with the Qualifying Improvements (the "subject property") must be located in the District.
- b. The subject property may be used for residential or non-residential purposes. If the subject property is used for residential purposes, the property owner is not required to occupy the subject property as a primary residence.
- c. The property owner must provide written notice of the proposed senior lien to any and all lenders with existing liens on the subject property. Property owners of a non-residential property (including residential property of more than four units) must obtain the written consent of existing lenders. The forms for these notifications (Lender Notification (Residential) and Lender Notification and Acknowledgement) are available on-line or from the Administrator and must be submitted to the Administrator prior to project approval.
- d. All holders of fee simple title to the subject property must sign the Program Documents. Therefore, before submitting an Application, property owners must ensure that all property owners will agree to participate in the Program on the terms set forth in these Program Terms.
- e. Property owners will be required to participate in appropriate federal, state and District incentive programs, to the extent the subject property and/or the project are eligible for such programs at the time of application.
- f. The property owner must agree to provide the Administrator with access to the property's utility usage history and information to enable the Program to monitor energy savings. The Utility Authorization Form is available on-line or from the Administrator for this purpose.
- g. Property owners must be current in the payment of all obligations secured by the subject property, including loans, property taxes, assessments and tax liens; and have maintained currency for all

such obligations for the past 3 years (or since the current owner(s) took title to the subject property if less than 3 years). The Administrator may review public records and private credit histories, including County real property records, to verify compliance with this requirement. Certain allowances may be made for property tax payment delays that do not reflect financial distress. Cases of non-residential property owners who are currently appealing a property tax assessment will be reviewed and eligibility will be determined on a case-by-case basis.

- h. The value of the property, based on just value (or market value in cases where just value can be shown to unreasonably underestimate the property value), must be equal to or greater than the sum of (i) the total debt, including mortgages and equity lines of credit, secured by the property, (ii) the principal amount of any Program indebtedness attributable to the property, and (iii) the aggregate principal amount of any fixed assessment liens on the property.
- i. The aggregate principal amount of the Program funding attributable to the property cannot exceed 20% of the value of the property (based on just value, appraised value, or market value calculated according to a method identified by the Administrator).
- j. It is critical to the health of the Program that property owners pay their special assessments and other property-related obligations in full on a timely basis. Consequently, the District reserves the right, in its sole discretion, to request supplemental information from owners and to deny applications based on any negative reports.

4. Initial Application; Approval or Denial; Application Fee.

All property owners interested in applying to the Program must submit the Initial Application Documents listed below along with a \$50 application fee (applications submitted on behalf of property owners by approved contractors, multi-family residential properties of more than four units and commercial/industrial projects are exempt from application fees). At the time of application, property owners must agree to the Program Terms. Project applications for larger financing amounts or building types not covered by these Program Terms will receive an administrative point of contact from the Administrator, who will assist in the process.

- a. Initial Application Documents
 - i. Application Form, either submitted online or printed and signed
 - ii. Lender notification
 - For residential properties of 4 units or less, proof of mailing of the Residential Lender Notification form.
 - For residential properties with more than 4 units and for non-residential properties, properly executed Lender Notification and Acknowledgement form from existing lender(s).
- b. Upon receipt of the Application documents and underwriting by the Administrator, applicants will receive either a Notice of Approval or a Notice of Denial.
- c. Upon receipt of a Notice of Approval, applicants must obtain Residential Lender Notification forms or Lender Notification and Acknowledgement forms, available either on-line or from the Administrator, and submit them to their lender(s). Property owners will be required to provide to the Administrator with Proof of Mailing for Lender Notification and Acknowledgement forms.
- d. Upon receipt of a Notice of Approval, applicants can proceed to submit their proposed project for approval (See "Project Approval" below).
- e. Should an application be denied, the notice will include recommend remedial action that may be available to the applicant.

5. Qualifying Improvements; Certified Contractors; Maximum Funding.

The following general provisions apply to all projects submitted for funding under the Program:

- a. Program financing may only be used to finance those improvements that are described in the list of Qualifying Improvements. Property owners are responsible to ensure that improvements

- installed on their property qualify under the program. Contractor/installer agreements will be required to address performance and other system-related issues to assist property owners.
- b. The Program is a financing program only. Neither the District nor the Administrator is responsible for installation of the Qualifying Improvements or their performance.
 - c. The Qualifying Improvements must be installed by contractors who meet the eligibility criteria set forth for the specific category of work being financed, and who are listed on the Certified Contractors list that may be obtained on-line or from the Administrator. If property owners choose to work with a contractor that is either not a Certified Contractor or who fails to become a Certified Contractor, they will not be eligible for Program financing.
 - d. For a proposed project to qualify for funding, the Certified Contractor must submit evidence that the project fulfills the requirement of providing a savings-to-investment ratio (SIR) of at least one. This means that the energy cost savings attributable to the installation of the Qualifying Improvements must equal the funded cost of those improvements over their useful life.
 - e. Maximum Funding. The Program requires a minimum funding request of \$2,500. The Program will approve maximum funding requests in an amount equal to the lesser of (i) maximum amount allowed under FL law for the property or (ii) the final cost of installing the Qualifying Improvements (including allowable fees) less any federal, state, District and Utility rebates, plus the additional items identified in "Financing Cost; Interest Rate" below. The funding limits are per property per financing request. The Program will not provide financing for any costs in excess of the maximum amounts allowed under FL law. Participants are invited to submit projects that may exceed the basic ratio of cost vs. fair value, based upon the savings-to-investment ratio achieved by the Qualifying Improvements. Such projects may require alternative legal and financial processing.

6. Project Approval.

Upon receipt of a Notice of Approval of a Program application and following notification and/or request for lender acknowledgement (approval), the property owner may select a contractor and proceed to apply for project funding. Following are the steps required to obtain authorization for funding under the Program:

- a. Select a contractor from the Certified Contractor List. This list is available on-line and/or from the Administrator. Applicants may wish to obtain bids and advice from more than one Certified Contractor.
- b. Work with Certified Contractor(s) to determine the scope and cost of your project, analyze its energy and savings and financial benefits to confirm a SIR of at least one, and verify that the proposed work qualifies for funding under the Program. Once Qualifying Improvements are selected, obtain a formal bid from one or more Certified Contractors.
- c. Following review of the project bid(s) select a Certified Contractor to complete the approval process with the Program Administrator. Even if the project requires using more than one Certified Contractor for various aspects of the work (i.e. – retrofit and solar), applicants must select a lead contractor to process the project.
- d. Upon review of the proposed project and the bid(s) submitted for the work, the Administrator will issue either a Project Approval Letter or a Project Denial Letter. This communication will be provided by email unless directed otherwise by the applicant.
- e. Once the project is approved, applicants will be required to execute the Assessment Agreement. This is the contract that authorizes the Administrator and the District to place the assessment on the property that will secure the project financing. The assessment must be in place prior to commencement of construction.
- f. Once the assessment is recorded, applicants will receive a Notice to Proceed. Upon receipt of this notice, applicants can sign construction contracts and authorize commencement of the project. If construction begins prior to receipt of a Notice to Proceed, applicants run the risk of not qualifying for Program funding.

- g. If the project is denied, the Project Denial Letter will outline remedial action that may be available to the applicant.

7. Funding

- a. Once the Certified Contractor has completed installation of the Qualifying Improvements, property owners must submit a funding request and the project verification documents listed below in order to receive funding from the Program. The Administrator will review the funding request and the project verification documents, and produce final Program forms. The final Program forms will be transmitted via email, or by mail if so directed by the property owner. All required forms must be returned to the Administrator prior to funding. The project verification documents and final Program forms are listed below.
 - i. A final sign-off on the building permit for the project from the authorized building official in the appropriate District participating jurisdiction.
 - ii. Final invoices and lien releases from all Certified Contractors (including any sub-contractors) who worked on the project.
 - iii. An executed Project Approval signed and notarized by all property owners. By executing the Project Approval, owners annex their property to the Special Tax District, agree to pay the special assessments in specified amounts for the period specified in the Project Approval, consent to recordation of a Notice of Special Tax Lien against the subject property, and release the Administrator and the District from any liability associated with installation of the Qualifying Improvements or their performance.
 - iv. Utility Authorization to Release Information.
 - v. Assignment of Right to Receive Financing Proceeds form if the payment is to be assigned to someone other than the property owner.
 - vi. Settlement Statement
 - vii. Truth-in-Lending Disclosure Statement
 - viii. FHFA/FNMA/FMAC Status Disclosure Form
- b. If the documents listed above are not submitted to the Administrator within 7 calendar days after transmittal of the final Program forms, the funding request will expire. In that event, an updated funding request will be required. If the interest rate has changed between the date of the original funding request and any subsequent updated funding request, the interest rate will be reset (See "Financing Costs; Interest Rate below).
- c. Upon completion of a final project audit, the Administrator will make a final determination of eligibility of the project and calculation of the final assessment details. Upon acceptance by the property owner, the Administrator and the District will amend the recorded tax lien as appropriate and approve issuance of checks as directed by the property owner
- d. In the event a property owner cancels financing after submitting a request for funding, all expenses incurred by the Program for recording tax liens, preparing bond documents and removing tax liens will be the responsibility of the property owner.

8. Financing Costs; Interest Rate.

- a. In order to receive funding, property owners agree to pay special assessments in an amount equal to (i) the principal amount received from the Program, (ii) interest on the principal amount received from the Program and (iii) initial and on-going administrative expenses. The District expects to levy special assessments on the owner's property tax bill, although it may bill separately for the Program installments.
- b. Principal. This is the total of all financed project costs. These may include costs associated with implementing the project such as permits, audit expenses, application fees and capitalized interest (see "Capitalized Interest" below).
- c. Interest Rate. The rate of interest charged on the amount funded will be fixed for the full term of the assessment. The rate will be determined on the date of submission of a valid funding request.

Property owners can monitor interest rates on the Program website or by contacting the Administrator.

- d. Capitalized Interest. Because of administrative delays involved in placing the special tax assessments on County tax rolls, the payments may not appear on property tax bills in the first year. In this case the first tax year's tax installment may be added to the assessment. This will be itemized on the Settlement Statement.

9. Repayment Terms; Special Assessments; Foreclosure Terms.

- a. Repayment Terms. Following recordation of the Notice of Assessment, the property owner will be obligated to pay the special assessments specified in the Project Approval and the Notice of Assessment.
- b. Special Assessments and Foreclosure. A property owner must pay the taxes associated with the agreed-upon special assessment regardless of personal financial circumstances, the condition of the property, or the performance of the Qualifying Improvements. Property owners should not apply for financing if they are not certain they can meet the assessment obligations. The failure to pay property taxes in full or in part will result in financial repercussions including penalties, interest and possibly foreclosure. If property owners use an escrow account to pay their property taxes, they must notify the escrow company of the special tax payments. In such cases, property owners will need to increase monthly payments to the escrow account by an amount equivalent to the annual special assessments, divided by 12 months.

10. Compliance with Existing Mortgages.

Recordation of the Notice of Assessment will establish a continuing lien as security for the obligation to pay the special assessments. The lien securing the obligation to pay special assessments will be senior to all private liens, including existing mortgage(s). Many mortgage and loan documents limit the ability of a property owner to place senior liens upon property without the consent of the lender, or authorize the lender to obligate borrowers to prepay the senior obligation. Recently, the Federal Housing Finance Agency has issued policy guidelines that question the validity and assessment status of PACE assessments. Program participants should confirm with their lender(s) that participation in the Program does not adversely impact their rights with respect to any existing loan documents. For residential projects, the Program requires property owners to notify their lenders prior to a funding request, to provide the Administrator with a copy of the letter and proof of mailing and to certify that the lender has not objected to the property participating in the Program. For non-residential projects and residential properties containing more than 4 units, property owners must notify the lender and receive written consent for the priority assessment lien from the lender prior to submitting a funding request. The Administrator provides required forms for lender notification and consent, but ultimate responsibility for addressing issues with existing lenders remains with property owners.

11. Transfer or Resale of the Subject Property.

If Program participants sell their property prior to the end of the agreed-upon special tax period, the new owner will assume the special tax obligation. Ownership of any Qualifying Improvements on the subject property will transfer to the new owner at the close of escrow. Qualifying Improvements financed through the Program may not be removed from the property. Program participants agree to make all legally required disclosures regarding the existence of the special tax lien on the property in connection with any sale.

12. Rebates and Taxes.

Participation in this Program does not reduce rebates available through federal, state, utility sponsored and District rebate programs. More information on available programs can be found on-line or through Certified Contractors and other vendors. Participants should consult with their tax advisors with respect to the state and federal tax benefits and consequences of participating in the Program.

Neither the District nor the Administrator is responsible for the tax considerations of participating in the Program.

13. Changes in State and Federal Law.

The District's ability to continue to finance the Program is subject to a variety of state and federal laws. If those laws or the judicial interpretation thereof changes after a property owner applies for the Program, but before the District fulfills the funding request, the District may be unable to fulfill the request. In such event, the District shall have no liability as a result of any such change in law or judicial interpretation.

14. Changes in Program Terms; Severability.

The District reserves the right to change the Program Terms at any time without notice. However, no such change will affect a participant's obligation to pay special assessments as set forth in the Project Approval. Participation in the Program will be subject to the Program Terms in effect from time to time.

VI. FINANCIAL MODEL

1. Barclay's Capital:

Ygrene and Barclay's Capital ("Barclays") have agreed that Barclays will provide interim (warehouse) financing and long term (bond) financing for the District program. Ygrene will form an affiliated corporation ("Ygrene Funding") to provide credit administration and underwriting services for this funding agreement. Besides providing assessment funding that will respond to virtually any level of demand, the Barclay's agreement finances the administrative, marketing, legal and other costs of operating PACE programs. Like other financing programs, PACE is subject to market forces and interest rate fluctuations that will require adjustments of rates and terms during operation of the Program to maintain viability.

2. Operating Capital:

Ygrene's initial target interest rate for property owners participating in the District program is 7.00% ("Program Interest Rate"). This is based on a current estimated cost of funds from Ygrene Funding of 6.50% (the estimated "Funding Rate"). This example results in an interest rate spread of one half of one percent (0.5%) to provide for the operating and administrative costs of the District program ("Operating Capital"). Ygrene uses the Operating Capital for program administration, marketing and program development, legal and bond counsel, District cost reimbursement, overhead and profit.

The actual Funding Rate is calculated as the on-the-run U.S. Treasury 10-year bond rate plus 3.25%. If the Funding Rate increases, the Program Interest Rate will increase by a like amount to provide adequate Operating Capital. Ygrene will endeavor to keep the Program Interest Rate as low as possible.

3. Fee Schedule:

In addition to the Operating Capital, Ygrene relies on Program fees to fund operations. This fee structure minimizes up-front costs for property owners.

Residential property fees:

<u>Fee Description</u>	<u>Amount</u>	<u>Collected</u>
Initial application:	\$ 50.00	with application
Processing & Underwriting:	\$ 125.00	at disbursement
Energy audit:	\$ 50.00	at disbursement
Jurisdiction cost recovery:	\$ 100.00	at disbursement
Recording & Disbursement:	\$ 95.00	at disbursement
Insurance:	TBD	TBD

Commercial/Industrial property fees:

<u>Fee Description</u>	<u>Amount</u>	<u>Collected</u>
Initial application:	Waived	N/A
Processing & Underwriting:	\$ 250.00	at disbursement
Energy Audit:	TBD	at disbursement
Jurisdiction cost recovery:	\$ 100.00	at disbursement
Recording & Disbursement:	\$ 250.00	at disbursement
Insurance:	TBD	TBD

This fee schedule is subject to change and must be approved by the District prior to the Commencement Date. Fees for energy audits are paid directly to contractors, are included in the project cost, and on commercial/industrial properties will be priced on a case-by-case basis. Insurance fees and methods of collection are under review and must be approved by the District prior to the Commencement Date. Of the fees listed, only the residential application fee is collected directly from property owners. The fee is waived when a Certified Contractor submits the application on a property owner's behalf. The remaining fees are paid through the assessment funding.

In the event either the District or its constituent members enacts fees or other charges that have the effect of increasing Administrator's costs for providing the Services, Administrator may increase the fee provided for in this schedule to offset the increased costs.

4. Contractor Training & Administration:

Funding for program operations is enhanced by a 3.0% Project Oversight fee charged to Certified Contractors to reimburse the Program for training, lead generation, marketing services, Energy Center meeting space and services, etc.

5. Carbon Credits/Offsets

Ygrene will aggregate and accumulate carbon credits that result from PACE projects financed through the Program. A possible future source of Program revenue could result from the development of a market for these credits.

VII. PROGRAM FORMS

Following is a partial list of forms and documents that may be required for the establishment, operation, administration, financing and reporting for the District PACE Program. These forms are maintained through a document management program that allows ongoing, password-protected access for authorized District representatives. Forms will be added, edited and deleted as necessary for the operation of the District program.

Interlocal Agreement
Task List
Program Report

PACE Frequently Asked Questions
Schedule of Fees
List of Qualifying Improvements
Assessment Underwriting Terms
Application & Documentation Checklist
Application Form
Financing Agreement
Truth in Lending Form
FHFA/FNMA/FMAC PACE Status Disclosure Form
Lender Notification (Residential)
Lender Notification and Acknowledgement (Commercial & Industrial)
Project Bid & Contract Form
Funding Request Checklist
Utility Authorization Form
Closing Checklist
Utility Authorization Form
Closing Checklist

Notice of Assessment
Assessment Agreement
FL Assessment Underwriting Terms
Underwriting Policy
Project Submission Checklist
Project Approval Letter
Project Denial Letter
Notice to Proceed
Draw Request Form
Lien Release Form
Change Order Request Form
Final Building Permit Checklist
Assignment of Right to Receive Financing Proceeds
Wire Request Form
Escrow Instructions
Appraisal Report
Project Energy Savings Calculations & CO2e Reductions Form
SIR Report