

SARASOTA COUNTY GOVERNMENT

Sarasota UF IFAS Extension and Sustainability

TO: Sarasota County Commission
THROUGH: Jonathan R. Lewis, County Administrator
FROM: Lee Hayes Byron, Director, UF/IFAS Extension and Sustainability
DATE: July 10, 2018
SUBJECT: Property Assessed Clean Energy Program Agreements

RECOMMENDED MOTION(S) OR ACTION(S):

- A. To adopt a resolution authorizing the execution of an interlocal agreement with Green Corridor Property Assessment Clean Energy District and the associated indemnification agreement with Ygrene Energy Fund Florida LLC;
- B. To adopt a resolution authorizing the execution of an interlocal agreement with Florida PACE Funding Agency and the associated indemnification agreement with Counterpointe Energy Solutions (FL) LLC;
- C. To adopt a resolution authorizing the execution of an interlocal agreement with Florida Green Finance Authority and the associated indemnification agreement with Renew Financial Group LLC;
- D. To adopt a resolution authorizing the execution of an interlocal agreement with Florida Resiliency and Energy District and the associated indemnification agreement with Renovate America, Inc.

BACKGROUND:

The Property Assessed Clean Energy Program (PACE) is a voluntary financing mechanism for property owners to fund private property improvements related to renewable energy, energy efficiency and hurricane hardening (Qualifying Improvements) through assessments levied on their property tax bill by special districts created for that purpose pursuant to Section 163.08, Florida Statutes (PACE Local Governments). Under the County's ordinance, in order for PACE Local Governments to offer the PACE financing, the local governing body must adopt a resolution or ordinance implementing the program and interlocal agreements authorizing each PACE Local Governments to operate within its jurisdiction. Each PACE Local Government has a third party administrator (TPA) to implement the program and interact with the tax collector and property appraiser to levy the assessments. Currently, there are four PACE Local Governments interested in offering programs in Sarasota County.

How PACE Works

PACE Local Governments have the statutory authority to issue bonds, the revenues of which are made available to eligible property owners who have entered into the requisite financing agreement with the PACE Local Government to pay for Qualifying Improvements through assessments. Local governing bodies can authorize more than one PACE program to operate in their jurisdiction, increasing competition and options for property owners.

PACE in Sarasota County

On October 11, 2017, the Board of County Commissioners (Board) adopted Ordinance No. 2017-051, establishing a local Property Assessed Clean Energy Program. The goal of that ordinance was to establish a PACE Program within Sarasota County for commercial and residential properties that would include strong consumer protections and customer service criteria. It followed best practices from several other counties as well as national guidance documents in setting standard policies that would apply to all PACE Local Governments operating in Sarasota County. Since then, staff has been working with the PACE Local Governments and the respective TPAs to negotiate the interlocal agreements that are necessary for program implementation.

RELEVANT PRIOR BOARD ACTION:

1. June 23, 2010 – The Board directed the County Administrator to proceed with the next steps to establish a PACE program (5-0 vote). (Implementation delayed due to pending litigation).
2. April 18, 2011 – The Board discussed regional energy finance programs at the joint meeting with the Charlotte County Commission.
3. October 11, 2016 – The Board authorized the County Administrator to begin the process to implement the PACE Program within Sarasota County (5-0 vote).
4. July 11, 2017 – The Board authorized a public hearing on an ordinance creating a PACE Program (5-0 vote).
5. September 26, 2017 – The Board continued a public hearing on an ordinance creating a PACE Program until October 11 to enable public review of proposed changes (5-0 vote).
6. October 11, 2017 – The Board adopted Ordinance No. 2017-051, relating to the PACE Program (carried by a 3-2 vote; Commissioners Detert and Maio voted No).

OUTREACH:

Since the PACE ordinance was adopted, community interest in PACE has been strong, with regular contacts from businesses and residents requesting updates on PACE implementation. Over 165 people are on a stakeholder list requesting updates on the program. Presentations to neighborhoods have been requested and contractors are anxious to start using the program. Education and outreach efforts show strong citizen interest in solar and efficiency improvements, with the up-front costs for such improvements being the major barrier. Hurricane Irma also elevated the level of community interest around PACE given its hurricane preparedness potential. In developing the agreements being considered by the Board today, staff received several rounds of comments from PACE Local Governments and engaged with other local governments around the state that already have PACE programs in place. Discussions with staff from the Cities of Sarasota, North Port and Venice and the Town of Longboat Key have indicated openness to offering the PACE Program within those jurisdictions and they await the adoption of county agreements before proceeding with their processes to opt in to the county program.

PROCUREMENT ACTION:

N/A

ANALYSIS/NEXT STEPS:

The attached resolutions and accompanying interlocal agreements follow a structure similar to what has been used in several other counties as well as national guidance documents. The agreements outline the terms by which the PACE Local Governments would operate the programs in Sarasota County within the context of the policies set by the ordinance and state statute. The agreements set program requirements such as disclosures, eligible measures, contractor management, and reporting to ensure public benefit. They clarify steps necessary before a program can launch, standardize compliance and oversight requirements, and address insurance, indemnification, and liability protections between the parties. A separate document is also included for each provider, which outlines indemnification between the county and the TPA for each PACE Local Government.

During the ordinance adoption process, the PACE Local Governments and Sarasota County staff agreed to move several program requirements that are not in their current operating procedures from the draft ordinance to the interlocal agreements and to provide the option of a one-year grace period to meet those requirements. These are reflected in the proposed agreements as committed.

These documents represent an in-depth process of review and negotiation with the PACE Local Governments, which has culminated in agreement by all four to substantially similar terms that provide important protections to consumers and Sarasota County as well as ensures the required public benefit.

Next Steps

If the resolutions and accompanying documents are approved, the various PACE providers will begin the process toward implementation, which includes negotiating agreements with the Tax Collector and Property Appraiser and providing the documentation required to prove that the program design meets state and local requirements. The PACE Local Governments would then receive a letter of authorization to allow them to enter into PACE Financing Agreements with County property owners. In addition, UF/IFAS Extension and Sustainability staff will work with the interested municipalities on the opt-in process and with the PACE providers to conduct community education sessions on PACE and other financing options.

FUNDING:

The proposed PACE programs would not have a current or future financial impact on the county budget. It is the responsibility of each PACE Local Government and TPA to secure the private financing necessary for the implementation of the program and to work with the Property Appraiser and Tax Collector to levy the assessments. There would be minimal county staff time involved in launching the program and overseeing its implementation.

STAFF RECOMMENDATION(S):

Staff recommends adoption of the resolutions and accompanying agreements to enable implementation of a local Property Assessed Clean Energy Program. PACE represents an opportunity to encourage energy and resiliency property improvements and there is strong local interest in the program.

ATTACHMENTS:

1. Resolution 2018-____ authorizing the execution of an interlocal agreement with Green Corridor Property Assessment Clean Energy District and the associated indemnification agreement with Ygrene Energy Fund Florida LLC;
2. Resolution 2018-____ authorizing the execution of an interlocal agreement with Florida PACE Funding Agency and the associated indemnification agreement with Counterpointe Energy Solutions (FL) LLC;
3. Resolution 2018-____ authorizing the execution of an interlocal agreement with Florida Green Finance Authority and the associated Indemnification Agreement with Renew Financial Group LLC;
4. Resolution 2018-____ authorizing the execution of an interlocal agreement with Florida Resiliency and Energy District and the associated indemnification agreement with Renovate America, Inc.;
5. Ordinance No. 2017-051 Relating to Property Assessed Clean Energy.

RESOLUTION NO. 2018-____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN SARASOTA COUNTY AND THE GREEN CORRIDOR PROPERTY ASSESSMENT CLEAN ENERGY DISTRICT FOR A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; APPROVING AN INDEMNIFICATION AGREEMENT BETWEEN SARASOTA COUNTY AND YGRENE ENERGY FUND FLORIDA LLC FOR THE BENEFIT OF SARASOTA COUNTY; AND DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE AGREEMENTS WITH SUBSEQUENT ADMINISTRATORS OF THE GREEN CORRIDOR PROPERTY ASSESSMENT CLEAN ENERGY DISTRICT FOR THE BENEFIT OF SARASOTA COUNTY, AND EXERCISE CERTAIN PROVISIONS IN THE AGREEMENTS.

WHEREAS, on October 11, 2017, the Board of County Commissioners (“Board”) adopted Ordinance 2017-051 (the “PACE Program Ordinance”); and

WHEREAS, the PACE Program Ordinance provides that PACE Local Governments must enter into an interlocal agreement with the County prior to receiving authorization to operate and administer their PACE Program within Sarasota County; and

WHEREAS, the operation of the PACE Program in Sarasota County by the Green Corridor Property Assessment Clean Energy District will be done entirely without cost, liability or burden to Sarasota County; and

WHEREAS, the County is not joining or partnering with the Green Corridor Property Assessment Clean Energy District under the terms of the Interlocal Agreement but is merely providing the Green Corridor Property Assessment Clean Energy District with the limited, non-exclusive ability to operate a PACE Program in compliance with the terms of the PACE Act, the PACE Program Ordinance, and the Interlocal Agreement within Sarasota County at its own expense; and

WHEREAS, allowing the PACE Local Governments to operate their PACE Program in conformity with the terms of the PACE Act, the PACE Program Ordinance and the Interlocal Agreement is in the best interest of the citizens of Sarasota County;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, THAT:

1. The Interlocal Agreement, in substantially the form attached hereto as Attachment A, is hereby approved and the Chair is authorized to sign the Interlocal Agreement.
2. The Indemnification Agreement between the County and Ygrene Energy Fund Florida LLC, as the administrator of Green Corridor Property Assessment Clean Energy District, in substantially the form attached hereto as Attachment B, is hereby approved and the Chair is authorized to sign the Indemnification Agreement.
3. The County Administrator or designee is authorized to execute Indemnification Agreements with subsequent administrators of Green Corridor Property Assessment Clean Energy District, in a form approved by the Office of the County Attorney, to provide that such subsequent administrator of Green Corridor Property Assessment Clean Energy District shall indemnify and hold harmless the County.
4. This Board authorizes the County Administrator or designee to exercise the provisions as provided in the above-mentioned Agreements.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS THIS
____ DAY OF _____, 20__.

BOARD OF COUNTY COMMISSIONERS OF
SARASOTA COUNTY, FLORIDA

By: _____
CHAIR

ATTEST:

Karen E. Rushing, Clerk of the Circuit Court
and Ex-Officio Clerk to the Board of County
Commissioners of Sarasota County, Florida

By: _____
DEPUTY CLERK

**INTERLOCAL AGREEMENT BETWEEN THE GREEN CORRIDOR PROPERTY
ASSESSMENT CLEAN ENERGY (PACE) DISTRICT AND SARASOTA COUNTY
AUTHORIZING THE OPERATION OF A NON-EXCLUSIVE PACE PROGRAM**

This non-exclusive Interlocal Agreement ("Agreement") is entered into _____, 2018 by and between the Green Corridor Property Assessment Clean Energy (PACE) District, a public body created pursuant to Section 163.01(7), Florida Statutes, (the "PACE Local Government"), and Sarasota County, a political subdivision of the State of Florida ("County") collectively, the ("Parties"), related to the non-exclusive operation of PACE program within the County.

RECITALS

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

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

WHEREAS, Section 163.08, Florida Statutes (the "PACE Statute"), authorizes PACE Local Governments to finance Qualifying Improvements with a voluntary non-ad valorem special assessment process as the repayment mechanism (the "PACE Program") in those jurisdictions where the local governing body has adopted an ordinance or resolution authorizing the PACE Program within its jurisdiction and the PACE Local Government has entered into an interlocal agreement with that local governing body; and

WHEREAS, the PACE Local Government was created as a separate legal entity by interlocal agreement between the Miami, Cutler Bay, Miami Shores, Palmetto Bay, Pinecrest, Coral Gables, and South Miami, pursuant to Section 163.01(7), Florida Statutes, to finance qualifying improvements, including energy conservation and efficiency, renewable energy, and wind resistance improvements, in accordance with the PACE Statute, as may be amended; and

WHEREAS, the Sarasota County Board of County Commissioners has adopted Ordinance No. 2017-051, entitled the Sarasota County Property Assessed Clean Energy (PACE) Program (the "Ordinance"), which is incorporated herein by reference and authorizes a PACE Program to be administered within unincorporated Sarasota County by those PACE Local Governments that have entered into an interlocal agreement with the County and provides for certain consumer protections and requirements for PACE Local Governments; and

WHEREAS, the Parties have determined that entering into this Agreement is in the best interest and welfare of the property owners within the County.

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 Agreement is to facilitate the financing of Qualifying Improvements for property owners within the County in accordance with the PACE Statute, and the Ordinance by allowing the PACE Local Government to operate within the unincorporated County and in all municipalities that opt in to the PACE Program by adopting an ordinance or resolution ("Participating Municipalities"). Where the PACE Statute, the Ordinance, and any applicable state and/or Federal law provides different standards upon the PACE Local Government in the operation of the PACE program, the strictest requirement will control.
- Section 3. Definitions. All capitalized terms in this Agreement shall have the meaning set forth in the Ordinance, if defined therein, or as otherwise specifically defined in this Agreement.
- Section 4. Authorization Letter. Before the PACE Local Government is authorized to enter into any PACE Financing Agreements within Sarasota County, they must receive an authorization letter from the PACE Program Coordinator. In order to receive the authorization letter from the PACE Program Coordinator, the PACE Local Government must provide proof that their PACE program design meets the requirements of the PACE Statute, Ordinance, and this Agreement. In order to do so they must, at a minimum, provide copies of the following materials along with an outline of specific references to sections that meet the requirements of the Ordinance and this Agreement:
- a. PACE Financing Agreement (template)
 - b. Notice to Property Owner (template)
 - c. Eligible Measures List
 - d. Contractor Code of Conduct
 - e. Contractor training materials and schedule
 - f. Customer Service: email, phone, website, document outlining complaint process
 - g. Eligibility criteria, including additional program standards for residential properties.
 - h. Rates, fees and charges charged by or through the PACE Local Government
 - i. Agreements with the Tax Collector and Property Appraiser

Additionally, the PACE Local Government shall provide updated copies of these materials being utilized on the annual anniversary of the execution of this Agreement. Failure of the materials to adhere to requirements of the Statute, the Ordinance or this Agreement shall result in suspension or termination in accordance with Section 38-332 of the Sarasota County Code or other enforcement action as appropriate.

Section 5. Qualifying Improvements. The PACE Local Government is authorized, subject to the terms of the Ordinance and this Agreement, to provide financing of Qualifying Improvements, as defined in the Ordinance, as may be amended from time to time, on properties within the unincorporated County and Participating Municipalities. The following additional requirements shall apply to the authorized operation of the PACE Program under this Agreement. However, the PACE Program Coordinator is authorized to defer these additional requirements for a term up to one year from the date of the Authorization Letter if the PACE Local Government demonstrates that it does not have the ability to comply as of the date of the Authorization Letter and that it would create an unreasonable hardship to immediately modify its procedures and documents to comply. Full compliance will be required upon the expiration of any deferral period.

- a. If the Qualifying Improvement falls within an eligible category under ENERGY STAR, the product must be ENERGY STAR Certified in order to be considered as a Qualifying Improvement eligible for the PACE Program.
- b. Unless exempted by the PACE Program Coordinator for good cause, any solar photovoltaic system installed shall have an online monitoring system for maintenance and production monitoring purposes, provided the residence or business has appropriate connectivity.

Section 6. Non-Exclusive. The authorization for the PACE Local Government to administer the PACE Program in the unincorporated County or the Participating Municipalities is non-exclusive, meaning the County specifically reserves the right to either operate its own PACE program or enter into additional interlocal agreements with any other entity authorized acting pursuant to the PACE Statute authorizing that entity to provide a similar program within the unincorporated County and Participating Municipalities.

Section 7. Assessment by the PACE Local Government; Tax Collector Role Ministerial. The Parties hereto acknowledge and agree that the non-ad valorem assessments arising from a property owner's voluntary participation in the PACE Program are imposed by the PACE Local Government and not the County. Additionally, the Parties agree that the collection and distribution of any non-ad valorem assessments imposed by the PACE Local Government are purely ministerial acts by the Tax Collector pursuant to state law.

Section 8. Creation of State, County, or Municipal Debts Prohibited. The County and Participating Municipalities shall not incur nor ever be requested to authorize any obligations secured by special assessments associated with Qualifying Improvements imposed by the PACE Local Government pursuant to the PACE Statute and the Ordinance. No special purpose local government acting pursuant to the PACE Statute, the Ordinance, or this Agreement shall be empowered or authorized in any manner to create a debt as against the County and Participating Municipalities and shall not pledge the full faith and credit of the County and Participating Municipalities in any manner whatsoever. No revenue bonds or debt obligations of any special purpose local government acting pursuant to the PACE Statute, shall ever pledge or imply any pledge that the County or any Participating Municipality shall be obligated to pay the same or the interest thereon, nor state or imply that such obligations payable from the full faith and credit or the taxing power of the state, the County, or any Participating Municipality within the County as a result of the Ordinance or this Agreement. The issuance of bonds by the PACE Local Government under the provisions of law, the PACE Local Government's governance documents, or any agreement or resolution shall not, as the result of the Ordinance or this Agreement, be deemed in any manner, directly or indirectly or contingently, to obligate the County and Participating Municipalities, to levy or to pledge any form of ad valorem taxation or other county or municipal revenues or to make any appropriation for their payment whatsoever.

Section 9. Program Requirements:

The Parties agree that the PACE Program to be offered in the unincorporated County and Participating Municipalities will be governed by the Ordinance, the PACE Statute, and this Agreement, including the following additional program requirements:

- a. The PACE Local Government will inform every property owner that by law these non-ad valorem assessments must be collected pursuant to sections 163.08, 197.3632, and 197.3635, Florida Statutes and that the assessment shall not be subject to discount for early payment; and, are not imposed by the County, any Participating Municipality, the property appraiser, or the tax collector, and that they are levied and imposed solely by the PACE Local Government, and only then upon voluntary application of the private property owner as expressly authorized by the PACE Statute and the Ordinance. The following statement, in substantially the following form, must be included on the Notice to Property Owner:
The Assessment will appear on the property tax bill, and will not be eligible for early payment discounts.
- b. The PACE Local Government will also inform every property owner that the PACE Local Government will share data pertaining to the details of their PACE project and assessment with government entities for the purpose of evaluating program demand, benefits, and consumer protections. An option for the property owner to opt out of sharing personal data may be provided, but they must be informed that

- data will still be provided in aggregate format and on an individual level as necessary for the purposes of the assessment and TRIM notice and property tax bill.
- c. The PACE Local Government shall not approve any PACE Assessment on properties that are subject to a reverse mortgage.
 - d. The PACE Local Government shall include in their contractor Code of Conduct a requirement that approved contractors must maintain proof of their license/certification, insurance, and business tax receipts (occupational license) and provide to property owners if requested. The PACE Local Government must also give the property owner the document outlining the complaint process covering the PACE Program and participating contractors or a summary sheet and a web link to a full document.
 - e. Recognizing that there may be ongoing consequences and risk that some lenders may require full repayment of the special assessments upon resale or refinancing, in addition to the disclosures and protections required in the Ordinance, the PACE Local Government shall provide assistance to any Property Owner that faces such a requirement.

Section 10. Attorney Opinion Letter. In 2012, the PACE Local Government validated \$500,000,000 of bonds (the "Validated Bonds") which were used to finance the PACE Local Government's PACE Program. By 2017, the PACE Local Government had used substantially all of the Validated Bonds. In July 2017, the PACE Local Government authorized an additional \$2,000,000,000 of bonds (the "Additional Bonds"). As of mid-January 2018, the PACE Local Government started using the Additional Bonds to fund the Program. The PACE Local Government hereby represents that the bond documents used for the Additional Bonds are substantially the same as those used for the Validated Bonds. As a condition precedent to the authorization to operate a PACE Program in Sarasota County under the terms of this Agreement, the PACE Local Government shall deliver to the County an "Attorney Opinion Letter of Bond Counsel" upon execution of this Agreement directed to the County stating that, based on such firm's review of state law and its preparation of the documents for the Additional Bonds, the Program complies with all existing applicable state law.

Section 11. Boundaries. To help finance the costs of Qualifying Improvements for those individual properties, the PACE Local Government is authorized, on a non-exclusive basis, to levy voluntary, non-ad valorem special assessments on the benefitted properties within the geographical boundaries of unincorporated County and within the Participating Municipalities, pursuant to their respective opt-in ordinance or resolution. Those properties receiving financing for Qualifying Improvements shall be assessed from time to time, in accordance with the PACE Statute, the Ordinance, the opt-in ordinance or resolution of each Participating Municipality and other applicable law. Notwithstanding termination of this Agreement, those properties that have received financing for Qualifying Improvements shall continue to be a part of the PACE Local Government's Program until such time the financial obligations owed pursuant to all properly

signed PACE Financing Agreements have been satisfied, released, or otherwise resolved.

Section 12. Financing Agreement. The Parties agree that the PACE Local Government may enter into a PACE Financing Agreement, pursuant to the PACE Statute and the Ordinance with property owner(s) who obtain financing through the PACE Local Government within the geographical boundaries of unincorporated County and Participating Municipalities. Notwithstanding any other provision in this Agreement, rates, fees and charges charged by or through the PACE Local Government shall not exceed those contained in Chapter 687, Florida Statutes.

Section 13. Responsibilities of the PACE Local Government; Indemnification; Liability.

- a. All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the Parties, and Participating Municipalities, shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Agreement.
- b. The County, Participating Municipalities, and the PACE Local Government are and shall be subject to the limitations of liability provided in Section 768.28, Florida Statutes, and any other relevant provisions of Florida law governing sovereign immunity. Nothing in this Agreement is intended to waive or alter the sovereign immunity of any of the Parties hereto including, but not limited to the express monetary limits of liability set forth in Section 768.28, Florida Statutes. Pursuant to the PACE Statute and this Agreement, the local governments who are either the incorporators or members of the PACE Local Government or any subsequently served or participating local government shall not be held jointly liable for the torts of the officers or employees of the PACE Local Government, or any other tort attributable to the PACE Local Government, and the PACE Local Government alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes.
- c. To the extent provided by law, the PACE Local Government agrees to protect, defend, reimburse, indemnify and hold the County and Participating Municipalities, their agents, employees and elected officers ("Indemnified Parties"), and each of them free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature (collectively, a "Claim") whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault, whether active or passive, of the PACE Local Government, its agents, employees, or officials or anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. The PACE Local Government's aforesaid indemnity and hold harmless obligations, or portions or

applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the County or Participating Municipalities, its respective agents, servants, employees or officers, nor shall the liability limits set forth in Section 768.28, Florida Statutes, be waived. Nothing in this Agreement is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. In the event any Claim is brought against an Indemnified Party, the PACE Local Government shall, upon written notice from an Indemnified Party, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

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

Section 14. Agreements with Tax Collector, Property Appraiser and Municipalities.

- a. The PACE Local Government acknowledges that the County has no authority to bind the County Tax Collector and the County Property Appraiser, and the PACE Local Government will be required to enter into separate agreement(s) therewith, which shall establish the fees (if any) to be charged by the Tax Collector and Property Appraiser for the collection or handling of the Program's special assessments. The PACE Local Government also acknowledges that until an incorporated municipality in the County has adopted an ordinance or resolution authorizing the PACE Program to be implemented within its respective jurisdiction, the PACE Local Government shall have no authority to operate the Program within such municipality.
- b. As a condition precedent to the authorization to operate a PACE Program under the terms of this Agreement within Sarasota County, the PACE Local Government must enter into separate written agreements as required by Section 197.3632(2), Florida Statutes, for the reimbursement and compensation of tax collectors and property appraisers as prescribed by law.
- c. The PACE Local Government, as a duly authorized separate legal entity, not the County nor Participating Municipalities, is the local government imposing the subject non-ad valorem assessments and shall be solely responsible for compliance

with all applicable law and all matters associated with origination, funding, financing, administration, and collection (in concert with the uniform method of collection set forth in Section 197.3632, Florida Statutes) of each of the resulting non-ad valorem assessments.

- d. The PACE Local Government, as a local government created and authorized by general law to impose the Special Assessments, is also required by general law to use the uniform method of collecting such Special Assessments pursuant to Section 197.3632, Florida Statutes, and shall be solely responsible for professionally coordinating all interface with the tax collector and property appraiser, and minimize to the greatest extent reasonably possible, the time, effort and attention of these public officials to accomplish the public purposes and direction of the PACE Statute.

Section 15. Resale or Refinancing of a Property. The PACE Local Government recognizes that some lenders may require full repayment of the Program's special assessments upon resale or refinancing of a property subject to the Program's special assessments. The PACE Local Government agrees to provide written disclosure of this matter to all property owners that may utilize the Program, as outlined in the Ordinance.

Section 16. Reporting. In addition to the reporting requirements in the Ordinance, the PACE Local Government shall encourage participants conducting energy improvements to complete a utility information release form to enable reporting on their actual energy use and energy cost after completion of their respective project(s). For those participants that agree to do so, the PACE Local Government shall provide the PACE Program Coordinator with the signed release form as part of their quarterly metrics reporting. The PACE Local Governments shall encourage participants conducting hurricane improvements to agree to participate in an annual survey conducted by the County to collect information on insurance cost savings after completion of the project. If the PACE Local Government prefers, they can send the link that the County provides directly to the customers. The PACE Program Coordinator is authorized to defer these additional requirements for a term up to one year from the date of the Authorization Letter if the PACE Local Government demonstrates that it does not have the ability to comply as of the date of the Authorization Letter and that it would create an unreasonable hardship to immediately modify its procedures and documents to comply. The PACE Local Government shall provide the PACE Program Coordinator with a copy of the document(s) provided to the Property Owner to comply with this section. Full compliance will be required upon the expiration of any such deferral period unless the PACE Program Coordinator approves a further deferral or an alternative method of compliance.

Section 17. Responsive Communications. The PACE Local Government will promptly respond in writing to all written communications, including email, from the County. Such response shall be deemed prompt if made in a reasonable and complete manner within ten (10) days of receipt of any such written communication. This paragraph shall not be construed as containing any obligation for the County to receive complaints or concerns about the PACE Local Government's or its designee's

performance, policies, systems, or procedures. The County will refer all such complaints or concerns directly to the PACE Local Government for a response. The PACE Local Government shall follow the customer service procedures as outlined in the Ordinance.

Section 18. Term of Agreement; Duration of Agreement; No Exclusivity.

- a. The term of this Agreement shall commence upon recording of this Agreement with the Sarasota County Clerk of Court.
- b. Either party may at any time terminate this Agreement upon sixty (60) days written notice. Provided, however, no termination of this Agreement shall preclude the PACE Local Government from exercising its power or authority to collect any of the assessments owed pursuant to a properly signed and performed PACE Financing Agreement. The party that terminates this Agreement will be responsible for filing a notice of such termination with the Sarasota County Clerk of Court.
- c. The applicable provisions, authority and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the Program and responsibilities of the PACE Local Government then underway shall remain in effect and survive any termination until such time as those obligations and all associated remaining responsibilities of the PACE Local Government are fulfilled (including, but not limited to, the collection of assessments in due course). Provided, however, the PACE Local Government's powers employed and exercised shall be non-exclusive, and the County, pursuant to the Ordinance, is free to and reserves the right to enter into or otherwise encourage or commence any other special purpose local government acting pursuant to Section 163.08, Florida Statutes to administer a PACE Program within its jurisdiction

Section 19. Consent. This Agreement and the Ordinance shall be considered the County's consent for the PACE Local Government to implement the PACE Program within unincorporated County pursuant to the PACE Statute and the Ordinance.

Section 20. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

County: Sarasota County
ATTN: County Administrator
1660 Ringling Blvd.
Sarasota, Florida 33236

With a copy to: Sarasota County
ATTN: County Attorney
1660 Ringling Blvd., Rm. 250
Sarasota, Florida 33236

PACE Local
Government: Paul Winkeljohn, Executive Director
Green Corridor PACE District
5385 Nob Hill Road
Sunrise, Florida 33351

With a copy to: Program Counsel for the PACE Local Government
Chad Friedman, Esq.
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce De Leon Boulevard, Suite 700
Coral Gables, Florida 33143

Section 21. 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 with the same formality and of equal dignity herewith by the Parties hereto.

Section 22. Joint Effort. The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

Section 23. Merger. This 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 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.

Section 24. Assignment. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Party hereto.

Section 25. Records. The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

Section 26. No Third Party Beneficiaries. It is the intent and agreement of the Parties that this Agreement is solely for the benefit of the Parties and Participating Municipalities under the Ordinance and no other party or entity shall have any rights or privileges hereunder.

Section 27. Severability. In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

Section 28. Administrator Indemnification; Additional Insured.

- a. The PACE Local Government will promptly request and obtain from its administrator, Ygrene Energy Fund, and any subsequent administrator, a separate indemnification agreement as to its actions and activities on behalf of the PACE Local Government concerning all of the subject matter of this Agreement for the benefit of the County and Participating Municipalities. The form of the indemnification agreement must be approved by the County Attorney's Office, prior to the administrator assuming responsibilities for the PACE Local Government pursuant to this agreement.
- b. The PACE Local Government shall promptly request and obtain from its administrator, Ygrene Energy Fund and any subsequent administrator, and shall provide the County with a copy of a certificate showing the County as an additional insured for the coverages the PACE Local Government requires of its administrator, which shall be at a minimum:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability	\$1,000,000 per occurrence \$1,000,000 aggregate
Commercial Auto Liability	\$1,000,000 combined single limit
Professional Liability (E&O)	\$1,000,000 per occurrence \$2,000,000 aggregate

- c. The statement or certificate evidencing the County is named as an additional insured will include a standard insurance industry statement prohibiting cancellation, termination, or modification of the policy or a reduction of coverage without first giving the County (as an additional insured) at least ten (10) days prior written notice of such proposed action.

Section 29. Insurance by the PACE Local Government. Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statute, the PACE Local Government acknowledges that it is self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with limits of liability at \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the PACE Local Government maintains third-party Commercial General Liability and

Business Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28 Florida Statute, the PACE Local Government shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The PACE Local Government agrees to maintain or to be self-insured for Workers' Compensation & Employer's Liability insurance in accordance with Section 440, Florida Statutes. When requested, the PACE Local Government shall agree to provide Certificate of Insurance evidencing the insurance coverage requirements set forth herein or an affidavit of self-insurance demonstrating the insurance coverage required herein. Compliance with the foregoing requirements shall not satisfy, modify or otherwise relieve the PACE Local Government of its indemnification liability and obligations under this Agreement.

- Section 30. Dispute Resolution. In the event of a dispute between the PACE Local Government and the County under this Agreement, the PACE Local Government Manager and the County Administrator, or their respective designees, shall review such dispute and options for resolution. The joint decision of the PACE Local Government Manager and the County Administrator regarding the dispute shall be final. In the event the PACE Local Government Manager and County Administrator are unable to agree, then the matter shall be referred to the respective Commissions, who may jointly elect to hold a joint meeting in Sarasota County. This process shall substitute for the dispute resolution process set forth in Chapter 164 of the Florida Statutes.
- Section 31. Venue. The venue of any legal or equitable action that arises out of or relates to this Agreement shall be in the appropriate state court in Sarasota County, Florida. In any such action, Florida law shall apply. BY ENTERING INTO THIS AGREEMENT, THE PACE LOCAL GOVERNMENT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF THE PACE LOCAL GOVERNMENT FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE COUNTY OF VIOLATION OF THIS SECTION, THE PACE LOCAL GOVERNMENT SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE COUNTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.
- Section 32. Recording; Effective Date. This Agreement shall be recorded by the PACE Local Government with the Clerk of the Circuit Court in Sarasota County, Florida and shall become effective upon such filing.
- Section 33. Delegation of Duty. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or city officers.

Section 34. Equal Opportunity Provision. Neither the PACE Local Government nor its respective, agents, successors, or assigns shall practice discrimination on the basis of race, age, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information under any activity carried out by the performance of this Agreement.

Section 35. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Non-Exclusive Interlocal Agreement to be duly executed and entered into as of the date first above written.

ATTEST:

KAREN E. RUSHING, Clerk of
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners of
Sarasota County, Florida

By: _____
Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA**

By: _____
Chair

Date: _____

Approved as to form and correctness:

By: _____
County Attorney

ATTEST:

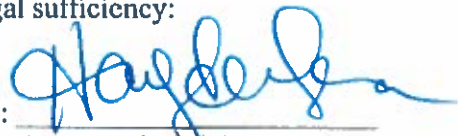
By: 
Secretary

**Green Corridor Property Assessment Clean
Energy (PACE) District**

By: 
Paul Winkeljohn, Executive Director

Date: 6/21/18

Approved as to form and
legal sufficiency:

By: 
Attorney for PACE Local Government
Weiss Serota Helfman Cole & Bierman, P.L.

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

**INDEMNIFICATION AGREEMENT BETWEEN YGRENE ENERGY FUND
FLORIDA, LLC AS ADMINISTRATOR FOR THE GREEN CORRIDOR AND
SARASOTA COUNTY, FLORIDA**

This Indemnification Agreement (the "Agreement") is entered into May 30, 2018 by and between Ygrene Energy Fund Florida, LLC ("Ygrene"), administrator for the Green Corridor ("Green Corridor"), and Sarasota County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

WHEREAS, Section 163.08, Florida Statutes, ("the PACE Statute") authorizes Local Governments to finance defined Qualifying Improvements with payments being secured through the use non-ad valorem assessments; and

WHEREAS, Green Corridor is a separate legal entity created pursuant to Section 163.01(7), Florida Statutes, for the purposes of financing Qualifying Improvements under the PACE Statute; and

WHEREAS, Ygrene is the administrator for Green Corridor's PACE Program in the County; and

WHEREAS, as a material inducement to and condition of the County allowing Green Corridor to operate a PACE program within Sarasota County, Green Corridor is required to protect, defend, reimburse, indemnify and hold the County and any Participating Municipalities free and harmless from and against all claims related to Green Corridor's operation of a PACE Program in Sarasota County; and

WHEREAS, as a material inducement to and condition of the County allowing Green Corridor to operate a PACE program within Sarasota County, Green Corridor's Administrator is also required to protect, defend, reimburse, indemnify and hold the County and any Participating Municipalities free and harmless from and against all claims related to the Administrator's actions related to its actions and activities the operation of a PACE Program; and

NOW, THEREFORE, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. **Indemnification.** Ygrene shall protect, defend, reimburse, indemnify and hold the County, its officers, employees, agents and instrumentalities (hereinafter referred to as the "Indemnified Parties") free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, attorneys' fees, costs of defense, or other expense of whatsoever kind or nature (collectively a "Claim") which the Indemnified Parties may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to, resulting from, or in any way connected with the actions or inactions of Ygrene, its employees, agents, servants,

partners, principals, administrators, subcontractors, or agents in operation of a PACE Program in Sarasota County. Ygrene shall pay all Claims and losses in connection therewith and shall investigate and defend all Claims, suits or losses in connection therewith and shall investigate and defend the Indemnified Parties against all Claims, suits or actions of any kind or nature, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue therefrom. Ygrene expressly understands and agrees that the provisions of the insurance required below shall in no way limit, modify or satisfy the responsibility to indemnify, keep and save harmless and defend the Indemnified Parties as herein provided. In the event any Claim is brought against an Indemnified Party, Ygrene shall, upon written notice from an Indemnified Party or Green Corridor, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

3. Insurance. Prior to the commencement of any efforts related to the operation of a PACE Program in Sarasota County, Ygrene shall provide the County with a copy of a certificate showing the County as an additional insured for under all policies the coverages the PACE Local Government requires of its administrator, which shall be at a minimum:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability	\$1,000,000 per occurrence \$1,000,000 aggregate
Commercial Auto Liability	\$1,000,000 combined single limit
Professional Liability (E&O)	\$1,000,000 per occurrence \$2,000,000 aggregate

4. The statement or certificate evidencing the County is named as an additional insured will include a standard insurance industry statement prohibiting cancellation, termination, or modification of the policy or a reduction of coverage without first giving the County (as an additional insured) at least ten (10) days prior written notice of such proposed action.
5. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in conjunction with this Agreement shall be in the state courts in and for Sarasota County. The Parties hereby expressly agree that in the event of litigation regarding this Agreement, any and all rights to jury trial are waived.
6. The term of this Agreement shall begin upon execution by both Parties and continue so long as Ygrene is conducting activities related to the operation of a PACE Program in Sarasota County.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement each on this date noted below.

ATTEST:

KAREN E. RUSHING, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners of
Sarasota County, Florida

By: _____
Deputy Clerk

Approved as to form and correctness.

By: _____
County Attorney

Attest & Approved as to form and legal
sufficiency.

By:  _____
Sven Kaludzinski
General Counsel

Board of County Commissioners of
Sarasota County, Florida

By: _____
Chair

Date: _____

Ygrene

By:  _____
Rocco Fabiano
President

Date: May 30, 2018

RESOLUTION NO. 2018-____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN SARASOTA COUNTY AND FLORIDA PACE FUNDING AGENCY FOR A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; APPROVING AN INDEMNIFICATION AGREEMENT BETWEEN SARASOTA COUNTY AND COUNTERPOINTE ENERGY SOLUTIONS (FL) LLC FOR THE BENEFIT OF SARASOTA COUNTY; AND DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE AGREEMENTS WITH SUBSEQUENT ADMINISTRATORS OF FLORIDA PACE FUNDING AGENCY FOR THE BENEFIT OF SARASOTA COUNTY, AND EXERCISE CERTAIN PROVISIONS IN THE AGREEMENTS.

WHEREAS, on October 11, 2017, the Board of County Commissioners (“Board”) adopted Ordinance 2017-051 (the “PACE Program Ordinance”); and

WHEREAS, the PACE Program Ordinance provides that PACE Local Governments must enter into an interlocal agreement with the County prior to receiving authorization to operate and administer their PACE Program within Sarasota County; and

WHEREAS, the operation of the PACE Program in Sarasota County by the Florida PACE Funding Agency will be done entirely without cost, liability or burden to Sarasota County; and

WHEREAS, the County is not joining or partnering with the Florida PACE Funding Agency under the terms of the Interlocal Agreement but is merely providing the Florida PACE Funding Agency with the limited, non-exclusive ability to operate a PACE Program in compliance with the terms of the PACE Act, the PACE Program Ordinance, and the Interlocal Agreement within Sarasota County at its own expense; and

WHEREAS, allowing the PACE Local Governments to operate their PACE Program in conformity with the terms of the PACE Act, the PACE Program Ordinance and the Interlocal Agreement is in the best interest of the citizens of Sarasota County;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, THAT:

1. The Interlocal Agreement, in substantially the form attached hereto as Attachment A, is hereby approved and the Chair is authorized to sign the Interlocal Agreement.
2. The Indemnification Agreement between the County and Counterpointe Energy Solutions (FL) LLC, as the administrator of Florida PACE Funding Agency, in substantially the form attached hereto as Attachment B, is hereby approved and the Chair is authorized to sign the Indemnification Agreement.
3. The County Administrator or designee is authorized to execute Indemnification Agreements with subsequent administrators of Florida PACE Funding Agency, in a form approved by the Office of the County Attorney, to provide that such subsequent administrator of Florida PACE Funding Agency shall indemnify and hold harmless the County.
4. This Board authorizes the County Administrator or designee to exercise the provisions as provided in the above-mentioned Agreements.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS THIS
____ DAY OF _____, 20__.

BOARD OF COUNTY COMMISSIONERS OF
SARASOTA COUNTY, FLORIDA

By: _____
CHAIR

ATTEST:

Karen E. Rushing, Clerk of the Circuit Court
and Ex-Officio Clerk to the Board of County
Commissioners of Sarasota County, Florida

By: _____
DEPUTY CLERK

**INTERLOCAL AGREEMENT BETWEEN THE
FLORIDA PACE FUNDING AGENCY AND SARASOTA COUNTY AUTHORIZING
THE OPERATION OF A NON-EXCLUSIVE PACE PROGRAM**

This non-exclusive Interlocal Agreement ("Agreement") is made and entered into by and between Sarasota County, Florida, ("County"), and the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, established through an interlocal agreement pursuant to Section 163.01(7), Florida Statutes, ("Agency"), regarding the non-exclusive operation of a PACE program within the County. The County and the Agency are sometimes referred to as a "Party" and collectively as the "Parties".

RECITALS

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

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

WHEREAS, Section 163.08, Florida Statutes, ("PACE Act") authorizes financing of Qualifying Improvements through agreements for property to be subject to a voluntary, non-ad valorem special assessment process as the repayment mechanism, commonly known as Property Assessed Clean Energy ("PACE Program"); and

WHEREAS, the Agency was created as a separate legal entity by interlocal agreement between Flagler County, Florida and the City of Kissimmee, Florida pursuant to Section 163.01(7), Florida Statutes, to operate a PACE Program and finance qualifying improvements, including energy conservation and efficiency, renewable energy, and wind resistance improvements, in accordance with the PACE Statute, as may be amended; and

WHEREAS, the Sarasota County Board of County Commissioners has adopted Ordinance No. 2017-051, entitled the Property Assessed Clean Energy (PACE) Program Ordinance ("Ordinance"), which is incorporated herein by reference and authorizes a PACE Program to be administered within unincorporated Sarasota County by those PACE Local Governments that have entered into an interlocal agreement with the County and provides for certain consumer protections and requirements for PACE Local Governments; and

WHEREAS, the Parties have determined that entering into this Agreement is in the best interest and welfare of the property owners within the County.

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

ARTICLE I

DEFINITIONS AND CONSTRUCTION

SECTION 1.01. DEFINITIONS. Capitalized words used in this Agreement shall have the same meaning as set forth in the Ordinance, if defined therein, or as otherwise expressly defined in this Agreement, including but not limited to the following:.

"Agency" shall mean the Florida PACE Funding Agency, a separate legal entity and public body and special purpose local government.

"Authorization Letter" shall mean written notice from the Pace Program Coordinator pursuant to the term of this Agreement that expressly informs the Agency that it may begin to offer the Agency PACE Program to Property Owners within the unincorporated area of the County and within the Participating Municipalities.

"Board of Directors" shall mean the governing body of the Agency.

"Charter" shall mean the separate interlocal agreement between Flagler County, Florida and the City of Kissimmee, Florida, which created and established the Agency, including any amendments, supplements or restatements thereto executed and delivered in accordance with the terms thereof.

"County" shall mean Sarasota County, a political subdivision of the State of Florida.

"Ordinance" shall mean Sarasota County Ordinance No. 2017-051, entitled the Property Assessed Clean Energy (PACE) Program Ordinance, as codified, and as the same may be amended from time to time.

"PACE" is an acronym for the colloquial financing concept commonly referred to as 'property assessed clean energy'; in Florida, the name or acronym PACE is derived from the provisions of general law related to financing energy efficiency, renewable energy and wind resistance improvements addressed by the Ordinance, and encouraged by the Legislature in Section 163.08, Florida Statutes, which is entitled "Supplemental authority for improvements to real property."

"PACE Act" sometimes called the "Supplemental Act", shall refer to Section 163.08, Florida Statutes, as may be amended from time to time.

"Participating Municipalities" shall mean all municipalities within Sarasota County that have adopted a resolution or ordinance authorizing the respective jurisdiction to be included in the application of the Ordinance .

"Property Owner" shall mean, singularly or collectively as the context requires, all of the record owners of real property subject to a PACE Financing Agreement with the Agency.

"Special Assessments" shall mean the non-ad valorem assessments authorized by the PACE Statute and levied by the Agency on property owned by a Property Owner who has entered into a PACE Financing Agreement to fund the costs of Qualifying Improvements.

SECTION 1.02 CONSTRUCTION.

(A) The Recitals set forth above are hereby confirmed and incorporated herein by reference.

(B) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date this Agreement is executed; and the term "hereafter" shall mean after the date this Agreement is executed.

(C) Each recital, covenant, agreement, representation and warranty made by a party herein shall be fairly deemed to be material and to have been relied on by the other party to this Agreement. Both parties have independently reviewed this Agreement with their own counsel and covenant that the provisions hereof shall not be construed for or against either the County or the Agency by reason of authorship.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the texts of the several articles and sections of this Agreement and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

SECTION 1.04. FINDINGS. It is hereby ascertained, determined and declared that:

(A) The Florida Legislature has determined there is a compelling state interest in enabling private property owners to voluntarily finance Qualifying Improvements with PACE Local Governments. The actions authorized by the PACE Statute, including the financing of Qualifying Improvements through the execution of financing agreements with the PACE Local Governments and the related imposition of a special assessment, have been determined by the Legislature as reasonable and necessary for the prosperity and welfare of the State, its property owners and inhabitants.

(B) The Agency has provided to the County a binding Final Judgment (Florida PACE Funding Agency v. State of Florida, et al, No. 2011-CA-1824, Circuit Court 2nd Judicial Circuit (Aug. 25, 2011) and its governance Charter which both expressly evidence the Agency is distinct from the County and that the County shall not in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency or its agents, and the Agency has no independent power to obligate the County or any Participating Municipality.

(C) Nothing in this Agreement does, nor shall be construed to empower the Agency to obligate or impose any liability upon the County, in any manner.

(D) The availability of the non-exclusive PACE Program offered by the Agency (without cost to, assumption of liability by or demand upon the credit of the County or any

Participating Municipality) and the voluntary participation in the Agency's PACE Program by property owners provides an alternative financing option to private property owners who choose to finance and repay the costs to provide and install Qualifying Improvements.

(E) The Agency is authorized by law and pursuant to the provisions of the PACE Statute and Ordinance to undertake this financing service and associated activities to interested property owners.

ARTICLE II

IMPLEMENTATION OF A NON-EXCLUSIVE PACE PROGRAM

SECTION 2.01. AUTHORIZATION TO OPERATE.

(A) This Agreement authorizes the Agency to administer a non-exclusive PACE Program within the unincorporated County and any Participating Municipalities that have adopted an ordinance or resolution opting into the PACE Program in accord with applicable general law, the Ordinance and the terms of this Agreement. This Agreement is limited to the named parties only and shall not be assigned, in whole or in part, without the written consent of the other Party hereto.

(B) Before the Agency is authorized to enter into any PACE Financing Agreements within Sarasota County, they must receive an Authorization Letter from the PACE Program Coordinator. In order to receive the authorization letter from the PACE Program Coordinator, the Agency must provide proof that their PACE program design meets the requirements of the PACE Statute, Ordinance, and this Agreement. In order to do so they must, at a minimum, provide copies of the following materials along with an outline of specific references to sections that meet the requirements of the Ordinance and this Agreement:

- i. PACE Financing Agreement (template)
- ii. Notice to Property Owner (template)
- iii. Eligible Measures List
- iv. Contractor Code of Conduct
- v. Contractor training materials and schedule
- vi. Customer Service: email, phone, website, document outlining complaint process
- vii. Eligibility criteria, including additional program standards for residential properties.
- viii. Rates, fees and charges charged by or through the PACE Local Government
- ix. Agreements with the Tax Collector and Property Appraiser

Additionally, the Agency shall annually provide updated copies of these materials being utilized on the annual anniversary of the execution of this Agreement. Failure of the materials to adhere to requirements of the Statute and the Ordinance, as the same may be amended from time to time, as well as this Agreement shall result in suspension or termination in accordance with Section 38-332 of the Sarasota County Code or other enforcement action as appropriate.

SECTION 2.02. CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED. The Agency shall not be empowered or authorized in any manner to create a debt against the County or any Participating Municipality and may not pledge the full faith and credit of the County or any Participating Municipality. All revenue bonds or debt obligations of the Agency shall contain on the face thereof a statement to the effect that the State, County, or any Participating Municipality, shall not be obligated to pay the same or the interest and that they are only payable from Agency revenues or the portion thereof for which they are issued and that neither the full faith and credit nor the taxing power of the County, or any Participating Municipality, is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue or refunding bonds under the provisions of law, the Charter Agreement, or any other agreement shall not directly or indirectly or contingently obligate the County, or any Participating Municipality, to levy or to pledge any form of ad valorem taxation or other County, or any Participating Municipality, revenues or to make any appropriation for their payment.

SECTION 2.03. RATES, FEES AND CHARGES.

Notwithstanding any other provision in this Agreement, rates, fees and charges charged by or through the PACE Local Government shall not exceed those contained in Chapter 687, Florida Statutes.

SECTION 2.04. PACE PROGRAM REQUIREMENTS

The Parties agree that the PACE Program to be offered by Agency in the unincorporated County and Participating Municipalities will be governed by the Ordinance, the PACE Statute, and this Agreement, including the following additional program requirements:

(A) The Agency will inform every Property Owner that by law these non-ad valorem assessments must be collected only pursuant to Sections 163.08, 197.3632, and 197.3635, Florida Statutes, including that the assessment shall not be subject to discount for early payment; and, are not imposed by the County, any participating municipality, the property appraiser, nor the tax collector, and that they are levied and imposed solely by the Agency, and only then upon voluntary application of the private property owner as expressly enabled, authorized and encouraged by the PACE Statute, as well as the Ordinance, to accomplish a compelling state interest with the Agency's local government assistance. The following statement, in substantially the following form, must be included on the Notice to Property Owner: **The Assessment will appear on and must be paid as part of the property tax bill, and will not be eligible for early payment discounts.**

(B) The Agency will also inform every Property Owner that, to the extent permitted by applicable law, the Agency will share data pertaining to the details of their PACE project and assessment with government entities for the purpose of evaluating program demand, benefits,

and consumer protections. An option for the property owner to opt out of sharing personal data may be provided, but they must be informed that data will still be provided in aggregate format and on an individual level as necessary for the purposes of the assessment and TRIM notice.

(C) The Agency shall include in their contractor Code of Conduct a requirement that approved contractors must maintain proof of their license/certification, insurance, and business tax receipts (occupational license) and provide to the property owners if requested. The Agency will provide the document outlining the complaint process covering the PACE Program and participating contractors or a summary sheet including a web link to the full document.

(D) Recognizing that there may be ongoing consequences and risk that some lenders may require full repayment of the special assessments upon resale or refinancing, in addition to the disclosures and protections required in the Ordinance, the Agency shall provide assistance to any Property Owner that faces such a requirement.

(E) The PACE Program Coordinator is authorized to defer the following additional Energy Star and solar online monitoring requirements for a term up to one year from the date of the Authorization Letter if the Agency demonstrates that it does not have the ability to comply as of the date of the Authorization Letter and that it would create an unreasonable hardship to immediately modify its procedures and documents to comply. Full Compliance will be required upon the expiration of any deferral period.

- i. If the Qualifying Improvement falls within an eligible category under ENERGY STAR, the product must be ENERGY STAR Certified in order to be considered as a Qualifying Improvement eligible for the PACE Program.
- ii. Unless exempted by the PACE Program Coordinator for good cause, any solar photovoltaic system installed shall have an online monitoring system for maintenance and production monitoring purposes, provided the residence or business has appropriate connectivity.
- iii. The Agency shall not approve any PACE Assessment on properties that are subject to a reverse mortgage.

(F) Any financing for Qualifying Improvements pursuant to the PACE Statute shall be conducted solely between the Agency and an interested private property owner, done pursuant to general law and the Ordinance, and shall not be construed to be the legal, financial or administrative responsibility of the County or participating municipalities in any manner whatsoever.

(G) This Agreement provides for accomplishment of a compelling state interest, to finance energy conservation and efficient, renewable energy, and wind resistance improvements to real property. Even though this Agreement affords service to interested private property owners who voluntarily desire to take advantage of and use the financing and supplemental authority for improvements to real property described in the PACE Statute, all such activities must be independently accomplished without cost, liability, or any demand upon the County's and Participating Municipalities' credit or use of significant staff time or resources.

(H) In no event shall the County or Participating Municipalities be held individually or jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and the Agency shall be solely liable for any torts attributable to it or for torts of its officers, employees or agents, to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. Nothing in this Agreement shall be

construed to inure to the benefit of any third-party or for allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(I) By law, the Agency shall at all times be a qualified, distinct and separate special purpose local government funding and financing instrumentality separate and apart from the County and Participating Municipalities and separate from their treasuries; and, neither the County nor Participating Municipalities, shall be liable for the actions of or in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, or its successor in function, and neither the Agency nor any agent, employee, officer or official of same shall have any authority or power to otherwise represent or obligate the County or Participating Municipalities in any manner as a result of this Agreement.

(J) The County and Participating Municipalities shall not incur nor ever be requested to authorize any obligations secured by special assessments associated with Qualifying Improvements imposed by the Agency pursuant to the PACE Statute. No special purpose local government acting pursuant to the PACE Statute, the Ordinance, or this Agreement shall be empowered or authorized in any manner to create a debt against the state, the County, or Participating Municipalities, and shall not pledge the full faith and credit of the state, or the County, or Participating Municipalities, in any manner whatsoever. No revenue bonds or debt obligations of the Agency, shall ever pledge or imply any pledge that the County, or Participating Municipalities, shall be obligated to pay the same or the interest thereon. Nor shall the Agency state or imply that such obligations payable from the full faith and credit or the taxing power of the state, the County, or Participating Municipalities. The issuance of revenue or refunding bonds by the Agency under the provisions of law, the Agency's charter or governance documents, or any other agreement or resolution shall not be deemed in any manner, directly or indirectly or contingently, to obligate the County or Participating Municipalities to levy or to pledge any form of ad valorem taxation or other county or municipal revenues or to make any appropriation for their payment whatsoever.

(K) Upon execution by the respective property owners and the Agency, the statutorily required PACE Financing Agreement or a summary governmental notice or memorandum thereof shall be recorded by the Agency in the Official Records within five (5) days after execution of the agreement, pursuant to general law and the Ordinance. This notice shall provide constructive notice that the non-ad valorem assessment to be levied on the subject property constitutes a lien of equal dignity to ad valorem taxes and assessments.

(L) The Agency shall timely provide to the property appraiser and tax collector the required information in the form designated by the property appraiser and tax collector pursuant to the agreements to be entered into between the Agency and the property appraiser and tax collector. This shall include the most recent property identification number and annual amount of the non-ad valorem assessment along with such other information as the property appraiser and tax collector shall require.

(M) The Agency is solely responsible for the local government role in complying with the requirements of Sections 197.3632 and 163.08, Florida Statutes.

(N) As a condition precedent to the authorization to operate a PACE Program under the terms of this Agreement within Sarasota County, the Agency must comply with the statutory responsibility to enter into separate written agreements as required by Section 197.3632(2), Florida Statutes, for the reimbursement and compensation of tax collectors and property appraisers, and allow for payment of such amounts by deduction as the non-ad valorem assessments are collected. The Agency, as a duly authorized special purpose local government shall be solely responsible for timely and professionally coordinating all interface with the tax collector or property appraiser, and minimize to the greatest extent reasonably possible the time, effort and attention of these public officials and offices.

(O) The Agency is the local government imposing the subject non-ad valorem assessments arising from a Property Owner's voluntary participation in the PACE Program, not the County nor Participating Municipalities and shall be solely responsible for compliance with all applicable law and all matters associated with origination, funding, financing, administration, and collection (in concert with the uniform method of collection) of each of the resulting non-ad valorem assessments. Additionally, the collection and distribution of any non-ad valorem assessments imposed by the Agency are purely ministerial acts by the Tax Collector pursuant to state law.

SECTION 2.05. ASSESSMENTS.

(A) The Agency will take such actions as are necessary for the lawful levy of the Special Assessments against all lands and properties specially benefitted by the acquisition, construction and financing of Qualifying Improvements. If any assessment made with respect to any property shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Agency shall be satisfied that any such assessment is so irregular or defective that the same cannot be enforced or collected, the Agency will take all necessary steps to cause a new assessment to be made for the whole or any part of any Qualifying Improvements or against any property specially benefitted by such improvement, to the extent and in the manner provided by law.

(B) The County and Participating Municipalities shall not incur or ever be requested to authorize any obligations secured by Special Assessments associated with Qualifying Improvements imposed by the Agency.

(C) The obligations of the Agency, however created, shall not be or constitute obligations or an indebtedness of the County, or participating municipalities. Furthermore, the obligations of the Agency shall not be or constituted "bonds" of the County or any Participating Municipality within the meaning of the Constitution of Florida or the Charter of Sarasota County. Neither the Agency nor any holder of any debt obligation issued by the Agency shall ever have the right to compel the exercise of the ad valorem taxing power of the County, or Participating Municipalities, or other taxation in any form. .

ARTICLE III

GENERAL PROVISIONS

SECTION 3.01. INTERLOCAL AGREEMENT FILING. The Agency shall file this Agreement with the Clerk of the Circuit Court of Sarasota County, Florida.

SECTION 3.02. NONDISCRIMINATION.

The Agency shall not practice discrimination on the basis of race, age, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information.

SECTION 3.03. REPORTING. In addition to the reporting requirements in the Ordinance, the Agency shall encourage participants conducting energy improvements to complete a utility information release form to enable reporting on their actual energy use and energy cost after completion of their respective project(s). For those participants that agree to do so, the PACE Local Government shall provide the PACE Program Coordinator with the signed release form as part of their quarterly metrics reporting. The Agency shall encourage participants conducting hurricane improvements to agree to participate in an annual survey conducted by the County to collect information on insurance cost savings after completion of the project. If the Agency prefers, they can send the link that the county provides directly to the customers. The PACE Program Coordinator is authorized to defer these additional requirements for a term up to one year from the date of the Authorization Letter if the Agency demonstrates that it does not have the ability to comply as of the date of the Authorization Letter and that it would create an unreasonable hardship to immediately modify its procedures and documents to comply. The Agency shall provide the PACE Program Coordinator with a copy of the document(s) provided to the Property Owner to comply with this section. Full compliance will be required upon the expiration of any such deferral period unless the PACE Program Coordinator approves a further deferral or an alternative method of compliance.

SECTION 3.04. TERM OF AGREEMENT; DURATION OF AGREEMENT; NO EXCLUSIVITY.

(A) The term of this Interlocal Agreement shall commence upon recording of this Agreement with the Sarasota County Clerk of Court.

(B) Either party may at any time terminate this Agreement upon sixty (60) days written notice. Provided, however, no termination of this Agreement shall preclude the Agency from and performing its attendant responsibilities hereunder with respect to exercising its power or authority to collect any of the assessments owed to all properly signed and performed PACE Financing Agreements. The party that terminates this Agreement will be responsible for filing a notice of such termination with the Sarasota County Clerk of Court.

Non-Exclusive. The authorization for the Agency to administer the PACE Program in the unincorporated County or the Participating Municipalities is non-exclusive, meaning the County specifically reserves the right to either operate its own PACE program or enter into additional interlocal agreements with any other special purpose local government acting pursuant

to the PACE Statute authorizing that entity to provide a similar program within the unincorporated County and Participating Municipalities.

SECTION 3.05 Opinion of Bond Counsel. As a condition precedent to the authorization to operate a PACE Program in Sarasota County under the terms of this Agreement, the PACE Local Government shall deliver to the County an "Opinion of Bond Counsel," within 30 days of execution of this Agreement, stating that, based on the counsel's review of the bond validation judgment and the underlying bond documents of the Agency, the Agency PACE Program's structure complies with the bond validation judgment and the underlying bond documents. The Agency acknowledges that the County is relying on the Opinion of Bond Counsel in its decision to execute this Agreement.

SECTION 3.06. AMENDMENTS AND WAIVERS. Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the County and Agency.

SECTION 3.07. NOTICES. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered (or confirmed electronic facsimile transmission) or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the parties at the following addresses:

County: Sarasota County
 ATTN: County Administrator
 1660 Ringling Boulevard
 Sarasota, Florida 34236

With a copy to: Sarasota County
 ATTN: County Attorney
 1660 Ringling Boulevard
 Sarasota, Florida 34236

Agency: Executive Director
 Florida PACE Funding Agency
 c/o City of Kissimmee
 101 North Church Street, Fifth Floor
 Kissimmee, Florida 34741

With a copy to: Program Counsel for the Florida PACE Funding Agency
 P.O. Box 14043
 Tallahassee, Florida 32317-4043

Any of the parties may, by notice in writing given to the other, designate any further or different 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 days after the date mailed.

SECTION 3.08. QUALITY CONTROL AND COMMUNICATION. The Agency will promptly respond in writing to all written communications, including email, from the County. Such response shall be deemed prompt if made in a reasonable and complete manner within ten (10) days of receipt of any such written communication from the County. This paragraph shall not be construed as containing any obligation for the County to receive complaints or concerns about the Agency or its designee's performance, policies, systems, or procedures, and the County is requested to and specifically authorized to refer all such complaints or concerns directly to the Agency for a response. The Agency shall follow the complaint procedures as outlined in the Ordinance.

SECTION 3.09. IMMUNITY; LIMITED LIABILITY.

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

(B) The County, Participating Municipalities, and Agency are and shall be subject to the limitations of liability set forth in Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. The local governments who are either the incorporators, or members of the Agency, or any subsequently served or participating local government shall not be held jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and that the Agency alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes.

(C) The Agency shall protect, defend, reimburse, indemnify and hold the County and Participating Municipalities (Indemnified Parties) free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature (collectively, a "Claim") whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault whether active or passive of the Agency or anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. . Nothing in this Agreement is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. In the event any Claim is brought against an Indemnified Party, the Agency, shall upon written notice from an Indemnified Party, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

(D) The Agency is an independent local government funding and financing instrumentality. Neither the County nor any Participating Municipality shall, in any manner, be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, its Board of Directors or any other agents, employees, officers or officials of the Agency. In addition, the Agency, its Board of Directors or any other agents, employees, officers or officials

of the Agency shall have no authority or power to otherwise obligate either the County or any Participating Municipality.

(E) Notwithstanding anything to the contrary herein, neither the County nor the Agency waive any sovereign immunity as a result of this Agreement. Nothing herein shall be construed to usurp or contract away any immunity, or the duty or authority of either party to exercise any general law or police powers as defined by law.

SECTION 3.10. BINDING EFFECT. This Agreement shall be binding upon the parties, their respective successors and assigns and shall inure to the benefit of the parties, their respective successors and assigns.

SECTION 3.11. SEVERABILITY. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 3.12. ADMINISTRATION INDEMNIFICATION; ADDITIONAL INSURED.

(A) The Agency will promptly request and obtain from its administrator, CounterPointe Energy Solutions (FL), LLC, and any subsequent administrator, a separate indemnification agreement as to its actions and activities on behalf of the Agency concerning all of the subject matter of this Agreement for the benefit of the County and Participating Municipalities. The form of the indemnification agreement shall be approved by the County Attorney's Office, prior to the administrator assuming responsibilities for the Agency.

(B) The Agency will promptly request and obtain from its administrator, CounterPointe Energy Solutions (FL), LLC, and any subsequent administrator, and provide to the County a certificate showing the County as an additional insured for the coverages the Agency requires of its administrator, which shall be at a minimum:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability	\$1,000,000 per occurrence
	\$1,000,000 aggregate
Commercial Auto Liability	\$1,000,000 combined single limit
Professional Liability (E&O)	\$1,000,000 per occurrence
	\$2,000,000 aggregate

The statement or certificate evidencing the County is named as an additional insured will include a standard insurance industry statement prohibiting cancellation, termination, or modification of the policy or a reduction of coverage without first giving the County (as an additional insured) at least ten (10) days prior written notice of such proposed action.

SECTION 3.13. INSURANCE BY THE AGENCY: Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statute, the Agency acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity

statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the Agency maintains third-party Commercial General Liability and Commercial Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28 Florida Statute, the Agency shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The Agency agrees to maintain or to be self-insured for Workers' Compensation & Employer's Liability insurance in accordance with Section 440, Florida Statutes. When requested, the Agency shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverage. Compliance with the foregoing requirements shall not relieve the Agency of its liability and obligations under this Interlocal Agreement.

SECTION 3.14. EXECUTION IN COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 3.15. APPLICABLE LAW; ENFORCEMENT; DELEGATION. A breach of this Agreement shall mean a material failure to comply with the PACE Statute, the Ordinance, or any covenants or 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 proceed diligently and in good faith to take all reasonable actions to cure such breach, and shall continue to take all such actions until such breach is cured, or be subject to termination for cause.

- (A) The parties agree time is of the essence in all performance hereunder. At all times the parties may proceed at law or in equity to enforce their rights under this Agreement using all available remedies.
- (B) The venue of any legal or equitable action that arises out of or relates to this Agreement shall be in the Twelfth Judicial Circuit in Sarasota County, Florida. In any such action, Florida law shall apply. The parties hereby waive any right to jury trial.

BY ENTERING INTO THIS AGREEMENT, THE AGENCY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF THE AGENCY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE COUNTY OF VIOLATION OF THIS SECTION, THE AGENCY SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE COUNTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

SECTION 3.16. DISPUTE RESOLUTION. In the event of a dispute between the Agency and the County under this Agreement, the Agency Manager and the County Administrator, or their respective designees, shall review such dispute and options for resolution. The joint decision of the Agency Manager and the County Administrator regarding the dispute shall be final.

In the event the Agency Manager and County Administrator are unable to agree, then the matter shall be referred to the respective Commissions, who may jointly elect to hold a joint meeting in Sarasota County. This process shall substitute for the dispute resolution process set forth in Chapter 164 of the Florida Statutes.

SECTION 3.17. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURES BEGIN ON THE NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have caused this Non-Exclusive Interlocal Agreement to be duly executed and entered into as of the date noted below.

ATTEST:

KAREN E. RUSHING, Clerk of Circuit Court and Ex-Officio Clerk of the Board of County Commissioners of Sarasota County, Florida

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair

Date: _____

Approved as to form and correctness:

By: _____
County Attorney

THE FLORIDA PACE FUNDING AGENCY



By: _____
Michael H. Steigerwald, Executive Director

Date: 5/29/18

ATTEST:

Donald T. Smallwood, Assistant Secretary

**INDEMNIFICATION AGREEMENT BETWEEN COUNTERPOINTE ENERGY
SOLUTIONS (FL) LLC, INC. AS ADMINISTRATOR FOR THE FLORIDA
PACE FUNDING AGENCY, AND SARASOTA COUNTY, FLORIDA**

This Indemnification Agreement (the "Agreement") is entered into _____, 2018 by and between Counterpointe Energy Solutions (FL LLC ("CES"), administrator for the Florida PACE Funding Agency ("FPFA"), and Sarasota County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

WHEREAS, Section 163.08, Florida Statutes, ("the PACE Statute") authorizes Local Governments to finance defined Qualifying Improvements with payments being secured through the use non-ad valorem assessments; and

WHEREAS, FPFA is a separate legal entity created pursuant to Section 163.01(7), Florida Statutes, for the purposes of financing Qualifying Improvements under the PACE Statute; and

WHEREAS, CES is the administrator for FPFA's PACE Program in the County; and

WHEREAS, as a material inducement to and condition of the County allowing FPFA to operate a PACE program within Sarasota County, FPFA is required to protect, defend, reimburse, indemnify and hold the County and any Participating Municipalities free and harmless from and against all claims related to FPFA's operation of a PACE Program in Sarasota County; and

WHEREAS, as a material inducement to and condition of the County allowing FPFA to operate a PACE program within Sarasota County, FPFA's Administrator is also required to protect, defend, reimburse, indemnify and hold the County and any Participating Municipalities free and harmless from and against all claims related to the Administrator's actions related to its actions and activities the operation of a PACE Program; and

NOW, THEREFORE, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. **Indemnification.** CES shall protect, defend, reimburse, indemnify and hold the County, its officers, employees, agents and instrumentalities (hereinafter referred to as the "Indemnified Parties") free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, attorneys' fees, costs of defense, or other expense of whatsoever kind or nature (collectively a "Claim") which the Indemnified Parties may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to, resulting from, or in any way connected with the actions or inactions of CES, its employees, agents, servants, partners, principals, administrators, subcontractors, or agents in operation of a PACE Program in Sarasota County. CES shall pay all Claims and losses in

connection therewith and shall investigate and defend all Claims, suits or losses in connection therewith and shall investigate and defend the Indemnified Parties against all Claims, suits or actions of any kind or nature, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue therefrom. CES expressly understands and agrees that the provisions of the insurance required below shall in no way limit, modify or satisfy the responsibility to indemnify, keep and save harmless and defend the Indemnified Parties as herein provided. In the event any Claim is brought against an Indemnified Party, CES shall, upon written notice from an Indemnified Party or FPFA, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

3. Insurance. Prior to the commencement of any efforts related to the operation of a PACE Program in Sarasota County, CES shall provide the County with a copy of a certificate showing the County as an additional insured for under all policies the coverages the PACE Local Government requires of its administrator, which shall be at a minimum:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability	\$1,000,000 per occurrence
	\$1,000,000 aggregate
Commercial Auto Liability	\$1,000,000 combined single limit
Professional Liability (E&O)	\$1,000,000 per occurrence
	\$2,000,000 aggregate

4. The Administrator shall provide County with at least 5 days advanced written notice of any suspension, cancellation, or reduction in limits of any insurance policy required by this Agreement, and shall promptly procure a replacement policy in full conformance with the requirements of this Agreement.
5. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in conjunction with this Agreement shall be in the state courts in and for Sarasota County. The Parties hereby expressly agree that in the event of litigation regarding this Agreement, any and all rights to jury trial are waived.
6. The term of this Agreement shall begin upon execution by both Parties and continue so long as CES is conducting activities related to the operation of a PACE Program in Sarasota County.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement each on this date noted below.

ATTEST:

KAREN E. RUSHING, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners of
Sarasota County, Florida

Board of County Commissioners of
Sarasota County, Florida

By: _____
Chair


By: _____
Deputy Clerk

Approved as to form and correctness.

Date: _____

By: _____
County Attorney

Counterpointe Energy Solutions (FL)
LLC

By:  _____
David S. Schaefer
Chief Operating Officer

Date: _____

RESOLUTION NO. 2018-____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN SARASOTA COUNTY AND FLORIDA GREEN FINANCE AUTHORITY FOR A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; APPROVING AN INDEMNIFICATION AGREEMENT BETWEEN SARASOTA COUNTY AND RENEW FINANCIAL GROUP LLC FOR THE BENEFIT OF SARASOTA COUNTY; AND DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE AGREEMENTS WITH SUBSEQUENT ADMINISTRATORS OF FLORIDA GREEN FINANCE AUTHORITY FOR THE BENEFIT OF SARASOTA COUNTY, AND EXERCISE CERTAIN PROVISIONS IN THE AGREEMENTS.

WHEREAS, on October 11, 2017, the Board of County Commissioners (“Board”) adopted Ordinance 2017-051 (the “PACE Program Ordinance”); and

WHEREAS, the PACE Program Ordinance provides that PACE Local Governments must enter into an interlocal agreement with the County prior to receiving authorization to operate and administer their PACE Program within Sarasota County; and

WHEREAS, the operation of the PACE Program in Sarasota County by the Florida Green Finance Authority will be done entirely without cost, liability or burden to Sarasota County; and

WHEREAS, the County is not joining or partnering with the Florida Green Finance Authority under the terms of the Interlocal Agreement but is merely providing the Florida Green Finance Authority with the limited, non-exclusive ability to operate a PACE Program in compliance with the terms of the PACE Act, the PACE Program Ordinance, and the Interlocal Agreement within Sarasota County at its own expense; and

WHEREAS, allowing the PACE Local Governments to operate their PACE Program in conformity with the terms of the PACE Act, the PACE Program Ordinance and the Interlocal Agreement is in the best interest of the citizens of Sarasota County;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, THAT:

1. The Interlocal Agreement, in substantially the form attached hereto as Attachment A, is hereby approved and the Chair is authorized to sign the Interlocal Agreement.
2. The Indemnification Agreement between the County and Renew Financial Group LLC, as the administrator of Florida Green Finance Authority, in substantially the form attached hereto as Attachment B, is hereby approved and the Chair is authorized to sign the Indemnification Agreement.
3. The County Administrator or designee is authorized to execute Indemnification Agreements with subsequent administrators of FGFA, in a form approved by the Office of the County Attorney, to provide that such subsequent administrator of FGFA shall indemnify and hold harmless the County.
4. This Board authorizes the County Administrator or designee to exercise the provisions as provided in the above-mentioned Agreements.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS THIS _____ DAY OF _____, 20__.

BOARD OF COUNTY COMMISSIONERS OF
SARASOTA COUNTY, FLORIDA

By: _____
CHAIR

ATTEST:

Karen E. Rushing, Clerk of the Circuit Court
and Ex-Officio Clerk to the Board of County
Commissioners of Sarasota County, Florida

By: _____
DEPUTY CLERK

**INTERLOCAL AGREEMENT BETWEEN FLORIDA GREEN FINANCE AUTHORITY
AND SARASOTA COUNTY AUTHORIZING THE OPERATION OF A NON-
EXCLUSIVE PROPERTY ASSESSMENT CLEAN ENERGY (PACE) PROGRAM IN
SARASOTA COUNTY**

This non-exclusive Interlocal Agreement ("Agreement") is entered into _____, 2018 by and between the Florida Green Finance Authority, a public body created pursuant to Section 163.01(7), Florida Statutes, (the "PACE Local Government"), and Sarasota County, a political subdivision of the State of Florida ("County") collectively, the ("Parties"), related to the non-exclusive operation of PACE program within the County.

RECITALS

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

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

WHEREAS, Section 163.08, Florida Statutes (the "PACE Statute"), authorizes Local Governments, including a public body created pursuant to Section 163.01(7), Florida Statutes, to finance Qualifying Improvements with a voluntary non-ad valorem special assessment process as the repayment mechanism (the "PACE Program") in those jurisdictions where the local governing body has adopted an ordinance or resolution authorizing the PACE Program within its jurisdiction and the PACE Local Government has entered into an interlocal agreement with that local governing body; and

WHEREAS, the PACE Local Government was created as a separate legal entity by interlocal agreement between the Towns of Lantana and Mangonia Park, pursuant to Section 163.01(7), Florida Statutes, to finance qualifying improvements, including energy conservation and efficiency, renewable energy, and wind resistance improvements, in accordance with the PACE Statute, as may be amended; and

WHEREAS, the Sarasota County Board of County Commissioners has adopted Ordinance No. 2017-051, entitled the Sarasota County Property Assessed Clean Energy (PACE) Program (the "Ordinance"), which is incorporated herein by reference and authorizes a PACE Program to be administered within unincorporated Sarasota County by those PACE Local Governments that have entered into an interlocal agreement with the County and provides for certain consumer protections and requirements for PACE Local Governments; and

WHEREAS, the Parties have determined that entering into this Agreement is in the best interest and welfare of the property owners within the County.

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 Agreement is to facilitate the financing of Qualifying Improvements for property owners within the County in accordance with the PACE Statute, the Ordinance and applicable Federal and state law, by allowing the PACE Local Government to operate within the unincorporated County and in all municipalities that opt in to the PACE Program by adopting an ordinance or resolution ("Participating Municipalities"). Where the PACE Statute, the Ordinance, and any applicable state and/or Federal law provides different standards upon the PACE Local Government in the operation of the PACE program, the strictest requirement will apply under this Agreement unless expressly prohibited by controlling law.
- Section 3. **Definitions.** All capitalized terms in this Agreement shall have the meaning set forth in the Ordinance, if defined therein, or as otherwise specifically defined in this Agreement.
- Section 4. **Authorization Letter.** Before the PACE Local Government is authorized to enter into any PACE Financing Agreements within Sarasota County, they must receive an authorization letter from the PACE Program Coordinator. In order to receive the authorization letter from the PACE Program Coordinator, the PACE Local Government must provide proof that their PACE program design meets the requirements of the PACE Statute, Ordinance, and this Agreement. In order to do so they must, at a minimum, provide copies of the following materials along with an outline of specific references to sections that meet the requirements of the Ordinance and this Agreement:
- a. PACE Financing Agreement (template)
 - b. Notice to Property Owner (template)
 - c. Eligible Measures List
 - d. Contractor Code of Conduct
 - e. Contractor training materials and schedule
 - f. Customer Service: email, phone, website, document outlining complaint process
 - g. Eligibility criteria, including additional program standards for residential properties.
 - h. Rates, fees and charges charged by or through the PACE Local Government

i. **Agreements with the Tax Collector and Property Appraiser**

Additionally, the PACE Local Government shall provide updated copies of these materials being utilized on the annual anniversary of the execution of this Agreement. Failure of the materials to adhere to requirements of the Statute, the Ordinance or this Agreement shall result in suspension or termination in accordance with Section 38-332 of the Sarasota County Code or other enforcement action as appropriate.

Section 5. **Qualifying Improvements.** The PACE Local Government is authorized, subject to the terms of the Ordinance and this Agreement, to provide financing of Qualifying Improvements, as defined in the Ordinance and Section 163.08, Florida Statutes, as may be amended from time to time, on properties within the unincorporated County and Participating Municipalities. The following additional requirements shall apply to the authorized operation of the PACE Program under this Agreement. However, the PACE Program Coordinator is authorized to defer these additional requirements for a term up to one year from the date of the Authorization Letter if the PACE Local Government demonstrates that it does not have the ability to comply as of the date of the Authorization Letter and that it would create an unreasonable hardship to immediately modify its procedures and documents to comply. Full compliance will be required upon the expiration of any deferral period.

- a. If the Qualifying Improvement falls within an eligible category under ENERGY STAR, the product must be ENERGY STAR Certified in order to be considered as a Qualifying Improvement eligible for the PACE Program.
- b. Unless exempted by the PACE Program Coordinator for good cause, , any solar photovoltaic system installed shall have an online monitoring system for maintenance and production monitoring purposes, provided the residence or business has appropriate connectivity.

Section 6. **Non-Exclusive.** The authorization for the PACE Local Government to administer the PACE Program in the unincorporated County or the Participating Municipalities is non-exclusive. The County specifically reserves the right to either operate its own PACE program or enter into additional interlocal agreements with any other entity authorized pursuant to the PACE Statute to provide a similar program within the unincorporated County and Participating Municipalities.

Section 7. **Assessment by the PACE Local Government; Tax Collector Role Ministerial.** The Parties hereto acknowledge and agree that the non-ad valorem assessments arising from a property owner's voluntary participation in the PACE Program are imposed by the PACE Local Government and not the County. Additionally, the Parties agree that the collection and distribution of any non-ad valorem assessments imposed by the PACE Local Government are purely ministerial acts by the Tax Collector pursuant to state law.

Section 8. Creation of State, County, or Municipal Debts Prohibited. The County and Participating Municipalities shall not incur nor ever be requested to authorize any obligations secured by special assessments associated with Qualifying Improvements imposed by the PACE Local Government pursuant to the PACE Statute and the Ordinance. No PACE Local Government acting pursuant to the PACE Statute, the Ordinance, or this Agreement shall be empowered or authorized in any manner to create a debt as against the County and Participating Municipalities and shall not pledge the full faith and credit of the County and Participating Municipalities in any manner whatsoever. No revenue bonds or debt obligations of any PACE Local Government acting pursuant to the PACE Statute, shall ever pledge or imply any pledge that the County or any Participating Municipality shall be obligated to pay the same or the interest thereon, nor state or imply that such obligations payable from the full faith and credit or the taxing power of the state, the County, or any Participating Municipality within the County as a result of the Ordinance or this Agreement. The issuance of bonds by the PACE Local Government under the provisions of law, the PACE Local Government's governance documents, or any agreement or resolution shall not, as the result of the Ordinance or this Agreement, be deemed in any manner, directly or indirectly or contingently, to obligate the County and Participating Municipalities, to levy or to pledge any form of ad valorem taxation or other county or municipal revenues or to make any appropriation for their payment whatsoever.

Section 9. Program Requirements:

The Parties agree that the PACE Program to be offered in the unincorporated County and Participating Municipalities will be governed by the Ordinance, the PACE Statute, applicable Federal law, applicable state law, and this Agreement, including the following additional program requirements:

- a. The PACE Local Government will inform every property owner that by law these non-ad valorem assessments must be collected pursuant to Sections 163.08, 197.3632, and 197.3635, Florida Statutes and that the assessment shall not be subject to discount for early payment; and, are not imposed by the County, any Participating Municipality, the property appraiser, or the tax collector, and that they are levied and imposed solely by the PACE Local Government, and only then upon voluntary application of the private property owner as expressly authorized by the PACE Statute and the Ordinance. The following statement, in substantially the following form, must be included on the Notice to Property Owner: **The Assessment will appear on the property tax bill, and will not be eligible for early payment discounts.**
- b. The PACE Local Government will also inform every property owner that the PACE Local Government will share data pertaining to the details of their PACE project and assessment with government entities for the purpose of evaluating program demand, benefits, and consumer protections consistent with applicable Federal and state law. An option for the property owner to opt out of sharing personal data may be provided, but they must be informed that data will still be provided in aggregate

format and on an individual level as necessary for the purposes of the assessment, TRIM notice, and property tax bill.

- c. The PACE Local Government shall not approve any PACE Assessment on properties that are subject to a reverse mortgage.
- d. The PACE Local Government shall include in their contractor Code of Conduct a requirement that approved contractors must maintain proof of their license/certification, insurance, and business tax receipts (occupational license) and provide to Property Owners if requested. The PACE Local Government must also give the property owner the document outlining the complaint process covering the PACE program and participating contractors or a summary sheet including a web link to the full document.
- e. Recognizing that there may be ongoing consequences and risk that some lenders may require full repayment of the special assessments upon resale or refinancing, in addition to the disclosures and protections required in the Ordinance, the PACE Local Government shall provide assistance to any Property Owner that faces such a requirement.

Section 10. Opinion of Bond Counsel. As a condition precedent to the authorization to operate a PACE Program in Sarasota County under the terms of this Agreement, the PACE Local Government shall deliver to the County an "Opinion of Bond Counsel," within 30 days of execution of this Agreement, stating that, based on the counsel's review of the bond validation judgment and the underlying bond documents of the PACE Local Government, the PACE Program's structure complies with the bond validation judgment and the underlying bond documents. The PACE Local Government acknowledges that the County is relying on the Opinion of Bond Counsel as a material inducement due the County's decision to enter into this Agreement.

Section 11. Boundaries. To help finance the costs of Qualifying Improvements for those individual properties, the PACE Local Government is authorized, on a non-exclusive basis, to levy voluntary, non-ad valorem special assessments on the benefitted properties within the geographic boundaries of unincorporated County and within the Participating Municipalities, pursuant to their respective opt-in ordinance or resolution. Those properties receiving financing for Qualifying Improvements shall be assessed, in accordance with the PACE Statute, the Ordinance, the opt-in ordinance or resolution of each Participating Municipality and other applicable law. Notwithstanding termination of this Agreement, those properties that have received financing for Qualifying Improvements shall continue to be a part of the PACE Local Government's Program until such time the financial obligations owed pursuant to all properly signed PACE Financing Agreements have been satisfied, released, or otherwise resolved.

Section 12. Financing Agreement. The Parties agree that the PACE Local Government may enter into a PACE Financing Agreement, pursuant to the PACE Statute and the

Ordinance with property owner(s) who obtain financing through the PACE Local Government within the geographical boundaries of unincorporated County and Participating Municipalities. Notwithstanding any other provision in this Agreement, rates, fees and charges charged by or through the PACE Local Government shall not exceed those contained in Chapter 687, Florida Statutes.

Section 13. Responsibilities of the PACE Local Government; Indemnification; Liability.

- a. All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the Parties, and Participating Municipalities, shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Agreement.
- b. The County, Participating Municipalities, and the PACE Local Government are and shall be subject to the limitations of liability provided in Section 768.28, Florida Statutes, and any other relevant provisions of Florida law governing sovereign immunity. Nothing in this Agreement is intended to waive or alter the sovereign immunity of any of the Parties hereto including, but not limited to the express monetary limits of liability set forth in Section 768.28, Florida Statutes. Pursuant to the PACE Statute and this Agreement, the local governments who are either the incorporators or members of the PACE Local Government or any subsequently served or participating local government shall not be held jointly liable for the torts of the officers or employees of the PACE Local Government, or any other tort attributable to the PACE Local Government, and the PACE Local Government alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes.
- c. To the extent provided by law, the PACE Local Government agrees to protect, defend, reimburse, indemnify and hold the County and Participating Municipalities, their agents, employees and elected officers ("Indemnified Parties"), and each of them free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature (collectively, a "Claim") whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault, whether active or passive, of the PACE Local Government, its agents, employees, or officials or anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. The PACE Local Government's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the County or Participating Municipalities, its respective agents, servants, employees or officers, nor shall the liability limits set forth in Section 768.28, Florida Statutes, be waived. Nothing in this Agreement is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would

otherwise be barred under the doctrine of sovereign immunity or by operation of law. In the event any Claim is brought against an Indemnified Party, the PACE Local Government shall, upon written notice from an Indemnified Party, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

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

Section 14. Agreements with Tax Collector, Property Appraiser and Municipalities.

- a. The PACE Local Government acknowledges that the County has no authority to bind the County Tax Collector and the County Property Appraiser, and the PACE Local Government will be required to enter into separate agreement(s) therewith, which shall establish the fees (if any) to be charged by the Tax Collector and Property Appraiser for the collection or handling of the Program's special assessments. The PACE Local Government also acknowledges that until an incorporated municipality in the County has adopted an ordinance or resolution authorizing the PACE Program to be implemented within its respective jurisdiction, the PACE Local Government shall have no authority to operate the Program within such municipality.
- b. As a condition precedent to the authorization to operate a PACE Program under the terms of this Agreement within Sarasota County, the PACE Local Government must enter into separate written agreements as required by Section 197.3632(2), Florida Statutes, for the reimbursement and compensation of tax collectors and property appraisers as prescribed by law.
- c. The PACE Local Government, not the County nor Participating Municipalities, is the local government imposing the subject non-ad valorem assessments and shall be solely responsible for compliance with all applicable law and all matters associated with origination, funding, financing, administration, and collection (in concert with the uniform method of collection set forth in Section 197.3632, Florida Statutes) of each of the resulting non-ad valorem assessments.

Section 15. Resale or Refinancing of a Property. The PACE Local Government recognizes that some lenders may require full repayment of the Program's special assessments

upon resale or refinancing of a property subject to the Program special assessments. The PACE Local Government agrees to provide written disclosure of this matter to all property owners that may utilize the Program, as outlined in the Ordinance.

Section 16. Reporting. In addition to the reporting requirements in the Ordinance, the PACE Local Government shall encourage participants conducting energy improvements to complete a utility information release form to enable reporting on their actual energy use and energy cost after completion of their respective project(s). For those participants that agree to do so, the PACE Local Government shall provide the PACE Program Coordinator with the signed release form as part of their quarterly metrics reporting. The PACE Local Governments shall encourage participants conducting hurricane improvements to agree to participate in an annual survey conducted by the County to collect information on insurance cost savings after completion of the project. If the PACE Local Government prefers, they can send the link that the county provides directly to the customers. The PACE Program Coordinator is authorized to defer these additional requirements for a term up to one year from the date of the Authorization Letter if the PACE Local Government demonstrates that it does not have the ability to comply as of the date of the Authorization Letter and that it would create an unreasonable hardship to immediately modify its procedures and documents to comply. The PACE Local Government shall provide the PACE Program Coordinator with a copy of the document(s) provided to the Property Owner to comply with this section. Full compliance will be required upon the expiration of any such deferral period unless the PACE Program Coordinator approves a further deferral or an alternative method of compliance.

Section 17. Responsive Communications. The PACE Local Government will promptly respond in writing to all written communications, including email, from the County. Such response shall be deemed prompt if made in a reasonable and complete manner within ten (10) days of receipt of any such written communication. This paragraph shall not be construed as containing any obligation for the County to receive complaints or concerns about the PACE Local Government or its designee performance, policies, systems, or procedures. The County will refer all such complaints or concerns directly to the PACE Local Government for a response. The PACE Local Government shall follow the customer service procedures as outlined in the Ordinance.

Section 18. Term of Agreement; Duration of Agreement.

- a. The term of this Agreement shall commence upon recording of this Agreement with the Sarasota County Clerk of Court.
- b. Either party may at any time terminate this Agreement upon sixty (60) days written notice. Provided, however, no termination of this Agreement shall preclude the PACE Local Government from exercising its power or authority to collect any of the assessments owed pursuant to a properly signed and performed PACE Financing Agreement. The party that terminates this Agreement will be responsible for filing a notice of such termination with the Sarasota County Clerk of Court.

- c. The applicable provisions, authority and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the Program and responsibilities of the PACE Local Government then underway shall remain in effect and survive any termination until such time as those obligations and all associated **remaining** responsibilities of the PACE Local Government are fulfilled (including, but not limited to, the collection of assessments in due course).

Section 19. Consent. This Agreement and the Ordinance shall be considered the County's consent for the PACE Local Government to implement the PACE Program within **unincorporated** County pursuant to the PACE Statute and the Ordinance.

Section 20. Notices. Any notices to be given **hereunder** shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

County: Sarasota County
ATTN: County Administrator
1660 Ringling Blvd.
Sarasota, Florida 33236

With a copy to: Sarasota County
ATTN: County Attorney
1660 Ringling Blvd., Rm. 250
Sarasota, Florida 33236

PACE Local
Government: Todd Wodraska
Special District Services
2501A Burns Road
Palm Beach Gardens, FL 33410

With a copy to: Keith Davis, Esq
Davis & Ashton, P.A.
701 Northpoint Parkway, Suite 205
West Palm Beach, Florida 33407

Section 21. 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 with the same formality and of equal dignity herewith by the Parties hereto.

- Section 22. Joint Effort. The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.
- Section 23. Merger. This 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 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.
- Section 24. Assignment. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Party hereto.
- Section 25. Records. The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
- Section 26. No Third-Party Beneficiaries. It is the intent and agreement of the Parties that this Agreement is solely for the benefit of the Parties and Participating Municipalities under the Ordinance and no other party or entity shall have any rights or privileges hereunder.
- Section 27. Severability. In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.
- Section 28. Administrator Indemnification; Additional Insured.
- a. The PACE Local Government will promptly request and obtain from its administrator, Renew Financial Group, LLC, and any subsequent administrator, a separate indemnification agreement as to its actions and activities on behalf of the PACE Local Government concerning all of the subject matter of this Agreement for the benefit of the County and Participating Municipalities. The form of the indemnification agreement must be approved by the County Attorney's Office, prior to the administrator assuming responsibilities for the PACE Local Government pursuant to this agreement.
 - b. The PACE Local Government shall promptly request and obtain from its administrator, Renew Financial Group, LLC and any subsequent administrator, and shall provide the County with a copy of a certificate showing the County as an additional insured for the coverages the PACE Local Government requires of its administrator, which shall be at a minimum:

Worker's Compensation
Employer's Liability

Statutory
\$1,000,000

Commercial General Liability	\$1,000,000 per occurrence
	\$1,000,000 aggregate
Commercial Auto Liability	\$1,000,000 combined single limit
Professional Liability (E&O)	\$1,000,000 per occurrence
	\$2,000,000 aggregate

- c. The statement or certificate evidencing the County is named as an additional insured will include a standard insurance industry statement prohibiting cancellation, termination, or modification of the policy or a reduction of coverage without first giving the County (as an additional insured) at least ten (10) days prior written notice of such proposed action.

Section 29. Insurance by the PACE Local Government. Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statute, the PACE Local Government acknowledges that it is self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with limits of liability at \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the PACE Local Government maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28 Florida Statute, the PACE Local Government shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The PACE Local Government agrees to maintain or to be self-insured for Workers' Compensation & Employer's Liability insurance in accordance with Section 440, Florida Statutes. When requested, the PACE Local Government shall agree to provide Certificate of Insurance evidencing the insurance coverage requirements set forth herein or an affidavit of self-insurance demonstrating the insurance coverage required herein. Compliance with the foregoing requirements shall not satisfy, modify or otherwise relieve the PACE Local Government of its indemnification liability and obligations under this Agreement.

Section 30. Dispute Resolution. In the event of a dispute between the PACE Local Government and the County under this Agreement, the PACE Local Government Manager and the County Administrator, or their respective designees, shall review such dispute and options for resolution. The joint decision of the PACE Local Government Manager and the County Administrator regarding the dispute shall be final. In the event the PACE Local Government Manager and County Administrator are unable to agree, then the matter shall be referred to the respective governing bodies, who may jointly elect to hold a joint meeting in Sarasota County. This process shall substitute for the dispute resolution process set forth in Chapter 164 of the Florida Statutes.

Section 31. Venue. The venue of any legal or equitable action that arises out of or relates to this Agreement shall be in the appropriate state court in Sarasota County, Florida. In any such action, Florida law shall apply. BY ENTERING INTO THIS AGREEMENT, THE PACE LOCAL GOVERNMENT AND COUNTY

HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF THE PACE LOCAL GOVERNMENT FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE COUNTY OF VIOLATION OF THIS SECTION, THE PACE LOCAL GOVERNMENT SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE COUNTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

- Section 32. Recording; Effective Date. This Agreement shall be recorded by the PACE Local Government with the Clerk of the Circuit Court in Sarasota County, Florida and shall become effective upon such filing.
- Section 33. Delegation of Duty. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or city officers.
- Section 34. Equal Opportunity Provision. Neither the PACE Local Government nor its respective, agents, successors, or assigns shall practice discrimination on the basis of race, age, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information under any activity carried out by the performance of this Agreement.
- Section 35. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Non-Exclusive Interlocal Agreement to be duly executed and entered into as of the date first above written.

ATTEST:

KAREN E. RUSHING, Clerk of
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners of
Sarasota County, Florida

By: _____
Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA**

By: _____
Chair

Date: _____


Approved as to form and correctness:

By: _____
County Attorney

ATTEST:

By: 
Secretary

Florida Green Finance Authority

By: 
Chair

Date: 5/29/18

Approved as to form and
legal sufficiency:

By: 
Keith Davis, Esq.
Attorney for Florida Green Finance Authority

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

**INDEMNIFICATION AGREEMENT BETWEEN RENEW FINANCIAL GROUP
LLC, AS ADMINISTRATOR FOR THE FLORIDA GREEN FINANCE
AUTHORITY, AND SARASOTA COUNTY, FLORIDA**

This Indemnification Agreement (the "Agreement") is entered into May 24, 2018 by and between Renew Financial Group LLC ("Renew"), administrator for the Florida Green Finance Authority ("FGFA"), and Sarasota County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

WHEREAS, Section 163.08, Florida Statutes, ("the PACE Statute") authorizes Local Governments to finance defined Qualifying Improvements with payments being secured through the use non-ad valorem assessments; and

WHEREAS, FGFA is a separate legal entity created pursuant to Section 163.01(7), Florida Statutes, for the purposes of financing Qualifying Improvements under the PACE Statute; and

WHEREAS, Renew is the administrator for FGFA's PACE Program in the County; and

WHEREAS, as a material inducement to and condition of the County allowing FGFA to operate a PACE program within Sarasota County, FGFA is required to protect, defend, reimburse, indemnify and hold the County and any Participating Municipalities free and harmless from and against all claims related to FGFA's operation of a PACE Program in Sarasota County; and

WHEREAS, as a material inducement to and condition of the County allowing FGFA to operate a PACE program within Sarasota County, FGFA's Administrator is also required to protect, defend, reimburse, indemnify and hold the County and any Participating Municipalities free and harmless from and against all claims related to the Administrator's actions related to its actions and activities the operation of a PACE Program; and

NOW, THEREFORE, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. **Indemnification.** Renew shall protect, defend, reimburse, indemnify and hold the County, its officers, employees, agents and instrumentalities (hereinafter referred to as the "Indemnified Parties") free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, attorneys' fees, costs of defense, or other expense of whatsoever kind or nature (collectively a "Claim") which the Indemnified Parties may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to, resulting from, or in any way connected with the actions or inactions of Renew, its employees, agents, servants,

partners, principals, administrators, subcontractors, or agents in operation of a PACE Program in Sarasota County. Renew shall pay all Claims and losses in connection therewith and shall investigate and defend all Claims, suits or losses in connection therewith and shall investigate and defend the Indemnified Parties against all Claims, suits or actions of any kind or nature, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue therefrom. Renew expressly understands and agrees that the provisions of the insurance required below shall in no way limit, modify or satisfy the responsibility to indemnify, keep and save harmless and defend the Indemnified Parties as herein provided. In the event any Claim is brought against an Indemnified Party, Renew shall, upon written notice from an Indemnified Party or FGFA, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

3. Insurance. Prior to the commencement of any efforts related to the operation of a PACE Program in Sarasota County, Renew shall provide the County with a copy of a certificate showing the County as an additional insured for under all policies the coverages the PACE Local Government requires of its administrator, which shall be at a minimum:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability	\$1,000,000 per occurrence \$1,000,000 aggregate
Commercial Auto Liability	\$1,000,000 combined single limit
Professional Liability (E&O)	\$1,000,000 per occurrence \$2,000,000 aggregate

4. The Administrator shall provide County with at least 5 days advanced written notice of any suspension, cancellation, or reduction in limits of any insurance policy required by this Agreement, and shall promptly procure a replacement policy in full conformance with the requirements of this Agreement.
5. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in conjunction with this Agreement shall be in the state courts in and for Sarasota County. The Parties hereby expressly agree that in the event of litigation regarding this Agreement, any and all rights to jury trial are waived.
6. The term of this Agreement shall begin upon execution by both Parties and continue so long as Renew is conducting activities related to the operation of a PACE Program in Sarasota County.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement each on this date noted below.

ATTEST:

KAREN E. RUSHING, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners of
Sarasota County, Florida

Board of County Commissioners of
Sarasota County, Florida

By: _____
Chair


By: _____
Deputy Clerk

Approved as to form and correctness.

Date: _____

By: _____
County Attorney

ATTEST:

By:  _____
Sachin Adarkar
General Counsel & Secretary

Renew Financial Group LLC

By:  _____
Kirk Inglis
Chief Executive Officer

Approved as to form and legal
sufficiency.

Date: May 24, 2018

By:  _____
Julianne Spears
Counsel to Renew

RESOLUTION NO. 2018-____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN SARASOTA COUNTY AND FLORIDA RESILIENCY AND ENERGY DISTRICT FOR A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; APPROVING AN INDEMNIFICATION AGREEMENT BETWEEN SARASOTA COUNTY AND RENOVATE AMERICA, INC. FOR THE BENEFIT OF SARASOTA COUNTY; AND DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE AGREEMENTS WITH SUBSEQUENT ADMINISTRATORS OF FLORIDA RESILIENCY AND ENERGY DISTRICT FOR THE BENEFIT OF SARASOTA COUNTY, AND EXERCISE CERTAIN PROVISIONS IN THE AGREEMENTS.

WHEREAS, on October 11, 2017, the Board of County Commissioners (“Board”) adopted Ordinance 2017-051 (the “PACE Program Ordinance”); and

WHEREAS, the PACE Program Ordinance provides that PACE Local Governments must enter into an interlocal agreement with the County prior to receiving authorization to operate and administer their PACE Program within Sarasota County; and

WHEREAS, the operation of the PACE Program in Sarasota County by the Florida Resiliency and Energy District will be done entirely without cost, liability or burden to Sarasota County; and

WHEREAS, the County is not joining or partnering with the Florida Resiliency and Energy District under the terms of the Interlocal Agreement but is merely providing the Florida Resiliency and Energy District with the limited, non-exclusive ability to operate a PACE Program in compliance with the terms of the PACE Act, the PACE Program Ordinance, and the Interlocal Agreement within Sarasota County at its own expense; and

WHEREAS, allowing the PACE Local Governments to operate their PACE Program in conformity with the terms of the PACE Act, the PACE Program Ordinance and the Interlocal Agreement is in the best interest of the citizens of Sarasota County;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, THAT:

1. The Interlocal Agreement, in substantially the form attached hereto as Attachment A, is hereby approved and the Chair is authorized to sign the Interlocal Agreement.
2. The Indemnification Agreement between the County and Renovate America, Inc., as the administrator of Florida Resiliency and Energy District, in substantially the form attached hereto as Attachment B, is hereby approved and the Chair is authorized to sign the Indemnification Agreement.
3. The County Administrator or designee is authorized to execute Indemnification Agreements with subsequent administrators of Florida Resiliency and Energy District, in a form approved by the Office of the County Attorney, to provide that such subsequent administrator of Florida Resiliency and Energy District shall indemnify and hold harmless the County.
4. This Board authorizes the County Administrator or designee to exercise the provisions as provided in the above-mentioned Agreements.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS THIS _____ DAY OF _____, 20__.

BOARD OF COUNTY COMMISSIONERS OF
SARASOTA COUNTY, FLORIDA

By: _____
CHAIR

ATTEST:

Karen E. Rushing, Clerk of the Circuit Court
and Ex-Officio Clerk to the Board of County
Commissioners of Sarasota County, Florida

By: _____
DEPUTY CLERK

**INTERLOCAL AGREEMENT BETWEEN THE FLORIDA RESILIENCY AND
ENERGY DISTRICT AND SARASOTA COUNTY AUTHORIZING THE OPERATION
OF A NON-EXCLUSIVE PACE PROGRAM**

This non-exclusive Interlocal Agreement ("Agreement") is entered into _____, 2018 by and between the Florida Resiliency and Energy District, a public body created pursuant to Section 163.01(7), Florida Statutes, (the "PACE Local Government"), and Sarasota County, a political subdivision of the State of Florida ("County") collectively, the ("Parties"), related to the non-exclusive operation of PACE program within the County.

RECITALS

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

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

WHEREAS, Section 163.08, Florida Statutes (the "PACE Statute"), authorizes Local Governments, including a public body created pursuant to Section 163.01(7), Florida Statutes, (to enter into Interlocal to finance Qualifying Improvements with a voluntary non-ad valorem special assessment process as the repayment mechanism (the "PACE Program") in those jurisdictions where the local governing body has adopted an ordinance or resolution authorizing the PACE Program within its jurisdiction and the PACE Local Government has entered into an interlocal agreement with that local governing body; and

WHEREAS, the PACE Local Government was created as a separate legal entity by interlocal agreement between the Town of Lake Clarke Shores and the City of Fernandina Beach, pursuant to Section 163.01(7), Florida Statutes, to finance qualifying improvements, including energy conservation and efficiency, renewable energy, and wind resistance improvements, in accordance with the PACE Statute, as may be amended; and

WHEREAS, the Sarasota County Board of County Commissioners has adopted Ordinance No. 2017-051, entitled the Sarasota County Property Assessed Clean Energy (PACE) Program (the "Ordinance"), which is incorporated herein by reference and authorizes a PACE Program to be administered within unincorporated Sarasota County by those PACE Local Governments that have entered into an interlocal agreement with the County and provides for certain consumer protections and requirements for PACE Local Governments; and

WHEREAS, the Parties have determined that entering into this Agreement is in the best interest and welfare of the property owners within the County.

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 Agreement is to facilitate the financing of Qualifying Improvements for property owners within the County in accordance with the PACE Statute, the Ordinance and applicable Federal and state law, by allowing the PACE Local Government to operate within the unincorporated County and in all municipalities that opt in to the PACE Program by adopting an ordinance or resolution ("Participating Municipalities"). Where the PACE Statute, the Ordinance, and any applicable state and/or Federal law provides different standards upon the PACE Local Government in the operation of the PACE program, the strictest requirement will control.
- Section 3. Definitions. All capitalized terms in this Agreement shall have the meaning set forth in the Ordinance, if defined therein, or as otherwise specifically defined in this Agreement.
- Section 4. Authorization Letter. Before the PACE Local Government is authorized to enter into any PACE Financing Agreements within Sarasota County, they must receive an authorization letter from the PACE Program Coordinator. In order to receive the authorization letter from the PACE Program Coordinator, the PACE Local Government must provide proof that their PACE program design meets the requirements of the PACE Statute, Ordinance, and this Agreement. In order to do so they must, at a minimum, provide copies of the following materials along with an outline of specific references to sections that meet the requirements of the Ordinance and this Agreement:
- a. PACE Financing Agreement (template)
 - b. Notice to Property Owner (template)
 - c. Eligible Measures List
 - d. Contractor Code of Conduct
 - e. Contractor training materials and schedule
 - f. Customer Service: email, phone, website, document outlining complaint process
 - g. Eligibility criteria, including additional program standards for residential properties.
 - h. Rates, fees and charges charged by or through the PACE Local Government

i. **Agreements with the Tax Collector and Property Appraiser**

Additionally, the PACE Local Government shall provide updated copies of these materials being utilized on the annual anniversary of the execution of this Agreement. Failure of the materials to adhere to requirements of the Statute, the Ordinance or this Agreement shall result in suspension or termination in accordance with Section 38-332 of the Sarasota County Code or other enforcement action as appropriate.

Section 5. **Qualifying Improvements.** The PACE Local Government is authorized, subject to the terms of the Ordinance and this Agreement, to provide financing of Qualifying Improvements, as defined in the Ordinance and Section 163.08, Florida Statutes, as may be amended from time to time, on properties within the unincorporated County and Participating Municipalities. The following additional requirements shall apply to the authorized operation of the PACE Program under this Agreement. However, the PACE Program Coordinator is authorized to defer these additional requirements for a term up to one year from the date of the Authorization Letter if the PACE Local Government demonstrates that it does not have the ability to comply as of the date of the Authorization Letter and that it would create an unreasonable hardship to immediately modify its procedures and documents to comply. Full compliance will be required upon the expiration of any deferral period.

- a. If the Qualifying Improvement falls within an eligible category under ENERGY STAR, the product must be ENERGY STAR Certified in order to be considered as a Qualifying Improvement eligible for the PACE Program.
- b. Unless exempted by the PACE Program Coordinator for good cause, any solar photovoltaic system installed shall have an online monitoring system for maintenance and production monitoring purposes, provided the residence or business has appropriate connectivity.

Section 6. **Non-Exclusive.** The authorization for the PACE Local Government to administer the PACE Program in the unincorporated County or the Participating Municipalities is non-exclusive. The County specifically reserves the right to either operate its own PACE program or enter into additional interlocal agreements with any other entity authorized pursuant to the PACE Statute to provide a similar program within the unincorporated County and Participating Municipalities.

Section 7. **Assessment by the PACE Local Government; Tax Collector Role Ministerial.** The Parties hereto acknowledge and agree that the non-ad valorem assessments arising from a property owner's voluntary participation in the PACE Program are imposed by the PACE Local Government and not the County. Additionally, the

Parties agree that the collection and distribution of any non-ad valorem assessments imposed by the PACE Local Government are purely ministerial acts by the Tax Collector pursuant to state law.

Section 8. Creation of State, County, or Municipal Debts Prohibited. The County and Participating Municipalities shall not incur nor ever be requested to authorize any obligations secured by special assessments associated with Qualifying Improvements imposed by the PACE Local Government pursuant to the PACE Statute and the Ordinance. No PACE Local Government acting pursuant to the PACE Statute, the Ordinance, or this Agreement shall be empowered or authorized in any manner to create a debt as against the County and Participating Municipalities and shall not pledge the full faith and credit of the County and Participating Municipalities in any manner whatsoever. No revenue bonds or debt obligations of any PACE Local Government acting pursuant to the PACE Statute, shall ever pledge or imply any pledge that the County or any Participating Municipality shall be obligated to pay the same or the interest thereon, nor state or imply that such obligations payable from the full faith and credit or the taxing power of the state, the County, or any Participating Municipality within the County as a result of the Ordinance or this Agreement. The issuance of bonds by the PACE Local Government under the provisions of law, the PACE Local Government's governance documents, or any agreement or resolution shall not, as the result of the Ordinance or this Agreement, be deemed in any manner, directly or indirectly or contingently, to obligate the County and Participating Municipalities, to levy or to pledge any form of ad valorem taxation or other county or municipal revenues or to make any appropriation for their payment whatsoever.

Section 9. Program Requirements:

The Parties agree that the PACE Program to be offered in the unincorporated County and Participating Municipalities will be governed by the Ordinance, the PACE Statute, applicable Federal and state law, and this Agreement, including the following additional program requirements:

- a. The PACE Local Government will inform every property owner that by law these non-ad valorem assessments must be collected pursuant to Sections 163.08, 197.3632, and 197.3635, Florida Statutes and that the assessment shall not be subject to discount for early payment; and, are not imposed by the County, any Participating Municipality, the property appraiser, or the tax collector, and that they are levied and imposed solely by the PACE Local Government, and only then upon voluntary application of the private property owner as expressly authorized by the PACE Statute and the Ordinance. The following statement, in substantially the following form, must be included on the Notice to Property Owner:
The Assessment will appear on the property tax bill, and will not be eligible for early payment discounts.

- b. The PACE Local Government will also inform every property owner that the PACE Local Government will share data pertaining to the details of their PACE project and assessment with government entities for the purpose of evaluating program demand, benefits, and consumer protections consistent with applicable Federal and state law. An option for the property owner to opt out of sharing personal data may be provided, but they must be informed that data will still be provided in aggregate format and on an individual level as necessary for the purposes of the assessment, TRIM notice, and property tax bill.
- c. The PACE Local Government shall not approve any PACE Assessment on properties that are subject to a reverse mortgage.
- d. The PACE Local Government shall include in their contractor Code of Conduct a requirement that approved contractors must maintain proof of their license/certification, insurance, and business tax receipts (occupational license) and provide to Property Owners if requested. The contractors must also give the property owner the document outlining the complaint process covering the PACE program and participating contractors or a summary sheet including a web link to the full document.
- e. Recognizing that there may be ongoing consequences and risk that some lenders may require full repayment of the special assessments upon resale or refinancing, in addition to the disclosures and protections required in the Ordinance, the PACE Local Government shall provide assistance to any Property Owner that faces such a requirement.

Section 10. Opinion of Bond Counsel. As a condition precedent to the authorization to operate a PACE Program in Sarasota County under the terms of this Agreement, the PACE Local Government shall deliver to the County an "Opinion of Bond Counsel" within 30 days of execution of this Agreement stating that, based on the counsel's review of the bond validation judgment and the underlying bond documents of the PACE Local Government, the PACE Program's structure complies with the bond validation judgment and the underlying bond documents. The PACE Local Government acknowledges that the County is relying on the Opinion of Bond Counsel in its decision to execute this Agreement.

Section 11. Boundaries. To help finance the costs of Qualifying Improvements for those individual properties, the PACE Local Government is authorized, on a non-exclusive basis, to levy voluntary, non-ad valorem special assessments on the benefitted properties within the geographical boundaries of unincorporated County and within the Participating Municipalities, pursuant to their respective opt-in ordinance or resolution. Those properties receiving financing for Qualifying Improvements shall be assessed, in accordance with the PACE Statute, the Ordinance, the opt-in ordinance or resolution of each Participating Municipality and other applicable law. Notwithstanding termination of this Agreement, those properties that have received financing for Qualifying Improvements shall continue to be a part of the PACE Local Government's Program until such time the financial obligations owed pursuant to all properly signed PACE Financing Agreements have been satisfied, released, or otherwise resolved.

Section 12. Financing Agreement. The Parties agree that the PACE Local Government may enter into a PACE Financing Agreement, pursuant to the PACE Statute and the Ordinance with property owner(s) who obtain financing through the PACE Local Government within the geographical boundaries of unincorporated County and Participating Municipalities. Notwithstanding any other provision in this Agreement, rates, fees and charges charged by or through the PACE Local Government shall not exceed those contained in Chapter 687, Florida Statutes.

Section 13. Responsibilities of the PACE Local Government; Indemnification; Liability.

- a. All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the Parties, and Participating Municipalities, shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Agreement.
- b. The County, Participating Municipalities, and the PACE Local Government are and shall be subject to the limitations of liability provided in Section 768.28, Florida Statutes, and any other relevant provisions of Florida law governing sovereign immunity. Nothing in this Agreement is intended to waive or alter the sovereign immunity of any of the Parties hereto including, but not limited to the express monetary limits of liability set forth in Section 768.28, Florida Statutes. Pursuant to the PACE Statute and this Agreement, the local governments who are either the incorporators or members of the PACE Local Government or any subsequently served or participating local government shall not be held jointly liable for the torts of the officers or employees of the PACE Local Government, or any other tort attributable to the PACE Local Government, and the PACE Local Government alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes.
- c. To the extent provided by law, the PACE Local Government agrees to protect, defend, reimburse, indemnify and hold the County and Participating Municipalities, their agents, employees and elected officers ("Indemnified Parties"), and each of them free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature (collectively, a "Claim") whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault, whether active or passive, of the PACE Local Government, its agents, employees, or officials or anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. The PACE Local Government's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the County or

Participating Municipalities, its respective agents, servants, employees or officers, nor shall the liability limits set forth in Section 768.28, Florida Statutes, be waived. Nothing in this Agreement is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. In the event any Claim is brought against an Indemnified Party, the PACE Local Government shall, upon written notice from an Indemnified Party, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

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

Section 14. Agreements with Tax Collector, Property Appraiser and Municipalities.

- a. The PACE Local Government acknowledges that the County has no authority to bind the County Tax Collector and the County Property Appraiser, and the PACE Local Government will be required to enter into separate agreement(s) therewith, which shall establish the fees (if any) to be charged by the Tax Collector and Property Appraiser for the collection or handling of the Program's special assessments. The PACE Local Government also acknowledges that until an incorporated municipality in the County has adopted an ordinance or resolution authorizing the PACE Program to be implemented within its respective jurisdiction, the PACE Local Government shall have no authority to operate the Program within such municipality.
- b. As a condition precedent to the authorization to operate a PACE Program under the terms of this Agreement within Sarasota County, the PACE Local Government must enter into separate written agreements as required by Section 197.3632(2), Florida Statutes, for the reimbursement and compensation of tax collectors and property appraisers as prescribed by law.
- c. The PACE Local Government, not the County nor Participating Municipalities, is the local government imposing the subject non-ad valorem assessments and shall be solely responsible for compliance with all applicable law and all matters associated with origination, funding, financing, administration, and collection (in

concert with the uniform method of collection set forth in Section 197.3632, Florida Statutes) of each of the resulting non-ad valorem assessments.

- Section 15. Resale or Refinancing of a Property. The PACE Local Government recognizes that some lenders may require full repayment of the Program special assessments upon resale or refinancing of a property subject to the Program special assessments. The PACE Local Government agrees to provide written disclosure of this matter to all property owners that may utilize the Program, as outlined in the Ordinance.
- Section 16. Reporting. In addition to the reporting requirements in the Ordinance, the PACE Local Government shall encourage participants conducting energy improvements to complete a utility information release form to enable reporting on their actual energy use and energy cost after completion of their respective project(s). For those participants that agree to do so, the PACE Local Government shall provide the PACE Program Coordinator with the signed release form as part of their quarterly metrics reporting. The PACE Local Governments shall encourage participants conducting hurricane improvements to agree to participate in an annual survey conducted by the County to collect information on insurance cost savings after completion of the project. If the PACE Local Government prefers, they can send the link that the county provides directly to the customers. The PACE Program Coordinator is authorized to defer these additional requirements for a term up to one year from the date of the Authorization Letter if the PACE Local Government demonstrates that it does not have the ability to comply as of the date of the Authorization Letter and that it would create an unreasonable hardship to immediately modify its procedures and documents to comply. The PACE Local Government shall provide the PACE Program Coordinator with a copy of the document(s) provided to the Property Owner to comply with this section. Full compliance will be required upon the expiration of any such deferral period unless the PACE Program Coordinator approves a further deferral or an alternative method of compliance.
- Section 17. Responsive Communications. The PACE Local Government will promptly respond in writing to all written communications, including email, from the County. Such response shall be deemed prompt if made in a reasonable and complete manner within ten (10) days of receipt of any such written communication. This paragraph shall not be construed as containing any obligation for the County to receive complaints or concerns about the PACE Local Government or its designee's performance, policies, systems, or procedures. The County will refer all such complaints or concerns directly to the PACE Local Government for a response. The PACE Local Government shall follow the customer service procedures as outlined in the Ordinance.
- Section 18. Term of Agreement; Duration of Agreement; No Exclusivity.
- a. The term of this Agreement shall commence upon recording of this Agreement with the Sarasota County Clerk of Court.

- b. Either party may at any time terminate this Agreement upon sixty (60) days written notice. Provided, however, no termination of this Agreement shall preclude the PACE Local Government from exercising its power or authority to collect any of the assessments owed pursuant to a properly signed and performed PACE Financing Agreement. The party that terminates this Agreement will be responsible for filing a notice of such termination with the Sarasota County Clerk of Court.
- c. The applicable provisions, authority and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the Program and responsibilities of the PACE Local Government then underway shall remain in effect and survive any termination until such time as those obligations and all associated remaining responsibilities of the PACE Local Government are fulfilled (including, but not limited to, the collection of assessments in due course).

Section 19. Consent. This Agreement and the Ordinance shall be considered the County's consent for the PACE Local Government to implement the PACE Program within unincorporated County pursuant to the PACE Statute and the Ordinance.

Section 20. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

County: Sarasota County
ATTN: County Administrator
1660 Ringling Blvd.
Sarasota, Florida 33236

With a copy to: Sarasota County
ATTN: County Attorney
1660 Ringling Blvd., Rm. 250
Sarasota, Florida 33236

PACE Local
Government: District Florida Resiliency and Energy District
c/o Florida Development Finance Corporation
William "Bill" Spivey, Jr.
Executive Director
156 Tuskawilla Road
Winter Springs, FL 32708

With a copy to: Program Counsel for the PACE Local Government
Issuer's Counsel with Broad and Cassel
Joseph Stanton, Esq
Bank of America Center
390 Orange Avenue, Suite 1400
Orlando, FL 32801

- Section 21. 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 with the same formality and of equal dignity herewith by the Parties hereto.
- Section 22. Joint Effort. The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.
- Section 23. Merger. This 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 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.
- Section 24. Assignment. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Party hereto.
- Section 25. Records. The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
- Section 26. No Third-Party Beneficiaries. It is the intent and agreement of the Parties that this Agreement is solely for the benefit of the Parties and Participating Municipalities under the Ordinance and no other party or entity shall have any rights or privileges hereunder.
- Section 27. Severability. In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.
- Section 28. Administrator Indemnification; Additional Insured.
- a. The PACE Local Government will promptly request and obtain from its administrators, [Renovate America Inc, PACE Funding Group LLC, and Dividend Finance a legally recognized entity authorized to conduct business in Florida], and any subsequent administrator, a separate indemnification agreement as to its actions and activities on behalf of the PACE Local Government

concerning all of the subject matter of this Agreement for the benefit of the County and Participating Municipalities. The form of the indemnification agreement must be approved by the County Attorney's Office, prior to the administrator assuming responsibilities for the PACE Local Government pursuant to this agreement.

- b. The PACE Local Government shall promptly request and obtain from its administrators [Renovate America Inc, PACE Funding Group LLC, and Dividend Finance] and any subsequent administrator, and shall provide the County with a copy of a certificate showing the County as an additional insured for the coverages the PACE Local Government requires of its administrator, which shall be at a minimum:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability	\$1,000,000 per occurrence
	\$1,000,000 aggregate
Commercial Auto Liability	\$1,000,000 combined single limit
Professional Liability (E&O)	\$1,000,000 per occurrence
	\$2,000,000 aggregate

- c. The statement or certificate evidencing the County is named as an additional insured will include a standard insurance industry statement prohibiting cancellation, termination, or modification of the policy or a reduction of coverage without first giving the County (as an additional insured) at least ten (10) days prior written notice of such proposed action.

Section 29. Insurance by the PACE Local Government. Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statute, the PACE Local Government acknowledges that it is self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with limits of liability at \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the PACE Local Government maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28 Florida Statute, the PACE Local Government shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The PACE Local Government agrees to maintain or to be self-insured for Workers' Compensation & Employer's Liability insurance in accordance with Section 440, Florida Statutes. When requested, the PACE Local Government shall agree to provide Certificate of Insurance evidencing the insurance coverage requirements set forth herein or an affidavit of self-insurance demonstrating the insurance coverage required herein. Compliance with the foregoing requirements shall not satisfy, modify or otherwise relieve the PACE Local Government of its indemnification liability and obligations under this Agreement.

- Section 30. Dispute Resolution. In the event of a dispute between the PACE Local Government and the County under this Agreement, the PACE Local Government Manager and the County Administrator, or their respective designees, shall review such dispute and options for resolution. The joint decision of the PACE Local Government Manager and the County Administrator regarding the dispute shall be final. In the event the PACE Local Government Manager and County Administrator are unable to agree, then the matter shall be referred to the respective Commissions, who may jointly elect to hold a joint meeting in Sarasota County. This process shall substitute for the dispute resolution process set forth in Chapter 164 of the Florida Statutes.
- Section 31. Venue. The venue of any legal or equitable action that arises out of or relates to this Agreement shall be in the appropriate state court in Sarasota County, Florida. In any such action, Florida law shall apply. BY ENTERING INTO THIS AGREEMENT, THE PACE LOCAL GOVERNMENT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF THE PACE LOCAL GOVERNMENT FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE COUNTY OF VIOLATION OF THIS SECTION, THE PACE LOCAL GOVERNMENT SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE COUNTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.
- Section 32. Recording; Effective Date. This Agreement shall be recorded by the PACE Local Government with the Clerk of the Circuit Court in Sarasota County, Florida and shall become effective upon such filing.
- Section 33. Delegation of Duty. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or city officers.
- Section 34. Equal Opportunity Provision. Neither the PACE Local Government nor its respective, agents, successors, or assigns shall practice discrimination on the basis of race, age, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information under any activity carried out by the performance of this Agreement.
- Section 35. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Non-Exclusive Interlocal Agreement to be duly executed and entered into as of the date first above written.

ATTEST:

KAREN E. RUSHING, Clerk of
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners of
Sarasota County, Florida

By: _____
Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA**

By: _____
Chair

Date: _____

Approved as to form and correctness:

By: _____
County Attorney

ATTEST:

By:  _____
Secretary

[Florida Resiliency and Energy District]

By:  _____
Chair

Date: 5/31/18

Approved as to form and
legal sufficiency:

By:  _____
Attorney for PACE Local Government

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[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

**INDEMNIFICATION AGREEMENT BETWEEN RENOVATE AMERICA, INC.
AS ADMINISTRATOR FOR THE FLORIDA RESILIENCY AND ENERGY
DISTRICT, AND SARASOTA COUNTY, FLORIDA**

This Indemnification Agreement (the "Agreement") is entered into May 31, 2018 by and between Renovate America, Inc. ("Renovate America"), administrator for the Florida Resiliency and Energy District ("FRED"), and Sarasota County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

WHEREAS, Section 163.08, Florida Statutes, ("the PACE Statute") authorizes Local Governments to finance defined Qualifying Improvements with payments being secured through the use non-ad valorem assessments; and

WHEREAS, FRED is a separate legal entity created pursuant to Section 163.01(7), Florida Statutes, for the purposes of financing Qualifying Improvements under the PACE Statute; and

WHEREAS, Renovate America is the administrator for FRED's PACE Program in the County; and

WHEREAS, as a material inducement to and condition of the County allowing FRED to operate a PACE program within Sarasota County, FRED is required to protect, defend, reimburse, indemnify and hold the County and any Participating Municipalities free and harmless from and against all claims related to FRED's operation of a PACE Program in Sarasota County; and

WHEREAS, as a material inducement to and condition of the County allowing FRED to operate a PACE program within Sarasota County, FRED's Administrator is also required to protect, defend, reimburse, indemnify and hold the County and any Participating Municipalities free and harmless from and against all claims related to the Administrator's actions related to its actions and activities the operation of a PACE Program; and

NOW, THEREFORE, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. **Indemnification.** Renovate America shall protect, defend, reimburse, indemnify and hold the County, its officers, employees, agents and instrumentalities (hereinafter referred to as the "Indemnified Parties") free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, attorneys' fees, costs of defense, or other expense of whatsoever kind or nature (collectively a "Claim") which the Indemnified Parties may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to, resulting from, or in any way connected with the actions or inactions of Renovate America,

its employees, agents, servants, partners, principals, administrators, subcontractors, or agents in operation of a PACE Program in Sarasota County. Renovate America shall pay all Claims and losses in connection therewith and shall investigate and defend all Claims, suits or losses in connection therewith and shall investigate and defend the Indemnified Parties against all Claims, suits or actions of any kind or nature, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue therefrom. Renovate America expressly understands and agrees that the provisions of the insurance required below shall in no way limit, modify or satisfy the responsibility to indemnify, keep and save harmless and defend the Indemnified Parties as herein provided. In the event any Claim is brought against an Indemnified Party, Renovate America shall, upon written notice from an Indemnified Party or FRED, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

3. **Insurance.** Prior to the commencement of any efforts related to the operation of a PACE Program in Sarasota County, Renovate America shall provide the County with a copy of a certificate showing the County as an additional insured for under all policies the coverages the PACE Local Government requires of its administrator, which shall be at a minimum:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability	\$1,000,000 per occurrence \$1,000,000 aggregate
Commercial Auto Liability	\$1,000,000 combined single limit
Professional Liability (E&O)	\$1,000,000 per occurrence \$2,000,000 aggregate

4. The Administrator shall provide County with at least 5 days advanced written notice of any suspension, cancellation, or reduction in limits of any insurance policy required by this Agreement, and shall promptly procure a replacement policy in full conformance with the requirements of this Agreement.
5. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in conjunction with this Agreement shall be in the state courts in and for Sarasota County. The Parties hereby expressly agree that in the event of litigation regarding this Agreement, any and all rights to jury trial are waived.
6. The term of this Agreement shall begin upon execution by both Parties and continue so long as Renovate America is conducting activities related to the operation of a PACE Program in Sarasota County.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement each on this date noted below.

ATTEST:

KAREN E. RUSHING, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners of
Sarasota County, Florida

Board of County Commissioners of
Sarasota County, Florida

By: _____
Chair

By: _____
Deputy Clerk

Approved as to form and correctness.

Date: _____

By: _____
County Attorney

ATTEST:

By:  _____
Secretary

Renovate America, Inc.

By:  _____
Scott D. McKinlay,
Executive Vice President

Approved as to form and legal
sufficiency.

Date: May 31, 2018

By:  _____
Counsel to Renovate America, Inc.

ORDINANCE NO. 2017-051

BOARD OF COUNTY COMMISSIONERS
FILED FOR THE CLERK
2017 OCT 16 AM 10:48

AN ORDINANCE OF THE COUNTY OF SARASOTA, FLORIDA, RELATING TO THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM, CODIFIED AS ARTICLE XIV OF CHAPTER 38 OF THE SARASOTA COUNTY CODE; PROVIDING DEFINITIONS; PROVIDING FINDINGS OF FACT; PROVIDING A SHORT TITLE; PROVIDING A PURPOSE; PROVIDING PACE PROGRAM BOUNDARIES; PROVIDING FOR PACE LOCAL GOVERNMENTS AUTHORIZATION; PROVIDING FOR PACE PROGRAM STANDARDS; PROVIDING FOR ELIGIBLE PARTICIPANTS; PROVIDING FOR NON-AD VALOREM ASSESSMENTS; PROVIDING FOR PACE PROGRAM ADMINISTRATION; PROVIDING FOR RECORDATION; PROVIDING FOR NOTICE TO PURCHASER; PROVIDING FOR SUSPENSION OR TERMINATION; PROVIDING FOR ENFORCEMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA:

SECTION 1. There is hereby created a new Article XIV of Chapter 38 of the Sarasota County Code of Ordinances (the "Code"), entitled "Property Assessed Clean Energy (PACE) Program".

SECTION 2. Article XIV of Chapter 38 of the Code is hereby created to read as follows:

ARTICLE XIV. PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM

Sec. 38-320. Definitions.

- (a) *Board* shall mean the Sarasota County Board of County Commissioners.
- (b) *Eligible Participant* shall mean any residential or non-residential Property owner who voluntarily participates in the PACE Program and satisfies the eligibility requirements set forth in Section 38-327.
- (c) *PACE Act* shall mean Section 163.08, Florida Statutes.
- (d) *PACE Assessment* shall mean the non-ad valorem assessment placed on a property owner's tax bill as a result of financing obtained pursuant to the PACE Financing Agreement.
- (e) *PACE Financing Agreement* shall mean the agreement entered into between the Eligible Participant and the PACE Local Government

specifying the Qualifying Improvements to be installed at the Property and the terms and conditions for financing those improvements through non-ad valorem assessments levied on the Property.

(f) *PACE Interlocal* shall mean an agreement entered into between Sarasota County and a PACE Local Government authorizing the PACE Local Government to administer a PACE Program within unincorporated Sarasota County.

(g) *PACE Local Government* shall mean a separate legal entity, other than a county or municipality, created pursuant to Section 163.01(7), Florida Statutes, and/ or its designated PACE Program administrator as applicable.

(h) *PACE Program or Program* shall mean the Property Assessed Clean Energy program authorized by this Article within the boundaries of unincorporated Sarasota County and any municipality that has opted into the Sarasota County PACE Program via resolution or ordinance.

(i) *PACE Program Coordinator* shall mean the County staff liaison between the PACE Local Government and the County as delegated by the County Administrator.

(j) *Property* means a residential or non-residential property, as determined by the most current version of the Florida Building Code, and/or the building or facility that is part of the property, as applicable, located within the jurisdictional boundaries of unincorporated Sarasota County and any municipality that has opted into the Sarasota County PACE Program.

(k) *Qualifying Improvements* shall mean those improvements to real property provided for in Section 163.08(2), Florida Statutes, including, but not limited to, energy conservation and efficiency, renewable energy and wind-resistance improvements.

Sec. 38-321. Findings of Fact.

(a) Section 163.08, Florida Statutes authorizes local governments defined as a county, a municipality, a dependent special district as defined in Section 189.012, Florida Statutes or a separate legal entity created pursuant to Section 163.01(7), Florida Statutes to establish and administer financing programs pursuant to which owners of real property may voluntarily obtain funding for Qualifying Improvements and repay such funding through non-ad valorem assessments, levied upon the improved property pursuant to

financing agreements between the property owner and the PACE Local Government(s).

- (b) Several PACE Local Governments have been created and the availability of the voluntary, non-exclusive PACE Program offered by the separate PACE Local Governments is subject to an agreement with the local governing body and is without cost, assumption of liability by, or demand upon the credit of the local governing body.
- (c) Section 163.08(3), Florida Statutes authorizes a PACE Local Government to levy non-ad valorem assessments to fund qualifying improvements within jurisdictions that authorize the Program.
- (d) It is within the best interests of the citizens of Sarasota County to authorize a PACE Program through the adoption of an ordinance that sets uniform consumer protections that apply to all PACE Local Governments who implement and manage PACE Programs in unincorporated Sarasota County and in those municipalities within Sarasota County who choose to opt into the Program.
- (e) A PACE Local Government shall be authorized to implement the PACE Program within Sarasota County through the execution of an individual interlocal agreement with Sarasota County.
- (f) The installation and operation of Qualifying Improvements not only benefits the affected properties for which the improvements are made, but also provides a public benefit by assisting in fulfilling the goals of the State's and County's energy and hurricane mitigation policies.
- (g) The voluntary participation in the PACE Program by property owners will provide an alternative financing option to finance the costs to provide and install Qualifying Improvements to property located within Sarasota County.

Sec. 38-322. Short Title.

This article shall be known as the "Property Assessed Clean Energy (PACE) Program".

Sec. 38-323. Purpose.

- (a) The PACE Program has been developed to allow a property owner to voluntarily finance energy efficient, renewable energy, or wind resistant improvements through a non-ad valorem assessment implemented and managed by a PACE Local Government and repaid through the annual tax bill. The purpose of this Ordinance is to provide uniform consumer protection regulations for all PACE Local Governments that are authorized to operate within Sarasota County to ensure that: (i) the citizens of Sarasota County are fully apprised of the Program, (ii) PACE Local Governments have developed a responsive complaint process, (iii) that Qualifying Improvements meet the statutory goals set forth in Section 163.08, Florida Statutes; and (iv) that contractors meet certain standards of conduct.
- b. This Article is intended to add requirements to the provisions of Section 163.08, Florida Statutes and other applicable law as it currently exists and should be construed consistently with the PACE Act and any such other applicable law. To the extent that the PACE Act provides for additional requirements not otherwise found in this Article or applicable law; the provisions of the PACE Act must be met. To the extent that this Article provides for more restrictive or additional requirements not found in the PACE Act or any such other applicable law, the provisions of this Article shall apply.

Sec. 38-324. PACE Program Boundaries.

The PACE Program shall be available to Eligible Participants residing within unincorporated Sarasota County and within Sarasota County municipalities, provided that the municipality has adopted a resolution or ordinance authorizing those areas to be included in the PACE Program.

Sec. 38-325. PACE Local Governments Authorization.

Upon entering into a PACE Interlocal with Sarasota County, a PACE Local Government shall be authorized to administer a PACE Program pursuant to Section 163.08, Florida Statutes, the terms of this Article, as may be amended from time to time, the PACE Interlocal and other regulations adopted by the Board within unincorporated Sarasota County and those municipalities that have opted into the PACE Program.

Sec. 38-326 PACE Program standards. At a minimum, PACE Local Governments shall comply with each of the following standards:

- (a) General

- (1) Qualifying Improvements: All Qualifying Improvements shall be properly permitted and must comply with Florida and local codes. PACE Local Governments shall finance only Qualifying Improvements that are permanently affixed to the Property.
- (2) Licensed Contractors: Any contractor constructing or installing a Qualifying Improvement shall be properly licensed and insured.
- (3) Materials: PACE Local Governments shall fund, and contractors and owner-builders shall construct or install, only Qualifying Improvements. PACE Local Governments shall establish an "Eligible Measures List" that identifies the types and specifications of Qualifying Improvements, using efficiency standards for materials and installation established by the U.S. Department of Energy, the U.S. Environmental Protection Agency, or Florida state agencies, as applicable. The Eligible Measures List shall be regularly updated and made publicly available. The County shall have the right to review that list annually to assure compliance with this ordinance.
- (4) Data Security and Consumer Privacy: PACE Local Governments shall take security measures to protect the security and confidentiality of consumer records and information to the extent permitted by law. In addition, a privacy policy must be in place that complies with state and federal law and, in particular, shall provide a property owner the ability to opt-out of having the property owner's information shared with third parties, except where expressly required by state and federal law.
- (5) Contractor Pricing: Within six months of entering into an Interlocal agreement, PACE Local Governments shall have in place pricing rules and enforcement mechanisms to ensure property owners are protected from excessive or unjustified prices and charges.
- (6) Estimated Energy or Insurance Savings Disclosure: PACE Local Governments shall include in the "Code of Conduct" (referenced below) and in contractor training the requirement that contractors inform Eligible Participants of the following:

- aa. Estimate of energy savings, insurance cost savings (if applicable) and return on investment, including the range of efficiency options (if applicable) using industry best practices;
- bb. Available rebates or incentives associated with Qualifying Improvements;
- cc. If energy improvements are undertaken:
 - aaa. The benefits of installing energy efficiency improvements before renewable energy to reduce costs overall;
 - bbb. The benefits of a full Energy Audit of their property, names of energy audit professionals qualified through the Residential Energy Services Network, Building Performance Institute, Association of Energy Engineers, or other comparable program, and any available incentive programs; and
 - ccc. Costs of the Energy Audit are eligible for financing as part of the assessment.

(7) Notice to Property Owner: Prior to or contemporaneously with entering into a PACE Financing Agreement, PACE Local Governments shall provide the property owner with a separate written notice disclosing the following items:

- aa. The total amount of the debt, including interest;
- bb. The maximum annual PACE Assessment and payment term that does not exceed the useful life of the improvements;
- cc. The estimated savings from the Qualifying Improvements, including a statement that actual savings will depend on usage patterns, seasonal variation and weather, utility rates and trends and product specifications.
- dd. The three-day right to cancel the PACE Financing Agreement;
- ee. The PACE Assessment will appear on the property owner's tax bill;
- ff. There is no discount or penalty for paying the PACE Assessment early;
- gg. The PACE Assessment will be collected in the same manner as real estate taxes; that failure to pay the PACE Assessment may cause a tax certificate to be issued against the property; and that failure to pay may result in the loss of property subject to the

- PACE Assessment, including homestead property, in the same manner as failure to pay property taxes;
- hh. The installation of Qualifying Improvements may or may not affect the overall market value of the Property;
 - ii. The PACE Assessment may affect the sale or refinance of the Property; and
 - jj. The property owner may be required to pay any PACE assessment in full at the time of refinance or sale of the property.
 - kk. If the property owner is using an escrow or impound account to pay property taxes, he/she should contact his/her lender immediately to ensure that the escrow payments are adjusted correctly so that the property owner is aware of and prepared for the increased payment amount.

The notice shall be signed and dated by the property owner to acknowledge that they understand these conditions. Item cc above may be provided in a separate document without property owner signature if necessary. If the PACE Local Government does not currently have the ability to include item cc above, it should modify its procedures in order to comply within one year of the effective date of its PACE Interlocal.

- (8) PACE Financing Agreement. The PACE Local Government shall enter into a voluntary written agreement with each Eligible Participant which shall include, at a minimum, the following:

- aa. The full legal description of the Property subject to the PACE Assessment.
- bb. The amount of funding to be provided to the Eligible Participant.
- cc. Statement of express voluntary consent by the Eligible Participant to accept the non-ad valorem assessment collection process, set forth in Section 197.3632, Florida Statutes.
- dd. The length of time for the Eligible Participant to repay the non-ad valorem assessment, which shall not exceed 30 years.
- ee. Statement that the Eligible Participant is responsible for assuring the Qualifying Improvements are completed as reflected in the approved application documents; consent by the Eligible Participant to providing the PACE Local Government with access to the Property to verify that the Qualifying

Improvements have been completed as proposed in the application.

- ff. Statement that at the time of a transfer of Property ownership (except a transfer resulting from foreclosure), the past due balances of any non-ad valorem assessment may be due for payment, but future payments may continue as a lien on the Property, if the buyer and the mortgagor, if any, agree.
- gg. Statement that at or before the execution of a contract for the sale and purchase of any Property for which a non-ad valorem assessment for the PACE Program has been levied and any unpaid financed balance is due, the seller must give the prospective purchaser a Notice of the lien.
- hh. In bold face caps, in a font larger than the rest of the Agreement, a statement of the risks associated with participating in the PACE Program, including risks related to the failure of the Eligible Participant to make payments, the risk that they may not be able to refinance the home or sell the home unless the PACE Assessment is paid off in full first, and the risk of issuance of a tax certificate and loss of the Property pursuant to Chapter 197, Florida Statutes.
- ii. Description of the Qualifying Improvements and their cost.
- jj. Notice of the non-ad valorem assessment shall be recorded in the public records for the Property.
- kk. In bold face caps, in a font larger than the rest of the Agreement, a statement of the interest rate to be charged, including points, as well as any and all fees or penalties that may be separately charged to the Eligible Participant, including potential late fees. The subsequent charging or collecting of any additional fees that were not specifically disclosed in the written agreement with the property owner is prohibited.

- (9) Within five (5) days after execution of the PACE Financing Agreement, the PACE Local Government shall record, or cause to be recorded, the following notice in the public records along with appropriate contact information for property owner inquiries:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE. This property is located within the jurisdiction of a PACE Local Government that has placed an assessment on the property pursuant to Section 163.08, Florida Statutes. The assessment is for a Qualifying Improvement to the property relating to energy efficiency, renewable energy or wind resistance.

(10) Prepayment.

- aa. The PACE Local Government shall provide to the Eligible Participant information as to any accrued interest that may be due upon early payment.
- bb. No prepayment penalties may be charged or allowed on residential projects. The PACE Local Government shall provide a mechanism for re-amortization of PACE assessments to account for partial pre-payment, particularly for application of tax credits, rebates, or other incentives.
- cc. For non-residential properties, prepayment penalties may be charged or imposed to the extent permitted by applicable law, as negotiated with the property owner, and providing all financial impacts of such penalties are clearly disclosed and agreed to by the property owner in writing.

(11) Financing. The PACE Local Government may offer only fixed simple interest rates and payments that fully amortize the obligation. Variable or negative amortization financing terms are not permitted. Capitalized interest included in the original balance of PACE financing does not constitute negative amortization.

(12) Project Completion. The PACE Local Government shall require property owner verification of work and sign-off on project completion to owner's satisfaction before issuance of final payment to any contractor(s).

(13) Lender notification. The PACE Local Government shall obtain from the property owner a verified copy or other proof of lender notification of intent to enter into the Financing Agreement, consistent with Section 163.08(13), Florida Statutes.

(14) Contractor Management. PACE Local Governments shall:

- aa. To the extent available, recruit and approve local contractors;
- bb. Conduct local recruitment efforts;
- cc. Establish a "Code of Conduct" that sets standards for participating contractors such as licensing, advertising and marketing, accurate representation of the program, and consumer protections.
- dd. Train all PACE program contractors on the regulations related to the PACE program and the Code of Conduct;
- ee. Ensure that all contractors hold necessary licenses and insurance;
- ff. Confirm contractor qualifications at least annually and as necessary based upon consumer complaints or other indications of lack of compliance; and
- gg. Remove contractors from the PACE program who no longer meet program criteria; have not met program requirements or fail to resolve consumer complaints.

(15) Customer Service: PACE Local Governments shall provide a high level of customer service, including:

- aa. Access to customer service representatives by email and phone during normal business hours;
- bb. A detailed website with specific reference to the Sarasota County PACE Program;
- cc. A transparent customer feedback and complaint process with quick response and resolution by both the contractor and the PACE Local Government.
- aaa. A document outlining the complaint process shall be clearly available on the PACE Local Government website and provided to customers.
- bbb. The document shall make clear that Sarasota County is not operating or administering the PACE Program in any way and that all concerns about the Program should be addressed directly to the PACE Local Government, with clear contact information provided.
- ccc. All complaints and resolutions shall be logged, with the following information at a minimum: date and time of complaint, customer and contractor information, details

of complaint, when and what actions were taken by both the PACE Local Government and the contractor, and final resolution.

- ddd. All disputes and complaints shall be investigated, and resolved in a timely manner. Reports shall be provided to the PACE Program Coordinator upon request and an annual summary provided automatically.

- (16) Marketing: Neither PACE Local Governments nor their contractors, shall use facsimiles of the county, city, Property Appraiser, or Tax Collector logos in their marketing materials. Marketing materials shall not state that PACE: (i) is a free program; (ii) is administered by the county; (iii) does not involve a financial obligation by the property owner; (iv) is a form of public assistance.

- (17) Metrics Reporting: PACE Local Governments shall track Program metrics and report those metrics to the PACE Program Coordinator at least quarterly, in spreadsheet format or another electronic format agreed upon by Sarasota County. Those metrics shall include, at a minimum, the total number and value of projects approved and completed in that reporting period and a running total of the projects approved and completed since the beginning of the Program, and the following, to the extent allowed by law:

- aa. Name, address, contact information and sector type (commercial, industrial or residential) of participants;
- bb. Number of defaults or delinquencies;
- cc. Project description including Qualifying Improvement made, completion dates, contractor information, financed value, assessment amount, assessment duration, and total cost to property owner;
- dd. Estimated baseline energy use, and estimated annual savings of energy use, energy cost and insurance cost; whether ENERGY STAR certified materials were used, if appropriate; solar capacity installed with expected annual renewable energy generation; any other resource saving metrics;

- ee. Energy audits performed, detailing the energy audit results, if property owner chose to include an energy audit in the financing;
- ff. Number of actual or estimated jobs created during the reporting period related to the projects;
- gg. Record of complaints and resolution of complaints. County reserves the right to review the material used to prepare the reports and to contact customers or contractors directly to verify experiences.

If the PACE Local Government does not currently have the ability to provide reports that contain this minimum reporting information, it should modify its data collection and maintenance procedures and systems within one-year of the effective date of its PACE Interlocal in order to comply. Sarasota County reserves the right to publish reports on program progress and results and PACE Local Government compliance.

- (18) Amendments. County reserves the right to amend this ordinance to revise Program standards.
- (19) Reporting. PACE Local Governments will respond to requests from the PACE Program Coordinator for information related to the Program in a timely manner and shall provide sufficient documentation as requested by the PACE Program Coordinator to ensure that the requirements of this Article and the State statutes are being met. The PACE Local Government shall retain sufficient books and records demonstrating compliance with the Agreement and State and County requirements for a minimum period of seven years from the initial date of each non-ad valorem assessment, and shall allow County representatives access to such books and records upon request.
- (b) Additional Program standards for residential properties: In addition to requirements set forth in Section 163.08, Florida Statutes, PACE Local Governments that finance PACE Qualifying Improvements on residential properties within Sarasota County shall, at a minimum, comply with at least one (1) of the following additional standards for projects affecting residential properties with four (4) residential units or fewer:
 - (1) Financing limits: PACE Local Governments shall ensure that the total amount of any annual property taxes and assessments do not exceed five percent (5%) of the

Property's fair market value, determined at the time financing is approved and ensure that the total amount of annual PACE Assessments do not exceed four percent (4%) of the total annual gross income of the Property owner in the prior calendar or fiscal year, based upon an affidavit or attestation by the Property owner of the owner's total annual gross income. Fair market value shall be that value determined by the Sarasota County Property Appraiser, by a credentialed commercial property appraiser or licensed realtor, or by an automated valuation service or model from a reputable third party source; or

- (2) Mortgage Holder Consent or Escrow: PACE Local Governments shall verify that each prior mortgage or financing instrument holder has consented to any proposed Financing Agreement and PACE Assessment, or that the prior mortgage or financing instrument holder or loan servicer has consented to escrow sufficient funds to ensure payment of the annual assessment with each year's tax bill; or
- (3) Insurance or Energy Savings: PACE Local Governments shall verify that the total cost of the PACE Assessment is equal to or less than the projected savings to the property owner based upon the projected energy savings in a written statement from a Certified Energy Auditor, certified by the Association of Energy Engineers, the Residential Energy Services Network, or the Building Performance Institute, or the projected insurance savings in a written statement from the property owner's insurer; or
- (4) Debt Limits: PACE Local Governments shall verify that all mortgage-related debt on the underlying property does not exceed 90 percent of the property's fair market value and ensure that the total mortgage-related debt on the underlying property plus the PACE Assessment does not exceed the fair market value.

Sec. 38-327. Eligible Participants.

In order to be an Eligible Participant, a property owner (or property) must meet the criteria listed below. The PACE Local Government is responsible for verifying that the following conditions are met:

- (a) Property owner must be the legal owner of the Property and provide proof of ownership in the application for the PACE Program;
- (b) Property must be within the PACE Program boundaries, as defined in Section 38-324;
- (c) Property owner must be in compliance with Section 163.08(8) and (9);
- (d) Property owner cannot be in bankruptcy nor can the Property be an asset in any bankruptcy proceeding; and
- (e) Property cannot be encumbered by any federal income-tax lien, judgment lien or similar lien in excess of \$1,000;

Section 38-328. Non-ad valorem Assessments

- (a) Pursuant to Section 163.08, Florida Statutes, the PACE Local Government is authorized to impose non ad-valorem assessments on Property to secure the repayment of any financing provided to an Eligible Participant to pay for Qualified Improvement(s). The assessments are collected pursuant to Section 197.3632, Florida Statutes, or any successor Section. Notwithstanding Section 197.3632(8)(a), the assessments shall not be subject to discount for early payment and shall not require notice and adoption as set forth in Section 197.3632(4).
- (b) Pursuant to Chapter 197, Florida Statutes, non-ad valorem assessments levied pursuant to this Article shall remain liens, coequal with the lien of all state, County, district and municipal taxes, superior in dignity to all other liens, titles and claims, until paid.
- (c) PACE Local Governments shall timely notify the Sarasota County Property Appraiser of all PACE Assessments for inclusion in the Truth in Millage (TRIM) notice with other non-ad valorem assessments levied within the County.

Sec. 38-329. PACE Program Administration.

The PACE Program shall be administered by the PACE Local Government pursuant to Section 163.08, Florida Statutes, this Article and any additional regulations adopted by the Board.

Sec. 38-330. Recordation.

Any financing agreement entered into or a summary memorandum of such agreement between the Eligible Participant and the PACE Local Government, shall be recorded by the PACE Local Government in the public records of the County within five (5) days after execution of the Financing Agreement. The recorded Agreement or summary memorandum of such Agreement shall provide constructive notice that the assessment to be levied on the Property constitutes a lien of equal dignity to County taxes and assessments from the date of recordation.

Sec. 38-331. Notice to Purchaser.

- (a) Property owner must comply with Section 163.08(14) regarding providing a written disclosure statement to a prospective purchaser.
- (b) Failure to provide the notice referenced above to a purchaser of the Property shall have no effect on either the validity of any PACE Assessment or any obligation of a Property owner.

Sec. 38-332. Suspension or Termination.

In the event that the PACE Program Coordinator determines that any PACE Local Government has failed to abide by the provisions of this Ordinance and the PACE Interlocal, following sixty day notice to cure, the Board of County Commissioners in its sole discretion, may suspend or terminate the Interlocal agreement and the PACE Local Government shall have no authority to continue with any new projects within Sarasota County. The Board's determination shall be considered final administrative action for purposes of appeal. Notwithstanding termination of the Interlocal agreement, however, property owners whose applications were approved prior to the termination date, and who received funding through the PACE Program, shall continue to be a part of the PACE Program, for the sole purpose of paying their outstanding assessment payments, until such time that all outstanding assessment payments have been satisfied.

Sec. 38-333. Enforcement

The county may enforce this Ordinance by any means provided by law. Additionally, the County may choose to enforce this Ordinance by seeking injunctive relief in the Twelfth Judicial Circuit of Florida.

SECTION 3. Severability Clause.

If any provision of this ordinance is for any reason finally held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions.

SECTION 4. Effective Date.

This Ordinance shall take effect upon filing with the Office of Secretary of State of the State of Florida.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Sarasota County, Florida, this 11th day of October 2017.

**BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA**

By: _____

Chairman

ATTEST:

KAREN E. RUSHING, Clerk of the
Circuit Court and Ex-Officio Clerk
of the Board of County Commissioners
of Sarasota County, Florida

By: _____

Deputy Clerk

