





**Continued from Page 1**

**Background and Justification:** The establishment of a PACE program for Palm Beach County aligns with the County's climate resilience and sustainability efforts and the Southeast Florida Regional Climate Compact. Providing PACE, as an alternative to traditional forms of financing, is a good strategy to increase energy efficiency in residential and commercial buildings thus reducing community greenhouse gas (GHG) emissions. As PACE has developed nationally, it has become a viable option for property owners enabling a much broader range of property owners to implement energy efficiency, renewable energy, and wind resiliency improvements that increase the value, functionality, and sustainability of their buildings. These improvements reduce building operational costs, energy use, and GHG emissions. PACE Programs expand the financial options for property owner to access to these improvements while providing advice, tools and resources that enable property owners to make informed choices.

Based on Board direction to ensure consumer protection to the greatest extent feasible and as other municipalities have done, staff incorporated residential consumer protection policies from PACENation, an association of individuals and organizations joined in support for PACE financing, into the County's Ordinance. These policies are rooted in the premise that consumer protections to serve homeowners must be a core value of PACE Programs and Partners (the government authority or third party non-government administrator).

The attachments include a resolution, formal agreement to join the PACE agencies/authorities/district, and indemnification agreement(s) with each of the administrators for the PACE provider. This resolution and agreement(s) represent a joint effort to provide County property owners with access to voluntary non-ad valorem assessments to implement energy efficiency, renewable energy, and wind resiliency improvements on their properties, providing appropriate consumer protections, and reflecting best practice standards ensuring high quality PACE Programs operate within our County.

RESOLUTION NO. 2017-\_\_\_\_\_

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

**WHEREAS**, on April 4, 2017, the BCC adopted Ordinance 2017-012, known as the Palm Beach County PACE Program Ordinance; and

**WHEREAS**, the attached interlocal agreement between Palm Beach County ("County") and the Florida Resiliency and Energy District ("FRED") and the indemnification agreements with both Renovate America Inc. and Florida Development and Finance Corporation ("FDFC"), as administrators for FRED, are being recommended for approval by the BCC.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:**

**Section 1.** This Board hereby approves the interlocal agreement between the County and FRED (Exhibit 1), the indemnification agreements between the County and Renovate America Inc. and FDFC as administrators of FRED (Exhibits 2 and 3, respectively), and this Board authorizes the County Administrator or designee to execute the above-mentioned agreements, in substantially the form attached.

**Section 2.** This Board authorizes the County Administrator or designee to execute indemnification agreements with subsequent administrators of FRED, in a form approved by the County Attorney's Office, to provide that such subsequent administrator of FRED shall indemnify and hold harmless the County.

**Section 3.** This Board authorizes the County Administrator or designee to exercise the provisions in the above-mentioned agreements including, but not limited to, audits, enforcement, revisions, notifications, and termination.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- COMM. PAULETTE BURDICK, Mayor \_\_\_\_\_
- COMM. MELISSA MCKINLAY, Vice Mayor \_\_\_\_\_
- COMM. HAL R. VALECHE \_\_\_\_\_
- COMM. DAVID KERNER \_\_\_\_\_
- COMM. STEVEN L. ABRAMS \_\_\_\_\_
- COMM. MARY LOU BERGER \_\_\_\_\_
- COMM. MACK BERNARD \_\_\_\_\_

The Mayor thereupon declared the resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS  
SHARON R. BOCK, CLERK

By: \_\_\_\_\_

County Attorney

By: \_\_\_\_\_

Deputy Clerk

## EXHIBIT 1

### **NON-EXCLUSIVE INTERLOCAL AGREEMENT BETWEEN THE FLORIDA RESILIENCY AND ENERGY DISTRICT AND PALM BEACH COUNTY, FLORIDA**

This Interlocal Agreement ("Interlocal Agreement") is entered into \_\_\_\_\_, 2017 by and between the Florida Resiliency and Energy District ("FRED"), a public body corporate and politic, and Palm Beach County, a political subdivision of the State of Florida (County) collectively, the ("Parties"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes, for the purpose of providing a Property Assessed Clean Energy (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, (PACE "Statute") authorizes financing for certain renewable energy, energy efficiency and conservation and wind resistance improvements ("Qualifying Improvements") through voluntary assessment programs such as the PACE program provides a special benefit to real property by alleviating the property's burden from energy consumption and/or reducing the property's burden from potential wind damage; and

**WHEREAS**, in order to make such Qualifying Improvements more affordable and assist property owners who wish to undertake such improvements, the legislature also determined that there is a compelling state interest in enabling property owners to voluntarily finance such qualifying improvements with the assistance of local governments, through the execution of financing agreements and the related imposition of voluntary, non-ad valorem special assessments;

**WHEREAS**, an Interlocal Agreement, dated September 6, 2016, recorded in the official records of Orange County, Florida as DOC#20160632352, incorporated herein by reference, as amended and supplemented from time to time ("FRED Interlocal Agreement") was entered into between the Town of Lake Clarke Shores, the City of Fernandina Beach, and any subsequent parties thereto (the "Public Agencies") and, in the limited capacity described therein, the Florida Development Finance Corporation ("FDFC" and, together with the Public Agencies, the "Parties"), for the purpose of facilitating the financing of qualifying improvements for properties located within FRED's aggregate legal boundaries via the levy and collection of voluntary non-ad valorem special assessments on improved property; and

**WHEREAS**, the Parties to this Agreement desire to supplement the FRED Interlocal Agreement to include Palm Beach County as a Limited Member, as such term is defined in the FRED Interlocal Agreement, on the date last signed below; and

**WHEREAS**, the Parties to this Agreement desire to supplement the FRED Interlocal Agreement to include Palm Beach County as a Limited Member, as such term is defined in the FRED Interlocal Agreement, on the date last signed below; and

**WHEREAS**, on April 4, 2017, the Palm Beach County Board of County Commissioners adopted Ordinance No. 2017-012, entitled the Palm Beach County Property Assessed Clean Energy Ordinance (PACE) (“Ordinance”), and provided for certain consumer protections and requirements for PACE Providers; and

**WHEREAS**, the County is concurrently adopting a Resolution authorizing FRED to provide PACE financing and funding with property owners for qualifying improvements within the County, in accordance with the PACE Statute and the Ordinance; and

**WHEREAS**, the Parties have determined that entering into this Interlocal 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 Interlocal 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 virtue of the County’s joining FRED as a non-voting member and allowing FRED and its program to operate within the County. For the purposes of this Agreement, references to FRED shall also include the Florida Development and Finance Corporation (FDFC), the PACE Program Administrator (“Program Administrator”) and financing entity for FRED as referenced in the FRED Interlocal Agreement. Pursuant to the Ordinance, this Interlocal Agreement shall be applicable within the unincorporated areas of Palm Beach County, and in all municipalities that have not adopted an ordinance governing any or all of the subject matter of the Ordinance, regardless of the time of passage of the municipal ordinance (“participating municipalities”).

Section 3. Qualifying Improvements. The County shall allow FRED to provide financing of qualifying improvements, including energy conservation and efficiency, renewable energy, and wind resistance improvements, as defined in the PACE Statute, as may be amended by law, on properties within the County, pursuant to the Ordinance.

Section 4. Non-Exclusive. FRED is non-exclusive, meaning the County specifically reserves the right to participate with or join any other entity providing a similar program or create its own program under the PACE Statute.

Section 5. Assessment by FRED; County Collection Ministerial. The Parties hereto acknowledge and agree that the non-ad valorem assessments arising from a property owner’s voluntary participation in the program are imposed by FRED and not the

County. Additionally, the Parties agree that the County's collection and distribution of any non-ad valorem assessments imposed by FRED are purely ministerial acts.

Section 6. 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 FRED 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 as against the County or participating municipalities and shall not pledge the full faith and credit of the County or 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 served by FRED, 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 as a result of the Ordinance or this Interlocal Agreement. The issuance of revenue or refunding bonds by FRED under the provisions of law, FRED's governance documents, or any agreement or resolution shall not, as the result of the Ordinance or this Interlocal 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 7. Program Guidelines: The Parties agree that, the program to be offered in the County and participating municipalities will comply with program guidelines and consumer protections set forth in the Ordinance and FRED's guidelines, as may be amended time to time. If there is a conflict between FRED's guidelines and the Ordinance, the Ordinance shall control. FRED will inform every property owner that by law these non-ad valorem assessments must be collected only pursuant to sections 163.01, 163.08, 197.3632, and 197.3635, Florida Statutes; and, are not imposed by the County, any municipality within the County served by FRED under the Ordinance, the property appraiser, nor the tax collector, and that they are levied and imposed solely by FRED, 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.

Section 8. Opinion of Bond Counsel. Prior to the execution of this Interlocal Agreement, FRED shall deliver to the County an "Opinion of Bond Counsel", stating that, based on the counsel's review of the bond validation judgement and the underlying bond documents the program's structure complies with the bond validation judgement and the underlying bond documents. FRED acknowledges that the County is relying on the Opinion of Bond Counsel in its decision to execute the Interlocal Agreement.

Section 9. Boundaries. Pursuant to this Interlocal Agreement, the boundaries of FRED shall include the legal boundaries of the County, which boundaries may be limited, expanded, or more specifically designated from time to time by the County by providing written



notice to FRED. As contemplated in the FRED Interlocal Agreement (as defined above) and as supplemented by this Interlocal Agreement, FRED will levy voluntary non ad valorem special assessments on the benefitted properties within the boundaries of the County pursuant to the Ordinance to help finance the costs of qualifying improvements for those individual properties. Those properties receiving financing for qualifying improvements shall be assessed from time to time, in accordance with the PACE Statute, the Ordinance, and other applicable law. Notwithstanding termination of this Interlocal Agreement or notice of a change in boundaries by the County as provided for above, those properties that have received financing for qualifying improvements shall continue to be a part of FRED, until such time that all outstanding debt has been satisfied.

Section 10. Financing Agreement. The Parties agree that FRED may enter into a financing agreement, pursuant to the PACE Statute and the Ordinance with property owner(s) within the County pursuant to the Ordinance who obtain financing through FRED. Notwithstanding any other provision in the FRED Interlocal Agreement, this Interlocal Agreement, or other related agreement, rates, fees and charges shall not exceed those contained in Chapter 687, Florida Statutes, and always be sufficient to comply fully with any covenants contained in the financing documents.

Section 11. Responsibilities of FRED; 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, including participating municipalities under the Ordinance, shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Interlocal Agreement.
- b. The County, participating municipalities, and FRED are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to the PACE Statute and this Interlocal Agreement, the local governments who are either the incorporators, or members of FRED, or any subsequently served or participating local government shall not be held jointly liable for the torts of the officers or employees of FRED, or any other tort attributable to FRED, and that FRED 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. The County and FRED acknowledge and agree that FRED shall have all of the applicable privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State.
- c. To the extent provided by law, FRED agrees to protect, defend, reimburse, indemnify and hold the County, or any participating municipality within the County served by FRED pursuant to the Ordinance, its 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 County, or any municipality within the County served by FRED pursuant to the Ordinance, of anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. FRED'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 any municipality within the County served by FRED pursuant to the Ordinance, its respective agents, servants, employees or officers, nor shall the liability limits set forth in 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, FRED, 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. FRED 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 FRED, its Board of Directors or any other agents, employees, officers or officials of FRED, except to the extent otherwise mutually and expressly agreed upon in writing. In addition, FRED, its Board of Directors or any other agents, employees, officers or officials of FRED shall have no authority or power to otherwise obligate either the County or any participating municipality.

Section 12. Agreements with Tax Collector, Property Appraiser and Municipalities. FRED acknowledges that the County has no authority to bind the County Tax Collector and the County Property Appraiser, and FRED 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. FRED also acknowledges that all incorporated municipalities in the County that have not adopted an ordinance governing any or all of the subject matter of the Ordinance will be included in the program. As the County is made aware of such cases, the County will promptly notify FRED of any municipality that will not be included in the program, and that FRED will have no authority to operate the program within such municipality under the terms of this Interlocal Agreement and the Ordinance.

Section 13. Resale or Refinancing of a Property. FRED 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. FRED agrees to provide written disclosure of this matter to all property owners that may utilize the program.

Section 14. Term of Agreement; Duration of Agreement; No Exclusivity.

- a. The term of this Interlocal Agreement shall commence as of the date first above written.
- b. The term shall continue so long as FRED has obligations outstanding which are secured by pledged revenues derived from financing agreements relating to any properties within the boundaries of the County, pursuant to the Ordinance, or FRED has projects for qualified improvements underway therein; the applicable provisions, authority and responsibility under this Interlocal Agreement reasonably necessary to carry out the remaining aspects of the program and responsibilities of FRED then underway, shall remain in effect and survive any termination until such time as those obligations and all associated remaining FRED responsibilities are fulfilled (including, but not limited to, the collection of assessments in due course). Provided, however, FRED'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 program for financing qualified improvements using non-ad valorem assessments.
- c. Notwithstanding subsection (b), either party may at any time terminate this Interlocal Agreement upon sixty (60) days written notice provided as required by Section 17. Provided, however, no termination of this Interlocal Agreement shall preclude FRED from exercising any of its power or authority after any termination, including without limiting the generality of the foregoing, that specifically associated with its mission or collection of any of its Obligations outstanding which are secured by pledged revenues derived from Financing Agreements. In the event FRED's rights under this Interlocal Agreement to impose new non-ad valorem assessments shall ever end, then as of the effective date of the termination, all rights and obligations of the parties shall continue as specified in subsection (B) until such time as all FRED's obligations, and all associated remaining Program responsibilities are fulfilled (including, but not limited to, the collection of assessments in due course).

Section 15. Consent. This Interlocal Agreement and any required resolution or ordinance of an individual Party shall be considered the County's consent to participate in the program pursuant to the PACE Statute.

Section 16. Voting Rights. The Parties agree that the County shall be a non-voting Limited Member of FRED for the term of this Interlocal Agreement.

Section 17. 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: Palm Beach County  
ATTN: County Administrator  
301 North Olive Avenue, Suite 1101  
West Palm Beach, Florida 33401

With a copy to: Palm Beach County  
ATTN: County Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401

FRED: The Florida Resiliency and Energy District  
c/o Florida Development Finance Corporation  
William "Bill" F. Spivey, Jr., Executive Director  
800 Magnolia Avenue, Suite 1100  
Orlando, Florida 32803  
407.956.5695 (t)  
[bspivey@fdcbonds.com](mailto:bspivey@fdcbonds.com)

With a copy to: Issuer's Counsel with Broad and Cassel  
Joseph Stanton, Esq.  
Bank of America Center  
390 North Orange Avenue, Suite 1400  
Orlando, FL 32801-4961  
407.839.4200 (t)  
[jstanton@broadandcassel.com](mailto:jstanton@broadandcassel.com)

Section 18. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by the Parties hereto.

Section 19. Joint Effort. The preparation of this Interlocal Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

Section 20. Merger. This Interlocal Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Interlocal Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

Section 21. Assignment. The respective obligations of the Parties set forth in this Interlocal Agreement shall not be assigned, in whole or in part, without the written consent of the other Parties hereto.

Section 22. Records. The Parties shall each maintain their own respective records and documents associated with this Interlocal Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

Section 23. 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 24. Severability. In the event a portion of this Interlocal Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

Section 25. Administrator Indemnification; Additional Insured.

- a. FRED will promptly request and obtain from its administrators, FDFC and Renovate America, and any subsequent Program Administrator(s), a separate indemnification agreement as to its actions and activities on behalf of FRED 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 Program Administrator assuming responsibilities for FRED.
- b. FRED will promptly request and obtain from its Program Administrator(s), and any subsequent administrator, and provide the County a certificate showing the County as an additional insured for the coverages FRED requires of its Program Administrators, which are currently:

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 26. Insurance by FRED. Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statute, FRED 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 FRED maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28 Florida Statute, FRED shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. FRED agrees to maintain or to be self-insured for Workers' Compensation & Employer's Liability insurance in accordance with Section 440, Florida Statutes. When requested, FRED 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 FRED of its liability and obligations under this Interlocal Agreement.

Section 27. 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 Palm Beach County, Florida. In any such action, Florida law shall apply. BY ENTERING INTO THIS AGREEMENT, FRED 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 FRED 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, FRED 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 28. Effective Date. This Interlocal Agreement shall become effective upon the execution by the Parties hereto.

Section 29. 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 30. Filing. This Interlocal Agreement shall be filed by FRED with the Clerk of the Circuit Court in Palm Beach County, Florida.

Section 31. Equal Opportunity Provision. FRED, its agents, successors, or assigns 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 32. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

[signature page follows]

WITNESS:

[Signature]  
RYAN P BARTKUS

FLORIDA DEVELOPMENT FINANCE CORPORATION on behalf of FLORIDA RESILIENCY AND ENERGY DISTRICT

By:

[Signature]

William "Bill" F. Spivey, Jr.  
Executive Director

WITNESS:

[Signature]  
Jennifer Jenkins

STATE OF FLORIDA  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of June, 2017, by William "Bill" F. Spivey, Jr., Executive Director of the Florida Development Finance Corporation, who is personally known to me/has produced \_\_\_\_\_ as identification.

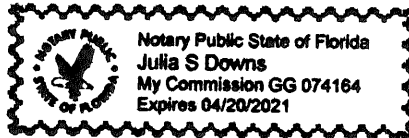
[Signature]

Printed/Typed Name: Julia Downs

Notary Public-State of Florida

Commission Number:

(SEAL)



**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.

**BOARD OF COUNTY COMMISSIONERS  
OF PALM BEACH COUNTY**

(SEAL)

By: \_\_\_\_\_  
Paulette Burdick, Mayor

Attest:

Approved as to form:

\_\_\_\_\_  
Sharon R. Bock, Clerk and Comptroller

\_\_\_\_\_  
James Brako, Assistant County Attorney

Approved as to terms and conditions

By: Natalie B. Bock

[SIGNATURE PAGE TO MEMBERSHIP AGREEMENT]



EXHIBIT 2

**INDEMNIFICATION AGREEMENT BETWEEN RENOVATE AMERICA INC., AS AN ADMINISTRATOR OF THE FLORIDA RESILIENCY AND ENERGY DISTRICT, AND PALM BEACH COUNTY, FLORIDA**

This Indemnification Agreement (the "Agreement") is entered into \_\_\_\_\_, 2017 by and between Renovate America Inc. ("Renovate America"), as the administrator of the Florida Resiliency and Energy District ("FRED"), and Palm Beach County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

**WHEREAS**, pursuant to the Ordinance, this Agreement shall be applicable within the unincorporated areas of Palm Beach County, and in all municipalities that have not adopted an ordinance governing any or all of the subject matter of the Ordinance, regardless of the time of passage of the municipal ordinance ("participating municipalities"); and

**WHEREAS**, the County and the FRED have proposed to enter into an Interlocal Agreement ("Interlocal Agreement") to authorize the FRED to operate in Palm Beach County pursuant to the Palm Beach County PACE Program Ordinance for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

**WHEREAS**, Renovate America is a third party administrator for the FRED and Renovate America would be operating on behalf of the FRED within Palm Beach County; and

**WHEREAS**, Renovate America has agreed to provide the County with a separate indemnification agreement for the benefit of the County and participating municipalities.

**NOW, THEREFORE**, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. To the extent permitted by applicable law, Renovate America shall indemnify and hold harmless the County and participating municipalities and their officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which County and participating municipalities or their officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Interlocal Agreement by Renovate America or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. This indemnity shall not cover any liability, losses or damages caused by the negligence or willful misconduct of the County and participating municipalities. 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

all claims, suits or actions of any kind or nature in the name of the County and participating municipalities, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Renovate America expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County and participating municipalities or their officers, employees, agents and instrumentalities as herein provided.

3. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in conjunction with this Agreement shall be in the state courts in and for Palm Beach County, Florida, the United States District Court for the Southern District of Florida or United States Bankruptcy Court for the Southern District of Florida, as appropriate.


IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA

By: \_\_\_\_\_  
Assistant County Attorney  
Date

By: \_\_\_\_\_  
County Administrator or Designee

  
**APPROVED AS TO TERMS  
AND CONDITIONS.**

For the Board of County Commissioners  
Palm Beach County, Florida

Governmental Center  
301 N. Olive Avenue, 12<sup>th</sup> Floor  
West Palm Beach, Florida 33401

SHARON R. BOCK, CLERK  
Attest:

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

RENOVATE AMERICA, INC.  
By: \_\_\_\_\_  
Date

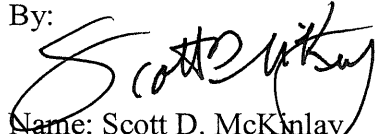
  
Name: Scott D. McKinlay  
Title: Executive Vice President

EXHIBIT 3

**INDEMNIFICATION AGREEMENT BETWEEN FLORIDA DEVELOPMENT  
AND FINANCE CORPORATION, AS AN ADMINISTRATOR OF THE  
FLORIDA RESILIENCY AND ENERGY DISTRICT, AND PALM BEACH  
COUNTY, FLORIDA**

This Indemnification Agreement (the "Agreement") is entered into \_\_\_\_\_, 2017 by and between Florida Development and Finance Corporation ("FDFC"), as the administrator of the Florida Resiliency and Energy District ("FRED"), and Palm Beach County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

**WHEREAS**, pursuant to the Ordinance, this Agreement shall be applicable within the unincorporated areas of Palm Beach County, and in all municipalities that have not adopted an ordinance governing any or all of the subject matter of the Ordinance, regardless of the time of passage of the municipal ordinance ("participating municipalities"); and

**WHEREAS**, the County and the FRED have proposed to enter into an Interlocal Agreement ("Interlocal Agreement") to authorize the FRED to operate in Palm Beach County pursuant to the Palm Beach County PACE Program Ordinance for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

**WHEREAS**, FDFC is a third party administrator for the FRED and FDFC would be operating on behalf of the FRED within Palm Beach County; and

**WHEREAS**, FDFC has agreed to provide the County with a separate indemnification agreement for the benefit of the County and participating municipalities.

**NOW, THEREFORE**, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. To the extent permitted by applicable law, FDFC shall indemnify and hold harmless the County and participating municipalities and their officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which County and participating municipalities or their officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Interlocal Agreement by FDFC or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. This indemnity shall not cover any liability, losses or damages caused by the negligence or willful misconduct of the County and participating municipalities. FDFC 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 all claims, suits or actions of any kind or nature in the name of the County and participating municipalities, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. FDFC expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County and participating municipalities or their officers, employees, agents and instrumentalities as herein provided.

3. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in conjunction with this Agreement shall be in the state courts in and for Palm Beach County, Florida, the United States District Court for the Southern District of Florida or United States Bankruptcy Court for the Southern District of Florida, as appropriate.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2017.

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA

By: \_\_\_\_\_  
Assistant County Attorney  
Date

By: \_\_\_\_\_  
County Administrator or Designee

For the Board of County Commissioners  
Palm Beach County, Florida

Governmental Center  
301 N. Olive Avenue, 12<sup>th</sup> Floor  
West Palm Beach, Florida 33401

SHARON R. BOCK, CLERK  
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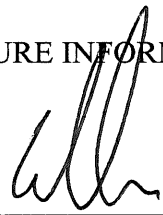
By: Deputy Clerk

\_\_\_\_\_  
Date

Approved as to terms and conditions

By: *Mataie B. Schur*

SIGNATURE INFORMATION FOR FDFC

By:  \_\_\_\_\_ Date

Name: William F. Spivey Jr.  
Title: Executive Director