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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 resolutions and formal agreements to join the PACE agencies/authorities/districts and indemnification agreements with each of the administrators for those PACE providers. These resolutions and agreements 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.

ATTACHMENT 1

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 PACE FUNDING AGENCY FOR A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; APPROVING AN INDEMNIFICATION AGREEMENT BETWEEN PALM BEACH COUNTY AND COUNTERPOINTE ENERGY SOLUTIONS (FL) LLC FOR THE BENEFIT OF PALM BEACH COUNTY; AND AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE THESE AND SUBSEQUENT AGREEMENTS WITH ADMINISTRATORS OF FLORIDA PACE FUNDING AGENCY FOR THE BENEFIT OF PALM BEACH COUNTY, AND EXERCISE CERTAIN PROVISIONS IN THE AGREEMENTS.

WHEREAS, on April 4, 2017, the Board of County Commissioners (“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 Florida PACE Funding Agency (“FPFA”) and the Indemnification Agreement with CounterPointe Energy Solutions (FL), LLC, as the administrator for FPFA, 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 FPFA (Exhibit 1) and the indemnification agreement between the County and CounterPointe Energy Solutions (FL), LLC, as the administrator of FPFA (Exhibit 2), 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 FPFA, in a form approved by the County Attorney’s Office, to provide that such subsequent administrator of FPFA 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 RELATING TO THE FUNDING AND FINANCING OF QUALIFYING IMPROVEMENTS BY THE FLORIDA PACE FUNDING AGENCY

This non-exclusive Interlocal Agreement is made and entered into as of _____, 2017 ("Interlocal Agreement"), by and between Palm Beach County, Florida, ("County"), and the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, established pursuant to Section 163.01(7), Florida Statutes, ("Agency"), by and through their respective governing bodies. The purpose of this Agreement is to better secure, in an efficient and uniform manner, for local property owners (as hereinafter defined) the privileges and benefits provided for herein and by law, and particularly by Section 163.08, Florida Statutes, as amended ("PACE Statute"), relating to the voluntary determination by affected property owners to obtain and finance certain improvements to property for energy efficiency, renewable energy or wind resistance.

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 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"); 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 the Agency 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:

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. As used in this Agreement, the following terms shall have the meanings as defined unless the context requires otherwise:

“**Agency**” shall mean the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, and also characterized as a special purpose local government.

“**Agency Charter Agreement**” or “**Charter**” shall mean, unless the context otherwise requires, the separate interlocal agreement which created and established the Agency, including any amendments, supplements or restatements thereto executed and delivered in accordance with the terms thereof.

“**Agency’s Program**” shall mean the activities of the Agency to provide financing for qualifying improvements undertaken within this State.

“**Board of Directors**” shall mean the governing body of the Agency.

“**County**” shall mean Palm Beach County, a political subdivision of the State of Florida.

“**Financing Agreement**” shall mean the financing agreement or the summary memorandum of such agreement the property owner signs establishing terms and conditions for the financing of qualifying improvements which is required to be recorded in the public records pursuant to the PACE Statute.

“**Financing Documents**” shall mean the resolution or resolutions duly adopted by the Agency, as well as any indenture of trust, trust agreement, interlocal agreement or other instrument relating to the issuance or security of any bond or obligations of the Agency and any agreement, pursuant to which the property owners obtain access to funds provided by the Agency.

“**Interlocal Agreement**” shall mean this interlocal agreement executed under the auspices of Section 163.01, Florida Statutes, known as the “Florida Interlocal Cooperation Act of 1969”, or if the context requires, a similar interlocal agreement between the Agency and any municipality, county or other government or separate legal entity permitted by the PACE Statute to enter into financing agreements as provided for therein. This Agreement simply presents a means of coordination and communication among local governments as the Agency serves and makes available, in a non-exclusive manner, funding and financing of qualifying improvements by the Agency to interested private property owners in the manner provided by law.

“Obligations” shall mean a series of bonds, obligations or other evidence of indebtedness, including, but not limited to, notes, commercial paper, certificates or any other obligations of the Agency issued pursuant hereto, or under any general law provisions, and pursuant to the financing documents. The term shall also include any lawful obligation committed to by the Agency or pursuant to an interlocal agreement with another governmental body or agency and/or warrants issued for services rendered or administrative expenses.

“Ordinance” shall mean Ordinance No. 2017-012, entitled the Palm Beach County Property Assessed Clean Energy (PACE) Ordinance, and as codified.

“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 Statute” sometimes called the “Supplemental Act”, shall mean the defined terms, general law provisions, and additional and supplemental authority described in Section 163.08, Florida Statutes, as amended.

“Participating Municipalities” shall mean 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.

“Pledged Funds” shall mean (A) the revenues derived from special assessments and other moneys received by the Agency or its designee relating to some portion thereof, (B) until applied in accordance with the terms of the financing documents, all moneys in the funds, accounts and sub-accounts established thereby, including investments therein, and (C) such other property, assets and moneys of the Agency as shall be pledged pursuant to the financing documents; in each case to the extent provided by the Board of Directors pursuant to the financing documents. The Pledged funds pledged to one series of obligations may be different than the Pledged funds pledged to other series of obligations. Pledged funds shall not include any general or performance assurance fund or account of the Agency.

“Property Owner” shall mean, singularly or collectively as the context requires, all of the record owners of real property subject to a financing agreement with the Agency.

“Qualifying Improvements” includes energy conservation and efficiency, renewable energy, and wind resistance improvements as defined by the PACE Statute, as may be amended by law.

“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 to fund the costs of qualifying improvements.

SECTION 1.02 CONSTRUCTION.

(A) 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.

(B) 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 Interlocal 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 State Legislature has determined there is a compelling state interest in enabling private property owners to voluntarily finance qualifying improvements with local government assistance. The actions authorized by the PACE Statute, including the financing of qualifying improvements through the execution of financing agreements 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, and its property owners and inhabitants.

(B) The Agency has provided to the County a binding Final Judgment 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 municipality within the County served by the Agency.

(C) Nothing in this Agreement does, nor shall be construed to empower the Agency to obligate or foist any liability upon the County, in any manner, without the express written permission of both parties; and no such permission is included in this Agreement.

(D) The availability of the non-exclusive financing 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 financing 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 to undertake this financing service and associated activities to interested property owners.

(F) This Agreement provides a cooperative, interlocal, alternative, supplemental and non-exclusive means to encourage and achieve, *inter alia*, immediate local economic development in a manner provided by the Legislature, provide for local commerce and job creation, as well as achieving the compelling State interest and public purposes described in the PACE Statute.

ARTICLE II

IMPLEMENTATION OF A COMPELLING STATE AND LOCAL INTEREST

SECTION 2.01. AUTHORITY; AND, PURPOSE.

(A) The execution hereof has been duly authorized by the resolution of the governing bodies of each party hereto.

(B) The Agency by this Agreement is approved to serve, to provide its lawful services, and lawfully conduct its affairs within the County in accord with applicable general law and local legislation.

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. ADOPTION OF RATES, FEES AND CHARGES.

(A) The Board of Directors necessarily must adopt or authorize from time to time by resolution such rates, fees or other charges for the provision of the services of the Agency to be paid by the property owner pursuant to a financing agreement described in the PACE Statute.

(B) Such rates, fees and charges shall be adopted and revised so as to provide moneys, which, with other funds available for such purposes, shall be at least sufficient at all times to pay the expenses of administering, managing, and providing for the services and administration of the activities of the Agency, to pay costs and expenses provided for by law or the Charter Agreement and the financing documents, and to pay the principal and interest on the obligations as the same shall become due and reserves therefore, and to provide for necessary administration and reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in the Charter Agreement or this Agreement, such rates, fees and charges shall not exceed a rate of interest greater than the equivalent of 18 percent per annum simple interest either directly or indirectly, and always be sufficient to comply fully with any covenants contained in the financing documents.

(C) Such rates, fees and charges may vary from jurisdiction to jurisdiction, but shall be just and equitable and uniform at the time of imposition for the Property Owners within the

same class, or within each subscribing local governmental jurisdiction, and may be based upon or computed upon any factor (including, by way of example and not limitation, competitive or market conditions, distinguishing between residential and non-residential properties or uses, distinguishing between variable costs of administrative services and local government cooperation over time) or combination of factors affecting the demand or cost of the services furnished or provided to administer the services and affairs of the Agency as may be determined by the Board of Directors from time to time.

SECTION 2.04. FINANCING OF IMPROVEMENTS TO REAL PROPERTY; COLLECTION OF ASSESSMENTS.

(A) Program Guidelines: The Agency's Program to be offered in the County and participating municipalities will comply with program guidelines and consumer protections set forth in the Ordinance, as may be amended from time to time. The parties concur that at the time of execution of this Agreement, the Agency's program guidelines and consumer protections are consistent with the Ordinance. However, if there is a conflict between the Agency's Program and the Ordinance, the Agency shall notify the County in writing.

(B) Any financing assistance 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.

(C) This Agreement provides for accomplishment of a compelling state interest, recognizes and carefully encourages uniform and scalable processes statewide to finance energy conservation and efficient, renewable energy, and wind resistance improvements to real property, and is intended to create local economic development and local employment. 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.

(D) In no event shall the County and participating municipalities served by the Agency 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.

(E) 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, nor the local governments who are either incorporators

or members of, or have joined, or are served by the Agency, or any subsequently served or participating local government in the affairs of the Agency, 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.

(F) 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 any special purpose local government acting pursuant to the PACE Statute, 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 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, as a result the Ordinance or this Agreement. 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 as the result of the Ordinance or this Agreement 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.

(G) Upon execution by the respective property owners and the Agency, the statutorily required 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, as required by general law which provides 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 from the date of recordation.

(H) In a reasonably cooperative and uniform manner, the Agency must timely provide to the property appraiser and tax collector a digital copy of the recorded financing agreement or other digital summary thereof, the most recent property identification number and annual amount of the non-ad valorem assessment along with such other efficient and reasonable information and test-rolls necessary for the tax collector to collect such amounts as a non-ad valorem assessment on behalf of the Agency pursuant to Sections 163.01, 163.08, 197.3632, and 197.3635, Florida Statutes, or their successors in function.

(I) The Agency 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 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.

(J) The Agency must at all times acknowledge that the statutory duties of the property appraiser and the tax collector in each county, under Section 197.3632, Florida Statutes, are ministerial and the property appraiser and tax collector are by law without discretion with regard to the imposition of non-ad valorem assessments and collection on the tax notice once the affected private property owner has voluntarily entered into the statutorily required financing agreement and evidence of the non-ad valorem assessment through the required notice is recorded; and, the Agency is solely responsible for the local government role in such circumstance for complying with the requirements of Sections 197.3632 and 163.08, Florida Statutes.

(K) The Agency must comply with the statutory responsibility to enter into a separate written agreement required by Section 197.3632(2), Florida Statutes, accept the terms specified by Sections 197.3632(2) and 192.091(2)(b)2., Florida Statutes, for 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.

(L) The Agency, as a duly authorized special purpose local government, is the local government imposing the subject non-ad valorem assessments, 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.

SECTION 2.05. COORDINATION IN COLLECTION ACTIVITIES.

The Agency 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, 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 2.06. PLEDGE OF PROCEEDS FROM NON-AD VALOREM 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) Pursuant to the financing documents, this Agreement, and the Ordinance the Agency shall irrevocably pledge and, to the fullest extent permitted by law, pledge and assign any and all revenues derived from special assessments to the repayment of any debt obligation issued by the Agency pursuant to the financing documents.

(C) 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.

(D) Each series of financing documents shall be secured forthwith equally and ratably by a pledge of and lien upon the special assessments. The obligations of the Agency under and pursuant to the financing documents shall not be or constitute general obligations or an indebtedness of the County, or participating municipalities, as "bonds" within the meaning of the Constitution of Florida, but shall be payable from and secured solely by a lien upon and pledge of the special assessments as provided herein. Neither the Agency nor any holder of any debt obligation issued by the Agency pursuant to the financing documents 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, of property therein to pay any amount due under any financing documents or any special assessment. The financing documents shall not constitute a lien upon any property of or in the County's, or participating municipalities' jurisdiction except as to the respective special assessments in the manner provided herein and by law.

[Remainder of page intentionally left blank.]

ARTICLE III

GENERAL PROVISIONS

SECTION 3.01. INTERLOCAL AGREEMENT PROVISIONS. This Agreement is deemed to be an “interlocal agreement” within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. The Agency shall file this Interlocal Agreement with the Clerk of the Circuit Court of Palm Beach County, Florida.

SECTION 3.02. DISCLOSURE; NONDISCRIMINATION; COVENANT TO COOPERATE.

A) The Agency has provided a copy of (1) the PACE Statute, (2) the Agency’s Charter Agreement, (3) the Final Judgment in *Fla. PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct. 2011), and (4) other relevant disclosure information and background materials to the County prior to execution hereof. County, through its own staff and advisors, has independently reviewed and considered the foregoing and other relevant information of its choosing.

(B) The Agency and the County agree that no person 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.

(B) The objective of the Agency’s mission is to offer a uniform, standardized and scalable approach that provides efficiencies and economies of scale intended to attract voluntary financing of qualifying improvements by private property owners desirous of also achieving, a compelling state interest and stimulate a substantial and meaningful flow of private sector economic activity and new job creation. In doing so under this Interlocal Agreement, the County recognizes the non-exclusive availability of the Agency’s funding and financing program to constituent property owners and the County and Agency covenant to cooperate, coordinate and communicate on an interlocal basis.

SECTION 3.03. 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 the Agency has obligations outstanding which are secured by Pledged Revenues derived from financing agreements relating to any properties within the boundaries of the County and participating municipalities or the Agency has projects for qualified improvements underway therein; the applicable provisions, authority and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the Agency’s Program and responsibilities of Agency then underway, shall remain in effect and survive any termination until such time as those obligations and all associated remaining Agency responsibilities are fulfilled (including, but not limited to, the collection of assessments in due course). Provided, however, the Agency’s powers employed and exercised shall be non-

exclusive, and the County and participating municipalities are free to and reserve 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 3.05. Provided, however, no termination of this Interlocal Agreement shall preclude the Agency 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 the Agency'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 Agency's obligations, and all associated remaining responsibilities under the Agency's Program are fulfilled (including, but not limited to, the collection of assessments in due course).

SECTION 3.04. 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 3.05. 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: 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

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 3.06. QUALITY CONTROL AND COMMUNICATION. For quality control purposes, the Agency and County desire, and the Agency covenants to continually develop, implement and employ policies, systems and procedures which set or reflect industry standards; with such standards being reasonably expected to change and evolve over time. This Agreement serves to establish an ongoing positive and professional line of communication between staff and agents for the parties and is encouraged. At any time, notwithstanding lack of default or lack of material breach hereunder, each party is encouraged to objectively and specifically communicate to the other in writing as provided for herein any concerns, suggestions or disapproval with performance, policies, systems or procedures being employed by each party concerning the funding and financing of qualified improvements. The Agency through its administrator, Executive Director, or a duly authorized designee, will promptly respond in writing to all such communications (reasonably within fifteen (15) days of receipt of any such written communication, but sooner if necessary) from the County and follow-up accordingly; and, also promptly communicate any such response, follow-up, and all related communication to the Board of Directors for review. This paragraph shall not be construed as containing any obligation for the County to receive complaints or concerns about the Agency'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.

SECTION 3.07. 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 and Agency 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 Section 163.01(5)(o), Florida Statutes, that certain final judgment in *Fla. PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct. 2011), and this covenant of the parties hereto, 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. The County and Agency acknowledge and agree that the Agency 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, the Agency agrees to protect, defend, reimburse, indemnify and hold the County and participating municipalities served by the Agency, 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 and participating municipalities of anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. Agency'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 their 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, 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 served by the Agency, 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, except to the extent otherwise mutually and expressly agreed upon in writing. 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 served by the Agency.

(E) Notwithstanding anything to the contrary herein, neither the County nor the Agency waive any sovereign immunity as a result of this or any other agreement resulting from the subject matter hereof; and, 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 3.08. 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 3.09. 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 3.10. 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 the County a certificate showing the County as an additional insured for the coverages the Agency requires of its administrator, 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

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 3.11. 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 3.12. 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 3.13. APPLICABLE LAW; ENFORCEMENT; DELEGATION. A breach of this Agreement shall mean a material failure to comply with the PACE Statute 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 appropriate state court in Palm Beach County, Florida. In any such action, Florida law shall apply and the parties waive any right to jury trial.

(C) Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties, provided; however, 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.

(D) Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.

SECTION 3.14. 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 page intentionally left blank.]

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 Belin

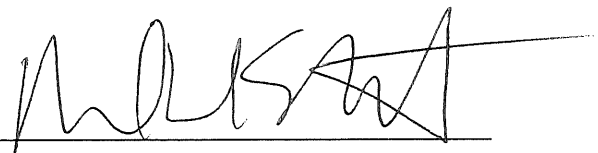
*Non-Exclusive Interlocal Subscription Agreement
Palm Beach County*

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.

THE FLORIDA PACE FUNDING AGENCY

(SEAL)



By: 

Michael H. Steigerwald, Executive Director

ATTEST:



Donald T. Smallwood, Assistant Secretary

EXHIBIT 2

INDEMNIFICATION AGREEMENT BETWEEN COUNTERPOINTE ENERGY SOLUTIONS (FL) LLC, AS ADMINISTRATOR OF THE FLORIDA PACE FUNDING AGENCY, AND PALM BEACH COUNTY, FLORIDA

This Indemnification Agreement (the “Agreement”) is entered into _____, 2017 by and between CounterPointe Energy Solutions (FL) LLC (“CounterPointe”), as the administrator of the Florida PACE Funding Agency (“FPFA”), 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 FPFA have proposed to enter into an Interlocal Agreement (“Interlocal Agreement”) to authorize the FPFA to operate in Palm Beach County pursuant to the Palm Beach County PACE Program Ordinance (“Ordinance”) for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

WHEREAS, CounterPointe is the third party administrator for the FPFA and CounterPointe would be operating on behalf of the FPFA within Palm Beach County; and

WHEREAS, CounterPointe 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. CounterPointe 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 CounterPointe or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. CounterPointe 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. CounterPointe 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.**

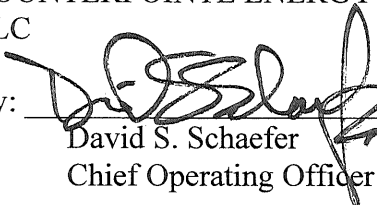
For the Board of County Commissioners
Palm Beach County, Florida

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

SHARON R. BOCK, CLERK
Attest:

By: Deputy Clerk _____
Date

COUNTERPOINTE ENERGY SOLUTIONS (FL)
LLC

By:  _____
Date 6/23/17
David S. Schaefer
Chief Operating Officer

6401 Congress Avenue, Suite 200
Boca Raton, Florida 33487