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**NON-EXCLUSIVE INTERLOCAL AGREEMENT  
RELATING TO THE FUNDING AND FINANCING  
OF QUALIFYING IMPROVEMENTS BY THE  
FLORIDA PACE FUNDING AGENCY**

**Between**

**MARTIN COUNTY, FLORIDA,**

**and**

**THE FLORIDA PACE FUNDING AGENCY**

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## TABLE OF CONTENTS

## PAGE

### ARTICLE I

#### DEFINITIONS AND CONSTRUCTION

SECTION 1.01.	DEFINITIONS.....	1
SECTION 1.02.	CONSTRUCTION .....	3
SECTION 1.03.	SECTION HEADINGS .....	3
SECTION 1.04.	FINDINGS .....	3

### ARTICLE II

#### IMPLEMENTATION OF A COMPELLING STATE AND LOCAL INTEREST

SECTION 2.01.	AUTHORITY .....	5
SECTION 2.02.	CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED .....	5
SECTION 2.03.	ADOPTION OF RATES, FEES AND CHARGES.....	5
SECTION 2.04.	FINANCING AGREEMENTS .....	6
SECTION 2.05.	IMPOSITION OF SPECIAL ASSESSMENTS PURSUANT TO FINANCING AGREEMENTS .....	6
SECTION 2.06.	COLLECTION OF SPECIAL ASSESSMENTS .....	7
SECTION 2.07.	PLEDGE OF PROCEEDS FROM NON-AD VALOREM ASSESSMENTS .....	7

### ARTICLE III

#### GENERAL PROVISIONS

SECTION 3.01.	INTERLOCAL AGREEMENT PROVISIONS.....	9
SECTION 3.02.	DISCLOSURE; REPORTING .....	9
SECTION 3.03.	TERM OF AGREEMENT, DURATION OF AGREEMENT; NO EXCLUSIVITY .....	10
SECTION 3.04.	AMENDMENTS AND WAIVERS.....	10
SECTION 3.05.	NOTICES .....	10
SECTION 3.06.	QUALITY CONTROL AND COMMUNICATION.....	11
SECTION 3.07.	IMMUNITY; LIMITED LIABILITY.....	12
SECTION 3.08.	BINDING EFFECT .....	13
SECTION 3.09.	SEVERABILITY .....	13
SECTION 3.10.	EXECUTION IN COUNTERPARTS.....	13
SECTION 3.11.	APPLICABLE LAW .....	13
SECTION 3.12.	ENTIRE AGREEMENT .....	13

**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 \_\_\_\_\_, 2019 (this "Interlocal Agreement"), by and between Martin County, Florida, a political subdivision of the State of Florida (the "County"), and the Florida PACE Funding Agency, a public body corporate and politic (the "Agency"), by and through their respective governing bodies. The purpose of this Interlocal Agreement is for the Agency to provide a property assessed clean energy program in accordance with Section 163.08, Florida Statutes, and Article 14 of Chapter 71, General Ordinances, Martin County Code ("PACE Program") within the unincorporated area of Martin County.

**WITNESSETH:**

**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 including 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, F.S., provides that a local government (defined to include a legal entity created pursuant to 163.01(7), F.S.), may finance qualifying improvements through agreements for property to be subject to a voluntary non-ad valorem assessment as the repayment mechanism, commonly known as Property Assessed Clean Energy ("PACE"); and

**WHEREAS**, on May 8, 2018, the County adopted Article 14, Chapter 71, General Ordinances, Martin County Code, establishing regulations for PACE programs within the unincorporated area of Martin County; and

**WHEREAS**, the Board of County Commissioners has determined it is in the best interest and welfare of the public for Martin County enter into this Interlocal Agreement to authorize the Agency to implement and finance a PACE Program within the unincorporated area of Martin County.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the County and the Agency hereby agree, stipulate and covenant as follows:

**ARTICLE I  
DEFINITIONS AND CONSTRUCTION**

**SECTION 1.01. DEFINITIONS.** As used in this Interlocal Agreement, the following terms shall have the meanings as defined unless the context requires otherwise:

**“Board of Directors”** means the governing body of the Agency.

**“Agency”** means the Florida PACE Funding Agency, a public body corporate and politic. The Agency is a PACE Entity as that term is defined in the Code.

**“Charter Agreement”** means the “Amended and Restated Interlocal Agreement Relating to the Establishment of the Florida PACE Funding Agency” entered into by Flagler County and the City of Kissimmee and acknowledged by the Agency as recorded in Official Records Book 5131, Page 1, of the Public Records of Osceola County, Florida.

**“Code”** means Article 14 of Chapter 71, General Ordinances, Martin County Code, as amended from time to time.

**“County”** means Martin County, Florida, a political subdivision of the State of Florida.

**“Financing Agreement”** means the agreement between the Agency and a Property Owner providing for the funding to finance Qualifying Improvements and the imposition of a Special Assessment against the improved property pursuant to the PACE Program.

**“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 through the PACE Program.

**“Interlocal Agreement”** means this interlocal agreement. This Interlocal Agreement is considered a subscription agreement, as contemplated by the Final Judgment recorded in Official Records Book 4279, Page 852 of the Public Records of Leon County, Florida.

**“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.

**“PACE”** is an acronym for the 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 energy efficiency, renewable energy and wind resistance improvements addressed by the Code and encouraged by the Supplemental Act.

**“PACE Program”** means the program operated by the Agency to provide financing for Qualifying Improvements in compliance with the Supplemental Act and the Code. The PACE

Program is non-exclusive; and, the County may embrace or authorize its own, or any program of another agency under the Supplemental Act as the County sees fit and in the interest of the public.

**"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. Pledged Funds shall not include any revenues, funds accounts or other assets or properties of the County.

**"Property Owner"** means, collectively, all of the record owners of real property subject to a Financing Agreement with the Agency under the PACE Program.

**"Qualifying Improvements"** means those improvements for energy efficiency, renewable energy, wind resistance, or such as described in the Supplemental Act authorized to be affixed and/or installed by the Property Owner through the PACE Program.

**"Special Assessments"** means the non-ad valorem assessments authorized by the Supplemental Act and levied by the Agency on property owned by a Property Owner who has entered into a Financing Agreement with the Agency to fund the costs of Qualifying Improvements under the PACE Program.

**"Supplemental Act"** means the provisions of, and additional and supplemental authority described in, Section 163.08, Florida Statutes, as amended.

## **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 Interlocal Agreement; the term "heretofore" shall mean before the date this Interlocal Agreement is executed; and the term "hereafter" shall mean after the date this Interlocal 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 Interlocal Agreement. Both parties have independently reviewed this Interlocal 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.

(C) In the event of any conflict between the terms of this Interlocal Agreement, the Charter Agreement, or the Code, the provisions of the Code will control. In the event of a conflict between this Interlocal Agreement and the Charter Agreement which is not addressed by the Code, the provisions of this Interlocal Agreement will control.

**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 Interlocal 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 Supplemental Act, 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 secured a binding Final Judgment that expressly evidences 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.

(C) Nothing in this Interlocal 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 approval of the County's Board of County Commissioners and the Board of Directors of the Agency; and no such approval is included in this Interlocal Agreement.

(D) The availability of the PACE Program in the unincorporated area of Martin County may only be offered by the Agency without cost to, assumption of liability by or demand upon the credit of the County and through the voluntary participation by Property Owners, the PACE Program provides an alternative financing option 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 Supplemental Act to undertake the PACE Program and, upon entering into and subject to the terms of this Interlocal Agreement, is authorized to offer the PACE Program within the unincorporated area of Martin County.

(F) This Interlocal Agreement provides an 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 Supplemental Act.

(G) The local needs and conditions warrant the establishment of the PACE Program within the unincorporated area of Martin County.

(H) It is reasonable and in the interest of the health, safety, and welfare of the County and its inhabitants that the County authorize the Agency to offer the PACE Program within the unincorporated area of Martin County.

[Remainder of page intentionally left blank.]

**ARTICLE II  
IMPLEMENTATION OF A COMPELLING STATE AND LOCAL INTEREST**

**SECTION 2.01. AUTHORITY.**

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

(B) The Agency by this Interlocal Agreement is authorized by the County provide the PACE Program within the unincorporated area of Martin County in accordance with general law and local legislation.

(C) Actions hereunder are expected and intended to better achieve the compelling state interest described in the Supplemental Act.

(D) The PACE Program shall at all times comply with the Code, as amended from time to time. The Agency will promptly notify the County in writing of any conflicts that arise between the PACE Program and the Code. The Agency certifies that it and its third party providers, if any, are in compliance with the Supplemental Act and the Code, and have not had a local government terminate participation for cause in a PACE Program under their control within the three (3) years prior to the date of this Agreement which has not been reinstated.

**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 as against the State, any county, or any municipality, and may not pledge the full faith and credit of the State, any county (including the County), or any municipality. All revenue bonds or debt obligations of the Agency shall contain on the face thereof a statement to the effect that the State, any county or any 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 State or of any political subdivision thereof 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, this Interlocal Agreement, or any other agreement shall not directly or indirectly or contingently obligate the State, or any county or municipality 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.

**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 Supplemental Act.

(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 and the Financing Documents, and to pay the principal and interest on the Obligations as the same shall become due and reserves therefor, 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 this Agreement, such rates, fees and charges shall 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 the County, 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 AGREEMENTS.**

(A) The Agency shall prepare and provide to each Property Owner the form of the Financing Agreement which complies with the Supplemental Act and the Code and is in accordance with the Financing Documents as designated by the Board of Directors from time to time.

(B) Notwithstanding any other provision of this Interlocal Agreement, the obligations undertaken by the Agency shall not be construed to be or constitute general obligations, debts or liabilities of the County.

(C) The Agency, not the County, shall be solely responsible for all matters associated with providing and operating the PACE Program, including, but not limited to (i) origination, funding, financing, collection and administration of each of the Agency's Special Assessments, Obligations, Financing Agreements, and Qualifying Improvements; and (ii) the Agency responding to any complaints or inquiries by Property Owners, tax certificate holders, lenders or others relating to the Special Assessments, the Financing Agreements, the Qualifying Improvements, or any other aspect of the PACE Program.

(D) Subject to the limitations in Section 768.28, Florida Statutes the Agency will defend and indemnify the County from any and all claims, causes of action, or damages (including attorneys' fees and costs) incurred by or brought against the County relating to the PACE Program including, but not limited to the Special Assessments, the Obligations, the Financing Agreements, the Qualifying Improvements, this Interlocal Agreement, or any other aspect of the PACE Program. In addition, if the Agency elects to offer the Program to Property Owners with loan(s) held by lender(s) who have accelerated, or threatened to accelerate, the loan(s) if the Special Assessments are imposed, the Agency agrees to defend any Property Owner who receives notice from any such lender(s) that the Property Owner's loan(s) have been, or will be, accelerated

solely as a result of the Special Assessments, if the Property Owner requests that the Agency undertake such a defense.

**SECTION 2.05. IMPOSITION OF SPECIAL ASSESSMENTS PURSUANT TO FINANCING AGREEMENTS.**

(A) Upon execution by the Property Owners and the Agency, the Financing Agreement or a summary or memorandum thereof shall be recorded by the Agency within five (5) days of execution or as required by Section 163.08(8), Florida Statutes, as amended. The recorded Financing Agreement, or summary or memorandum thereof, provides constructive notice that the Special 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.

(B) The Agency will inform every property owner that by law the Special Assessments are part of the PACE Program; 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, 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 Property Owner pursuant to the Supplemental Act and the Code.

(C) In a reasonably cooperative and uniform manner the Agency will provide a digital copy to the Property Appraiser or Tax Collector of the recorded Financing Agreement or summary thereof, the most recent property identification number and annual amount of the Special Assessment along with such other efficient and reasonable information necessary for the Tax Collector to collect such amounts as a non-ad valorem assessment on behalf of the Agency pursuant to Sections 197.3632 and 163.08, Florida Statutes.

(D) The Agency must at all times acknowledge that the Property Appraiser and Tax Collector are by law without discretion with regard to the collection of the Special Assessments on the tax notice once the affected Property Owner has voluntarily entered into a Financing Agreement with the Agency, evidence of the non-ad valorem assessment through the required notice is recorded, and the Agency complies with the requirements of Sections 197.3632 and 163.08, Florida Statutes.

(E) The Agency, as a local government authorized by law, is solely responsible for the local government role in and must comply with the statutory requirements of Sections 197.3632, 192.091, and 163.08, Florida Statutes and any other applicable law and all matters associated with origination, funding, financing, administration, and collection (in concert with the uniform method of collection) of each Special Assessment. As part of those requirements, the Agency must comply with the statutory responsibility to enter into a separate written agreement for reimbursement and compensation of the Tax Collector and Property Appraiser, and allow for payment of such amounts by deduction as the Special Assessments are collected.

(F) The Agency's power to levy and collect the Special Assessments is independent from and unrelated to any such power held by the County.

**SECTION 2.06. COLLECTION OF SPECIAL ASSESSMENTS.** The Agency as a local government authorized by law to impose the Special Assessments, is also required by 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 or 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 Supplemental Act.

**SECTION 2.07. 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 PACE Program. If any Special 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 Special 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 Special 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 and this Interlocal Agreement, 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 shall not incur or ever be requested to authorize any obligations secured by Special Assessments associated with Qualifying Improvements imposed by the Agency or otherwise associated with the PACE Program.

(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 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 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 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 Interlocal 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 in and for Martin County, Florida.

**SECTION 3.02. DISCLOSURE; REPORTING.**

(A) The Agency has provided a copy of (1) the Supplemental Act, (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. The County, through its own staff and advisors, has independently reviewed and considered the foregoing and other relevant information of its choosing.

(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 by resolution and under this Interlocal Agreement, the County recognizes the non-exclusive availability of the PACE Program to constituent property owners in the unincorporated area of Martin County.

(C) The Agency has engaged, and may engage in the future, various advisors, consultants, attorneys or other professionals or firms with recognized and focused expertise necessary to accomplish the Agency’s mission. Each of the various advisors, consultants, attorneys or other professionals engaged by the Agency have openly been, and will in the future be, disclosed to the County.

(D) The Agency recognizes that there may be ongoing consequences and risk that some lenders may require full repayment of the Special Assessments upon resale or refinancing of a property subject to the Special Assessments, and the Agency covenants to provide written disclosure of such consequences and risk to all Property Owners prior to imposing any Special Assessment. In addition, if the Agency elects to offer the PACE Program to Property Owners with loans held by lenders that have required, or threatened to require, full repayment of the Special Assessments, the Agency agrees to provide non-financial assistance to any Property Owner that is required to repay the entire Special Assessment (if the Property Owner requests such assistance), including providing the Property Owner with a list of available lenders that will not require full repayment of the Special Assessment.

(E) The Agency agrees to comply with the reporting requirements set forth in the Code.

**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) Either Party may terminate this Interlocal Agreement upon thirty (30) days prior written notice to the other Party. This Interlocal Agreement shall be automatically terminated at the end of the thirty (30) day notice period. Should the Agency's agreement for operation of a PACE Program be terminated for cause by another local government, the Agency will immediately notify the County in writing of such termination and this Interlocal Agreement shall be automatically terminated as of the date of the notice. Immediately upon termination of this Interlocal Agreement, the Agency will not accept any new applications for the PACE Program in the unincorporated area of Martin County. Any projects related to applications received before the termination date will be permitted to be completed. Termination of this Interlocal Agreement shall not affect the Agency's collection of Special Assessments imposed through the PACE Program as they become due.

(C) The County's authorization of the PACE Program is non-exclusive, meaning the County specifically reserves the right to join or authorize any other entity providing a similar program under the Supplemental Act and the Code, or create its own program under the Supplemental Act.

**SECTION 3.04. AMENDMENTS AND WAIVERS.** Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Interlocal Agreement shall be binding unless approved by the governing boards of, and executed in writing by the County and the Agency. Notwithstanding any provisions to the contrary, any change, amendment, alteration or modification in the terms of the Charter Agreement shall not be effective in or for Martin County without the prior written approval of Martin County.

**SECTION 3.05. NOTICES.**

(A) 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: Martin County  
ATTN: County Administrator  
2401 SE Monterey Road  
Stuart, FL 34996

With a copy to: Martin County  
ATTN: County Attorney  
2401 SE Monterey Road  
Stuart, FL 34996

Agency: Executive Director  
Florida PACE Funding Agency  
c/o Southern Sky Energy  
4411 Bee Ridge Road, #134  
Sarasota, Florida 34233

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

(B) Any of the parties may, by notice in writing given to the other, designate any additional or different individuals and/or addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or confirmed electronic facsimile transmission) or three days after the date mailed.

**SECTION 3.06. QUALITY CONTROL AND COMMUNICATION.** For quality control purposes the Agency and the 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 Interlocal 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, the County may objectively and specifically communicate to the Agency in writing as provided for herein any concerns, suggestions or disapproval with performance, policies, systems or procedures being employed by the Agency concerning the PACE Program. 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 Interlocal Agreement.

(B) The County and the Agency are and shall be subject to Section 768.28, Florida Statutes, and any other provisions of Florida law governing sovereign immunity. The County 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 the Agency alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes.

(C) To the extent provided by law, the Agency agrees to indemnify, defend and hold harmless the County and its officers, employees and agents from any and all damages, claims, losses, suits, causes of action, judgments, and liabilities, including attorneys' fees and costs of defense, arising from, relating to or resulting from the operation of the PACE Program or performance or non-performance under this Interlocal Agreement, by the Agency or its employees, agents, servants, partners, principals, administrators, contractors or subcontractors. The Agency shall pay all claims and 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, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon, in each case with counsel selected by the Agency and reasonably acceptable to the County. Nothing in this Interlocal 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.

(D) Neither the County, nor the local governments who are either or both the incorporators of or served by the Agency, nor any subsequently served or participating local government in the affairs of the Agency shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions or inactions of the Agency, the 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, neither the Agency, the Board of Directors or any other agents, employees, officers or officials of the Agency have any authority or power to otherwise obligate either the County, the local governments who are either or both the incorporators or members of the Agency, nor any subsequently served or participating local government in the affairs of the Agency in any manner.

(E) Notwithstanding anything to the contrary herein, neither the County nor the Agency waive any sovereign immunity as a result of this Interlocal Agreement.

**SECTION 3.08. BINDING EFFECT.** This Interlocal 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 Interlocal 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. EXECUTION IN COUNTERPARTS.** This Interlocal Agreement may be simultaneously executed in two counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 3.11. APPLICABLE LAW.**

(A) A breach of this Interlocal Agreement shall mean a material failure to comply with the Supplemental Act, the Code or any covenants or provisions of this Interlocal 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.

(B) At all times the parties may proceed at law or in equity to enforce their rights under this Interlocal Agreement using all available remedies.

(C) The exclusive venue of any legal or equitable action that arises out of or relates to this Interlocal Agreement shall be in the appropriate state court in and for Martin County, Florida. In any such action, Florida law shall apply and the parties waive any right to jury trial.

(D) Each party shall bear its own attorney's fees and costs related to any dispute over or associated with the enforcement of the terms and conditions of this Interlocal Agreement.

**SECTION 3.12. ENTIRE AGREEMENT.** This Interlocal 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.

**SECTION 3.13. PUBLIC RECORDS.** Each party shall retain and maintain its own records in relation to this Interlocal Agreement, subject to the requirements of Chapter 119, Florida Statutes.

**SECTION 3.14. ASSIGNMENT.** Neither party may assign this Interlocal Agreement or its duties or obligations hereunder, in whole or in part, without the prior written agreement of the other party hereto.



**SECTION 3.15. THIRD PARTY BENEFICIARIES.** Neither the County nor the Agency intend to benefit third parties by this Interlocal Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Interlocal Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Interlocal Agreement.

[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.

**MARTIN COUNTY, a political  
subdivision of the State of Florida**

**By: its Board of County Commissioners**

By: \_\_\_\_\_  
Edward V. Ciampi, Chairman

**ATTEST:**

By: \_\_\_\_\_  
Carolyn Timmann, Clerk of  
the Circuit Court and Comptroller

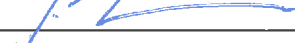
**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY.**

\_\_\_\_\_  
Sarah W. Woods, County Attorney

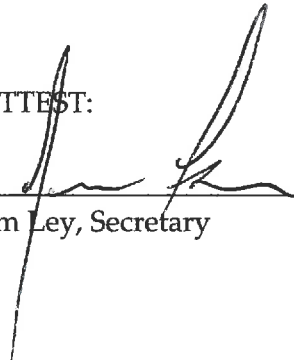
IN WITNESS WHEREOF, the undersigned have caused this Non-Exclusive Interlocal Agreement to be duly executed and entered into as of the date first above written.

**THE FLORIDA PACE FUNDING AGENCY**

(SEAL)

By:   
Michael A. Moran, Executive Director

ATTEST:

  
Jim Ley, Secretary