

**SUBSCRIPTION AGREEMENT BETWEEN THE FLORIDA PACE FUNDING  
AGENCY AND MIAMI-DADE COUNTY**

16<sup>th</sup> **WHEREAS**, this Subscription Agreement (the "Agreement") is entered into this day of Oct., 2018 by and between the Florida PACE Funding Agency (the "District" or "FPFA"), created as a separate legal entity pursuant to Section 163.01(7), Florida Statutes, and Miami-Dade County, a political subdivision of the State of Florida ("Miami-Dade County" or the "County") (collectively, the "Parties") for the purpose of providing a Property Assessed Clean Energy ("PACE") program within Unincorporated Miami-Dade County; and

**WHEREAS** Flagler County and the City of Kissimmee, both of which are Florida local governments, entered into an Amended and Restated Interlocal Agreement, effective as of February 20, 2017, as incorporators, relating to the establishment of the Florida PACE Funding Agency, as a means of implementing and financing a Qualifying Improvements program, known as a PACE, for energy conservation and efficiency, renewable energy, and wind-resistance improvements pursuant to Section 163.08, Florida Statutes, and to provide additional services consistent with law; and

**WHEREAS**, Miami-Dade County desires to have the FPFA act, provide its services, and conduct its affairs for the purpose of facilitating financing of qualifying improvements for properties located within the unincorporated area of Miami-Dade County, as further defined and detailed herein.

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

1. The foregoing recitals are incorporated into this Agreement and approved.
2. Purpose. The purpose of this Agreement is to facilitate the financing of qualifying improvements through a PACE program, in accordance with Section 163.08, Florida Statutes, for Miami-Dade County property owners within unincorporated Miami-Dade County, including for residential, commercial, and industrial properties.
3. No Membership. The District and Miami-Dade County hereby agree that Miami-Dade County is not becoming a member of the District by virtue of this Agreement and nothing herein is intended to imply otherwise.
4. Qualifying Improvements. The District may provide "Qualifying Improvements" to real property within unincorporated Miami-Dade County, in accordance with Section 163.08, Florida Statutes, and subject to the terms of this Agreement, as well as applicable federal, state, and County law. "Qualifying Improvements" shall be as defined in the Article CXXXVIII of the Code of Miami-Dade County, as amended from time to time, provided that all such Qualifying Improvements are also included within Section 163.08, Florida Statutes.

5. Financing Agreement. Before extending any financing or subjecting any participating real property within Miami-Dade County to the non-ad valorem special assessment authorized therein, the District shall, on a non-exclusive basis pursuant to the Section 163.08, Florida Statutes and this Agreement, enter into a financing agreement with property owner(s) within unincorporated Miami-Dade County who qualify for financing through the District. This financing agreement shall include a thorough explanation of the PACE program financing process and specify at what point in the process the special assessment will be added to the property's owner's property taxes.
6. Assessment by District. The Parties acknowledge and agree that the non-ad valorem assessments arising from a property owner's voluntary participation in the PACE program are imposed by the District and not by the County.
7. Agreements with Tax Collector and Property Appraiser. This Agreement shall be subject to the express condition precedent that the District enter into separate agreement(s) with the County, on behalf of the Tax Collector, and the County's Property Appraiser, which shall provide for the assessment and collection of any non-ad valorem assessments imposed by the District and establish Jurisdiction Cost Recovery Reimbursements (if any) to be charged for the collection and/or handling of those non-ad valorem assessments. Additionally, the Parties agree that the Property Appraiser's and Tax Collector's assessment, collection, and distribution of any such non-ad valorem assessments imposed by the District are purely ministerial acts.
8. Non-Exclusive. The program is non-exclusive, meaning the County specifically reserves the right to authorize other entities to provide a similar program under Section 163.08, Florida Statutes, or create its own program under Section 163.08, Florida Statutes.
9. Boundaries of the Program. For purposes of the PACE program authorized by this Agreement, the boundaries of the District shall include the legal boundaries of unincorporated Miami-Dade County, which boundaries may be limited, expanded, or more specifically designated from time to time by Miami-Dade County by providing written notice to the District.
10. Properties. Within the unincorporated area of Miami-Dade County, residential, commercial, and industrial properties may be eligible.
11. PACE program guidelines and other materials. All PACE materials for use within unincorporated Miami-Dade County, or otherwise related to this Agreement, including but not limited to program guidelines, rules, consumer agreements, consumer financing agreements, and promotional materials, shall be fully consistent with the Code of Miami-Dade County, Miami-Dade County resolutions and Miami-Dade County implementing orders, all of which may be amended from time to time, and with this Agreement and applicable federal and state laws. The District acknowledges and agrees that PACE materials for use within unincorporated Miami-Dade County, or otherwise related to this Agreement, shall be modified accordingly and reviewed on a continuing basis for consistency with applicable Miami-Dade County, state and federal laws. It shall be the obligation of the District to establish and maintain such consistency. Miami-Dade County will endeavor to provide the District with a courtesy notice of Miami-Dade County legislative changes that relate to PACE programs, however, failure by Miami-Dade County to send such courtesy notice or failure by the District to receive such courtesy notice shall not affect any action or proceeding and shall be



of no legal consequence.

12. Local program guidelines. The Parties agree that Miami-Dade County may, in the future, implement its own local program guidelines or affirmatively modify the program guidelines to be utilized in unincorporated Miami-Dade County, which may be more restrictive than those of the District. If Miami-Dade County decides to exercise these rights, it shall give sixty (60) days written notice to the District. Notwithstanding anything stated herein to the contrary, the PACE materials, including the District's program guidelines, shall be fully consistent with applicable County, state and federal laws, as amended from time to time.
13. Prepayment penalties. To the extent that the District may charge or impose prepayment penalties, the District may not allow or charge any prepayment penalties except in the case when an assessment is paid off in full within five (5) years after the effective date of financial agreements with the property owner. Where the District may charge or impose prepayment penalties, the District shall offer and inform property owners of the District's hardship exception, for instance where a property owner becomes disabled or deceased. Any such prepayment penalties, as well as information about the hardship exception, shall be clearly disclosed within all property owner financing agreements and in all PACE materials, including but not limited to program guidelines, program rules, consumer agreements, and consumer informational documents. For commercial properties, prepayment penalties may be charged or imposed by the District to the extent permitted by the Code of Miami-Dade County and other applicable legal requirements.
14. District Disclosures. The PACE materials, including but not limited to the financing agreement with the property owner, consumer agreement, and program guidelines, shall clearly disclose, in plain language, the interest rate to be charged, including points, as well as any and all fees or penalties that may be separately charged to the property owner, including prepayment penalties, potential late fees, and potential increases in the applicable interest rate. To the extent that additional fees are not specifically disclosed in a written agreement with the property owner, the subsequent charging or collecting of any such additional fees by the District or its agents, administrators, or subcontractors shall be prohibited. The District shall place the following sentence or similar language (without the County's logo) on all agreements:

While Miami-Dade County's authorization was essential to bringing PACE benefits to property owners in unincorporated Miami-Dade County, please be aware that Miami-Dade County government is not operating or administering the PACE program in any way. All contractual PACE agreements are between property owners and the Florida Green Finance District, a non-County entity. All concerns about this PACE Program should therefore be addressed to: [District to fill in appropriate contact / remedy information].

In addition, the District shall explain to the property owner under what circumstances the annual PACE assessment would need to be paid in one annual payment as opposed to installments, so that the property owner may understand what the required payments would be.

15. Miami-Dade County Disclosures. Miami-Dade County may compile and make available on a

publicly-accessible website the following minimum information about each PACE district or entity with which the County has executed an interlocal agreement: (a) the name of the PACE district or entity; (b) the name, phone number, and website URL for the administrator of the PACE district or entity; (c) the effective date of the interlocal agreement between the PACE district or entity and Miami-Dade County; (d) the start date for reporting to the County; and (e) any non-compliance issues with the interlocal agreement, including non-compliance with required reporting format and timelines.

16. Consumer assistance. In order to assist those persons who may have difficulty reading or understanding the PACE materials, such as the financing agreement, program guidelines and other consumer agreements, the District shall provide optional one-on-one in-person assistance regarding the PACE program, program terms, program process, program documents, and all other pertinent information. Information regarding this option for personal assistance shall be printed in English, Spanish, and Haitian Creole on PACE promotional materials.
17. Disclosures related to lenders. While the District will provide required forms for lender notification, the District shall make clear that the ultimate responsibility for addressing issues with existing lenders remains with property owners. A statement to this effect should be placed in the PACE materials, including all agreements with the property owner. In addition, the PACE materials, including all agreements with the property owners, shall include a statement that strongly urges the property owner to increase monthly escrow immediately after financing is released.
18. Administrative Fees. Miami-Dade County may impose administrative fees to cover the Miami-Dade County's administrative costs related to this Agreement. Such administrative fees may be established by the Miami-Dade County Board of County Commissioners by separate action, and may be charged to the District. Miami-Dade County will endeavor to provide the District with a courtesy notice of Miami-Dade County action on administrative fees changes that relate to PACE programs, however, failure by Miami-Dade County to send such courtesy notice or failure by the District to receive such courtesy notice shall not affect any action or proceeding and shall be of no legal consequence.
19. Responsibilities of the District. The District shall be solely responsible for all matters associated with origination, funding, financing and administration of each of the District's authorized non-ad valorem assessments, including responding to any complaints or inquiries by participants, 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. Nothing stated herein shall infringe or restrict Miami-Dade County's rights pursuant to this Agreement, including but not limited to Miami-Dade County's right to audit.
20. Survival of Assessments. During the term of this Agreement, the District may, on a non-exclusive basis, levy voluntary non-ad valorem special assessments on participating properties within the boundaries of unincorporated Miami-Dade County to help finance the costs of Qualifying Improvements for those individual properties. Those properties receiving financing for Qualifying Improvements shall be assessed from time to time, in accordance with Section 163.08, Florida Statutes, and other applicable law. Notwithstanding termination of this Agreement or notice of a change in boundaries by Miami-Dade County as provided for



herein, those properties that have received financing for Qualifying Improvements shall continue to be a part of the District, until such time that all outstanding debt has been satisfied.

21. Audits. The District agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Audit and Management Services Department of Miami-Dade County, the Office of the Commission Auditor, the Miami- Dade County Office of the Inspector General, or any agent of Miami-Dade County. The District shall retain sufficient books and records demonstrating compliance with this Agreement and State and County requirements, for a period of seven years from the date of each special assessment, and shall allow Miami-Dade County representatives access to such books and records upon request.

Miami-Dade County and/or its authorized representatives shall have the right to audit, examine, and make copies of or extracts from the records of the District or its employees, agents, assigns, successors, administrators, and subcontractors such records as deemed necessary to assess compliance with this Agreement, as well as applicable State law and Miami-Dade County Code.

The District shall, at any time requested by the Miami-Dade County, whether during or after completion of this Agreement and for a period of seven years after the completion of this Agreement, at the District's own expense, make such records available for inspection and audit. Such records shall be made available, to the extent permissible by County, state or federal law at a designated Miami-Dade County office during normal business hours, subject to 14 days written notice.

Further, the District shall ensure Miami-Dade County has these rights with its employees, agents, assigns, successors, administrators, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the District and any administrators and subcontractors to the extent that those subcontracts or agreements relate to this Agreement or operations in unincorporated Miami-Dade County.

22. Term. This Agreement shall remain in full force and effect from the date of its execution by both Parties. Either Party may terminate this Agreement for convenience upon ninety (90) days prior written notice ("Termination Notice"). Beginning on the date the District receives a Termination Notice from Miami-Dade County ("Termination Date"), the District shall not approve any new applications affecting property within the legal boundaries of the unincorporated Miami-Dade County referenced in the Termination Notice. Notwithstanding termination of this Agreement, however, property owners whose applications were approved prior to the Termination Date, and who received funding through the Program, shall continue to be a part of the District, for the sole purpose of paying their outstanding debt, until such time that all outstanding debt has been satisfied.
23. Termination for cause. In the event that Miami-Dade County determines that the District has violated any of the terms of this Agreement, Miami-Dade County shall have the right to terminate this Agreement for cause via thirty (30) days written notice to the District.
24. Consent. This Agreement, once effective, together with the resolution by the Miami- Dade County Board of County Commissioners approving this Agreement, shall be considered the

- Parties' consent to authorize the District to administer the PACE program within unincorporated Miami-Dade County, as required by Section 163.08, Florida Statutes.
25. County Coordinator. The Office of Resilience within Miami-Dade County's Department of Regulatory and Economic Resources shall serve as Miami-Dade County's primary point of contact and coordinator. Miami-Dade County will advise the District of any changes to Miami-Dade County's primary contact and coordinator within 30 days of such changes.
  26. Carbon or Similar Credits. In the event that the financing agreement or any other PACE agreement with the property owner provides for the transfer of any carbon or similar mitigation credits derived from Qualifying Improvements to the District, any such carbon or similar mitigation credits derived from unincorporated Miami-Dade County, shall be shared in equal parts between the District and Miami-Dade County.
  27. Contingency Plans. In the event that Florida's PACE statute is ruled unconstitutional or otherwise struck down by a court or if the PACE assessments are determined by a court to not be special assessments, the District agrees and acknowledges that Miami-Dade County may not be able to place the impacted PACE assessments on the tax rolls or collect PACE assessments, and that such a determination shall be made in the sole discretion of Miami-Dade County. The District agrees and acknowledges that it may be advisable for the District to have contingency plans in place should Florida's PACE statute be ruled unconstitutional or otherwise struck down by a court or if the PACE assessments are determined by a court to not be special assessments.
  28. Bonds. The District, is authorized to issue bonds, or any other form of debt, on behalf of Miami-Dade County. To the extent that the District issues bonds under its own authority in connection with this Agreement, the pledge will be based on the PACE assessments, and Miami-Dade County shall not be obligated in any way. For any such bonds, the bond disclosure document shall include references to the fact that Miami-Dade County is not an obligated party, and also that PACE programs are new and relatively untested and that there may be certain attendant risks.
  29. Opinion of Bond Counsel. Prior to the effective date of this Agreement, the District shall deliver to Miami-Dade County an "Opinion of Bond Counsel," stating that, based on counsel's review of the bond validation judgment and the underlying bond documents the Program's structure complies with the bond validation judgment and the underlying bond documents. The District acknowledges that Miami-Dade County is relying on the Opinion of Bond Counsel in its decision to execute this Agreement.
  30. Resale or Refinancing of a Property. The District recognizes that some lenders may require full repayment of the PACE program's non-ad valorem assessments upon resale or refinancing of a property. The District agrees to provide written disclosure of this matter in all PACE materials, including, but not limited to, the financing agreement with the property owner, consumer agreement, and program guidelines, and promotional materials.
  31. Agents of District. The District shall ensure that its agents, administrators, subcontractors, successors and assigns are, at all times, in compliance with the terms of this Agreement and applicable Miami-Dade County, state and federal laws. Miami-Dade County will endeavor to provide the District with a courtesy notice of Miami-Dade County legislative changes that



relate to PACE programs, however, failure by Miami- Dade County to send such courtesy notice or failure by the District to receive such courtesy notice shall not affect any action or proceeding and shall be of no legal consequence.

32. Reporting. The District shall provide quarterly reports to Miami-Dade County to include at a minimum: a) dates of reporting period; b) a list of PACE projects started and/or completed during reporting period (i.e. quarterly), separated by building type (e.g., office, retail, multifamily, agricultural, single family) and by sector type (commercial, industrial, or residential); c) for each PACE project identified, specify: (1) the qualifying improvements made to the property; (2) the energy baseline of each PACE project and the projected energy savings in kWh and/or the amount of potential renewable energy in kWh to be generated by the PACE project and number of audits performed detailing type of project, sector type and audit results; (3) start date and completion date for each PACE project; (4) financial information about each PACE project such as cost per kWh generated/saved; and (5) any other resource saving, such as water; d) number of applications declined during the reporting period and why each was declined in the aggregate, by category, and not on an individual basis; e) jobs created for the reporting period, including local versus non-local jobs and permanent versus temporary jobs; f) description of the standardized third-party methodologies, with citations and URL links as appropriate, and supporting assumptions used to verify data, and any changes in the methodologies and assumptions from the previous reporting period. The fourth quarter report shall include a cumulative yearly summary of all reported data. If the District does not currently have the ability to provide reports that contain this minimum reporting information as listed above, it shall modify its data collection and maintenance procedures and systems within one year in order to comply with this fundamental component of the Agreement. Proposed format for data reporting shall be submitted to Miami-Dade County as soon as possible, and no later than four months in advance of the first reporting period, so that Miami-Dade County can determine whether all reporting requirements have been included. Miami-Dade County shall provide written modifications to the submitted proposed reporting format within three months in advance of the first reporting period. If the County wishes to change the reporting format or require the inclusion of additional data, the County shall provide the request in writing and allow the District one year, if needed, to modify its analytical and reporting process to achieve compliance. The County agrees that it seeks aggregate data, and the District does not believe that such data would be personally identifiable information, as defined in federal law. If, however, a request for data by the County to the District would trigger disclosure or confidentiality requirements under federal law, the District agrees to promptly advise the County in writing before providing such data so that the parties may confer. The District and any and all of the District's administrators are obligated to take all steps, including restructuring their application, making disclosures to their customers or requiring their affiliates to make such disclosures, in order to comply with the obligations, including data reporting obligations, in this agreement. In order to facilitate reporting to Miami-Dade County, the District shall include the following two statements or substantially similar language in a PACE agreement with the property owner:

This PACE Program may share data pertaining to your PACE project and assessment with government entities and officials for the purposes of identifying demand for the Program, identifying environmental and economic benefits created by the Program,

and reviewing matters related to Program Consumer Protection. Government entities and officials may include municipalities, counties, and the state in which your property is located. If you wish to opt out and withhold your information from government entities and officials, please contact us by email (*email address to be filled in by District*) or phone: (*phone to be filled in by District-(XXX) XXX-XXXX.*) Although you may opt out from sharing personal data, data from your PACE project and assessment will still be provided to government entities and officials in an aggregated format.

To allow the PACE Program Administrator to better understand energy patterns and measure energy savings for our customers, the Property Owner authorizes electric, gas, water or other utility providers to release billing and consumption data for the Property or agrees to provide utility records to assist the District in tracking utility savings resulting from the Qualifying Improvements. If the PACE Program Administrator shares any results of the analysis, the Property Owner data will only be presented in a manner that does not specifically identify the Property Owner or the Property address.

33. Reporting Standards. It is the responsibility of the District to develop reports consistent with each of the categories of data required in paragraph 32 above and to test and verify the data collection and reporting methods and models used. The District shall describe the methodologies and supporting assumptions and/or sources, and any changes from the previous reporting period, within each quarterly report to Miami-Dade County. All reports shall exclude any sensitive customer information. Failure to report specified information as well as failure to report by the deadline shall be considered non-compliance with this Agreement.
34. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

**If to the District:**

Executive Director  
Florida PACE Funding Agency  
c/o City of Kissimmee  
101 N. Church St., Fifth Floor  
Kissimmee, FL 34741

**With a copy to:**

Program Counsel for the Florida PACE Funding Agency  
P.O. Box 14043  
Tallahassee, FL 32317



**If to Miami-Dade County:**

County Coordinator, Miami-Dade Office of Resilience 111  
NW 1<sup>st</sup> Street, 12<sup>th</sup> floor  
Miami, Florida 33128

35. Amendments. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this agreement and executed by Miami-Dade County and the District or other delegated authority authorized to execute same on their behalf.
36. Joint Effort. The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.
37. Merger. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations, correspondence, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
38. Assignment. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Party hereto.
39. Third Party Beneficiaries. Neither Miami-Dade County nor the District intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.
40. Records. The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
41. Severability. In the event a portion of this Agreement is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.
42. Indemnification. The District shall indemnify and hold harmless Miami-Dade County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which Miami-Dade County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the District or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. The District 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 Miami-Dade County, where applicable, including

appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28, Florida Statutes, subject to the provisions of that Statute whereby the District shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment or portions thereof, which, when totaled with all other claims or judgment paid by the District arising out of the same incident or occurrence, exceed the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the District.

43. Administrator Indemnification. Any and all administrators of the District shall be required to execute a separate indemnification agreement with Miami-Dade County. The District acknowledges and agrees that as of the execution of this Agreement, Counterpointe Energy Solutions (FL) LLC. is the only administrator for the District, and that Counterpointe Energy Solutions (FL) LLC has executed the separate indemnification agreement with Miami-Dade County for the benefit of Miami-Dade County. If the District changes its administrator or adds a new administrator, the District shall ensure that any and all administrators also provide Miami-Dade County with a separate indemnification agreement, on a form to be approved by the Miami-Dade County Attorney's Office, within ten (10) business days of assuming administrative responsibilities for the District.
44. Effective Date. This Agreement shall become effective upon the execution by both Parties hereto.
45. Law, Jurisdiction, and Venue. 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 connection with this Agreement shall be in the state courts of the Eleventh Judicial Circuit in and for Miami- Dade 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.
46. Sovereign Immunity. Nothing herein shall constitute a waiver of Section 768.28 of the Florida Statutes or shall be construed as impacting or modifying the protections set forth therein.



IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement  
on this 16th day of Oct., 2018.

MIAMI-DADE COUNTY, FLORIDA

By: [Signature] 10/15/18  
County Mayor or Designee Date

For the Board of County Commissioners  
Miami-Dade County, Florida

Stephen P. Clark Center  
111 N.W. 1st. Street  
Miami, Florida 33128

HARVEY RUVIN, CLERK  
Attest:

By: [Signature] 10/16/18  
Deputy Clerk Date

FLORIDA PACE FUNDING AGENCY

By: [Signature] 7/17/18  
Michael H. Steigerwald Date  
Executive Director

Florida PACE Funding Agency  
c/o City of Kissimmee  
101 N. Church St., Fifth Floor  
Kissimmee, FL 34741

Donald T. Smallwood, Assistant Secretary  
Attest:

By: [Signature] 7/17/18  
Assistant Secretary Date

Florida PACE Funding Agency Charter Agreement

Prepared by and return to:  
Robert Reich  
Bryant Miller Olive P.d.  
101 W. Monroe St., Suite 900  
Tallahassee, FL 32301

  
CFN 2011084841  
Bk 04143 Pgs 2562 - 2586 (25pgs)  
DATE: 06/22/2011 11:32:10 AM  
MALCOM THOMPSON, CLERK OF COURT  
OSCEOLA COUNTY  
RECORDING FEES 214.00

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AGREEMENT  
RELATING TO THE ESTABLISHMENT  
OF THE  
FLORIDA PACE FUNDING AGENCY

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**INTERLOCAL AGREEMENT  
RELATING TO THE ESTABLISHMENT  
OF THE  
FLORIDA PACE FUNDING AGENCY**

**THIS INTERLOCAL AGREEMENT** is made and entered into as of the last date of execution hereof by the Incorporators (hereinafter the "Charter Agreement" or "Charter"), by and among the local governments acting as Incorporators hereof (each an "Incorporator", and collectively, the "Incorporators") as evidenced by their execution hereof, by and through their respective governing bodies. The purpose of this Charter Agreement is to create and establish a separate legal entity, public body and unit of local government, pursuant to Section 163.01(7)(g), Florida Statutes, with all of the privileges, benefits, powers and terms provided for herein and by law.

**WITNESSETH:**

**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 Incorporator, hereby agree, stipulate and covenant as follows:

**ARTICLE I  
DEFINITIONS AND CONSTRUCTION**

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

"Agency" means the Florida PACE Funding Agency, a separate legal entity and public body created pursuant to the provisions of this Charter Agreement. The name or acronym PACE is derived from the concept commonly referred to as 'property assessed clean energy' and relates hereto to the provisions of general law related to energy efficiency, renewable energy, and/or wind resistance improvements encouraged and authorized by Section 163.08, Florida Statutes.

"Charter Agreement" or "Charter" means this Charter Agreement including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

"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 the lending or provision of the proceeds thereof to a Subscribing Local Government.

"Incorporator" and "Incorporators" shall mean those local governments executing this Charter Agreement, acting as the Incorporators of the Agency, and any future constituent local government member of the Agency who may join in to this Charter Agreement.

**"Obligations"** shall mean a series of bonds, obligations or any other evidence of indebtedness, including, but not limited to, notes, commercial paper, certificates or any other obligations of the Agency issued hereunder, 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 pursuant to an interlocal agreement with another governmental body or agency and/or warrants issued for services rendered or administration expenses.

**"Pledged Funds"** shall mean (A) the revenues derived from non-ad valorem special assessments levied by a Subscribing Local Government 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.

**"Qualifying Improvement"** means those improvements for energy efficiency, renewable energy, and/or wind resistance or any such similar purposes described or authorized in the Supplemental Act or any amendment thereto, to be affixed or installed by the record owner of an affected property. Until subsequently determined by the Board of Directors of the Agency once the Agency's programs have become established, Qualifying Improvements shall not include improvements completed before the property has received an initial certificate of occupancy.

**"Subscribing Local Government" or "Subscriber"** shall mean any municipality, county or other government permitted by the Supplemental Act to enter into financing agreements as provided for therein which elects to participate in the Agency's financing program for Qualifying Improvements by entering into a Subscription Agreement with the Agency.

**"Subscription Agreement"** means a separate interlocal agreement between the Agency and any municipality, county or other government permitted by the Supplemental Act to enter into financing agreements as provided for therein. At a minimum, such Subscription Agreement shall provide for (1) the authority of the Agency to act, provide its services, and conduct its affairs within the subscribing government's jurisdiction; (2) the Agency to facilitate the voluntary acquisition, delivery, installation or any other manner of provision of Qualifying Improvements to record owners desiring such improvements who are willing to enter into financing agreements as provided for in the Supplemental Act and agree to impose non-ad valorem assessments which shall run with the land on their respective properties; (3) the Subscribing Local Government to levy, impose and collect non-ad valorem assessments pursuant to such financing agreements; (4) the issuance of Obligations of the Agency to fund and finance the Qualifying Improvements; (5) for the proceeds of such non-ad valorem assessments to be timely and faithfully paid to the Agency; (6) the withdrawal from, discontinuance of, or termination of the Subscription Agreement by either party upon reasonable notice in a manner not detrimental to the holders of any Obligations of the Agency



or inconsistent with any Financing Documents; (7) such disclosures, consents or waivers reasonably necessary to use or employ the services and activities of the Agency; and (8) such other covenants or provisions deemed necessary and mutually agreed to by the parties to carry out the purpose and mission of the Agency.

"Supplemental Act" means the provisions of, and additional and supplemental authority described in, Section 163.08, Florida Statutes, and as may be amended from time to time and contemporaneously in effect.

#### 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 Charter Agreement; the term "heretofore" shall mean before the date this Charter Agreement is entered into; and the term "hereafter" shall mean after the date this Charter Agreement is entered into.

(B) Each recital, covenant, agreement, representation and warranty made by a party herein shall be deemed to have been material and to have been relied on by the other party to this Charter Agreement. Each Incorporator has reviewed and desires to enter into this Charter Agreement; the Agency is a successor to such Incorporators and a beneficiary hereof, and the provisions hereof shall not be construed for or against any Incorporator or the Agency by reason of authorship or incorporation.

**SECTION 1.03. SECTION HEADINGS.** Any headings preceding the texts of the several Articles and Sections of this Charter 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 Charter Agreement nor affect its meaning, construction or effect.

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

(A) The Legislature has determined that all energy consuming improvements to property that are not using energy conservation strategies contribute to the burden resulting from fossil fuel energy production. This comports with the declared public policy of the State to play a leading role in developing and instituting energy management programs to promote energy conservation, energy security, and the reduction of greenhouse gases, in addition to establishing policies to promote the use of renewable energy.

(B) The Legislature has also determined that improved properties not protected from wind damage by wind-resistant improvements contribute to the burden resulting from potential wind damage; and, the installation and operation of Qualifying Improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the State's energy and hurricane mitigation policies.

(C) In the Supplemental Act, the Legislature finds that there is a compelling State interest in enabling property owners to voluntarily finance such improvements with local government facilitative assistance.

(D) In the Supplemental Act, the Legislature makes it clear that the financing of Qualifying Improvements through the execution of financing agreements and related imposition of voluntary assessments is reasonable and necessary for the prosperity and welfare of the State and its property owners and inhabitants.

(E) The Supplemental Act also expressly allows for local governments to enter into partnerships with one or more local governments for the purpose of providing and financing Qualifying Improvements.

(F) Although, in theory, assessments for Qualifying Improvements could be imposed under home rule authority, the Legislature felt it necessary and desirable to provide supplemental authority and encouragement which provides a framework for local, regional, and even state-wide approaches. The Supplemental Act provides guidelines, safeguards and clarifies necessary aspects of implementation. The concept that each landowner voluntarily subjects their land as security for payment of the non-ad valorem assessments through an individual financing agreement is unique and fundamental to reasonably attracting funding secured by assessments for energy efficiency, renewable energy or wind resistant improvements.

(G) Accordingly, a simplified and standardized state-wide program will offer efficiencies, economies of scale, and uniformity that can best attract a stream of financing and uniform program implementation and avoid administrative burdens and inefficient expenditures by local governments throughout Florida. The approach embodied in this Charter Agreement allows the local governments executing this Charter Agreement to act initially as 'incorporators' to create a focused single legal entity which minimizes their involvement and exposure in a manner similar to that of an incorporator in the corporate sense. Thereafter, any local government in Florida authorized to impose these types of voluntary assessments for energy efficiency, renewable energy or wind resistant Qualifying Improvements could 'subscribe' to the uniform processes and procedures set forth by the separate legal entity created by this Charter Agreement.

(H) Each Subscribing Local Government would simply authorize the availability of the program to property owners in its jurisdiction and agree to use a standardized process for imposing and securing proceeds under the non-ad valorem assessments authorized by the Supplemental Act as property owners work with a third party administrator or other agent of the Agency responsible for bringing owners and contractors together to facilitate the provision, funding, and financing of Qualifying Improvements.

(I) This approach requires a match of demand by individual property owners, both residential and commercial, to the reservoir of qualified labor, tradesmen and vendors in communities throughout Florida. This approach also requires education of qualified labor, tradesman and vendors in how to effectively serve a new market. Facilitation by creating uniform and standardized approaches and developing financing underwritten voluntarily by



*Florida PACE Funding Agency Charter Agreement*

individual property owners will not only address energy efficiency, renewable energy, and/or wind resistance burdens and benefits, but will stimulate a substantial and meaningful flow of private sector economic activity and new job creation.

(J) The creation and establishment of the Florida PACE Funding Agency will minimize duplication of effort and unnecessary government exposure or involvement, efficiently facilitate administration in only communities that choose to employ or subscribe to the Agency's facilitative services in order to make available uniform and credible funding and financing for individual property owners wishing to participate. In addition, the creation and establishment of the Florida PACE Funding Agency will convert a resource of unused trade and construction skill-sets into productive new private sector job markets, while taking advantage of guidelines, safeguards and implementation authorization provided by the Legislature in the Supplemental Act.

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## ARTICLE II THE AGENCY

### SECTION 2.01. ESTABLISHMENT AND CREATION.

(A) There is hereby created and established the "Florida PACE Funding Agency," a separate legal entity and public body and unit of local government with all of the privileges, benefits, powers and terms provided for herein and by law, and as defined herein as the "Agency."

(B) Initial membership in and the Incorporators of the Agency shall consist of those local governments executing this Charter Agreement as Incorporators. To the extent permitted by Section 163.01, Florida Statutes, additional members may be included or deleted by amendment hereto approved by all member local governments of the Agency and the governing body of the Agency. As a condition to membership in the Agency, each member shall be a municipality or county, or other government permitted by the Supplemental Act to enter into financing agreements as provided for therein.

(C) The boundaries or jurisdiction of the Agency shall embrace and only include the territory within any local government subscribing to and authorizing the Agency by resolution to act, provide its services, and conduct its affairs within such subscribing local government's boundaries and jurisdiction.

(D) A municipality or county or other government permitted by the Supplemental Act to enter into financing agreements as provided for therein need not be a local government member in or of the Agency to subscribe and authorize the Agency by resolution and Subscription Agreement to act, provide its services, and conduct its affairs within the subscribing local government's boundaries and jurisdiction.

(E) The Agency is created for purposes set forth in Section 163.01(7)(g), Florida Statutes, and this Charter Agreement as the same may be amended from time to time, in order to facilitate, administer, implement and assist in providing Qualifying Improvements, enter into Subscription Agreements and other agreements with Subscribing Local Governments, facilitate financing agreements and non-ad valorem assessments only on properties subjected to same by the record owners thereof, develop funding and financing markets, develop structures and procedures to finance Qualifying Improvements, and to take any actions associated therewith or necessarily resulting therefrom, as contemplated by the Supplemental Act as the same may be amended from time to time.

(F) The Agency charter created by this Charter Agreement may be amended only by written amendment hereto, or by special act of the Legislature, upon the consent by resolution of the governing bodies of the then members of the Agency.

(G) The mission of the Agency shall be to aspire to and undertake, cause and/or perform all such acts as shall be necessary to provide a uniform and efficient local platform capable of securing economies of scale and uniform implementation on a state-wide basis if and



when embraced by individual local governments to facilitate the provision, funding and financing of Qualifying Improvements.

**SECTION 2.02. AUTHORITY TO ADMINISTER THE PROVISION, FUNDING AND FINANCING OF QUALIFYING IMPROVEMENTS SUBJECT TO LOCAL GOVERNMENT SUBSCRIPTION AND CONSENT.** By resolution of the governing bodies of each local government affected and as implemented pursuant to a Subscription Agreement, all power and authority available to the Agency under this Charter Agreement, general law, including without limitation, Chapters 163, 189 and 197, Florida Statutes, shall be deemed to be authorized and may be implemented by the Agency within the boundaries of each of the Subscribing Local Governments. The Agency shall not act, provide its services, or conduct its affairs within any local government's jurisdiction without first entering into a Subscription Agreement with such local government.

**SECTION 2.03. GOVERNANCE.**

(A) The governing body of the Agency shall consist of a number of persons equal to one (1) member appointed by each Incorporator, and in the event of an even number of Incorporators, one (1) member selected jointly by all Incorporators, each of whom shall serve a staggered term of three (3) years commencing on October 1, provided the procedure for appointment of members of the Board of Directors and their initial terms of office shall be as follows:

(1) Board Director No. 1 to be appointed by the first Incorporator to execute this Charter Agreement shall serve for an initial term of approximately two (2) years ending on September 30, 2013.

(2) Board Director No. 2 to be appointed by the second Incorporator to execute this Charter Agreement shall serve for an initial term of approximately three (3) years, ending on September 30, 2014.

(3) Board Director No. 3 to be appointed by the third Incorporator to execute this Charter Agreement, or if otherwise necessary, jointly appointed by all Incorporators, shall serve an initial term of approximately four (4) years, ending September 30, 2015.

(4) All members of the Board of Directors shall be qualified electors of the State of Florida.

(B) Members of the Board of Directors shall serve no more than three (3) consecutive three (3) year terms, not including any initial term of less than three (3) years. Provided, however, they shall hold office for the terms for which they were appointed until their successors are chosen and qualified.

(C) Upon the occasion of a vacancy for any reason in the term of office of a member of the Board of Directors, which vacancy occurs prior to the replacement of the Board member by appointment and which remains unfilled for thirty (30) days after such vacancy due to the failure of the respective Incorporator's governing body to duly appoint a successor who is a qualified elector of the State as provided in subsection (1) hereof, a successor shall be appointed

by a majority of a quorum of the remaining Board of Directors at a meeting held for such purposes. Any person so appointed to fill a vacancy shall be appointed to serve only for the unexpired term or until a successor is duly appointed, which ever first occurs.

(D) The Board of Directors shall elect a Chairperson, Vice-Chairperson, Secretary, Assistant Secretary and such other officers of the Agency as may be hereafter designated and authorized by the Board of Directors, each of whom shall serve for one (1) year commencing as soon as practicable after October 1 and until their successor is chosen. The Chairperson, the Vice-Chairperson, or the Secretary shall conduct the meetings of the Agency and perform such other functions as herein provided. The Chairperson and Vice-Chairperson shall take such actions, and have all such powers and sign all documents on behalf of the Agency in furtherance of this Charter Agreement or as may be approved by resolution of the Board of Directors adopted at a duly called meeting. The Vice-Chairperson, in the Chairperson's absence, shall preside at all meetings. The Secretary, or the Secretary's designee, shall keep minutes of all meetings, proceedings and acts of the Board of Directors, but such minutes need not be verbatim. Copies of all minutes of the meetings of the Agency shall promptly be sent by the Secretary, or the Secretary's designee, to all members of the Board of Directors and to each general purpose local government which is an Incorporator or Subscribing Local Government. The Secretary and any Assistant Secretary may also attest to the execution of documents. The Secretary and any Assistant Secretary, or other person duly designated by resolution of the Board, shall have such other powers as may be approved by resolution of the Board of Directors adopted at a duly called meeting.

(E) The Board of Directors shall have those administrative duties set forth in this Charter Agreement and Chapter 189, Florida Statutes, as the same may be amended from time to time. Any certificate, resolution or instrument signed by the Chairperson, Vice-Chairperson or such other person on behalf of the Agency as may hereafter be designated and authorized by resolution of the Board of Directors shall be evidence of the action of the Agency and any such certificate, resolution or other instrument so signed shall be conclusively presumed to be authentic.

(F) Except as provided in this subsection, the members of the Board of Directors shall receive no compensation for their services. Each member of the Board of Directors may be reimbursed for expenses as provided in Section 112.061, Florida Statutes, or, as an alternative, receive a per diem to compensate each member for the inconvenience of travel and associated expenses not to exceed \$350 per calendar day or as otherwise approved by the Board of Directors for travel on Agency business. Provided, however, such expenses or per diem shall accrue and only be payable as, if and when funds to pay same are available to the Agency.

(G) A majority of the Board of Directors shall constitute a quorum for the transaction of business of the Agency. The affirmative vote of the majority of the members of the Board of Directors present and voting (exclusive of any member having a conflict) shall be necessary to transact business.

(H) Prior to the appointment of the entire Board of Directors and the first organizational meeting thereof, the affairs of the Agency shall be governed by joint resolution of



the Incorporators or the then members of the Agency. In such interim period, however long, such acts shall be necessarily made on behalf of and shall be binding upon the Agency by joint resolution of said Incorporators or the then members. Such acts shall be deemed actions of the governing body of the Agency. In this context "joint resolution" shall mean any one or a set of resolutions adopting concurrent direction and authorization under the provisions hereof, and may be evidenced by resolutions executed separately, jointly or with counterpart or other similar provisions, and do not require the joint meeting of the Incorporators. Such actions shall be exclusively on behalf of the Agency, and no liability or responsibility therefor shall be imputed to said Incorporators or the then members. Such acts may include any power or authority otherwise available to the Agency and shall include, among other things, approval of such Financing Documents as are deemed advisable to file all necessary validation or other pleadings, and undertake appellate matters if necessary, in order to obtain validation of the authority for the Agency to undertake its purpose and mission and issue its Obligations associated there with, the retention of counsel, the procurement of other professional services and all other reasonable acts to initiate and validate the purpose, mission and authority of the Agency, with the cost thereof accruing exclusively to and only payable by the Agency as, if and when funds from or associated with the programs of the Agency become available. All such actions taken or instruments executed on behalf of the Agency shall be valid and binding in every respect upon the Agency as if duly executed by the Chairman on behalf of the Board of Directors or any other person authorized by the Board of Directors to execute same.

**SECTION 2.04. MEETINGS; NOTICE.** Unless determined otherwise by the Board of Directors, the Board of Directors shall hold meetings pursuant to Section 189.417, Florida Statutes. Meetings may be conducted in any reasonably noticed and lawful location within the State.

**SECTION 2.05. REPORTS; BUDGETS; AUDITS.** Unless determined otherwise by the Board of Directors, the Agency shall prepare and submit reports, budgets and audits as provided in Sections 189.415 and 189.418, Florida Statutes.

**SECTION 2.06. POWERS, FUNCTIONS AND DUTIES.**

(A) The Agency shall have all powers to carry out the purposes of this Charter Agreement and the functions and duties provided for herein, including the following powers which shall be in addition to and supplementing any other privileges, benefits and powers granted by this Charter Agreement or by law:

(1) To execute all contracts and other documents, adopt all proceedings and perform all acts determined by the Board of Directors as necessary or advisable to carry out the purpose or mission of the Agency, the purposes of this Charter Agreement or any Subscription Agreement with a local government as contemplated hereby. Unless otherwise provided for herein or authorized by the Board of Directors, the Chairperson or Vice-Chairperson shall execute contracts and other documents on behalf of the Board of Directors.

(2) To provide for the provision, funding, and financing of Qualified Improvements in any manner or means determined by the Board of Directors.

(3) To contract for the service of administrators, accountants, attorneys and any other experts, advisors, or consultants, and such other professionals, agents and employees as the Board of Directors may require or deem appropriate from time to time.

(4) To contract for such services, costs, goods, facilities, or other costs or expenses on a contingent, at risk or deferred basis with the providers, purveyors, or vendors thereof with the express understanding that payment therefore may be evidenced by warrants only due or payable from the Agency (and absolutely no other person, entity or Incorporator) as, if and when identified funds to pay same are available to the Agency.

(5) To reimburse any Incorporator for actual and verifiable costs and expenses reasonably associated with the creation and establishment of the Agency, if any, as, if and when identified funds to repay same are available to the Agency.

(6) To adopt all necessary rules, regulations, procedures, or standards by resolution.

(7) To exercise jurisdiction, control and supervision over the provision, funding, and financing of Qualified Improvements and to make and enforce such rules, procedures and regulations applicable thereto as may be, in the judgment of the Board of Directors, necessary or desirable for the efficient operation of the Agency in accomplishing the purpose and mission of the Agency, and purposes of this Charter Agreement.

(8) To enter into interlocal agreements or join with any other special purpose or general purpose local governments, public agencies or authorities in the exercise of common powers.

(9) To contract with private or public entities or persons.

(10) Subject to such provisions and restrictions as may be set forth in any Financing Document, to enter into contracts with the government of the United States or any agency or instrumentality thereof, the State, or with any municipality, county, district, authority, political subdivision, private corporation, partnership, association or individual providing for or relating to the provision, funding, or financing of Qualifying Improvements and any other matters relevant thereto or otherwise necessary to effect the purpose and mission of the Agency and purposes of this Charter Agreement.

(11) To receive and accept from any federal or State agency, grants or loans for or in aid of the planning, administration, provision or financing of Qualifying Improvements, and to receive and accept aid or contributions or loans from any other source of either money, labor or other things of value, to be held, used and applied only for the purpose for which such grants, contributions or loans may be made.

(12) To purchase, finance, assume the ownership of, lease, operate, manage and/or control of any administrative facilities, including all equipment or personal property deemed necessary by the Board of Directors to achieve the purpose or mission of the Agency.

(13) To appoint advisory boards and committees to assist the Board of Directors in the exercise and performance of the powers and duties provided in this Charter Agreement.

(14) To sue and be sued in the name of the Agency and participate as a party in any civil, administrative or other action.

(15) To provide or contract for record retention and public records administration.

(16) To adopt and use a seal and authorize the use of a facsimile thereof.

(17) To employ or contract with any public or private entity or person to administer, manage, operate or provide professional services or other efforts associated with any Agency activity, program or facilities, or any portion thereof, upon such terms as the Board of Directors deems appropriate.

(18) Subject to such provisions and restrictions as may be set forth in any Financing Document, to own, use, manage or otherwise dispose of any administrative facilities, equipment or personal property, or any portion thereof, upon such terms as the Board of Directors deems appropriate.

(19) Subject to such provisions and restrictions as may be set forth in any Financing Document, to acquire, own, manage, or otherwise dispose of carbon, renewable energy or similar credits upon such terms as the Board of Directors deems appropriate; and use the proceeds of same, if any materialize, to underwrite start-up or on-going program costs, payment to professionals for deferred or contingent fee or other work or retainers, the advancement of educational programs, deposit into any general or performance assurance fund and/or payment of other reasonable costs or expenditure to advance the mission and purpose of the Agency.

(20) To acquire, by purchase, gift, devise, tax sale certificate or otherwise, and to dispose of, real or personal property, or any estate therein in the course of the purpose or mission of the Agency.

(21) To make and execute contracts or other instruments necessary or convenient to the exercise of its powers.

(22) To maintain an office or offices within the State at such place or places as the Board of Directors may designate from time to time.

(23) To utilize and employ technology and innovation to the maximum extent possible, unless otherwise inconstant with general law, in conducting the meetings and affairs of the Agency.

(24) To lease, as lessor or lessee, to or from any person, firm, corporation, association or body, public or private, facilities or property of any nature to carry out any of the purposes authorized by law or this Charter Agreement.



(25) To borrow money and issue bonds, certificates, warrants, notes, obligations or other evidence of indebtedness of any kind.

(26) To assist and act on behalf of any local government to assess, levy, impose, collect and enforce non-ad valorem assessments authorized by Section 163.08, Florida Statutes, if expressly authorized to do so by the local government in which the lands assessed are located. Such non-ad valorem assessments may only be as described in the Supplemental Act.

(27) To contract, apply for and accept grants, loans, assignments and subsidies from any governmental entity for the provision, funding and financing of Qualifying Improvements, and to comply with all requirements and conditions imposed in connection therewith.

(28) To the extent allowed by law and to the extent required to effectuate the purposes of this Charter Agreement, to have and exercise all privileges, immunities and exemptions accorded municipalities and counties of the State under the provisions of the constitution and laws of the State.

(29) To adopt investment policies from time to time and/or invest its moneys in such investments as directed by the Board of Directors in a manner which shall be consistent in all instances with the applicable provisions of the Financing Documents and State law.

(30) To purchase such insurance, bonds, sureties, contracts of indemnity, or similar facilities of any kind or nature as it deems appropriate.

(31) To do all acts and to exercise all of the powers necessary, convenient, incidental, implied or proper, in connection with any of the powers, duties, obligations or purposes authorized by this Charter Agreement or by law.

(B) The Board of Directors may appoint or contract with one or more persons or entities to act as the third party administrator for the Agency having such functions, duties, and responsibilities to implement the services and affairs of the Agency as the Board of Directors may prescribe.

(C) The Board of Directors may appoint or contract with a person or entity to act as executive director of the Agency having such official title, functions, duties, and powers as the chief administrative officer of the Agency as the Board of Directors may prescribe. The Board of Directors shall appoint a person or entity to act as the legal counsel for the Agency. The executive director and legal counsel shall each answer directly to the Board of Directors. The third party administrator shall answer to the executive director, unless otherwise directed by the Board of Directors. Neither the executive director, the third party administrator, legal counsel, nor any other employee of the Agency shall be a member of the Board of Directors.

(D) The Board of Directors (or the executive director prior to the first meeting of Board of Directors) may use or employ any procurement procedures or approach not otherwise inconsistent with general law.

(E) The Board of Directors (or the executive director prior to the first meeting of Board of Directors) may request proposals, or receive unsolicited proposals; provided, however, notice thereof shall be provided to each then Incorporator and each Subscribing Local Government then subject to a Subscription Agreement with the Agency.

(F) The executive director shall be authorized to execute and deliver on behalf of the Agency such documents and to take such actions as shall be authorized from time to time by the governing body of the Agency. The executive director, or other person or entity otherwise specifically directed to do so, is hereby directed and authorized to undertake such reasonable actions to request proposals, receive unsolicited proposals or employ any procurement procedures necessary to reasonably and timely advance the mission and purpose of the Agency, and thereafter make recommendations to the Board of Directors.

(G) In exercising the powers conferred by this Charter Agreement, the Board of Directors shall act by resolution or motion made and adopted at duly noticed and publicly held meetings in conformance with applicable law.

(H) The provisions of Chapter 120, Florida Statutes, shall not apply to the Agency.

(I) However, nothing herein shall affect the ability of the Agency to engage in or pursue any civil or administrative action or remedies, including but not limited to any proceeding or remedy available under Chapter 120, Florida Statutes, or its successor in function.

**SECTION 2.07. 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 State, any county or any municipality, and may not pledge the full faith and credit of the State, any county, or any municipality. All revenue bonds or debt obligations shall contain on the face thereof a statement to the effect that the state, county or any municipality shall not be obligated to pay the same or interest thereon 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 or this Charter Agreement shall not directly or indirectly or contingently obligate the state, or any county or municipality to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

**SECTION 2.08. ADOPTION OF RATES, FEES AND CHARGES.**

(A) The Board of Directors may adopt 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 record owner of any property, 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, together 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

this Charter Agreement and the Financing Documents (including the funding of any financing or operating reserves deemed advisable by the Agency), and to pay the principal and interest on the Obligations as the same shall become due and reserves therefor, and to provide a reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in this Charter Agreement, such rates, fees and charges shall always be sufficient to comply fully with any covenants contained in the Financing Documents. The Agency shall charge and collect such rates, fees and charges so adopted and revised, and such rates, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau, agency or other political subdivision of the State.

(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 record owners of each subscribing local governmental jurisdiction electing to enter into any financing agreement described in the Supplemental Act within the same class, and may be based upon or computed upon any factor (including, by way of example and not limitation, distinguishing between residential and non-residential customers or uses, distinguishing between variable costs of administrative services 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.

(D) Notwithstanding anything in this Charter Agreement to the contrary, the Agency may establish a general fund and/or performance assurance account into which moneys may be deposited from an annual surcharge not to exceed one percent (1%) upon any assessments, or any rates, fees and charges imposed, pledged to or collected by the Agency. Any moneys deposited to such general fund account from such a surcharge represent a fair and reasonable cost of administration and shall be considered legally available for any lawful purpose approved by the Board of Directors. Moneys in such general fund and/or performance assurance account may be used to pay for or reimburse initial costs and expenses advanced or associated with start up costs, feasibility studies, economic analysis, financial advisory services, program development or implementation costs or enhancements, public education, administration, quality control, vendor procurement, and any other lawful purpose approved by the Board of Directors.

#### **SECTION 2.09. BONDS AND OBLIGATIONS.**

(A) The Board of Directors shall have the power and it is hereby authorized to provide pursuant to the Financing Documents, at one time or from time to time in one or more series, for the issuance of Obligations of the Agency, or notes in anticipation thereof, for one or more of the following purposes:

- (1) Paying all or part of the cost of one or more Qualifying Improvements,
- (2) Refunding any bonds or other indebtedness of the Agency,
- (3) Assuming or repaying the indebtedness relating to Qualifying Improvements,
- (4) Setting aside moneys in a reserve or performance assurance account,



- (5) Funding a debt service reserve account,
- (6) Capitalizing interest on the Obligations,
- (7) Paying costs of issuance relating to the Obligations, and
- (8) Any other purpose relating to the purpose or mission of the Agency or this Charter Agreement.

(B) The principal of and the interest on each series of Obligations shall be payable from the Pledged Funds, all as determined pursuant to the Financing Documents. The Agency may grant a lien upon and pledge the Pledged Funds in favor of the holders of each series of Obligations in the manner and to the extent provided in the Financing Documents. Such Pledged Funds shall immediately be subject to such lien without any physical delivery thereof and such lien shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Agency.

(C) The Obligations of each series shall be dated, shall bear interest and such rate or rates, shall mature at such time or times not exceeding forty (40) years from their date or dates, may be made redeemable before maturity, at the option of the Agency, at such price or prices and under such terms and conditions, all as shall be determined by the Board of Directors pursuant to the Financing Documents. The Board of Directors shall determine the form of the Obligations, the manner of executing such Obligations, and shall fix the denomination of such Obligations and the place of payment of the principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or facsimile of whose signature shall appear on any Obligations shall cease to be such officer before the delivery of such Obligations, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until delivery. The Board of Directors may sell Obligations in such manner and for such price as it may determine to be in the best interest of the Agency in accordance with the terms of the Financing Documents. In addition to the Pledged Funds, the Obligations may be secured by such credit enhancement as the Board of Directors determines to be appropriate pursuant to the Financing Documents. The Obligations may be issued as capital appreciation bonds, current interest bonds, term bonds, serial bonds, variable bonds or any combination thereof, all as shall be determined pursuant to the Financing Documents.

(D) Prior to the preparation of definitive Obligations of any series, the Board of Directors may issue interim receipts, interim certificates or temporary Obligations, exchangeable for definitive Obligations when such Obligations have been executed and are available for delivery. The Board of Directors may also provide for the replacement of any Obligations which shall become mutilated, or be destroyed or lost. Obligations may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Charter Agreement, the Financing Documents or other applicable laws.

(E) The Board of Directors may enter into such swap, hedge or other similar arrangements relating to any Obligations as it deems appropriate.

(F) The proceeds of any series of Obligations shall be used for such purposes, and shall be disbursed in such manner and under such restrictions, if any, as the Board of Directors may provide pursuant to the Financing Documents.

(G) The Financing Documents may also contain such limitations upon the issuance of additional Obligations as the Board of Directors may deem appropriate, and such additional Obligations shall be issued under such restrictions and limitations as may be prescribed by such Financing Documents. The Financing Documents may contain such provisions and terms in relation to the Obligations and the Pledged Funds as the Board of Directors deems appropriate and which shall not be inconsistent herewith.

(H) Obligations shall not be deemed to constitute a general obligation debt of the Agency or a pledge of the faith and credit of the Agency, but such Obligations shall be payable solely from the Pledged Funds and any moneys received from the credit enhancers of the Obligations, in accordance with the terms of the Financing Documents. The issuance of Obligations shall not directly or indirectly or contingently obligate the Agency to levy or to pledge any form of ad valorem taxation whatsoever therefor. No holder of any such Obligations shall ever have the right to compel any exercise of the ad valorem taxing power on the part of the Agency or any incorporating local government or subscribing local government to pay any such Obligations or the interest thereon or the right to enforce payment of such Obligations, or the interest thereon, against any property of the Agency, nor shall such Obligations constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Agency, except the Pledged Funds in accordance with the terms of the Financing Documents.

(I) All Pledged Funds shall be deemed to be trust funds, to be held and applied solely as provided in the Financing Documents. Such Pledged Funds may be invested by the Agency in such manner as provided in the Financing Documents.

(J) Any holder of Obligations, except to the extent the rights herein given may be restricted by the Financing Documents, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the Financing Documents, and may enforce and compel the performance of all agreements or covenants required by this Charter Agreement, or by such Financing Documents, to be performed by the Agency or by any officer thereof.

(K) From time to time the Agency may issue warrants, payable not from Pledged Revenues, but as, if and when other legally available funds become available; or as otherwise authorized under the Financing Documents.

(L) The Obligations may be validated, at the sole discretion of the Board of Directors, pursuant to Chapter 75, Florida Statutes. Obligations may be issued pursuant to and secured by a resolution of the Board of Directors. Provided, however, that the initial series of Obligations issued, together with the validity of this Charter Agreement and all of its terms, provisions and powers, the Pledged Revenues, the power and authority of the Agency and any subscribing local government to enter into a Subscription Agreement, the provision, funding, and financing of Qualifying Improvements, the power and authority for local governments to enter into

financing agreements and impose non-ad valorem assessments and the status of such non-ad valorem assessments as a lien of equal dignity to taxes and assessments as described in the Supplemental Act, and all matters associated therewith shall be validated pursuant to Chapter 75, Florida Statutes, as soon as practicable after execution hereof.

(M) In addition to the other provisions and requirements of this Charter Agreement, any Financing Documents may contain such provisions as the Board of Directors deems appropriate.

(N) All Obligations issued hereunder shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value. No proceedings in respect to the issuance of such Obligations shall be necessary except such as are required by law, this Charter Agreement or the Financing Documents. The provisions of the Financing Documents shall constitute an irrevocable contract between the Agency and the holders of the Obligations issued pursuant to the provisions thereof.

(O) Holders of Obligations shall be considered third party beneficiaries hereunder and may enforce the provisions of this Charter Agreement or general law.

#### **SECTION 2.10. MERGER; DISSOLUTION.**

(A) In no event shall a merger involving the Agency be permitted, unless otherwise approved by resolution of the local governments which are then members of the Agency pursuant to this Charter Agreement.

(B) The dissolution of the Agency shall occur by law and transfer the title to all property owned by the Agency in a manner consistent with Chapter 189, Florida Statutes, unless (1) the Agency is merged into an independent special district as acknowledged herein, (2) this Charter Agreement is terminated pursuant to Section 3.02 hereof, or (3) as otherwise provided in a dissolution plan approved and adopted by resolution of the local governments which are then members of the Agency pursuant to this Charter Agreement.

**SECTION 2.11. ENFORCEMENT AND PENALTIES.** The Board of Directors or any aggrieved person may have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of this Charter Agreement, including injunctive relief to mandate compliance with or enjoin or restrain any person violating the provisions of this Charter Agreement and any bylaws, resolutions, regulations, rules, codes, and orders adopted under this Charter Agreement, and the court shall, upon proof of such failure of compliance or violation, have the duty to issue forthwith such temporary and permanent injunctions as are necessary to mandate compliance with or prevent such further violations thereof.

**SECTION 2.12. TAX EXEMPTION.** As the exercise of the powers conferred by this Charter Agreement to effect the purposes of this Charter Agreement constitute the performance of essential public functions, and as the programs of the Agency constitute public purposes as more particularly articulated in the Supplemental Act, all assets and properties of

*Florida PACE Funding Agency Charter Agreement*

the Agency and all Obligations issued hereunder and interest paid thereon and all assessment proceeds, rates, fees, charges, and other revenues derived by the Agency from the activities, services, and programs provided for by this Charter Agreement or otherwise shall be exempt from all taxes by the State or any political subdivision, agency, or instrumentality thereof, except that this exemption shall not apply to interest earnings subject to taxation under Chapter 220, Florida Statutes.

[Remainder of page intentionally left blank.]



**ARTICLE III  
GENERAL PROVISIONS**

**SECTION 3.01. INTERLOCAL AGREEMENT PROVISIONS.** This Charter Agreement constitutes a joint exercise of power, privilege or authority by and between the Incorporators and shall be deemed to be an "interlocal agreement" within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. This Charter Agreement shall be filed with the applicable clerk of the circuit court as provided by Section 163.01(11), Florida Statutes.

**SECTION 3.02. TERM OF AGREEMENT; DURATION OF AGREEMENT.**

(A) The term of this Charter Agreement shall commence as of the date first above written, and shall continue for so long as the Agency shall exist.

(B) The Agency shall continue to exist so long as the Agency has Obligations outstanding. At such time as no Obligations are outstanding, the Agency may dissolve by a majority vote of the Board of Directors in a manner provided for herein.

(C) So long as the Agency has Obligations outstanding, the members of the Agency covenant not to undertake any act or action to withdraw from or otherwise terminate this Charter Agreement; and any such action shall not be effective if such action would leave less than two (2) members.

**SECTION 3.03. AMENDMENTS AND WAIVERS.**

(A) Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Charter Agreement shall be binding unless executed in writing by the Agency and the local governments which are then members of the Agency pursuant to this Charter Agreement.

(B) To the extent the Agency has no outstanding bonds, Obligations or other evidence of indebtedness, this Charter Agreement may be amended or modified or provisions hereto waived upon the written consent of all the then members of the Agency as more particularly described in Section 2.01(B) hereof.

(C) Notwithstanding any other provision herein interpreted to the contrary, to the extent the Agency has outstanding Obligations or other evidence of indebtedness, this Charter Agreement may not be amended or modified in any way that is materially adverse to holders of such Obligations or other evidence of indebtedness without the consent in writing of the holders of at least two-thirds (2/3) or more in principal amount of such Obligations or other evidence of indebtedness then outstanding, or any trustee or insurer duly authorized to provide such consent on behalf of such holders.

**SECTION 3.04. 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 Incorporators at the addresses appearing on their respective signature page.

(B) Upon execution hereof all notices shall also be sent to the Agency, to the attention of its Chair (or executive director prior to the first meeting of Board of Directors), with a separate copy to the legal counsel of the Agency.

(C) Any of the Incorporators (including the Agency after execution hereof by the Incorporators) may, by notice in writing given to the others, 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 3.05. 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 general purpose local governments incorporating or by law deemed members of the Agency shall apply to the officials, officers, agents or employees of the Agency when performing their respective functions and duties under the provisions of this Charter Agreement.

(B) The Agency and the general purpose local governments incorporating or by law deemed members of the 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, such local governments may not be held jointly or severally liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency or another member of 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 general purpose local governments incorporating or by law deemed members of the Agency intend that the Agency shall have all of the privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State. Nothing in this Charter Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(C) Neither any Incorporator nor any subsequent Subscribing Local Government shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions 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, and neither the Agency, the Board of Directors nor any other agents, employees, officers or officials of the Agency have any authority or power to otherwise obligate one or more of the Incorporators, nor any subsequently Subscribing Local Government in any manner.

**SECTION 3.06. BINDING EFFECT.** To the extent provided herein, this Charter 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 3.07. SEVERABILITY.** In the event any provision of this Charter 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 3.08. EXECUTION IN COUNTERPARTS.** This Charter 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 3.09. APPLICABLE LAW.** This Charter Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**SECTION 3.10. ENTIRE AGREEMENT.** This Charter 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.]

**Incorporator Signature Page**

IN WITNESS WHEREOF, the undersigned have caused this Charter Agreement to be duly executed and entered into as of this date.

**BOARD OF COUNTY COMMISSIONERS  
OF FLAGLER COUNTY, FLORIDA**

(SEAL)

By:   
Chair

Date:  June 20, 2011

ATTEST:

  
Clerk

Notice Address: County Administrator  
Flagler County  
1769 E. Moody Blvd., Bldg. 2  
Bunnell, Florida 32110



Florida PACE Funding Agency Charter Agreement

Incorporator Signature Page

IN WITNESS WHEREOF, the undersigned have caused this Charter Agreement to be duly executed and entered into as of this date.

THE CITY COMMISSION OF THE CITY  
OF KISSIMMEE, FLORIDA



By: *Jim Luta*  
Mayor

Date: June 22, 20 11

ATTEST:

*Ronda S. Hansell*  
City Clerk

Approved as to form and legality  
*[Signature]* 6/21/2011  
City Attorney Date

Notice Address: City Manager  
City of Kissimmee  
101 North Church Street, 5th Floor  
Kissimmee, Florida 34741



I HEREBY CERTIFY this to be a true  
And correct copy of the original  
GAIL WADSWORTH  
CLERK OF COURTS

By *Gail Wadsworth* DC