



4.A.1.  
2023-61221  
DATE: **7/18/2023**

## AGENDA REQUEST

**TO:** Sustainability District

**PRESENTED BY:** Daniel McIntyre, County Attorney

**SUBMITTED BY:** County Attorney

**SUBJECT:** Florida Pace Funding Agency (FPFA) - Request for Board Direction

### **BACKGROUND:**

The County enacted County Ordinance No. 2010-025 to create the Sustainability District ("District") and establish an Energy Financing Program which offers qualified owners of real property an opportunity to acquire Qualifying Improvements and repay the costs associated with such improvements through voluntary special assessments imposed by the District pursuant to Financing Agreements (the "Projects"). Pursuant to Resolution No. 2012-001 adopted on July 3, 2012, the District engaged the Solar and Energy Loan Fund of St. Lucie County, Inc. ("SELF") as Program Administrator for the Energy Financing Program. A copy of the July 3, 2012 Administration Agreement and the First Amendment are attached. The Administration Agreement expired in September 2022. Consumer protections above those required by State law were built into the SELF program. In that regard, St. Lucie County is a statewide leader.

The District previously issued its Taxable Special Assessment Bond, Series 2014 to Inland St. Lucie PACE, LLC ("Inland"), and entered into a Special Assessment Funding Agreement (Energy and Sustainability Financing Program) dated August 19, 2014 with SELF and the Lender, to establish a \$2,000,000 non-revolving line of credit (the "2014 Loan") with which to finance the costs associated with Qualifying Improvements constructed pursuant to Financing Agreements, entered into between the District and qualifying property owners. The Energy Financing Program, as funded by the 2014 Loan, has successfully financed numerous Qualifying Improvements and the principal amount of the non-revolving 2014 Loan is now almost entirely expended. Inland, however, recently notified the District that Inland did not want to continue to fund residential pace projects under the Agreement. County staff has contacted SELF in an attempt to find out if SELF intends to continue to process residential and commercial PACE loans under a renewed Administration Agreement in St. Lucie with another lender for residential PACE. According to the Director of SELF, SELF remains interested in working with St. Lucie County to prudently oversee PACE financing in the future.

The District's authority to issue revenue bonds is set out in County Resolution No. 10-259 which provided for the financing of Qualifying Improvements, including the 2014 Bond, and was validated by the Circuit Court in and for St. Lucie County pursuant to the Final Judgment entered on November 30, 2010 in Case No. 10-CA-5410.

**FPFA**

On January 3, 2023, FPFA sent the attached letter to former County Administrator Howard Tipton. The letter expresses FPFA's willingness to enter into an interlocal agreement that "facilitates information sharing and feedback" but states that FPFA does not believe that an interlocal agreement is necessary to provide PACE in St. Lucie County. FPFA bases its position on a bond validation judgment (Florida Pace Funding Agency v. State of Florida et. al., 2022-CA-001562 [ Fla. 2nd Cir. Ct. October 6, 2022]). In viewing the FPFA validation judgment, it appears that the judgment includes collateral issues beyond the scope of a bond validation case including authorizing FPFA to operate in other counties without regard to existing county programs or protections. St. Lucie County was provided no notice of this proceeding and was not a party to the proceeding. The County has not entered into an interlocal agreement with FPFA.

Recently, the attorney for the St. Lucie County Tax Collector contacted the County Attorney's office and provided the County Attorney's office with a list of over 140 liens reportedly filed by FPFA on properties in St. Lucie County. Based on staff review of the addresses, it appears that the number of liens per jurisdiction is as follows, as of July 10, 2023:

Unincorporated St. Lucie County - 25  
City of Fort Pierce - 9  
City of Port St. Lucie - 108  
Unable to determine - 3

Staff has contacted the two City Attorney's offices to see if either City has entered into an interlocal agreement with FPFA. The Port St. Lucie City Attorney's Office indicated that the City of Port St. Lucie has not entered into an agreement with FPFA. Similarly, the Fort Pierce City Attorney's Office indicated that the City of Fort Pierce has not entered into an agreement with FPFA. Please note that the 2010 County ordinance provides for the ability of the Cities to establish their own PACE program and opt out of the County's program. In addition, the FPFA website indicates that FPFA will submit a roll to the St. Lucie County Tax Collector in 2023 in the amount of \$3,120,081.98.

### Discussion

A discussion of the County's options follows. These options may be impacted by the answers to the question whether either of the cities (Fort Pierce or Port St. Lucie) intend to establish their own PACE program. It appears that the County has the following options (in no order of preference):

1. Attempt to negotiate an interlocal agreement with FPFA
2. Do nothing and let FPFA and other PACE programs operate in St. Lucie County
3. Authorize the County Attorney to send the attached draft cease and desist letter to FPFA

In any event staff suggests that the County should consider adopting a PACE consumer protection ordinance.

### **PREVIOUS ACTION:**

N/A

### **FINANCIAL IMPACT:**

N/A

### **RECOMMENDATION:**

Staff recommends that the Board provide direction. Due to the complexity of the issues and in the absence of Board consensus, the Board may want to consider holding a special informal meeting to further discuss the issues. Staff further recommends that the Board direct the County Attorney to draft and advertise a PACE consumer protection ordinance for Board review and consideration at a public hearing.

**COMMISSION ACTION:**

<b>RESULT:</b>	
<b>MOVER:</b>	None
<b>SECONDER:</b>	None
<b>AYES:</b>	None
<b>NAYS:</b>	None
<b>EXCUSED:</b>	None

**Coordination/Signatures**



\_\_\_\_\_  
Daniel McIntyre, County Attorney

Date: July 12, 2023



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George Landry, County Administrator

Date: July 12, 2023

July 3  
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**ADMINISTRATION AGREEMENT**

This Administration Agreement (the "Agreement"), dated as of ~~April 1~~, 2012, is entered into by and between the St. Lucie County Sustainability District, a dependent special district created by St. Lucie County, Florida ("District"), and the Solar Energy and Loan Fund of St. Lucie County, Inc. ("Administrator") (collectively, the District and the Administrator may be referred to herein as the "Parties" and each, singly, as a "Party").

**RECITALS**

**WHEREAS**, pursuant to Ordinance No. 10-025 (as codified in Chapter 1-19 of the Code of Ordinances of St. Lucie County, the "Sustainability Ordinance") and Resolution No. 10-259 (as may be amended from time to time, the "Resolution"), St. Lucie County, Florida (the "County") established the District for purposes of accomplishing energy efficiency and renewable energy improvements through an energy financing program providing for the levy of non-ad valorem assessments against real property, with the consent of the owners of such property, to finance the acquisition and construction of energy conservation, energy efficiency and renewable energy improvements (the "Program"); and

**WHEREAS**, Section 1-19.16 of the Sustainability Ordinance authorizes and directs the Board of the County and all other County officers and employees to take all actions necessary and appropriate to effectuate the provisions of the Sustainability Ordinance; and

**WHEREAS**, the Resolution expressly authorizes execution of an administration agreement pursuant to which Administrator will administer the Program on behalf of the District; and

**WHEREAS**, the parties hereto wish to enter into this Agreement in order to effectuate the policy direction set forth in the Resolution and to establish the terms and conditions governing administration of the Program.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**SECTION 1. INCORPORATION OF RECITALS AND APPENDICES.** The recitals stated above are true and correct and, together with the appendices attached hereto, are incorporated herein as a material part of this Agreement.

**SECTION 2. DEFINITIONS.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Sustainability Ordinance and the Resolution. As used in this Agreement, the following terms shall have the following meanings.

"Act" means Section 163.08, Florida Statutes.

"Administration Cost" means the cost incurred by the County in administering the Program and the Assessment contemplated hereunder, including but not limited to any costs associated with collection of the Assessment and recording of Financing Agreements or summary memoranda thereof in the public records of St. Lucie County, Florida.

"Annual Payment" means the annual installment of an Assessment which is due in any given Tax Year, including interest.

"Assessed Property" means real property subject to a Financing Agreement.

"Assessment" means the non-ad valorem assessment levied by the County against Assessed Property pursuant to Financing Agreements.

"Contract Administrator" means the County Administrator or designee thereof.

"Disbursement Amount" means the cost of the Improvements less any applicable refunds, rebates or credits to be disbursed to the Vendor.

"Financing Agreements" means the agreements entered into between the County and the owners of Assessed Property providing for the financing of Improvements

"Improvements" means the energy conservation, energy efficiency and renewable energy improvements authorized by the Resolution and the Act financed pursuant to Financing Agreements.

"Owner" means the owner of Assessed Property.

"Property Appraiser" means the St. Lucie County Property Appraiser.

"Vendor" means the contractor engaged by an Owner to provide, deliver and install Improvements.

"Tax Collector" means the St. Lucie County Tax Collector.

"Tax Year" means the period from January 1st through the following December 31st.

### **SECTION 3. SERVICES ADMINISTRATOR AGREES TO PERFORM.**

(A)The Administrator agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto.

(B) Officers, staff and employees of the County are not authorized to request, and the District is not required to reimburse the Administrator for, services beyond those set forth in Appendix A unless such services are authorized by amendment hereof or otherwise approved in advance, in writing, by the District.

**SECTION 4. COMPENSATION.**

(A) Administrator shall be compensated for services provided hereunder solely through (1) fees imposed upon and paid by an Owner (which may include application, administration and/or origination fees), and (2) proceeds of the Annual Payments paid by Owners pursuant to Financing Agreements.

(B) Officers, staff and employees of the District are not authorized to offer or promise, nor is the District required to honor, any offered or promised additional compensation.

(C) If Administrator claims or receives payment for a service performed hereunder, reimbursement for which is later disallowed by the State of Florida or United States Government, Administrator shall promptly refund the disallowed amount to District upon District's request.

**SECTION 5. ELIGIBILITY.** By executing this Agreement, Administrator certifies that Administrator is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Administrator acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

**SECTION 6. ONGOING COMPLIANCE.** Administrator agrees to comply at all times, and to cooperate with the District as necessary to ensure compliance at all times, with the requirements of the Act and the Resolution as they may be amended from time to time, and to execute any amendment hereto deemed necessary or desirable by the District in order to ensure such compliance.

**SECTION 7. QUALIFIED PERSONNEL.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Administrator. Administrator will comply with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, must be supervised by Administrator.

**SECTION 8. RESPONSIBILITY FOR EQUIPMENT.** District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Administrator, or by any of its employees, even though such equipment be furnished, rented or loaned to Administrator by District.

**SECTION 9. INDEPENDENT ADMINISTRATOR; PAYMENT OF TAXES AND OTHER EXPENSES.**

(A) Independent Administrator. Administrator or any agent or employee of Administrator shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by District under this Agreement. Administrator or any agent or employee of Administrator shall not have employee status with District, nor be entitled to participate in any plans, arrangements, or distributions by District pertaining to or in connection with any retirement, health or other benefits that District may offer its employees. Administrator or any agent or employee of Administrator is liable for the acts and omissions of itself, its employees and its agents. Administrator shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Administrator's performing services and work, or any agent or employee of Administrator providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between District and Administrator or any agent or employee of Administrator.

Any terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Administrator's work only, and not as to the means by which such a result is obtained. District does not retain the right to control the means or the method by which Administrator performs work under this Agreement.

(B) Payment of Taxes and Other Expenses. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service, determine that Administrator is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Administrator which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Administrator for District, upon notification of such fact by District, Administrator shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Administrator under this Agreement (again, offsetting any amounts already paid by Administrator which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Administrator shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Administrator is an employee for any other purpose, then Administrator agrees to a reduction in District's financial liability so that District's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Administrator was not an employee.

## SECTION 10. INSURANCE.

(A) Amounts and Coverages. Without in any way limiting Administrator's liability pursuant to the "Indemnification" section of this Agreement, Administrator must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident as required by Florida law; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(B) Required Provisions. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the District, the County, their respective officers, agents, and employees. To satisfy this requirement, Administrator shall submit an additional insured endorsement in the form of ISO 2010 (11/85) or its equivalent.

(2) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each Insured against whom claim is made or suit is brought.

(C) Notice of Cancellation or Non-Renewal. All policies shall provide thirty days' advance written notice to the District of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the District in accordance with Section 16.

(D) Maintenance of Coverage. Should any of the required insurance be provided under a claims-made form, Administrator shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of one year beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(E) Lapse of Required Insurance. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the District receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the District may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.



(F) Required Documentation. On or before the Effective Date, the Administrator shall do the following: (a) furnish to District certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of Florida, and that are satisfactory to District, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon District request. Failure to maintain insurance shall constitute a material breach of this Agreement.

(G) No Effect on Liability. Approval of the insurance by District shall not relieve or decrease the liability of Administrator hereunder.

(H) Subcontractors. If a subcontractor will be used to provide any of the services contemplated by this Agreement, the Administrator shall ensure that the subcontractor provides all necessary insurance and shall name the District its officers, agents and employees and the Administrator listed as additional insureds.

## **SECTION 11. INDEMNIFICATION.**

(A) Administrator shall indemnify and hold harmless District and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Administrator or loss of or damage to property, arising directly or indirectly from Administrator's performance of this Agreement, including, but not limited to, Administrator's use of facilities or equipment provided by District or others, regardless of whether liability without fault is imposed or sought to be imposed on District, except to the extent that (i), such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, or (ii) such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of District and to the extent not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Administrator, its subcontractors or either's agent or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and District's costs of investigating any claims against the District.

(B) In addition to Administrator's obligation to indemnify District, Administrator specifically acknowledges and agrees that it has an immediate and independent obligation to defend District from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Administrator by District and continues at all times thereafter.

(C) Administrator shall indemnify and hold District harmless from all third party claims of loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence

of the use by District, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement. In the event a third party makes a such a claim of loss or liability, Administrator shall have the right at its cost and expense to obtain the intellectual property rights necessary for District to use the articles and services as contemplated in this Agreement or to replace such articles or services with non-infringing articles or services in either case, at no additional cost to the District. Notwithstanding the foregoing, Administrator has no liability to District for (i) any marking or branding obtained by District from third parties; (ii) any data or content provided by the District; or (iii) modification of any deliverables or services, where infringement would not have occurred but for such modifications and such modifications causing infringements were not made or caused to be made by Administrator.

**SECTION 12. LIABILITY OF DISTRICT. ADMINISTRATOR'S COMPENSATION FOR THE SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO THE SOURCES PROVIDED FOR IN SECTION 4 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL DISTRICT BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.**

**SECTION 13. DEFAULT; REMEDIES.**

(A) Events of Default. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Administrator fails or refuses to perform or observe any term, covenant or condition contained in this Agreement.

(2) Administrator fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from District to Administrator.

(3) Administrator fails or refuses to perform or observe any other term, covenant or condition contained in any bond document pertaining to the issuance of debt by the District pursuant to the Resolution or otherwise, and such default continues for a period of ten days after written notice thereof from District to Administrator.

(4) Administrator (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, or (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Administrator or of any substantial part of Administrator's property.

(5) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Administrator or with respect to any substantial part of Administrator's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Administrator.

(B) Remedies. On and after any Event of Default, District shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, upon Administrator's failure to cure a default after notice from District, District shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Administrator any Event of Default; Administrator shall pay to District on demand all costs and expenses incurred by District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. District shall have the right to offset from any amounts due to Administrator under this Agreement or any other agreement between District and Administrator all damages, losses, costs or expenses incurred by District as a result of such Event of Default.

#### **SECTION 14. TERMINATION FOR CONVENIENCE.**

(A) Exercise. District shall have the option, in its sole discretion, with written notice to Administrator, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. District shall exercise this option by giving Administrator written notice of termination. Any such termination shall not become effective for 90 days after delivery to Administrator of such notice.

(B) Administrator Obligations. Upon receipt of the notice, Administrator shall commence and perform, with diligence, all actions necessary on the part of Administrator to effect the termination of this Agreement on the date specified by District and to minimize the liability of Administrator and District to third parties as a result of termination. All such actions shall be subject to the prior approval of District. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by District; provided, however, that Administrator shall continue to perform functions related to the collection of Assessments and accounting for proceeds received until the earlier of 90 days from notice of termination or release of such obligation by the District.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At District's direction, assigning to District any or all of Administrator's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, District shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to District's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that District designates to be completed prior to the date of termination specified by District.

(7) Taking such action as may be necessary, or as the District may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Administrator and in which District has or may acquire an interest.

(C) District Obligations. Within 30 days after the specified termination date, Administrator shall submit to District an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Administrator, without profit, for all services and other work District directed Administrator to perform prior to the specified termination date, for which services or work District has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Administrator's direct costs for services or other work. Any overhead allowance shall be separately itemized Administrator may also recover the reasonable cost of preparing the invoice.

(2) The reasonable cost to Administrator of handling material or equipment returned to the Vendor, delivered to the District or otherwise disposed of as directed by the District.

(3) A deduction for the cost of materials to be retained by Administrator, amounts realized from the sale of materials and not otherwise recovered by or credited to District, and any other appropriate credits to District against the cost of the services or other work.

(D) In no event shall District be liable for costs incurred by Administrator or any of its subcontractors after the termination date specified by District, except for those costs specifically enumerated and described in the immediately preceding paragraph (C). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such paragraph (C).

(E) In arriving at the amount due to Administrator under this Section, District may deduct: (1) all payments previously made by District for work or other services covered by Administrator's final invoice; (2) any claim which District may have against Administrator in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (D); and (4) in instances in which, in the opinion of the District, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and District's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

(F) District's payment obligation under this Section shall survive termination of this Agreement.

**SECTION 15. RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION.**

(A) Survival of Obligations. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 5, 6, 8 through 12, 14, 17, 18, 19, 25, 27 through 31 and 34.

(B) Duties upon Termination. Subject to the immediately preceding paragraph (A), upon termination of this Agreement prior to expiration of the term specified in Section 36, this Agreement shall terminate and be of no further force or effect. Administrator shall transfer title to District, and deliver in the manner, at the times, and to the extent, if any, directed by District, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to District. This subsection shall survive termination of this Agreement.

**SECTION 16. NOTICES TO THE PARTIES.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the Parties may be by U.S. mail and shall be addressed as follows:

To District: County Administrator  
2300 Virginia Avenue  
Ft. Pierce, Florida 34982

With a copy to: County Attorney  
2300 Virginia Avenue  
Ft. Pierce, Florida 34982

To Administrator: Solar Energy Loan Fund of St. Lucie County, Inc.

2400 Rhode Island Avenue (P.O. Box 5506)  
Fort Pierce, Florida 34950 (34954)

District and Administrator shall provide one another with written notice of any change in address for notice subsequent to the date hereof. Any notice of default must be sent by registered mail.

**SECTION 17. OWNERSHIP OF RESULTS.** Subject to the other terms in this Agreement, any non-proprietary interest of Administrator or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents first prepared by Administrator or its subcontractors in connection with services to be performed under this Agreement, shall remain the property of the Administrator. However, Administrator shall provide District with copies of any such material upon request.

**SECTION 18. WORKS FOR HIRE.**

(A) Subject to the other terms in this Agreement and unless otherwise specified in Appendix A, if, in connection with compensated services performed under this Agreement, Administrator or its subcontractors first create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship are the property of District. With the approval of the District, Administrator may retain and use copies of such works.

(B) The District acknowledges that the services performed hereunder (as further described in Appendix A) will include development, revision and maintenance of a web platform using District or County content such as logos and trademarks. Accordingly, as between the Administrator and the District, the Administrator shall retain all rights, including intellectual property rights, in any preexisting technology and software, including without limitation the platform and related functionality for data gathering, integration, transmission or otherwise underlying the website and subject to the County or District's rights in the Content (as described below) any modifications made thereto pursuant to this Agreement. The County shall retain all rights, including the intellectual property rights, in and to the County logo, trademarks and any content developed by Administrator for the County, and the County shall own all Program participant data obtained through the website provided by the County to Administrator in connection with the services and the website ("Content"). Subject to the County's rights in the Content, Administrator shall own all rights, including all intellectual property rights in the look and feel of the website; provided however that the Administrator shall not be entitled to develop similar websites that may create confusion or otherwise be detrimental to the Program.

(C) Notwithstanding anything herein to the contrary, the Parties acknowledge that Administrator may now and in the future maintain its own website, separate and apart from

any website or portal maintained by the District or the County pertaining to the Program. Administrator assumes no obligation hereunder to develop or host a website on behalf of the District. Administrator may offer a link to the District or County website from its own, and to the extent Administrator includes material related to the Program on Administrator's website for purposes of disseminating information concerning the Program, District shall have the right to approve of such material, and to request revisions to or removal of such material from Administrator's website.

**SECTION 19. AUDIT AND INSPECTION OF RECORDS.** Administrator agrees to maintain and make available to the District, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Administrator will permit District to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Administrator shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of Florida or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon District by this Section. Administrator and District agree to develop policies as to the appropriate scope and form of the records to be kept, particularly in relation to information provided by applicants.

**SECTION 20. SUBCONTRACTING.** The parties hereto acknowledge that Administrator may subcontract with third parties for the performance of various responsibilities assumed by Administrator hereunder; provided, however, that neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

**SECTION 21. ASSIGNMENT.** The services to be performed by Administrator are personal in character and this Agreement may not be assigned by the Administrator unless first approved by District by written instrument executed and approved in the same manner as this Agreement.

**SECTION 22. NON-WAIVER OF RIGHTS.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**SECTION 23. DRUG-FREE WORKPLACE POLICY.** Administrator acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District or County premises. Administrator agrees that any violation of this

prohibition by Administrator, its employees, agents or assigns will be deemed a material breach of this Agreement.

**SECTION 24. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT.** Administrator acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through the Administrator, must be accessible to the disabled public. Administrator shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Administrator agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Administrator, its employees, agents or assigns will constitute a material breach of this Agreement.

**SECTION 25. PUBLIC RECORDS.** In accordance with Chapter 119, Florida Statutes, contracts, bids, responses to solicitations and all other records of communications between the Parties and persons or firms seeking contracts, shall be public record and open to inspection as required by law.

**SECTION 26. PUBLIC ACCESS TO RECORDS AND MEETINGS.** By executing this Agreement, the Administrator acknowledges responsibility for complying with the requirements of the State of Florida's public records and open meeting laws, including Chapter 119 and Section 286.011, Florida Statutes, respectively, or their successors in function; provided, however, that the dissemination of public records shall be subject in all respects to any withholding or redaction requirements and/or privacy or other exemptions to public records disclosure required or allowed by state and federal law. Administrator acknowledges that its failure to comply with such laws shall constitute a material breach of this Agreement. The Administrator further acknowledges that such material breach shall be grounds for the District to terminate and/or not renew this Agreement.

**SECTION 27. MODIFICATION OF AGREEMENT.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**SECTION 28. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the County Administrator or designee who shall decide the true meaning and intent of the Agreement.

**SECTION 29. AGREEMENT MADE IN FLORIDA; VENUE.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in St. Lucie County, Florida.



**SECTION 30. CONSTRUCTION.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**SECTION 31. ENTIRE AGREEMENT.** This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 27.

**SECTION 32. COMPLIANCE WITH LAWS; COMPLIANCE WITH AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.**

(A) Administrator shall keep itself fully informed of the District's resolutions and the County's codes, ordinances and resolutions and of all state and federal laws and regulations in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and resolutions and all applicable state and federal laws and regulations as they may be amended from time to time, including but not limited to any applicable provisions of the Federal Drug Free Workplace Act of 1989, the Davis-Bacon Act and the ADA.

(B) Administrator acknowledges that work performed under this Agreement may be funded, in whole or in part, with funds appropriated through the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (the "Recovery Act" or "ARRA") and an award by the U.S. Department of Energy ("DOE") through an Energy Efficiency and Conservation Block Grant ("EECBG"), in which case Administrator acknowledges responsibility for ensuring compliance by Administrator and any subcontractor thereof with applicable terms and conditions contained therein, if any.

**SECTION 33. SERVICES PROVIDED BY ATTORNEYS.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the County Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Administrator, may be paid unless the provider received advance written approval from the County Attorney.

**SECTION 34. SEVERABILITY.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

**SECTION 35. COOPERATIVE DRAFTING.** This Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the

Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

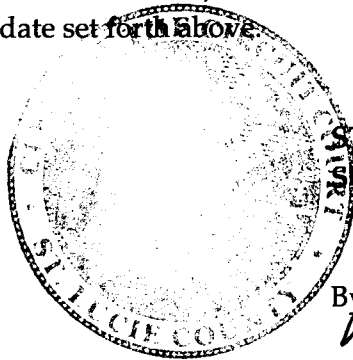
**SECTION 36. EFFECTIVE DATE; TERM; RENEWAL.**

(A) This Agreement shall be effective as of July 1, 2012.

(B) The term of this Agreement shall be from July 1, 2012, through June 30, 2014.

(C) The Parties expect that the Program will continue beyond the expiration date set forth in paragraph (B) above. Unless either Party delivers a written notice of nonrenewal to the other Party on or before the date that is 60 days prior to the then-effective expiration date, this Agreement shall be deemed renewed for an additional two years.

IN WITNESS WHEREOF, District and Administrator have entered into this Agreement as of the effective date set forth above.



(SEAL)

**ST. LUCIE COUNTY  
SUSTAINABILITY DISTRICT**

By: Paula A. Lewis  
Vice-Chair

ATTEST:

Approved as to Form:

[Signature]  
Deputy Clerk

[Signature]  
County Attorney

**SOLAR AND ENERGY LOAN FUND OF  
ST. LUCIE COUNTY, INC.**

Date: June 18, 2012

Thomas T. Cooper  
Thomas T. Cooper, Secretary

[Signature]  
Kyle Abney, President

## APPENDIX A

### Description of Services to be Provided by Administrator

**A. Program Design Services.** Program design services include alignment with local goals and policies, integration with existing programs, stakeholder engagement, and development of program guidelines.

Administrator will participate in meetings and facilitate the creation of documents with District staff and consultants:

1. To ensure full integration of the Program with existing federal, state, utility, and local renewable energy incentives.
2. To collaborate with the District in developing guidelines, policies and procedures for the Program.
3. To develop strategies for implementing and administering the Program.
4. To assist in drafting procedures, manuals and guidebooks in connection with the Program. (This task is also part of the Program Implementation Services.)

**B. Program Implementation Services.** Program implementation services include finalizing and integrating the tasks outlined in the program design services to create a program that is ready to process applications and fund Improvements. In addition, these services include the following key areas:

1. Web Portal
  - a. At District's direction, Administrator will assist in developing, revising and/or maintaining a web platform and related content in order to develop a County or District "branded" website that serves as an interface between applicants and Administrator. Administrator will provide reasonable assistance in this regard but will not assume responsibility for developing or hosting any County or District website.
  - b. The secure website will manage distribution of program application, application filing, the tracking of the application progress, and notice of application approval. Data collected includes:
    - i. The number and locations of persons submitting an application;
    - ii. The number of person approved for financing;
    - iii. The type, size and dollar value of Improvement projects;
    - iv. The time between application and installation of Improvements; and

v. The Vendor selected by the applicant to install the Improvements.

c. Through the website, Administrator will develop, implement and administer software and models that:

i. processes applications and funding requests

ii. provides loan repayment projections and bond debt service schedules  
provides real-time reports on program progress

2. Marketing and Communications

a. Administrator will assist the District in the development of a marketing and education campaign to inform the local community and stakeholders about the program.

b. Administrator will assist the District in developing content for print materials and workshops deemed desirable by the District.

c. Administrator will assist the District in the establishment of a branding and marketing plan and the coordination of District and local resources to maximize marketing impacts.

d. During the first year of the Program, Administrator will facilitate or assist in the facilitation of a reasonable number of workshops (not to exceed 12 workshops) with contractors, prospective participants and/or other interested parties in order to educate them about the program terms and application process.

e. Administrator will arrange and prepare presentation materials for the public, legislative and policy-making bodies, credit rating agencies, and credit enhancement and liquidity providers, as required.

3. Program Documentation. Administrator will collaborate with District staff and consultants to develop the following documents for Program administration:

a. Program Terms and Policies

b. Property Underwriting Criteria

c. Authorized Improvements List

d. Landowner Application(s)

e. Financing Agreement and related summary memorandum for recording

f. Marketing materials

**C. Program Administration Services.** Program administration services include all tasks necessary to administer the Program on an ongoing basis, with assistance from and oversight

by the District.

1. Application Processing, Request, and Payment

a. Administrator will develop underwriting guidelines and provide required underwriting services, including those mandated by the Act for eligibility and required by credit markets for quality control.

b. Administrator will conduct property and project screening to ensure compliance with the terms and conditions of the Program and the Act. Administrator will complete screening in no more than five (5) business days from receipt of the application.

c. When funding is requested, Administrator will verify the project installation through review of appropriate documents including estimates provided by Vendors. Administrator will conduct this review in no more than five (5) business days from the date all required documents are received, including any required verifications from the District.

d. Once project is verified, Administrator will notify the District and provide the property owner with required legal documents including the Financing Agreement.

e. Administrator will verify completion of the legal documents after receipt from property owners.

f. Administrator will interface between the Program and all mortgage lenders (where notice or approvals are necessary).

g. Upon receipt of complete documents, Administrator will notify the District of an approved funding request and provide the documents necessary to record the lien (which recording may take the form of a memorandum summarizing the Financing Agreement). Administrator will record the lien on behalf of the District, if needed.

h. Administrator will ensure the reasonably prompt disbursement of the Disbursement Amount as provided in the Financing Agreement.

i. Administrator will collaborate with the District on establishing and implementing appropriate procedures and timelines for applications filed in paper copy as opposed to the internet.

j. All of the timelines listed above are subject to revision by mutual agreement of the Parties in conjunction with the establishment and maintenance of Program terms and conditions.

k. Monitor and catalogue available rebate programs and take all necessary steps to make sure they are available for use in the Program, including, where feasible, arranging for direct payment of rebate to offset Assessments.

1. Identify methods to maximize available rebate programs, and work with participating property owners to maximize any applicable energy credits for the Improvements, and to the extent practicable, establish procedures to capture any cash rebates as down payments in the overall Assessment amount.

2. Contractor and Vendor Responsibilities

a. Administrator shall perform all outreach efforts to the contractor and vendor communities and maintain and update regularly a list of “approved” contractors and vendors that meet all required State licensing requirements and that demonstrate specific knowledge and experience with installing the qualifying improvements.

b. Develop training/certification programs for Vendors to increase level of expertise and efficiency in operation of Program, coordinate with existing job training/retraining centers to create workforce or expand quality of existing workforce (pool of contractors).

c. Oversee installation of Improvements and warranty program.

d. Develop methodologies and procedures to assure correct completion of improvements with all applicable warranties in place, including methods to provide timely audits of improvements made and completed.

e. Coordinate all inspections of the Improvements (some improvements will require building permits and inspections) among vendor and local building inspectors

f. Conduct periodic inspections of each Improvement to assure the Improvements were installed properly and are in working order.

g. If an Improvement is not installed properly or is not in working order, coordinate with original Vendor to rectify the situation or to bring in an alternate contractor to correct the installation.

h. Establish and operate a tandem warranty program to make sure improvements function as intended.

i. Identify potential service providers, initially consisting of licensed and qualified installers, equipment vendors and parties who can provide energy and wind resistance inspections.

3. Assessment Services

a. Data Collection. Administrator will coordinate with District staff to track the tax parcels that will be subject to Assessments in each fiscal year. For each parcel, Administrator will confirm the current tax parcel identification or folio number; determine whether the parcel has been subdivided or is the result of a subdivision and allocate the maximum special tax accordingly, if applicable; and calculate the amount to be levied to pay the parcel's debt service (if any).

b. Payment Calculation and Roll Preparation. Administrator will calculate the total amount of the Assessment due from each tax parcel and the Annual Payment due each year and will coordinate with District staff to ensure that all Administration Costs, interest and any capitalized interest associated with the Improvements for a given tax parcel are included in the Assessment levied against such parcel. Administrator will assist District staff, the Tax Collector and/or the Property Appraiser with preparation and certification of the annual Assessment roll.

c. Prepayments and Release of Assessment Liens. Upon request, Administrator will provide homeowners, property owners, title agents and other interested parties with an estimate of the amount required to prepay the Assessment. If an owner makes a prepayment, Administrator will facilitate filing of a release of lien in the public records as necessary to remove the lien of the Assessment from the Assessed Property.

d. Answer Inquiries from Various Parties. Administrator will respond to homeowners, property owners, realtors, title companies, appraisers and other parties regarding the Assessment and other issues related to the Program.

#### 4. Program Reporting

a. Administrator will prepare an annual administration report for the District which will summarize (i) number of parcels subject to an Assessment each year and the amount to be levied on each parcel; (ii) Assessment roll changes from the prior year, including parcels added or removed from the Assessment roll and bonds secured by each new parcel (if any), (iii) prepayments that have been received in the past year; (iv) delinquencies that have occurred and efforts that have been made to collect the past due amounts; and (v) any other event or statistic pertaining to the general fiscal health of the Program.

b. Administrator will assist the District with reporting requirements as part of the allocation of ARRA funds, if applicable.

c. Administrator will prepare reports, schedules, and documents to support the issuance and underwriting of bond documents such as disclosure documents for IRS, SEC, and/or any other regulatory body purposes; cash flows analysis; debt service and loan repayment projections; substantiation of revenue and expenditure estimates and project costs; verification of cash flows; and project or market feasibility, as needed.

d. Administrator shall submit written reports as requested or required by any state or federal governmental entity. The timely submission of such report is a necessary and material term and condition of this Agreement. The reports shall be submitted electronically; hard copies, if required, shall be on recycled paper and printed on double-sided pages to the maximum extent possible.

#### 5. Customer Service

a. Administrator will provide direct customer service to the community via the

web, email and phone.

b. Administrator will provide a local staff presence to permit walk-ins during critical program periods, depending on Program and District needs.

**D. Services Related to Issuance of Debt.** In the event the District issues or proposes to issue any debt obligations pursuant to the Resolution or otherwise for purposes of obtaining funds for purposes of funding and/or administering the Program, Administrator shall:

1. Meet with District staff, and the District's bond counsel and financial advisor to understand the proposed structure for the proposed debt.

2. Assist the District with preparation of any boundary maps that will be needed for issuance of the debt.

3. Be available as needed to provide information or analysis for disclosure documents prepared for the initial issuance or remarketing of the debt. Parcel-by-parcel breakdowns, aggregate totals by land use category, or any other data associated with Assessments expected to be levied can be provided to facilitate accurate dissemination of information regarding projected revenues pledged to the debt.

4. Attend meetings with District staff, bond counsel, financial advisor, and other consultants to acquire information and review applicable documentation.

**E. Services Related to Grants.** Administrator shall identify and seek, or assist the District with identifying and seeking, any grant funding which may be available for purposes of funding and/or administering the Program. Administrator shall be responsible for application, accounting, tracking and/or reporting requirements associated with any grant funding received. Notwithstanding anything herein to the contrary, the Parties may enter into separate agreements providing for the administration of particular grants.

**F. Attend District Meetings.** Administrator shall attend District meetings as requested by the Contract Administrator for purposes of presenting information and answering questions concerning the Program.

**G. General Advice and Cooperation on Operational Matters.**

(1) Provide ongoing feedback and advice to the District and its advisors on the operational aspects of the Program, for the exclusive benefit of the District.

(2) Receive and timely act on reasonable advice and direction from the Contract Administrator.





VIA FIRST CLASS MAIL

January 3, 2023

Dear County Administrator:

I'm writing to share some promising changes in the Florida PACE Funding Agency's operations that will have a positive impact on property owners in your county.

Since its inception in 2011, the Florida PACE Funding Agency and its partners have been working diligently to provide all eligible property owners with an affordable and accessible financing option to make needed property improvements to resist the impacts of hurricanes and tropical storms, reduce energy usage, and improve access to renewable energy. As we have seen just this year, natural disasters are affecting all of Florida's property owners, and low-to-moderate income homeowners often lack access to the ability to secure their homes against these natural disasters.

There is no single solution to solve the challenges facing Florida's property owners during these trying times. Limited, and frequently expensive, property insurance availability and the need to continually make investments to harden properties against weather-related disasters will continue to disadvantage the State financially, particularly as higher proportions of losses are borne by Citizens Property Insurance.

This is the reason that the Legislature adopted section 163.08 of the Florida Statutes, commonly referred to as the Property-Assessed Clean Energy, or PACE, program. Though PACE is not the only financing option for these qualifying improvements, it is a necessary and extremely useful tool in helping homeowners to affordably manage property maintenance and economic uncertainty.

The Florida PACE Funding Agency has long been a leader in advancing the mission of PACE statewide while championing consumer protection measures. To provide clarity on the respective responsibilities for carrying out the PACE program, the Agency underwent a judicial validation process that concluded this fall. This process finally determined that improvements such as seawalls that harden properties against storm surge qualify for PACE financing, and further clarified that the Agency has independent authority to carry out its mission of offering PACE financing statewide, without requiring additional efforts from individual counties or cities. That judgment is recorded in the Leon County Official Records at Book 5782, Page 1585.

We understand that Leon County has been working diligently to provide a comprehensive regulatory program for PACE in the County, and we have cooperated with the County in multiple rounds of revisions to various proposals. The validation process confirmed that these regulations apply to the County's program, not programs administered by the Agency, which has independent authority. Accordingly, while the Agency intends to continue to cooperate collegially with your team, our program is currently independently operational in the County.

This means that PACE financing remains available to property owners in your county, and every county in the state, with industry-standard homeowner protections. The Agency will operate on a uniform statewide basis, and invites continued participation from Leon County through a new interlocal agreement that

**[www.FloridaPace.gov](http://www.FloridaPace.gov)**

**Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233**



facilitates information sharing and feedback. The interlocal agreement is not necessary to provide PACE in your county, but you will likely find collaboration on helping property owners harden homes and businesses against natural disasters beneficial. Attached, please find the new Interlocal Agreement (ILA). We plan on initially providing county-level data regarding details regarding project volume and value, and are exploring ways to collaborate with sustainability departments to provide data that may help counties track sustainability progress.

A brief overview of both the PACE process, from the county's perspective, and an overview of the takeaways from the judicial validation proceeding, are included here. While the ruling only directly impacts the Florida PACE Funding Agency's relationship with counties and cities, other PACE authorities may be treated the same way by Florida law, and dialogue with those entities is encouraged. Florida PACE Funding Agency staff is always available for communication and assistance, so please reach out if necessary to: [Info@FloridaPACE.gov](mailto:Info@FloridaPACE.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "M. Moran", with a long horizontal flourish extending to the right.

Michael A. Moran

Executive Director

[www.FloridaPace.gov](http://www.FloridaPace.gov)

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



## MEMORANDUM REGARDING PACE JUDICIAL VALIDATION

From: Jamy Dinkins, CivForge Law, P.A.

Date: December 1, 2022

The Florida PACE Funding Agency obtained a judgment this fall from the Circuit Court in Leon County validating up to \$5,000,000,000 in PACE bonds and establishing several pertinent legal concepts. Each of those is detailed below.

### **SEAWALLS ARE QUALIFYING IMPROVEMENTS UNDER THE PACE STATUTE**

PACE assessments, or assessments for "Qualifying Improvements" under section 163.08, can be imposed by a local government such as the Florida PACE Funding Agency when they are used to fund and finance improvements to real property that fit into one of three criteria: energy efficiency, renewable energy, and wind-resistance. Previously, there was a question as to whether improvements (such as seawalls) that protect a property against wind-driven water damage (i.e., storm surge during a tropical storm) are wind-resistance improvements for purposes of the state statute. The recent judicial validation determined that they are. Accordingly, a property owner may now use PACE financing to install a seawall on property that is at risk for damage from storm surge.

### **THE COLLECTION OF PACE ASSESSMENTS IS A MINISTERIAL DUTY OF THE TAX COLLECTOR, NOT SUBJECT TO ADDITIONAL CONTRACTUAL DEMANDS OR TIMEFRAMES**

As a method of consumer protection, PACE assessments must be collected using the Uniform Method of Collection, a process by which assessments are collected on the same bill as taxes. The Uniform Method imposes a ministerial duty on each county's tax collector to place assessments on the tax bill without questioning the authority or propriety of the assessments—the Legislature has committed that judgment to the local government imposing the assessments. Unfortunately, some tax collectors in the state have ignored this law, and Florida Department of Revenue direction, and imposed unlawful conditions or timeframes on the collection of PACE assessments.

In addition, the Uniform Method requires reimbursement of actual costs of collection to the tax collectors, with a cap of two percent of the collection. This cost is passed on to property owners. While counties who have calculated actual costs arrive at a number consistently below one percent, some tax collectors do not calculate the costs and instead charge the statutory maximum.

The recent judicial validation directs tax collectors to place the assessments on the same bill as taxes without these conditions and to report, on request, the actual costs of collection so that they may be reimbursed (as opposed to simply charging the statutory cap on expenses).

### **FPFA HAS INDEPENDENT AUTHORITY TO IMPOSE ASSESSMENTS STATEWIDE**

The PACE statute does not grant authority to any entity to impose assessments. Rather, it allows entities who already have such a power to impose the specific type of assessment described, within the limitations of the statute.

**[www.FloridaPace.gov](http://www.FloridaPace.gov)**

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



Some general purpose local governments have attempted to use home-rule power to limit the authority of other local governments to impose PACE assessments. This can come in the form of prohibiting PACE assessments altogether, imposing a fee on assessments, or requiring adherence to particular contracts or extra-statutory conditions. **The recent judicial validation clarifies that such ordinances apply only to those programs administered by the municipality or county adopting the ordinance, but not to those PACE programs administered by other local governments.** The judicial validation further clarifies that, because the Florida PACE Funding Agency derives its authority to impose assessments from state statute, it does not need further authority or permission from a general purpose local government to operate within any particular territory, and no local government has liability, responsibility, or authority relating to PACE programs of another local government.

**[www.FloridaPace.gov](http://www.FloridaPace.gov)**

**Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233**

**INTERLOCAL AGREEMENT**  
between  
**THE FLORIDA PACE FUNDING AGENCY**  
and  
**[NAME OF COUNTY], FLORIDA**  
relating to  
**PROVISION OF FUNDING AND FINANCING FOR QUALIFYING IMPROVEMENTS**

**THIS INTERLOCAL AGREEMENT** is made and entered into as of \_\_\_\_\_ 1, 202\_, (“Agreement”), by and between the Florida PACE Funding Agency, a separate legal entity and unit of local government established pursuant to section 163.01(7), Florida Statutes (“Agency”), and [Name of County], a political subdivision of the State of Florida (“County”), by and through their respective governing bodies, for the purpose of recognizing the authority of the Agency to fund and finance qualifying improvements within the boundaries of the County, assisting the County with coordinating efforts to mitigate the effects of, and adapt to, climate events, and coordinating efforts to reduce energy consumption and mitigate damage from hurricanes and other windstorms.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Agency and the County hereby agree as follows:

**1. FINDINGS.**

(A) Agency and County have reviewed the provisions of section 163.08(1), Florida Statutes, and find those facts as originally determined by the Legislature to be true in relation to the County and its inhabitants as of the date of this Agreement, and therefore incorporate those recitals as if fully set forth herein.

(B) Agency and County find that County has no liability or obligation relating to the activities of the Agency, and Agency’s authority is derived from state statute and governed by Agency’s governing board, not ordinance or resolution of County.

(C) County will benefit from the provision of standard periodic reports from Agency to quantify Agency’s activity within the boundaries of County for the purpose of environmental and windstorm mitigation calculation, planning, and reporting.

**2. AUTHORITY.** The execution of this Agreement has been duly authorized by Resolution of the governing bodies of each party hereto. Nothing within this Agreement limits the authority of Agency to enter into similar agreements with other local

governments or provide its program outside of the boundaries of County. Nothing within this Agreement limits the authority of County to establish programs of a similar nature, or to contract with or otherwise enable other local governments to provide similar programs within the boundaries of County.

**3. RESPONSIBILITIES OF AGENCY.**

(A) Agency will provide County with access to a report no less frequently than once per calendar quarter that quantifies basic, aggregate information about Agency activities within the boundaries of County. This report will include, for example, number and value of projects completed within the boundaries of Subdivision, both monthly and in aggregate.

(B) Agency will conduct a public meeting in the third quarter of each calendar year at which comments and suggestions may be submitted to the governing body by County, in addition to written or verbal communication between Agency staff and County staff as the need arises.

(C) Agency will promptly respond to specific constituent concerns brought to the attention of Agency by County.

**4. RESPONSIBILITIES OF COUNTY.** County will forward any complaint or other communication from a constituent to Agency promptly for Agency resolution.

**5. ADMINISTRATION.**

(A) Agency and County are both units of local government within the State of Florida, and as such, are subject to the provisions of chapter 119, Florida Statutes. Nothing within this Agreement changes the rights or responsibilities of the parties with respect to public records.

(B) Agency and County are both units of local government within the State of Florida, and as such, are invested with certain privileges and immunities from liability and exemptions from laws, ordinances, and rules which apply to the activity of officials, officers, agents, or employees of public bodies. Nothing within this Agreement disturbs or constitutes a waiver by either party of any such privilege, immunity, or exemption.

(C) The term of this Agreement will begin on the date first written above, and will continue until terminated by either party upon ninety (90) days' written notice delivered to the other. No amendment, supplement, modification, or waiver of this Agreement is binding unless executed in writing by both parties. The parties understand that termination of this agreement does not affect the obligations and authorities of the parties to initiate or collect non-ad valorem assessments under section 163.08, Florida Statutes. If this Agreement is terminated for any reason, the Agency will operate in the County as recognized in *Florida PACE Funding Agency v. State*, No. 2022-CA-1562 (Fla.

2d Cir. Ct. Oct. 6, 2022), which recognized Agency has independent authority to conduct its programs within the boundaries of County without transfer of power from County.

(D) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes any prior agreements, understandings, negotiations, and discussions of the parties, written or oral, with respect thereto. This Agreement is binding on the parties, their respective successors, and assigns, and inures to the benefit of the parties, their respective successors, and assigns. This Agreement may not be assigned except to the lawful governmental successor of a party.

(E) Should any portion of this Agreement be held to be invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other aspect of this Agreement.

(F) This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which constitute but one and the same document. A true and correct facsimile copy may serve as an original in all respects.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed under seal and entered into as of the date first written above.

**FLORIDA PACE FUNDING AGENCY**

**[NAME OF COUNTY]**

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

*Mike Moran, Executive Director*

(seal)

Attest: \_\_\_\_\_

*Wendi Leach, Director of Operations*

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

*[Name and title]*

(seal)

Attest: \_\_\_\_\_

*[Name and title]*

**BOARD OF  
COUNTY  
COMMISSIONERS**



**COUNTY  
ATTORNEY**  
Daniel S. McIntyre

Katherine Davis Barbieri  
Ciara H. Forbes

ASSISTANT COUNTY ATTORNEY  
ASSISTANT COUNTY ATTORNEY

July XX, 2023

Florida Pace Funding Agency (FPFA)  
c/o Mike Moran  
4411 Bee Ridge Ed. #134  
Sarasota, FL 34233

Dear Mr. Moran:

Your January 3, 2023 letter to the former County Administrator has been referred to this office for response. Please note that on June 15, 2010, St. Lucie County adopted County Ordinance No. 10-025 which created the "St. Lucie County Sustainability District" as a dependent special district. One of the purposes of the District is to provide financing to owners of residential and commercial property within the District. In addition, St. Lucie County filed proceedings to validate not to exceed \$50,000,000 in special assessment improvement funding and reimbursement agreements. A Final Judgment validating the County's energy financing program was entered on November 30, 2010.

It is the County's position that FPFA does not have the legal authority to continue operating in St. Lucie County without an executed interlocal agreement.

The bond validation judgment rendered in Case No. 2022-CA-1562, by a Circuit Court in Leon County is not binding on St. Lucie County and conflicts with the 2010 validation Final Judgment. The court's conclusion that FPFA may operate independent of local government regulation on a statewide basis is beyond the statutory scope of bond validation proceedings and infringes upon the County's constitutional authority.

It appears FPFA never published notice in St. Lucie County, nor did it notify the County that the bond validation proceeding was pending. As a result, the County was deprived of an opportunity to be heard on a matter that ultimately infringed upon the County's substantive rights.

In conclusion, St. Lucie County requests that you immediately cease and desist your operations in St. Lucie County, and immediately stop executing new financing agreements with property owners in St. Lucie County.

Sincerely,

Daniel S. McIntyre  
County Attorney

cc: Katherine D. Barbieri, Assistant County Attorney  
Gregory Stewart, Esq.