

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

THIS NON-EXCLUSIVE INTERLOCAL AGREEMENT is made and entered into as of _____, _____, 2019 (the "Interlocal Agreement" or "this Agreement"), by and between Pinellas County, Florida, a political subdivision of the State of Florida (the "County"), and the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, established pursuant to Section 163.01(7)(g), Florida Statutes, (the "Agency"), by and through their respective governing bodies.

Whereas, the County adopted an ordinance setting minimum standards for the operation of any Property Assessed Clean Energy ("PACE") within Pinellas County which is codified and found at Pinellas County Code Chapter 42, Article XIV (the "PACE Ordinance");

Whereas, the Agency intends to operate a non-residential PACE program within Pinellas County and recognizes that, in addition to the limitations and requirements of applicable state and federal law, it must also comply with the limitations and requirements of the PACE Ordinance;

Whereas, some PACE agencies or districts follow a model permitting or requiring a local government allowing the PACE agency or district to operate within the local government's jurisdiction to join and become part of the PACE agency or district;

Whereas, Section 163.01, Florida Statutes, permits local governments to enter into interlocal agreements allowing sharing of powers of one local government with another; and

Whereas, the parties hereto are in full understanding that the Agency and the County are independent of one another and, other than the County authorizing the Agency to operate within Pinellas County pursuant to the requirements of general law and the PACE Ordinance, that the County is not in any way joining the Agency, nor participating in, nor responsible for, any part of the Agency's program.

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

- 1) The "whereas clauses" above are true, correct and incorporated into this agreement.
- 2) All requirements and conditions as defined for the conduct of a PACE Program within the PACE Ordinance are in full effect as if fully laid out herein.

- 3) All terms not specifically defined herein shall be as defined in the PACE Ordinance.
- 4) The Agency is the entity defined as the "PACE Local Government" within the PACE Ordinance with the responsibilities laid out therein.
- 5) Each of Counterpointe Energy Solutions (FL) LLC and Energy Efficient Equity, Inc. is the "PACE Administrator" for the Agency's program to be operated in Pinellas County. The Agency will notify the County of any change in identity of the PACE Administrators for its program and the effective date thereof.
- 6) It is understood and recognized that PACE is an evolving financing mechanism and changes in applicable law, whether local, state or federal, are to be expected and intended to be fully applicable as if they were in force today, notwithstanding anything in this Agreement to the contrary.
- 7) Nothing in this Agreement shall be construed to be an exclusive authorization for the Agency to operate a PACE program within Pinellas County. The County is free to, and reserves the right to, enter into or otherwise encourage or commence any other programs in the sole discretion of the County.
- 8) This Agreement shall be effective upon filing with the Pinellas County Clerk of the Circuit Court after full execution of the parties hereto.
- 9) This Agreement does not purport to, nor does it, direct or affect the actions of other constitutional officers or governmental officials including but not limited to the Pinellas County Property Appraiser or the Pinellas County Tax Collector. It is the responsibility of the Agency to coordinate with, and obtain any necessary or required approvals, consents or agreements of any other such officers or officials as may be necessary to effectuate its programs.
- 10) The Agency is not an agent of the County, and has no authority to create debt as against the County, and cannot pledge the full faith and credit of the County in any way. No bond, loan, debt obligation, or any other commitment of the Agency may require, implicate or otherwise affect the ad valorem taxing authority or any other County revenues, nor may any County funds or credit be appropriated or committed for such Agency commitment.
- 11) All Agency documents created or maintained in furtherance of the PACE program in Pinellas County are subject to Ch. 119, Florida Statutes.
- 12) The County confirms that section 42-446(11) of the PACE Ordinance is intended to prevent the Agency from making progress payments to a PACE Contractor in the course of installing Qualifying Improvements. All fees and charges to Eligible Participants within Pinellas County will be just, equitable, and uniform at the time of imposition upon such Eligible Participants in the same class or use of non-residential property.
- 13) As consideration for the County agreeing to allow the Agency to operate within Pinellas County, which the parties acknowledge is separate, good and sufficient consideration

for it, the Agency agrees to fully indemnify and defend the County and its officers and employees to the maximum extent permitted by law, for any and all claims of any nature whatsoever arising out of the Agency's presence in, and operation of its program within, Pinellas County. This obligation to indemnify and defend shall survive termination of this Agreement.

- 14) This Agreement shall continue until such time as either party gives written notice to the other of its intent to terminate this Agreement in accordance with section 42-452, Pinellas County Code, and the PACE program of the Agency within Pinellas County. In the event that the PACE Agency has previously failed to abide by the terms of this Agreement or the PACE Ordinance and cured such failure, the parties agree that the 60-day notice to cure does not apply to any subsequent failure and termination may proceed in the sole discretion of the County.
- 15) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained or referenced herein, and this Agreement supersedes any and all prior and contemporaneous agreements, understandings, representations, negotiations or discussions, whether written or oral and there are no other representations or agreements between the parties except as specifically set forth herein. This Agreement was a product of negotiation between the parties, and neither shall be construed as the drafter for the purposes of resolving or construing portions hereof.
- 16) For the purposes of all notices or reporting permitted or required pursuant to this Agreement or the PACE Ordinance, all such notices, reports or correspondence must be hand delivered (or confirmed electronic facsimile transmission which may include acknowledged email) or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the parties at the following addresses:

Agency: Attn: Executive Director Florida PACE Funding Agency c/o Southern Sky Energy 4411 Bee Ridge Road, #134 Sarasota, Florida 34233 Mike@SouthernSkyEnergy.com	County: Attn: Pinellas County Economic Development Department 13805 58th Street North, Suite 1-200 Clearwater, Florida 33760 Phone 727-464-7332 PaceProgram@pinellascounty.org
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- 17) Any of the parties may, by notice in writing given to the other, designate any additional or different individuals and/or addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or confirmed electronic facsimile transmission or by acknowledged email) or three days after the date mailed.
- 18) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the parties shall apply to the officials, officers, agents or employees thereof

when in good faith performing their respective functions and duties under the provisions of this Agreement.

- 19) The County and Agency are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(o), Florida Statutes, and this covenant of the parties hereto, the local governments who are either the incorporators, or members of the Agency, or any subsequently served or participating local government shall not be held jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and that the Agency alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes.
- 20) Nothing in this Agreement is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.
- 21) In the event the Agency fails to abide by the provisions of the PACE Ordinance, and the PACE interlocal, following 60-day notice to cure, the County, in its sole discretion, may suspend or terminate the interlocal agreement and the Agency shall have no authority to continue with any new projects within Pinellas County. Notwithstanding termination of the interlocal agreement, however, property owners whose applications were approved prior to the termination date, and who received funding through the PACE program, shall continue to be a part of the PACE program, for the sole purpose of paying their outstanding assessment payments, until such time that all outstanding assessment payments have been satisfied.
- 22) This Agreement may not be assigned or transferred to any other party. Any attempt to assign or transfer any right under this Agreement shall be void.
- 23) This Agreement shall be subject to and construed under Florida law and venue for any legal or equitable action involving the County arising out of or relating to this Agreement or the Agency or its program in Pinellas County shall be in the appropriate state court in and for Pinellas County.
- 24) In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

THE FLORIDA PACE FUNDING AGENCY

(SEAL)

By: _____
Michael A. Moran, Executive Director

ATTEST:

James Ley, Secretary

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

By: County Administrator

By: _____
Barry A. Burton, County Administrator