

Grants & Contracts - Transmittal Memo

DATE: August 24, 2018

FROM: Purchasing Division, Contracts

TO: Sean McLendon

CONTRACT #: 10975

VENDOR: Florida Green Finance Authority

DESCRIPTION: #10975 Florida Green Finance Authority ILA Agreement with enhanced consumer protections

APPROVED BY: Board of County Commissioners

APPROVAL DATE: 8/14/2018

RECEIVED ON: August 24, 2018

TERM START: 8/14/2018

TERM END: 10/1/2021

AMOUNT:

RFP/BID #:

POR #
(ENCUMBERANCE):

ACTIONS REQUIRED: Please forward a copy to the vendor & retain a copy for your files.

**INTERLOCAL AGREEMENT BETWEEN THE FLORIDA GREEN FINANCE
AUTHORITY AND ALACHUA COUNTY**

This Interlocal Agreement (the "Interlocal Agreement"), made and entered into this 14th day of August 2018, by and between Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County," and Florida Green Finance Authority, hereinafter referred to as the "Authority" (collectively referred to as "Parties");

WITNESSETH:

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, Section 163.08, Florida Statutes, authorizes financing of qualifying improvements through agreements for property to be subject to a voluntary, non-ad valorem assessment process as the repayment mechanism, commonly known as PACE; and

WHEREAS, Section 163.08, Florida Statutes, provides that a local government may partner with one or more local governments to provide and finance qualifying improvements; and

WHEREAS, the Authority was organized per Section 163.01(7), Florida Statutes, in order to finance qualifying improvements in accordance with Section 163.08, Florida Statutes, as a means of implementing and financing a qualifying improvements program for energy and water conservation and efficiency, renewable-energy and wind-resistance improvements, and to provide additional services consistent with law; and

WHEREAS, on December 8, 2015, the County adopted Resolution 15-130, agreeing to join multiple PACE districts, pursuant to Section 163.08, Florida Statutes, in order to finance qualifying improvements in the County; and

WHEREAS, on December 8, 2015, the County entered into an Agreement with the Authority, in which the County became a member of the Authority in order to facilitate the financing of qualifying improvements for properties located within the County; and

WHEREAS, the County would like to renew its relationship with the Authority, including additional consumer protections; and

WHEREAS, the Parties have determined that it shall serve the public interest to enter into this Interlocal Agreement to make the most efficient use of their powers and the County desires to renew its Agreement with the Authority.

NOW, THEREFORE, in consideration of the terms and conditions, promises, and covenants set forth in this Interlocal Agreement, the Parties agree as follows:

1. Term. This Interlocal Agreement between the Florida Green Finance Authority and Alachua County shall commence on the 14th day of August, 20 18 and continue for a period of three years, terminating on 8/13/2021. The County retains the option to terminate this Interlocal Agreement for any reason prior to the end of this term.
2. Purpose. The purpose of this Interlocal Agreement between the Florida Green Finance Authority and Alachua County is to renew the County's membership in the Authority and to authorize the Authority, or its agent, to finance qualifying improvements, as defined in Section 163.08, Florida Statutes, ("PACE Statute") for property owners in the County.
3. Qualifying Improvements. As used in this Interlocal Agreement, the term "qualifying improvements" has the meaning provided in the PACE Statute, including any energy conservation and efficiency improvement, any renewable energy improvement, and any wind resistance improvement.
4. The Authority. The Authority was established by an Interlocal Agreement between the Town of Lantana, Florida, a Florida municipal corporation ("Lantana") and the Town of Mangonia Park, Florida, a Florida municipal corporation, ("Mangonia Park") dated June 11, 2012, first amended on August 11, 2014 and second amended on April 7, 2016 with document execution May 9, 2016, establishing the Florida Green Finance Authority as a means of implementing and financing a qualifying improvements program for energy and water conservation and efficiency, renewable energy and wind-resistance improvements, and to provide additional services consistent with law ("Interlocal Agreement establishing the Florida Green Finance Authority").. Through this Interlocal Agreement between the Florida Green Finance Authority and Alachua County, the jurisdiction of the Authority is expanded to include the area of the County. The County is renewing its membership in the Authority and establishing standards for the Authority's Third Party Administrator ("Provider") when operating within the County.
5. Interlocal Agreement Establishing the Florida Green Finance Authority. By renewing its membership with the Authority, the County accepts and incorporates the terms of the Interlocal Agreement establishing the Florida Green Finance Authority (**Exhibit A**). This Interlocal Agreement between the Florida Green Finance Authority and Alachua County provides additional terms applicable only to the relationship between the County and the Authority and the financing of qualifying improvements for property owners in the County. To the extent that there are inconsistencies between the provisions of this Interlocal Agreement between the Florida Green Finance Authority and Alachua County and the Interlocal Agreement establishing the Florida Green Finance Authority, then this Interlocal Agreement between the Florida Green Finance Authority and Alachua County will govern within the jurisdiction of Alachua County.

6. Non-Exclusive. This Interlocal Agreement between the Florida Green Finance Authority and Alachua County is non-exclusive, meaning the County specifically reserves the right to participate with or join any other entity providing a similar program or create its own program under the PACE Statute.
7. Consumer Protection. As a condition precedent to operating within the County and financing qualifying improvements for property owners within the County, the Authority and the Provider agree to the following enhanced consumer protection measures for citizens seeking PACE services:

- a. Alachua County – Enhanced Consumer Protections:

- i. **Scope of Financing Agreement**

1. A financing agreement may only be used for qualifying improvements including energy conservation and efficiency, renewable energy, and wind resistance improvements as defined by Section 163.08, Florida Statutes, as may be amended by law.

- ii. **Consumer Eligibility**

1. For PACE financing and qualifying improvements on residential property within the County, The Authority, through its Provider, may finance qualifying improvements on Residential Properties provided they comply with all eligibility criteria listed in the PACE Statute, all future amendments thereto, along with the additional consumer protections outlined herein,, and the following criteria:
 - a. Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under the PACE Statute may not exceed twenty percent (20%) of the just value of the property as determined by the County Property Appraiser, excepted as otherwise provided by statute; and
 - b. All property taxes and other assessments levied on the property tax bill have been paid and have not been delinquent for the preceding three years, or the property owner's period of ownership, whichever is less; and
 - c. There are no involuntary liens in excess of \$1,000, including but not limited to construction liens on the property; and
 - d. No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding three years, or the property owner's period of ownership, whichever is less; and
 - e. All mortgage debt on the property is current and not delinquent; and

- f. All mortgage-related debt on the underlying property may not exceed 90% of the property's fair market value ("FMV"); and
 - g. The total mortgage-related debt on the underlying property plus the PACE program financing may not exceed the FMV of the property;
- 2. Non-Residential Properties. The Authority, through the Provider, may finance qualifying improvements on non-residential properties provided the Provider complies with the requirements set forth in the PACE Statute, and all future amendments thereto.

iii. Fair Market Value

Fair market value shall mean the value of real property determined by the Alachua County Property Appraiser, by a credentialed commercial property appraiser or licensed realtor, or by an automated valuation service or model from a reputable third-party source.

iv. Disclosure Requirements

- 1. In addition to any disclosure requirements in the PACE Statute, the Authority, through its Provider, that extends financing pursuant to the PACE Statute and levies non-ad valorem assessments to fund the qualifying improvements shall present to all participating property owners a separate, written notice disclosing the following ("Notice to Property Owner"):
 - a. The estimated total amount of the debt, including amount financed, fees, fixed interest rate, capitalized interest and the effective rate of the interest charged ("Annual Percentage Rate" or "APR");
 - b. A statement notifying the property owners with an escrow or impound account to pay property taxes that payment begins immediately and that they should contact their lender to ensure that the escrow payments are adjusted accordingly.
 - c. For residential properties, that PACE agencies/authorities/districts may only offer fixed simple interest rates and payments that fully amortize the obligation. Variable or negative amortization financing terms are not permitted. Variable interest rates shall be allowed for commercial properties. Capitalized interest included in the original balance of a PACE financing does not constitute negative amortization.
 - d. The repayment process and terms, amounts and a schedule that fully amortizes the amount financed including the estimated annual PACE assessment;

- e. That the PACE assessment will appear on the property owner's tax bill;
 - f. That there is no discount for paying the PACE assessment early;
 - g. The nature of the lien recorded and that of the PACE assessment will be collected in the same manner as real estate taxes. That failure to pay the PACE assessment may cause a tax certificate to be issued against the property, and that failure of payment thereof may result in the loss of property subject to the PACE assessment, including homestead property, in the same manner as failure to pay property taxes;
 - h. The specific improvements to be financed and installed and that such improvements and PACE assessment may or may not affect the overall value of the property;
 - i. A PACE assessment payment term that does not exceed the useful life of the improvements;
 - j. Prepayment: the Provider shall disclose the following to all participating property owners:
 - i. Information as to any accrued interest that may be due upon early payment;
 - ii. The right of pre-payment without penalty for residential projects;
 - iii. Notice that the property owner may be required to pay any PACE assessment in full at the time of refinance or sale of the property; and
 - k. The 3 business-day right to cancel the financing for residential property owners.
 - l. Renewable Energy Credits, carbon credits, or any derivatives of a similar nature, should a mechanism be created in law or regulation to formulate those, that come about due to the PACE assessment, shall remain in the ownership of the property owner.
2. The Notice must be delivered to the property owner by the PACE Authority or its Provider and must be signed and dated by the property owner prior to or contemporaneously with the property owner's signing of any legally enforceable documents under the PACE program. The Authority or its Provider must keep the signed Notice with the property owner's executed financing agreement.
 3. The Authority or Provider shall record, or cause to be recorded, the financing agreement or a summary memorandum of the financing agreement, in accordance with Section 163.08(8), Florida Statutes.

4. To the best of the Authority or Provider's ability, inform all participating property owners that various federal tax credits, state and local rebates, and incentive programs exist for energy efficiency, renewable energy, and wind resistance Eligible Products, but that not all Eligible Products under the PACE Statute will qualify for tax credits and/or state or local utility rebates. The Authority or Provider will advise the property owner to consult a tax professional for more information.
 5. Provide all participating property owners with a copy of the enhanced consumer protections included in this Agreement, titled "Notice to Property Owners".
- b. Verification. Neither the Authority nor the Provider may levy a non-ad valorem assessment under this Interlocal Agreement on a property owner's property until the property owner verifies, in writing, that the work performed by the Provider, or its agents and contractors, is completed appropriately.
8. Liability. The Parties are each individually and separately liable and responsible for the actions of its own officers, agents, governing bodies, and employees in the performance of their respective obligations under this Interlocal Agreement. Except as specified herein, the Parties shall each individually defend any action or proceeding brought against their respective agency pursuant to, or arising from, this Interlocal Agreement. The Parties are individually responsible for all of their respective costs, attorneys' fees, expenses, and liabilities incurred as a result of any claims, demands, suits, actions, damages, and causes of action, including the investigation or defense thereof, arising out of, or related to, this Interlocal Agreement between the Florida Green Finance Authority and Alachua County.
9. Responsibilities of Providers. As a condition to operating within the County, the Provider, when acting as the Authority's agent, shall perform the following tasks associated with the Authority's work:
 - a. Engage, educate, and follow-up with all contractors performing work in Alachua County regarding the consumer protections afforded under this Interlocal Agreement and any processes for project approval or payment requirements;
 - b. Take appropriate and proportional action up to and including dismissal of any contractor who does not comply with insurance or licensing requirements, who inaccurately or deceptively markets the PACE program, or who performs faulty or incomplete upgrades authorized under this Interlocal Agreement;
 - c. The financing Term may not exceed the useful life of the installed qualifying improvement(s);

- d. Apply interest rates based on the repayment term, or as negotiated with the capital provider, at a fixed rate;
 - e. Verify the financing term may not exceed the useful life of the installed qualifying improvement..
 - f. Send notice to existing mortgage lenders and allow the property owner to receive notice of any adjustment of escrow or other measure taken by the lender.
10. Carbon or Similar Credits. The property owner retains the right to any carbon credits, or credit in an equivalent program, earned or received should a mechanism be created in law or regulation to formulate them, due to upgrades or projects undertaken pursuant to this Interlocal Agreement or the PACE Statute.

11. Indemnification.

- a. To the extent provided by law, the Authority agrees to protect, defend, reimburse, indemnify and hold the County, its agents, employees, and elected officers ("Indemnified Parties") free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature (collectively, a "Claim") arising out of or caused by any direct or indirect act, omission, or fault, whether active or passive, of the Authority or the Provider, of anyone acting under their direction or control, or on their behalf in connection with or incident to the performance of this Interlocal Agreement. The Authority's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law, but in no event shall they apply to liability caused by the negligence or willful misconduct of the County.
- b. The Authority will promptly request and obtain from its Provider, and any subsequent provider, a separate indemnification agreement as to its actions and activities on behalf of the Authority concerning all of the subject matter of this Interlocal Agreement for the benefit of the County (**Exhibit B**).
- c. Nothing in this Interlocal Agreement between the Florida Green Finance Authority and Alachua County constitutes a waiver by the County or by the Authority of its sovereign immunity or the liability limits set forth in 768.28, Florida Statutes.
- d. Nothing in this Interlocal Agreement between the Florida Green Finance Authority and Alachua County is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. In the event any Claim is brought against an Indemnified Party, the Authority, shall upon written notice from an Indemnified Party, defend each Indemnified Party

against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

12. Notice. Except as otherwise provided in this Interlocal Agreement between the Florida Green Finance Authority and Alachua County, any notice of default or termination from either the County or the Authority must be in writing and sent by certified mail, return receipt requested, or by personal delivery with receipt. For purposes of all notices, Authority and County representatives are:

Authority: The Florida Green Finance Authority:
 2501 A Burns Rd.
 Palm Beach Gardens, FL 33410

County: County Manager
 12 SE First Street, Second Floor
 Gainesville, FL 32601

13. Agreements with Tax Collector. The Authority acknowledges that the County has no authority to bind the County Tax Collector and the Authority will be required to enter into separate agreement(s) therewith, to establish the fees (if any) to be charged by the Tax Collector for the collection or handling of the Authority's non-ad valorem assessments.
14. Records. The Parties shall each maintain their own respective records and documents associated with this Interlocal Agreement between the Florida Green Finance Authority and Alachua County in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
15. Termination. A Party may unilaterally terminate this Interlocal Agreement between the Florida Green Finance Authority and Alachua County, without cause, with 30 calendar days' written notice to the other Parties. Termination of this Interlocal Agreement between the Florida Green Finance Authority and Alachua County is prospective only and may not be interpreted to preclude another Party from exercising or satisfying its existing rights at the time of termination. Termination of this Interlocal Agreement between the Florida Green Finance Authority and Alachua County removes the County from the Authority's jurisdiction, but does not impact existing contractual relationships between property owners within the County and the Authority or the Provider. The Authority and the Provider may accept and process applications and complete any projects related to applications that have been received before the end of the 30 calendar day notice period. At the end of the 30 calendar day notice period, this Agreement shall be automatically terminated, the Authority will not accept any new applications, and no party shall have any recourse against the County due to a termination for convenience.

16. Law and Venue. This Interlocal Agreement between the Florida Green Finance Authority and Alachua County is governed in accordance with the laws of the State of Florida. Venue for any disputes or causes of action arising out of this Interlocal Agreement is in Alachua County.
17. Severability. Paragraphs 8 and 11 are essential and indivisible provisions of this Interlocal Agreement between the Florida Green Finance Authority and Alachua County and must be interpreted to provide the broadest protection to the County. If either paragraph 8 or 11 are declared void by a court of law, then the entire Interlocal Agreement between the Florida Green Finance Authority and Alachua County shall be deemed void. If any other provision of this Interlocal Agreement between the Florida Green Finance Authority and Alachua County is declared void by a court of law, all other provisions will remain in full force and effect.
18. Non-waiver. The failure of any party to exercise any right in this Interlocal Agreement between the Florida Green Finance Authority and Alachua County may not be considered a waiver of such right
19. Attachments. All attachments or exhibits to this Interlocal Agreement between the Florida Green Finance Authority and Alachua County are incorporated into and made part of this Interlocal Agreement between the Florida Green Finance Authority and Alachua County by reference.
20. Construction. This Interlocal Agreement between the Florida Green Finance Authority and Alachua County may not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the Parties. The Parties recognize that all Parties have substantially contributed to the preparation of this Interlocal Agreement between the Florida Green Finance Authority and Alachua County.
21. Counterparts. This Interlocal Agreement between the Florida Green Finance Authority and Alachua County may be executed in any number and by the different Parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.
22. Amendments. The Parties may not amend, modify, or alter the terms or conditions set forth herein unless the amendment, modification, or alteration is contained in a written document, executed by the Parties with the same formalities as this Interlocal Agreement between the Florida Green Finance Authority and Alachua County.
23. Entire Agreement. This Interlocal Agreement between the Florida Green Finance Authority and Alachua County constitutes the entire agreement for the County's membership in the Authority and the County's authorization to perform services within

Alachua County pursuant to the PACE Statute and supersedes all prior written or oral agreements, understandings, or representations.

24. Effective Date. This Interlocal Agreement between the Florida Green Finance Authority and Alachua County is effective on the date executed by all Parties.

IN WITNESS WHEREOF, the Parties hereto subscribe their names to this Interlocal Agreement between the Florida Green Finance Authority and Alachua County by their duly authorized officers.

ATTEST:

The Florida Green Finance Authority, a separate legal entity established pursuant to Section 163.01(7), Florida Statutes

By: 
Secretary of the Authority

By:  ON BEHALF OF
Chair of the Authority

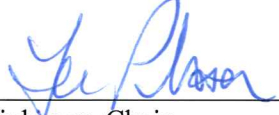
Approved by Authority Attorney
as to form and legal sufficiency


Authority Attorney

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

**BOARD OF COUNTY COMMISSIONERS
OF ALACHUA COUNTY**


(SEAL)

By: 


Lee Pinkoson, Chair

Attest:

Approved as to form:



Jesse K. Irby, Clerk of the Court



County Attorney

[SIGNATURE PAGE TO AGREEMENT]

EXHIBIT "A"

INTERLOCAL AGREEMENT ESTABLISHING THE FLORIDA GREEN FINANCE
AUTHORITY

**SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT
FORMING THE FLORIDA GREEN FINANCE AUTHORITY**

This Interlocal Agreement (the "Agreement") is entered into between the Town of Lantana, Florida, a Florida municipal corporation ("Lantana") the Town of Mangonia Park, Florida, a Florida municipal corporation, ("Mangonia Park") (together the "Originating Parties") and those additional cities and counties that have and hereafter execute a Party Membership Agreement as defined herein, (the "Additional Parties") and that altogether comprise the Florida Green Finance Authority (the "Authority").

RECITALS

WHEREAS, Section 163.01, F.S., the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into interlocal agreements for their mutual benefit; and

WHEREAS, Lantana and Mangonia Park with the Additional Parties desire to enter into this Interlocal Agreement in order to establish the Florida Green Finance Authority as a means of implementing and financing a qualifying improvements program for energy conservation and efficiency improvements, and to provide additional services consistent with law; and

WHEREAS, Section 163.08, F.S., provides that a local government may finance "qualifying improvements," including the type of improvements sought to be provided through this Agreement, via the levy and collection of voluntary non-ad valorem assessments on improved property; and

WHEREAS, Sections 170.01, and 170.201, F.S. provide for supplemental and alternative methods of making local municipal improvements, including the type of "qualifying improvements" sought to be provided by this Agreement; and

WHEREAS, pursuant to Sections 163.08, 170.01, and 170.201, F.S. and this Agreement, Lantana has created a "qualifying improvements" program entitled "RenewPACE"; and

WHEREAS, Section 163.01(7), F.S., allows for the creation of a "separate legal or administrative entity" to carry out the purposes of an interlocal agreement for the mutual benefit of the governmental units, and provide for parties to the agreement to administer the agreement; and

WHEREAS, pursuant to Section 163.01(4), F.S. a public agency of this state may exercise jointly with any other public agency of the state, any power, privilege or authority which such agencies share in common and which each might exercise separately, and the Parties to this Agreement have legislative authority over property within their jurisdictional boundaries; and

WHEREAS, Section 166.021, F.S., authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law, and Section 125.01 F.S. grants

counties the power to carry on county government to the extent not inconsistent with general or special law; and

WHEREAS, Section 163.08, F.S., provides that property retrofitted with energy-related "qualifying improvements" receives a special benefit from reduced energy consumption, benefits from the reduced potential for wind damage and assists in the fulfillment of the state's energy and hurricane mitigation policies; and

WHEREAS, Lantana and Mangonia Park together with the Additional Parties have determined that it is necessary and appropriate to establish various obligations for future cooperation between themselves and the Authority related to the financing of qualifying improvements within the Authority; and

WHEREAS, this Agreement shall be administered pursuant to the terms and conditions herein; and

WHEREAS, Lantana, Mangonia Park and the Additional Parties have determined that it shall serve the public interest to enter into this Agreement to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage to provide for the financing of qualifying improvements within the Authority.

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

Section 1. Recitals Incorporated. The above recitals are true and correct and are hereby incorporated herein.

Section 2. Purpose. The purpose of this Agreement is to provide the most economic and efficient means of implementing a financing program for qualifying improvements on property owners' lands within the Authority's Service Area and to provide additional services consistent with state law.

Section 3. Creation of the Authority. By execution of this Interlocal Agreement there is hereby created, pursuant to Section 163.01, F.S. and Section 163.08, F.S., the Florida Green Finance Authority ("the Authority"), a separate legal entity and public body with all of the powers and privileges as defined herein.

Section 4. Legal Authority/Consent to Serve the Authority. The Authority shall have all the powers, privileges and authority as set forth below and as provided by Chapter 163, F.S., as necessary to accomplish the purposes set forth in this Agreement. By resolution of the governing bodies of the Originating Parties and as subsequently resolved by the Additional Parties, all powers available to the Authority under this Agreement and general law, including but not limited to, Chapters 125, 163, 166, 170, 189 and 197, F.S. may be implemented by the Authority within the jurisdictional boundaries of all Parties. The Parties do hereby consent and agree to levy and collect voluntary non-ad valorem assessments on properties, either individually or collectively through the Authority as permitted by law, as may be more specifically

designated from time-to-time within their respective jurisdictions in accordance with the purposes of this Agreement and applicable law, to be repaid to the Authority. The Parties may also delegate the power to the Authority to levy and collect voluntary non-ad valorem assessments on properties within their jurisdictions as permitted by law. The Authority shall not act, provide its services or conduct its activities within any Party's jurisdiction without the execution of this Agreement and passage of a Resolution within that jurisdiction.

Section 5. Definitions.

- a. **"Additional Parties"** includes all cities and counties who execute a Party Membership Agreement to become part of the Authority.
- b. **"Authority Board"** shall be the governing body of the Authority, comprised of representatives from all Parties as defined herein.
- c. **"RenewPACE Program"** is the qualifying improvements program authorized by Section 163.08, F.S., developed by the third party administrator for Lantana and other Parties who elect to participate.
- d. **"Interlocal Agreement"** or **"Agreement"** is defined as this Agreement including any amendments and supplements executed in accordance with the terms herein.
- e. **"Originating Parties"** include the Florida local governments (as defined by Section 163.08, F.S.) that are the original signatories to this Agreement. These are the Towns of Lantana and Mangonia Park.
- f. **"Participating Property Owner"** is defined as a property owner whose property is located within the Service Area of the Authority and has voluntarily acquired financing from the Authority.
- g. **"Parties"** are any Florida local government (as defined by Section 163.08, F. S.) having the power to enter into interlocal agreements and which may, subject to the provisions of this Agreement, join in the efforts and activities provided for by this Agreement pursuant to Section 163.01, F.S. Any local government joining these efforts after the initial execution of this Agreement shall be known as an "Additional Party" or simply a "Party". To become a Party to this Agreement, a local government shall execute a Party Membership Agreement to the Florida Green Finance Authority in substantially similar form as the attached Exhibit B and passage of a Resolution within that jurisdiction.
- h. **"Qualifying Improvements"** are as defined in Section 163.08, F.S. in addition to any other improvements or services not inconsistent with state law.
- i. **"Service Area"** shall mean the geographic area comprising all of the jurisdictional boundaries of the Parties, except as such jurisdictional boundaries may be limited, expanded or more specifically designated, in writing with notice provided, from time to time by such Party or Parties, within the Florida Green Finance Authority as that area may be expanded or contracted in accordance with the provisions of this Agreement and the laws of the State of Florida.

Section 6. Representation on the Authority Board. The Originating Parties, and all Additional Parties upon joining the Authority through execution of this Agreement, shall be represented by a member of the Authority Board as provided in Section 10 of this Agreement.

Section 7. Authority Boundaries and Service Area. The boundaries of the Authority shall be the legal boundaries of the local governments that are Parties to this Agreement, which boundaries may be limited, expanded or more specifically designated, in writing with notice provided, from time to time by a Party. This is also the Authority's Service Area.

Section 8. Role of the Authority. As contemplated in this Agreement, the Authority will uniformly facilitate and assist the Parties with any necessary actions to levy and collect voluntary non-ad valorem assessments, or other legally authorized form of collection, on the benefitted properties within the Authority's Service Area and with securing the repayment of costs of qualifying improvements for those individual properties participating in the RenewPACE Program. Upon approval by the Authority of an application by a landowner desiring to benefit their property, those properties receiving financing for Qualifying Improvements shall be assessed from time to time, in accordance with the applicable law and/or financing documents. Notwithstanding a local government's termination of participation within this Agreement, those properties that have received financing for Qualifying Improvements shall continue to be a part of the Authority, until such time that all outstanding debt has been satisfied and the special assessments shall continue to be levied until paid in full for the applicable benefitted property.

Section 9. Powers of the Authority. The Authority shall exercise any or all of the powers granted under Sections 163.01, and 163.08, F.S., as well as powers, privileges or authorities which each local government might exercise separately, as may be amended from time to time, which include, without limitation, the following:

- a. To finance qualifying improvements within the Authority Service Area and to facilitate additional improvements or services consistent with law; including, but not limited to, acquiring, constructing, managing, maintaining or operating buildings, works or improvements;
- b. To make and enter into contracts in its own name;
- c. To enter into any interlocal agreement as necessary to exercise powers conferred by law;
- d. To appoint committees to assist with implementation of this Agreement;
- e. To employ agencies, employees, or consultants;
- f. To acquire, hold, lease or dispose of real or personal property;
- g. To borrow money, incur debts, liabilities, or obligations which shall not constitute the debts, liabilities, or obligations of the Originating Parties or any of the Parties to this Agreement;
- h. To levy and collect assessments, or assist in the levy and collection of assessments, either as the Authority or on behalf of a Party as permitted by law;
- i. To adopt resolutions and policies prescribing the powers, duties, and functions of the officers of the Authority, the conduct of the business of the Authority, and the maintenance of records and documents of the Authority;
- j. To maintain an office at such place or places as it may designate within the Service Area of the Authority or within the boundaries of a Party;
- k. To cooperate with or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers,

duties, or purposes authorized by Section 163.08, F.S., and to accept funding from local and state agencies;

- l. To exercise all powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized in Section 163.08, F. S.;
- m. To create and adopt any and all necessary operating procedures, policies, manuals or bylaws;
- n. To maintain insurance as the Authority deems appropriate;
- o. To apply for, request, receive and accept gifts, grants, or assistance funds from any lawful source to support any activity authorized under this Agreement; and
- p. To exercise any powers or duties necessary to address carbon or renewable energy credits, or any other similar commodity that may come into existence, for the public benefits of the program.

Section 10. Authority Board. The Authority shall be governed by a seven (7) member Board of Directors. Only Parties, through their governing bodies, may appoint representatives to serve as an Authority Board Director.

- a. **Initial Board Composition.** The Initial Board shall be comprised of one Director appointed by the governing body of each Originating Party plus five (5) additional Directors to be appointed by the governing bodies of Additional Parties that join the Authority pursuant to paragraph b.1) below. Upon expiration of their terms as set forth in subparagraph c. of this section, the Initial Board seats shall be filled in the manner set forth below in subparagraph b. of this section.
- b. **Rules of Appointment.** To encourage broad geographical and diverse jurisdictional representation across the State, the Authority desires Directors from local governments both large and small, including cities and counties representative of the diverse participating regions from throughout the State of Florida. To the extent that their application is practical, in terms of being able to establish a quorum of Directors to conduct Authority business and in terms of the actual breadth of the Authority's Party membership at any given time, the following rules of appointment shall apply to the selection of Directors:
 - 1) **Geographic Diversity.** To the extent that the Authority has party members in each such boundary area, and to the extent practical, one (1) Director shall be appointed from among the Parties located within the boundaries of each of the five (5) water management districts as defined in Chapter 373, F.S. Additionally, following the expiration of the Initial Board term limit, and to the extent practical, no more than three Directors from Parties located within the same water management district boundary should be seated to serve at the same time.
 - 2) **Population Diversity.** To the extent practical, the Board shall include one Director from a Party having a population of 500,000 or more residents. To the extent practical, the Board shall also include one Director from a Party having a population of less than 20,000 residents.

- 3) City and County Representation. To the extent practical, the Board shall be comprised of Directors representing at least three (3) cities and representing at least three (3) counties.
 - 4) Originating Party Directors; At Large Directors. Each Originating Party is entitled to a permanent Director seat at all times. In the event that an Originating Party does not appoint its Director, such seat shall become an "at-large" seat. The Board may include up to two (2) At Large Directors. When an at-large Director seat is established and becomes available, any Party that does not already have a representative on the Board may nominate a representative to be considered for an At Large Director seat. At Large Director seats shall each be filled by majority vote of the other five (5) Directors. When selecting an At Large Director from among the representative nominees, the Board shall consider the geographic, population, and county/municipal factors stated in the Rules of Appointment, together with the Order of Appointment set forth in paragraph b.5) as well as any other factors that they believe to be relevant in order to achieve and/or maintain diversity on the Board.
 - 5) Order of Appointment. As Additional Parties join the Authority, their governing body receives the right (but not the obligation) to appoint a Board member on a "first come-first served" basis, within the parameters of paragraphs b.1) through b.4) above. A Party who has a sitting Director may substitute that Director for another one from that local government jurisdiction any time upon notification to the Authority to serve out the remainder of a term. Each Party's right resets either after expiration of their Board Term, or after the Party is given the option of appointing a representative to the Board and chooses not to do so except for the Originating Party Directors as specified in paragraph b.4)..
 - 6) Expertise of Directors. Parties shall strive to appoint Directors with expertise in finance, administration and/or special assessments.
- c. Director Term Limits. All Board of Director terms shall be three (3) years. However, in the event that successor Directors are not appointed to serve pursuant to the parameters of paragraphs b.1) through b.4) above, then the term limited Director may serve additional terms until a successor is appointed at the end of any such additional term.
- d. Officers. The Board shall be governed by a Chair, a Vice Chair, a Secretary and a Treasurer. The Chair shall preside at meetings of the Authority, and shall be recognized as head of the Authority for service of process, execution of contracts and other documents as approved by the Authority. The Vice Chair shall act as Chair during the absence or disability of the Chair. The Secretary, which officer role may be delegated to a member of Staff, shall keep all meeting minutes and a record of all proceedings and acts of the Board and shall be responsible for ensuring that Board meeting minutes are distributed to all Directors and Parties in

a reasonable time period after the subject meeting. The Treasurer, which officer role may be delegated to a member of Staff, shall be responsible for managing and presenting the Authority Budget. The Chair and Vice-Chair shall be elected from the current Board membership and all officer terms shall be set as one (1) year terms and shall commence on October 1st of each year. The Board shall re-organize no later than September 30 for the subsequent fiscal year.

- e. Board Powers and Duties. The Authority Board shall act as the governing body of the Authority and shall have, in addition to all other powers and duties described herein, the following powers and duties:

- 1) To fix the time, and determine policies and orders of business for meetings, the place or places at which its meeting shall be held, and as set forth herein, to call and hold special meetings as may be necessary.
- 2) To make and pass policies, regulations, resolutions and orders not inconsistent with the Constitution of the United States or of the State of Florida, or the provisions of this Agreement, as may be necessary for the governance and management of the affairs of the Authority, for the execution of the powers, obligations and responsibilities vested in the Authority, and for carrying into effect the provisions of this Agreement.
- 3) To adopt bylaws or rules of procedure, or amend those initially adopted by the Originating Parties.
- 4) To fix the location of the principal place of business of the Authority and the location of all offices maintained thereunder.
- 5) To create any and all necessary offices in addition to Chair, Vice-Chair, Secretary and Treasurer; to establish the powers, duties and compensation of all employees or contractors; and to require and fix the amount of all non-ad valorem assessments and/or fees necessary to operate the RenewPACE Program.
- 6) To select and employ such employees and executive officers as the Authority Board deems necessary or desirable, and to set their compensation and duties.
- 7) To employ or hire such attorneys as it deems appropriate to provide legal advice and/or legal services to the Authority, and to employ and hire such other consultants as it deems appropriate through any procedure not inconsistent with law.
- 8) As applicable and available, nothing herein shall limit the Authority's ability to pursue actions or remedies pursuant to Chapter 120, F.S.

- f. Resignation. Any Director may resign from service upon providing at least thirty (30) days written notice pursuant to Section 27 of this Agreement, to the Authority Board Secretary. Such notice shall state the date said resignation shall take effect. Additionally, any Authority Board Director who is absent for three (3) Authority Board meetings within any given year, unless excused by majority vote of the Board, may, at the discretion of the Board, be deemed to have resigned

from the Authority Board. Any Director who resigns shall be replaced in accordance with the Rules of Appointment set forth in subparagraph (b) above. Any resigning Director shall immediately turn over and deliver to the Authority Board Secretary all records, books, documents or other Authority property in their possession or under their control. If extenuating circumstances require appointment of an interim Director necessary to enable the Authority to operate, an interim Director may be appointed by majority vote of the Authority Board until such time as a permanent successor can be seated.

- g. Board Compensation; Expenses. Authority Board Directors, as representatives of the local government Parties to this Agreement, shall serve without compensation. Reasonable travel or Authority-related expenses for Authority Board Directors shall be reimbursable as permitted by Florida law.

Section 11. Meetings of the Authority Board.

- a. Within thirty (30) calendar days of the creation of the Authority, or sooner if feasible, the Originating Parties shall hold an organizational meeting to appoint officers and perform other duties as required under this Agreement.
- b. There shall be an Annual Meeting of the Authority. The annual statements shall be presented, and any other such matter as the Authority Board deems appropriate may be considered.
- c. The Authority Board shall have regular, noticed, quarterly meetings at such times and places as the Authority Board may designate or prescribe. In addition, special meetings may be called, from time to time, by the Authority Board Chair, or by a majority vote of the Authority Board. A minimum of 24 hours notice to the public and all Authority Board Directors shall be given for any special meetings.
- d. In the absence of specific rules of procedure adopted by the Authority Board for the conduct of its meetings, the fundamental principles of parliamentary procedure shall be relied upon for the orderly conduct of all Authority Board meetings.

Section 12. Decisions of the Authority Board. A quorum of the Authority Board shall be required to be present at any meeting in order for official action to be taken by the Board. A majority of all Authority Board Directors shall constitute a quorum. A quorum may be established by both in person attendance and attendance through communications media technology, as allowed by state law, and pursuant to policy adopted by the Board. It is the desire and intent of this Agreement that decisions made by the Authority Board shall be by consensus of the Board. However, if a consensus is not achievable in any particular instance, then a majority vote of the quorum of the Authority Board shall be required to adopt any measure or approve any action, unless otherwise provided herein.

Section 13. Authority Staff and Attorney. The Authority's administrative functions shall be carried out on a day-to-day basis by the Third-Party Administrator and its subcontractors in accordance with the Administration Services Agreement attached as Exhibit A, as it may be updated and amended from time to time noticed to all Parties to this Agreement. The Third-Party Administrator shall be delegated with all duties necessary for the conduct of the

Authority's business and be delegated with the exercise of the powers of the Authority as provided in Section 163.01 and Section 163.08, F.S. The Authority may also hire legal counsel to serve as its General Counsel.

Section 14. Authorized Official. The Authority Board Chair or its designee shall serve as the local official or designee who is authorized to enter into a financing agreement, pursuant to Section 163.08(8), F.S., with property owner(s) who obtain financing through the Authority.

Section 15. Additional Parties. With the express goal of expanding to offer services to all Florida local governments, the Originating Parties to this Agreement support and encourage the participation of Additional Parties as contemplated herein.

Section 16. Funding the Initial Program. Funding for the Authority shall initially be from grant funds or other funds acquired by the Originating Parties and/or Additional Parties. For the initial establishment of the Authority, contributions can be made to the Authority as permitted by law.

Section 17. Debts of the Authority are Not Obligations of any Parties. Pursuant to Section 163.01(7), F.S. the Authority may exercise all powers in connection with the authorization, issuance, and sale of bonds or other legally authorized mechanisms of finance. Any debts, liabilities, or obligations of the Authority do not constitute debts, liabilities or obligations of the Originating Parties or any Additional Party to this Agreement. Neither this Agreement nor the bonds issued to further the program shall be deemed to constitute a general debt, liability, or obligation of or a pledge of the faith and credit of any other Party to this Agreement. The issuance of bonds as contemplated by this Agreement shall not directly, indirectly, or contingently obligate any Party to this Agreement to levy or to pledge any form of taxation whatsoever therefore, or to make any appropriation for their payment.

Section 18. Annual Budget.

- a. Prior to the beginning of the Authority's fiscal year, the Authority Board will adopt an annual budget. Such budget shall be prepared in the manner and within the time period required for the adoption of a tentative and final budget for state governmental agencies pursuant to general law. The Authority's annual budget shall contain an estimate of receipts by source and an itemized estimation of expenditures anticipated to be incurred to meet the financial needs and obligations of the Authority.
- b. The adopted Budget shall be the operating and fiscal guide for the Authority for the ensuing Fiscal Year.
- c. The Board may from time to time amend the Budget at any duly called regular or special meeting.

Section 19. Reports.

- a. **Financial reports:** The Authority shall provide financial reports in such form and in such manner as prescribed pursuant to this Agreement and Chapter 218,

F.S. Both quarterly and annual financial reports of the Authority shall be completed in accordance with generally accepted Government Auditing Standards by an independent certified public accountant. At a minimum, the quarterly and annual reports shall include a balance sheet, a statement of revenues, expenditures and changes in fund equity and combining statements prepared in accordance with generally accepted accounting principles.

- b. **Operational reports:** The Authority Board shall cause to be made at least once every year a comprehensive report of its operations including all matters relating to fees, costs, projects financed and status of all funds and accounts.
- c. **Audits:** The Authority shall be subject to, and shall cause to be conducted: (i) an independent financial audit and (ii) an independent performance audit performed in accordance with generally accepted accounting practices and as applicable by state law.
- d. **Reports to be public records:** All reports, as well as supporting documentation such as, but not limited to, construction, financial, correspondence, instructions, memoranda, bid estimate sheets, proposal documentation, back charge documentation, canceled checks, and other related records produced and maintained by the Authority, its employees and consultants shall be deemed public records pursuant to Chapter 119, F.S., and shall be made available for audit, review or copying by any person upon reasonable notice.

Section 20. Bonds. The Authority Board is authorized to provide, from time to time, for the issuance of bonds, or other legally authorized form of finance, to pay all or part of the cost of qualifying improvements in accordance with law.

Section 21. Schedule of Rates and Fees.

- a. Upon the creation of the Authority as set forth in this Agreement, the Authority Board shall establish a schedule of rates, fees or other charges for the purpose of making the Authority a self-sustaining district. There shall not be any obligation on the part of the Originating Parties or any Additional Parties for financing contributions. The Authority shall not be authorized to create or distribute a profit. This shall not, however, prevent the Authority from establishing reserves for unanticipated expenses or for future projects in keeping with sound, prudent and reasonable operation of the Program within industry standards or from fulfilling any other requirements imposed by bond financings, other financial obligations or law. Nor shall this prevent the Authority from incurring costs such as professional fees and other costs necessary to accomplish its purpose. The Authority Board shall fix the initial schedule of rates, fees or other charges for the use of and the services to operate the RenewPACE Program to be paid by each participating property owner consistent with Section 163.08(4), F.S.
- b. The Authority Board may revise the schedule of rates, fees or other charges from time to time; provided however, that such rates, fees or charges shall be so fixed and revised so as to provide sums, which with other funds available for such purposes, shall be sufficient at all times to pay the expenses of operating and maintaining the RenewPACE Program. This shall include any required reserves

for such purposes, the principal of and interest on bonds, or other financing method, as the same shall become due, and to provide a margin of safety over and above the total amount of any such payments, and to comply fully with any covenants contained in the proceedings authorizing the issuance of any bonds or other obligations of the Authority.

- c. The rates, fees or other charges set pursuant to this section shall be just and equitable and uniform for users and, where appropriate, may be based upon the size and scope of the financial obligation undertaken by a Participating Property Owner. All such rates, fees or charges shall be applied in a non-discretionary manner with respect to the Participating Property Owner's geographical location within the Authority's Service Area. No rates, fees or charges shall be fixed or subsequently amended under the foregoing provisions until after a public hearing at which all the potential participants in the Program, and other interested persons, shall have an opportunity to be heard concerning the proposed rates, fees or other charges. Notice of such public hearing setting forth the proposed schedule or schedules of rates, fees or other charges shall be provided in accordance with Chapter 163 and Chapter 197, F.S.
- d. The Authority shall charge and collect such rates, fees or other charges so fixed or revised, and such rates, fees and other charges shall not be subject to the supervision or regulation by any other commission, board, bureau, agency or other political subdivision or agency of the county or state.
- e. In the event that any assessed fees, rates or other charges for the services and financing provided by the Authority to Participating Property Owners shall not be paid as and when due, any unpaid balance thereof, and all interest accruing thereon, shall be a lien on any parcel or property affected or improved thereby. Pursuant to Section 163.08(8), F.S., such lien shall constitute a lien of equal dignity to county taxes and assessments from the date of recordation. In the event that any such fee, rate or charge shall not be paid as and when due and shall be in default for thirty (30) days or more, the unpaid balance thereof, and all interest accrued thereon, together with attorney's fees and costs, may be recovered by the Authority in a civil action, and any such lien and accrued interest may be foreclosed and otherwise enforced by the Authority by action or suit in equity as for the foreclosure of a mortgage on real property.

Section 22. Disbursements. Disbursements made on behalf of the Authority shall be made by checks drawn on the accounts of the Authority.

Section 23. Procurement; Program Implementation and Administration. The Authority shall be administered and operated by a Third Party Administrator ("TPA") who shall be responsible for providing services to the Authority for the design, implementation and administration of the RenewPACE Program. The Originating Parties and all Additional Parties understand and acknowledge, and the Town of Lantana represents and warrants that, the procurement for the initial TPA was performed in accordance with its adopted procurement procedures. Pursuant to said procurement procedures, "EcoCity Partners, L3C" was hired as the TPA. The "Florida Green Energy Works Program Administration Services Agreement" between Lantana and EcoCity Partners, L3C is attached hereto as Exhibit 1 and is hereby incorporated by

reference. The initial Florida Green Energy Works Program Administration Services Agreement, as amended, was assigned by the Authority to Renewable Funding LLC on March 10, 2016..

Section 24. Term. This Interlocal Agreement shall remain in full force and effect from the date of its execution by the Originating Parties until such time as there is unanimous agreement of the Authority Board to dissolve the Authority. Notwithstanding the foregoing, dissolution of the Authority cannot occur unless and until any and all outstanding obligations are repaid; provided, however, that any Party may terminate its involvement and its participation in this Interlocal Agreement upon thirty (30) days' written notice to the other Parties. Should a Party terminate its participation in this Interlocal Agreement, be dissolved, abolished, or otherwise cease to exist, this Interlocal Agreement shall continue until such time as all remaining Parties agree to dissolve the Authority and all special assessments levied upon Participating Property Owners properties have been paid in full.

Section 25. Consent. The execution of this Interlocal Agreement, as authorized by the government body of the Originating Parties and any Additional Party shall be considered the Parties' consent to the creation of the Authority as required by Sections 163.01 and 163.08, F.S.

Section 26. Limits of Liability.

- a. All of the privileges and immunities from liability and exemptions from law, ordinances and rules which apply to municipalities and counties of this state pursuant to Florida law shall equally apply to the Authority. Likewise, all of the privileges and immunities from liability; exemptions from laws, ordinances and rules which apply to the activity of officers, agents, or employees of counties and municipalities of this state pursuant to Florida law shall equally apply to the officers, agents or employees of the Authority.
- b. The Originating Parties and all Additional Parties to this Agreement shall each be individually and separately liable and responsible for the actions of their own officers, agents and employees in the performance of their respective obligations under this Agreement pursuant to Chapters 768 and 163, F.S. and any other applicable law. The Parties may not be held jointly or severally liable for the actions of officer or employees of the Authority or by any other action by the Authority or another member of the Authority and the Authority shall be solely liable for the actions of its officers, employees or agents to the extent of the waiver of sovereign immunity or limitation on liability provided by Chapter 768, F.S. Except as may be otherwise specified herein, the Parties shall each individually defend any action or proceeding brought against their respective agency under this Agreement, and they shall be individually responsible for all of their respective costs, attorneys' fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. The Parties shall each individually maintain throughout the term of this Agreement any and all applicable insurance coverage required by Florida law for

governmental entities. Such liability is subject to the provisions of law, including the limits included in Section 768.28, F.S., which sets forth the partial waiver of sovereign immunity to which governmental entities are subject. It is expressly understood that this provision shall not be construed as a waiver of any right or defense that the parties have under Section 768.28, F.S. or any other statute.

Section 27. Notices. Any notices to be given pursuant to this Interlocal Agreement 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 certified U.S. mail, return receipt requested, addressed to the Party for whom it is intended, at the place specified. The Originating Parties designate the following as the respective places for notice purposes:

Lantana: Town Manager
Town of Lantana
500 Greynolds Circle
Lantana, Florida 33462

With a Copy to: Lohman Law Group, P.A.
601 Heritage Drive, Suites 232-232A
Jupiter, FL 33458
Attn: R. Max Lohman, Esq.

Mangonia Park: Town Manager
Town of Mangonia Park
1755 East Tiffany Drive
Mangonia Park, Florida 33407

With a Copy to: Corbett, White, Davis and Ashton, P.A.
1111 Hypoluxo Road, Suite 207
Lantana, FL 33462
Attn: Keith W. Davis, Esq.

Section 28. Filing. It is agreed that this Interlocal Agreement shall be filed with the Clerk of the Circuit Court of Palm Beach County, as required by Section 163.01(11), F.S., and may be filed in subsequent jurisdictions pursuant to the appropriate process of public-record filing in that particular jurisdiction.

Section 29. Joint Effort. The preparation of this Interlocal Agreement has been a joint effort of the Parties hereto and the resulting document shall not, as a matter of judicial construction, be construed more severely against any one party as compared to another.

Section 30. Execution in Counterparts. This Interlocal Agreement may be executed in counterparts which shall be in original form all of which, collectively, shall comprise the entire Interlocal Agreement.

Section 31. Merger, Amendments. This Agreement incorporates and includes all prior 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. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained in this Interlocal Agreement shall be effective unless contained in a written document that is ratified or approved by at least seventy-five (75%) of the Parties to this Interlocal Agreement, which ratification or approval shall be expressed in writing by such Party and delivered to the Authority in a form upon which the Authority can rely, and the Authority has made a finding to that effect in the manner specified in Section 12 of this Interlocal Agreement.

Section 32. Assignment. The respective obligations of the Parties set forth in this Interlocal Agreement shall not be assigned, in whole or in part, without the written consent of the other Parties hereto.

Section 33. Records. The Parties shall each maintain their own respective records and documents associated with this Interlocal Agreement in accordance with the requirements for records retention set forth in Florida law.

Section 34. Compliance with Laws. In the performance of this Agreement, the Parties hereto shall comply in all material respects with all applicable federal and state laws and regulations and all applicable county and municipal ordinances and regulations.

Section 35. Governing Law and Venue. This Interlocal Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Venue for any claim, objection or dispute arising out of the terms of this Interlocal Agreement shall be proper exclusively in Palm Beach County, Florida.

Section 36. Severability. In the event a portion of this Interlocal Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective to the extent possible.

Section 37. Effective Date and Joinder by Authority. This Interlocal Agreement shall become effective upon its execution by the Originating Parties. It is agreed that, upon the formation of the Authority, the Authority shall thereafter join this Interlocal Agreement and that the Authority shall thereafter be deemed a Party to this Interlocal Agreement.

Section 38. No Third Party Rights. No provision in this Agreement shall provide to any person that is not a party to this Agreement any remedy, claim, or cause of action, or create any third-party beneficiary rights against any Party to this Agreement.

Section 39. Access and Audits. Palm Beach County has established the Office of Inspector General in Article VIII of the Charter of Palm Beach County, as may be amended, which is authorized and empowered to review past, present and proposed county or municipal

contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor, and inspect the activities of Palm Beach County, its officers, agents, employees, and lobbyists, as well as the activities of all municipalities in the county, and their officers, agents, employees, and lobbyists, in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Chapter 2, Article XIII of the Palm Beach County Code of Ordinances.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Originating Parties hereto have made and executed this Interlocal Agreement on this 9th day of May, 2016.

ATTEST:



Town of Lantana, a municipal corporation of the State of Florida

BY: [Signature]

Town Clerk

BY: [Signature]

Town Manager

(Affix Town Seal)

Approved by Town Attorney
as to form and legal sufficiency

[Signature]
Town Attorney

ATTEST:

Town of Mangonia Park, a municipal corporation of the State of Florida

BY: [Signature]

Town Clerk

BY: [Signature]

Town Manager

(Affix Town Seal)

Approved by Town Attorney
as to form and legal sufficiency

[Signature]
Town Attorney

Exhibit B

**INDEMNIFICATION AGREEMENT BETWEEN RENEW FINANCIAL, AS
ADMINISTRATOR OF THE FLORIDA GREEN FINANCE AUTHORITY, AND
ALACHUA COUNTY, FLORIDA**

This Indemnification Agreement (the "Agreement") is entered into July 31, 2018 by and between Renew Financial Group LLC ("Renew Financial"), as the administrator of the Florida Green Finance Authority (the "Authority"), and Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners ("County") (collectively, the "Parties").

WHEREAS, the County and the Florida Green Finance Authority have proposed to enter into an Interlocal Agreement ("Interlocal Agreement") to authorize the Florida Green Finance Authority to operate in Alachua County for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

WHEREAS, Renew Financial is the third party administrator for the Florida Green Finance Authority and Renew Financial would be operating on behalf of the Florida Green Finance Authority within Alachua County; and

WHEREAS, Renew Financial has agreed to provide the County with a separate indemnification agreement for the benefit of the County.


NOW, THEREFORE, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. Renew Financial shall indemnify and hold harmless the County and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of action, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the Interlocal Agreement by Renew Financial or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. Renew Financial shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon, in each case with counsel selected by Renew Financial and reasonably acceptable to County. Renew Financial expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents, and instrumentalities as herein provided.


3. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in conjunction with this Agreement shall be in the state courts of the Eighth Judicial Circuit in and for Alachua County, Florida, the United States District Court for the Northern District of Florida or United States Bankruptcy Court for the Northern District of Florida, as appropriate.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this 31st day of July, 2018.


BOARD OF COUNTY COMMISSIONERS
ALACHUA COUNTY, FLORIDA

By: 
Lee Pinkoson, Chair

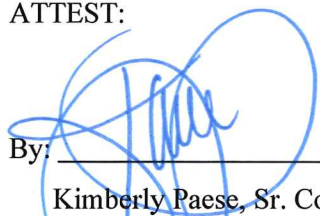
ATTEST:

By: 
Jesse K. Irby II, Clerk

APPROVED AS TO FORM


Sylvia E. Torres, Interim County Attorney


ATTEST:

By: 
Kimberly Paese, Sr. Corporate Counsel

RENEW FINANCIAL GROUP LLC

By: 
Kirk Inglis, Chief Executive Officer

Approved as to form and legality:

By: 
Julianne Spears, Associate General Counsel



Agenda

ALACHUA COUNTY BOARD OF COUNTY COMMISSIONERS

Jack Durrance Auditorium
Second Floor

12 SE 1st Street

August 14, 2018 BoCC Regular Meeting 9:00AM

Agenda Item #50.

Agenda Item Name:

Property Assessed Clean Energy - Interlocal Agreements with Enhanced Consumer Protections

Presenter:

Sean McLendon, 548 3765

Item Description:

Property Assessed Clean Energy (PACE) Interlocal agreements with negotiated enhanced consumer protections per previous Board direction.

Recommended Action:

Approve and authorize the Chair to sign all attached Interlocal Agreements and Indemnification Agreements.

If any agency refuses to enter into a revised Interlocal Agreement, direct staff to terminate the existing agreement per the termination clause.

Prior Board Motions

December 8, 2015 Regular Board Meeting Agreements with Property Assessed Clean Energy Providers Commissioner Byerly moved to implement the PACE Program for Commercial Properties. The motion carried 5-0. Commissioner Byerly moved to implement the PACE Program for Residential Properties. The motion carried 3-2 with Commissioners Chestnut and Pinkoson voting "Nay". Commissioner Byerly moved the following:

1.A. Approve and authorize the Chair to sign the Third Party Administered Interlocal Agreements, Resolution and other supporting documents to enact a Property Assessed Clean Energy Tuesday, December 8, 2015 – 9:00 A.M. & 5:00 P.M. program in Alachua County for residential and commercial properties.

1.B. Accept the finalized PACE Vendor Qualification Criteria, Rights and Responsibilities, and Truth in Lending Documents and direct staff to begin outreach and public education after vendors provides training and orientation of their programs.

2. Staff to provide the Board with a written summary of differences and issues that remain between the County and Florida PACE Funding Industry.

March 22, 2016 Regular Board Meeting Summary of PACE Interlocal Agreement Differences Commissioner Byerly moved to direct staff to work with the Florida Pace Funding Agency to resolve the differences of opinion on Items 2,3,6,7,8,11,13,14,and 15 on the staff provided matrix and return to the Board within 30 days with another proposal. Strategic Initiatives Manager Sean McLendon and Commissioner Cornell presented comments. The motion carried 5-0.

April 26, 2016 Regular Board Meeting Consent Agenda: Approve Agreement with Florida PACE Funding Agency Property Assessed Clean Energy Provider, per Sean McLendon

January 16, 2018 Special Board Meeting: Commissioner Cornell moved the following:

1. That staff meet with any applicable citizens that have had complaints as well as the Tax Collector's Office and ask each of the related PACE providers to provide a written response as to how those issues have been resolved.
 2. Direct staff to brief the Board within 30 days as to the findings as well any proposed suggestions for improving consumer protections.
 3. Request a written response from each of the PACE providers as to whether or not they support the current proposed consumer protection legislation as well as staff's analysis of the legislation.
 4. Staff to classify the types problems and repairs and the Board can discuss the issues and possible scope of services based on the responses.
- Commissioner Byerly and Commissioner Hutchinson presented comments. The motion carried 5-0.

At the May 22, 2018 Regular Board Meeting, Commissioner Byerly moved to direct Staff to negotiate amendments to the Pace Interlocal Agreements to include consumer protections 1, 2, 4 and 5 to the extent that they are already a part of the process. There should be additional disclaimer that reflects the possibility that the payment may increase the borrower's monthly escrow payment. If any agency refuses to enter into a revised Interlocal Agreement then the County will move to terminate the agreement per the termination clause. Staff should return to the Board within 60 days for approval.

Consumer Protections Referenced in the Motion:

- Better definition to the scope of the Finance Agreement
- More strictly defined consumer eligibility
- Clarifications of Fair Market Value
- Additional steps prior to the execution of the Finance Agreement

The motion carried 5-0.

Comprehensive Plan Guidance Energy Element

7.0 Renewable Energy

OBJECTIVE 7.1 Encourage renewable energy production and a countywide system of distributed residential and commercial power generation.

Policy 7.1.2 Alachua County shall pursue implementation of an efficiency and renewable energy financing program, such as a Property Assessed Clean Energy (PACE) program.

OBJECTIVE 7.2

Increase the use of solar and other forms of renewable energy by County residents, businesses and agricultural operations.

Fiscal Consideration:

Staff monitors but does not administer PACE programs. Any administrative oversight or pre-post assessment review will require additional resources in addition to amendments to existing interlocal agreements.

Background:

Property Assessed Clean Energy finance (PACE) is a voluntary finance mechanism for renewable energy, energy efficiency and wind hardening improvements to commercial and residential property repaid as a special assessment annually on the tax bills issued by the County. PACE was enacted by Florida Statute in 2010 and enabled by local governments via resolution and typically, uses third party administrative programs to run,

market and assess properties. Local governments join together in an authority model to reduce the administrative burden, cost and need to find a funding source by signing on with these bodies.

The Board approved PACE by resolution and interlocal agreements starting in December 2015. In 2017, the Board was made aware of a few citizens that had issues with their PACE assessments. In response to these citizen concerns, the Board directed staff to renegotiate the interlocal agreements with the following enhanced consumer protections categories:

Better definition to the scope of the Finance Agreement

More strictly defined consumer eligibility

Clarifications of Fair Market Value

Additional steps prior to the execution of the Finance Agreement with an additional disclaimer that reflects the possibility that the payment may increase the borrower's monthly escrow payment.

This language is referenced in the interlocal agreements as part of part 7 and sets baseline expectations for PACE communications and services in Alachua County. There are slight, variations of wording of the enhanced consumer protections, depending upon the program and how it is administered. Even with the variation the same structure and intent is maintained between each agreement so that the citizens of Alachua County may have standard expectations of service and disclosure. These enhanced consumer protections were not part of the 2015-2016 interlocal agreements. For PACE agreements going forward, this standard language will be included along with better definition of relevant terms including direct references to the Agency/District's founding documents.

In addition to the enhanced consumer protections, the interlocal agreements also include defined responsibilities of the providers in part 9 of the agreement. These provisions codify PACE industry best management practices and underwriting standards.

Note, that the Green Corridor (Ygrene) agreement deviates on one point in the consumer protections related to carbon credits/renewable energy credits going to the property owner. Green Corridor wishes to retain ownership of these rights. All other providers have agreed that the Property Owner will keep ownership. Please see the relevant section in Part 7 Consumer Protections, iv Disclosure Requirements, subpart I and also Part 10 Carbon or Similar Credits of the agreement.

PACE is one of many financial tools available to citizens to pay for wind hardening and energy related improvements to property. As with any finance mechanism, citizens are encouraged to review the terms, cost of money and overall affordability of property improvements prior to signing any agreement.

At the May 22, 2018 Board meeting the Board elected to not include an ability to pay provision and explicit credit score/debt to income ratios as categories of enhanced consumer protections.

"Ability to Pay", may be brought up as part of 2019 State Legislation. This language was first explored as part of the 2018 bill, Increasing Consumer Protections and Transparency– HB 1225/SB 1858. This PACE legislation failed.

Alachua County citizens at the conclusion of agreement adoption will have four, third party administered providers for citizens to compare and choose from for PACE financing.

Programs

GREEN CORRIDOR PACE (Ygrene); Program Rep: Kate Wesner; Sr. Director, Government Affairs; kate.wesner@ygrene.com

FLORIDA GREEN FINANCE AUTHORITY (Renew Financial); Program Rep: Natalie Schneider, AICP, Regional Director, Government Affairs, Renew Financial, Florida Office, Program Administrator for the Florida Green Finance Authority; nschneider@renewfinancial.com

FLORIDA PACE FUNDING Agency (CounterPointe Energy Solutions); Program Rep: C.J. De Santis, Head

of Government Relations; Counterpointe Energy Solutions LLC, Counterpointe Sustainable Real Estate LLC;
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Florida Resiliency and Energy District (Renovate America); Program Rep: Mike Antheil, Senior Director,
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review will require additional resources in addition to amendments to existing interlocal agreements.