

ORDINANCE NO. 20____-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE, CHAPTER 17, ARTICLE XVII, (ORDINANCE 2017-012), SECTION 17-504 THROUGH SECTION 17-507, REGARDING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, Property Assessed Clean Energy (PACE) programs for Residential and
2 Non-Residential Properties have been established across the country to provide mechanisms
3 for funding energy efficiency, renewable energy, and other types of improvements to
4 residential and commercial properties; and

5 **WHEREAS**, PACE Programs for Residential and Non-Residential Properties are
6 typically established by local governments, as defined by Section 163.08, Florida Statutes, and
7 are administered by the local government or by for-profit or not-for-profit entities; and

8 **WHEREAS**, PACE financing for Residential and Non-Residential Properties is repaid
9 as an assessment on the property's regular tax bill; and

10 **WHEREAS**, Section 163.08, Florida Statutes, authorizes programs, typically referred
11 to as PACE Programs, that levy non-ad valorem assessments allowing property owners to
12 apply to local governments for financing certain energy efficiency, renewable energy, and
13 wind resistant improvements; and

14 **WHEREAS**, Section 163.08, Florida Statutes, provides that properties retrofitted with
15 energy-related Qualifying Improvements benefit from reduced energy consumption, reduced
16 potential for wind damage, and assist in the fulfillment of the state's energy and hurricane
17 mitigation policies; and

18 **WHEREAS**, the PACE assessment is collected pursuant to Florida's uniform
19 method for the levy, collection, and enforcement of non-ad valorem assessments, Section
20 197.3632, Florida Statutes; and

1 **WHEREAS**, the County has entered into interlocal agreements with multiple PACE
2 Agencies/Authorities/Districts to encourage competition and provide more choices for
3 property owners; and

4 **WHEREAS**, the Board of County Commissioners intends to clarify and strengthen
5 qualifications and consumer protection disclosure requirements for PACE Programs for
6 Residential and Non-Residential Properties that provide financing for Qualifying
7 Improvements in accordance with Section 163.08, Florida Statutes, and provisions of this
8 Ordinance; and

9 **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to
10 its authority under the Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida
11 Statutes, and the Palm Beach County Charter, hereby adopts the following amendments to the
12 Palm Beach County Property Assessed Clean Energy (PACE) Ordinance (Ordinance 2017-
13 012).

14

15 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
16 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

17 **Section 1. Chapter 17, Article XVII, Section 17-504, entitled "DEFINITIONS" is hereby**
18 **amended as follows:**

19 For purposes of this Ordinance, the following words and phrases shall have the
20 following meanings:

- 21 (1) *Board or County* is the Palm Beach County Board of County Commissioners.
- 22 (2) *Fair Market Value* shall mean the value of the property as determined by a reputable valuation
23 service, the method of which shall be reported to the County quarterly.
- 24 (3) *Financing Agreement* shall mean the financing agreement or the summary memorandum of
25 such agreement the property owner signs establishing terms and conditions for the financing
26 of Qualifying Improvements which is required to be recorded in the public records pursuant
27 to the PACE Statute.
- 28 (4) *PACE Assessment* shall mean the non-ad valorem assessment placed on a property owner's
29 tax bill as a result of financing obtained pursuant to this Ordinance for Qualifying
30 Improvements.
- 31 (5) *Qualifying Improvements* shall mean energy conservation and efficiency, renewable energy,
32 and wind resistance improvements as defined by F.S. § 163.08, as may be amended by law.

1 (6) *PACE Third-Party Administrator* shall mean the entity administering the PACE Program
2 and operating on behalf of the PACE Agency/Authority/District. The Third-Party
3 Administrator is an entity contracted with a PACE Agency/Authority/District to perform
4 administrative functions, including, but not limited to, processing PACE financing
5 applications and determining eligibility.

6 (7) *PACE Agencies/Authorities/Districts* shall mean one or more local governments defined in
7 F.S. § 163.08 (2)(a), authorized by Palm Beach County to offer PACE financing for
8 Qualifying Improvements.

9 (8) *PACE Program* shall mean the County’s provision through interlocal agreements with
10 PACE Agencies/Authorities/Districts offering financing for Qualifying Improvements as
11 approved by the State of Florida pursuant to F.S. § 163.08, further defined in this
12 Ordinance, as may be amended by law.

13 (9) *PACE Statute* shall mean F.S. § 163.08 and all future amendments thereto.

14 (10) *Residential Property* shall mean a residential property consisting of four (4) or fewer
15 residential dwelling units.

16 (11) *Non-Residential Property* shall mean commercial, industrial, agricultural, mixed use and
17 residential properties consisting of five (5) or more residential dwelling units.

18 **Section 2. Chapter 17, Article XVII, Section 17-505, entitled “PACE PROGRAM**
19 **AUTHORIZATION” is hereby amended as follows:**

20 (1) PACE Agencies/Authorities/Districts and Third-Party Administrators offering financing
21 for Qualifying Improvements on Residential and Non-Residential Properties pursuant to
22 this Ordinance shall be approved by the County and authorized through interlocal
23 agreements to provide financing subject to the requirements of this Ordinance and the
24 PACE Statute. A resolution indicating the County’s desire to join a PACE
25 Agency/Authority/District shall be prepared by County staff and presented to the Board for
26 consideration with each interlocal agreement. The interlocal agreements shall include
27 specific terms and conditions for PACE Agencies/Authorities/Districts and Third-Party
28 Administrators to operate within Palm Beach County.

29 (2) PACE Agencies/Authorities/Districts and Third-Party Administrators desiring to provide
30 financing pursuant to this Ordinance shall provide sufficient documentation as requested
31 by the County to provide reasonable assurance that the requirements of this Ordinance and
32 the PACE Statute can be met by the PACE Agency/Authority/District and/or Third-Party

1 Administrator. Document requests shall include but are not limited to a list of Qualifying
2 Improvements, standard financing agreements, consumer protection provisions, and
3 certificates of insurance. PACE Agencies/Authorities/Districts and Third-Party
4 Administrators shall comply with reasonable requests for data and business practices
5 within 90 days, consistent with state and federal law.

6 **Section 3. Chapter 17, Article XVII, Section 17-506, entitled “DISCLOSURE**
7 **REQUIREMENTS” is hereby amended as follows:**

8 (1) For Residential Properties, in addition to any disclosure requirements in the PACE Statute,
9 PACE Agencies/Authorities/Districts and Third-Party Administrators that extend
10 financing pursuant to the PACE Statute and levy non-ad valorem assessments to fund
11 Qualifying Improvements must have the property owner sign a separate, written notice.
12 PACE Agencies/Authorities/Districts and Third-Party Administrators must disclose to
13 property owners essential terms in a “Residential Consumer Disclosure Notice” that must
14 be pre-approved by the County. The County will not unreasonably withhold approval. The
15 Residential Consumer Disclosure Notice must be a consolidated summary of the following
16 information:

17 (a) The estimated total amount of the debt, including amount financed, fees, fixed interest
18 rate, capitalized interest and the effective rate of the interest charged (“Annual
19 Percentage Rate” or “APR”);

20 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only
21 offer fixed simple interest rates and payments that fully amortize the obligation.
22 Variable or negative amortization financing terms are not permitted. Capitalized
23 interest included in the original balance of a PACE financing agreement does not
24 constitute negative amortization;

25 (c) The repayment process and terms, amounts and a schedule that fully amortizes the
26 amount financed including the estimated annual PACE assessment;

27 (d) That the PACE assessment will appear on the property owner's tax bill;

28 (e) That there is no discount for paying the PACE assessment early;

29 (f) The nature of the lien recorded and that the PACE assessment will be collected in the
30 same manner as real estate taxes. That failure to pay the PACE assessment may cause
31 a tax certificate to be issued against the property, and that failure of payment thereof
32 may result in the loss of property subject to the PACE assessment, including homestead

- 1 property, in the same manner as failure to pay property taxes;
- 2 (g) The specific improvements to be financed and installed and that such improvements
3 and PACE assessment may or may not affect the overall value of the property;
- 4 (h) A PACE assessment payment term that does not exceed the useful life of the
5 improvements, as determined by reputable third-party sources, including, but not
6 limited to, the U.S. Department of Energy;
- 7 (i) The right of pre-payment without penalty;
- 8 (j) Notice that the property owner may be required to pay any PACE assessment in full at
9 the time of refinance or sale of the property;
- 10 (k) The property owner has at least a three-day right to cancel the financing. PACE
11 Agencies/Authorities/Districts and Third-Party Administrators must furnish to the
12 property owner a notice of the right to rescind the PACE financing agreement. The
13 property owner may exercise the right to rescind until midnight of the third business
14 day following the execution of the agreement by giving notice to the other party by
15 either certified or registered mail, electronic mail, fax machine, phone call, or any other
16 method approved by the PACE Agencies/Authorities/Districts and Third-Party
17 Administrators;
- 18 (l) The property owner has a three-day right to cancel a home improvement contract per
19 F.S. § 520.72;
- 20 (m) In the event of an emergency, property owners may waive their right to the PACE
21 financing agreement three-day right to cancel to allow PACE contractors to begin the
22 project. For the purposes of this section, an emergency is defined as a situation that
23 poses an immediate threat to the health, safety, or well-being of the property owner and
24 requires immediate abatement by the installation of a Qualifying Improvement. The
25 property owner may waive their right to the three-day right to cancel for emergencies
26 either through the Consumer Disclosure Notice or by giving notice by either certified
27 or registered mail, or electronic mail, fax machine, phone call, or any other method
28 approved by the PACE Agencies/Authorities/Districts and Third-Party Administrators;
- 29 (n) An emergency waiver option for the three-day right to cancel;
- 30 (o) Except as required by law, PACE Agencies/Authorities/Districts and Third-Party
31 Administrators may not disclose or permit disclosure to a PACE contractor or third-party

1 engaged in soliciting financing agreements of the maximum amount of the PACE
2 financing for which a property owner is eligible;

3 (p) That the County has programs that property owners may qualify for to fund
4 improvements, such as the Weatherization Assistance Programs. The County retains
5 the right to provide information about County programs within and/or in addition to
6 the Residential Consumer Disclosure Notice, which the PACE
7 Agencies/Authorities/District and Third-Party Administrator must provide to the
8 homeowner; and

9 (q) That before the PACE three-day right to cancel ends, the PACE
10 Agencies/Authorities/Districts or Third-Party Administrators will speak with the
11 property owner or authorized representative to review the terms of the PACE financing
12 agreement and confirm that the property owner understands the financial implications
13 and communicate all essential terms including what the Consumer Disclosure Notice
14 requires. The PACE Agencies/Authorities/Districts or Third-Party Administrators will
15 conduct the conversation in the property owner's preferred language. The PACE
16 Agencies/Authorities/Districts or Third-Party Administrators will record the "confirm
17 terms" call, unless the property owner declines to be recorded. If the property owner
18 declines to be recorded, the PACE entity must take detailed notes of the conversation
19 to demonstrate compliance with the "confirm terms" requirement; and

20 (r) Contact information for the PACE Agency/Authority/District or Third-Party
21 Administrator, including the name, phone number, and email (if applicable).

22 (2) For Non-Residential Properties under \$250,000 for a PACE assessment, in addition to any
23 disclosure requirements in the PACE Statute, PACE Agencies/Authorities/Districts and
24 Third-Party Administrators that extend financing pursuant to the PACE Statute and levy
25 non-ad valorem assessments to fund the Qualifying Improvements shall have the property
26 owner sign a separate, written notice. PACE Agencies/Authorities/Districts and Third-
27 Party Administrators must disclose to property owners essential terms in a "Non-
28 Residential Consumer Disclosure Notice" that must be pre-approved by the County. The
29 County will not unreasonably withhold approval. The Non-Residential Consumer
30 Disclosure Notice must be a consolidated summary of the following information:

31 (a) The estimated total amount of the debt, including amount financed, fees, fixed or
32 variable interest rate, capitalized interest and the effective rate of the interest charged

- 1 (APR);
- 2 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only
3 offer payments that fully amortize the obligation. Negative amortization financing
4 terms are not permitted. Capitalized interest included in the original balance of a PACE
5 financing does not constitute negative amortization;
- 6 (c) The repayment process and terms, amounts and a schedule that fully amortizes the
7 amount financed including the estimated annual PACE assessment;
- 8 (d) That the PACE assessment will appear on the property owner's tax bill;
- 9 (e) That there is no discount for paying the PACE assessment early;
- 10 (f) The nature of the lien recorded and that the PACE assessment will be collected in the
11 same manner as real estate taxes. That failure to pay the PACE assessment may cause
12 a tax certificate to be issued against the property, and that failure of payment thereof
13 may result in the loss of property subject to the PACE assessment in the same manner
14 as failure to pay property taxes;
- 15 (g) The specific improvements to be financed and installed and that such improvements
16 and PACE assessment may or may not affect the overall value of the property;
- 17 (h) A PACE assessment payment term that does not exceed the useful life of the
18 improvements, as determined by reputable third-party sources, including, but not
19 limited to, the U.S. Department of Energy;
- 20 (i) Notice that the property owner may be required to pay any PACE assessment in full at
21 the time of refinance or sale of the property;
- 22 (j) The 3-day right to cancel the financing. PACE Agencies/Authorities/Districts and
23 Third-Party Administrators must furnish to the property owner a notice of the right to
24 rescind the PACE financing agreement. The property owner may exercise the right to
25 rescind until midnight of the third business day following the execution of the
26 agreement by giving notice to the other party by either certified or registered mail,
27 electronic mail, fax machine, or a recorded phone call;
- 28 (k) In the event of an emergency, property owners may waive their right to the PACE
29 financing agreement three-day right to cancel to allow PACE contractors to begin the
30 project. For the purposes of this section, an emergency is defined as a situation that
31 poses an immediate threat to the health, safety or well-being of the property owner and
32 requires immediate abatement by the installation of a Qualifying Improvement. The

1 property owner may waive their right to the three-day right to cancel for emergencies
2 either through the Consumer Disclosure Notice or by giving notice by either certified
3 or registered mail, or electronic mail, fax machine, phone call, or any other method
4 approved by the PACE Agencies/Authorities/Districts and Third-Party Administrators;

5 (l) An emergency waiver option for the three-day right to cancel; and

6 (m) Contact information for the PACE Agency/Authority/District or Third-Party
7 Administrator, including the name, phone number, and email (if applicable).

8 (3) Non-Residential PACE Agencies/Authorities/Districts and Third-Party Administrators
9 providing PACE financing in the amount of \$250,000 or greater are not required to provide
10 a Consumer Disclosure Notice. However, they are required to conform to the following
11 obligations:

12 (a) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only
13 offer payments that fully amortize the obligation. Negative amortization financing
14 terms are not permitted. Capitalized interest included in the original balance of a PACE
15 financing does not constitute negative amortization; and

16 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only
17 provide a PACE assessment payment term that does not exceed the useful life of the
18 improvements, as determined by reputable third-party sources, including, but not
19 limited, to the U.S. Department of Energy.

20 (4) For both Residential and Non-Residential where applicable, PACE
21 Agency/Authority/District or Third Party-Administrators must submit updated Consumer
22 Disclosure Notices that incorporate the updated Palm Beach County-approved consumer
23 protection language. Once approved by the County, PACE Agency/Authority/District or
24 Third Party-Administrators must fully implement and utilize the approved Palm Beach
25 County-approved Consumer Disclosure Notice within one hundred and eighty (180) days
26 of notice of approval.

27 (5) A copy of the Consumer Disclosure Notices must be provided to the property owner either
28 by electronic mail or hard copy by the PACE Agency/Authority/District or Third Party
29 Administrator within the 3-day right to cancel period and must be signed and dated by the
30 property owner prior to or contemporaneously with the property owner's signing of any
31 legally enforceable documents under the PACE Program. Upon the property owner's
32 request, the PACE Agency/Authority/District or Third-Party Administrator must provide

1 the property owner with a hardcopy of the Consumer Disclosure Notice within the three-
2 day right to cancel. The property owner and the PACE Agency/Authority/District or Third-
3 Party Administrator must keep the signed Consumer Disclosure Notice with the property
4 owner's executed financing agreement.

5 (6) The PACE Agency/Authority/District or Third-Party Administrator shall provide the
6 signed Consumer Disclosure Notice to the Palm Beach County Office of Resilience and
7 the Palm Beach County Tax Collector in electronic format within five (5) business days
8 after execution of the PACE financing agreement.

9 (7) The PACE Agency/Authority/District and Third-Party Administrator shall record, or cause
10 to be recorded, the financing agreement or a summary memorandum of the financing
11 agreement, in accordance with F.S. § 163.08 (8).

12 **Section 4. Chapter 17, Article XVII, Section 17-507, entitled "ELIGIBLE**
13 **PROPERTIES/PROGRAM REQUIREMENTS" is hereby amended as follows:**

14 (1) As defined in the PACE Statute, PACE Agencies/Authorities/Districts and Third-Party
15 Administrators that extend financing pursuant to the PACE Statute and levy non-ad
16 valorem assessments to fund the Qualifying Improvements shall comply with the following
17 terms in the subsections below. Subsections apply to both Residential and Non-Residential
18 Properties except where the subsection specifically refers to Residential or Non-
19 Residential.

20 (2) *Residential Property.* PACE Agencies/Authorities/Districts and Third-Party
21 Administrators may finance Qualifying Improvements on Residential Properties provided
22 they comply with the following criteria inclusive of all eligibility criteria listed in the PACE
23 Statute and all future amendments thereto, along with additional consumer protections:-

24 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or
25 otherwise secured by the property, the total amount of any non-ad valorem assessment
26 for a property under the PACE Statute may not exceed twenty (20) percent of the just
27 value of the property as determined by the county property appraiser, excepted as
28 otherwise provided by statute;

29 (b) All property taxes and other assessments levied on the property tax bill have been paid
30 and have not been delinquent for the preceding three years, or the property owner's
31 period of ownership, whichever is less;

- 1 (c) There are no involuntary liens, including but not limited to construction liens on the
2 property;
- 3 (d) No notices of default or other evidence of property-based debt delinquency have been
4 recorded during the preceding three (3) years, or the property owner's period of
5 ownership, whichever is less;
- 6 (e) All mortgage debt on the property is current and not delinquent;
- 7 (f) All mortgage-related debt on the underlying property may not exceed ninety (90)
8 percent of the property's Fair Market Value;
- 9 (g) The total mortgage-related debt on the underlying property plus the PACE Program
10 financing may not exceed the Fair Market Value of the property;
- 11 (h) The total estimated annual payment amount for the PACE assessment does not exceed
12 10 percent of the property owner's annual household income determined using
13 sufficient and credible documentation, for example using adjusted gross income from
14 a recent tax return; and
- 15 (i) That the property owner is not currently in bankruptcy proceedings.
- 16 (3) *Non-Residential Properties.* PACE Agencies/Authorities/Districts and Third-Party
17 Administrators may finance Qualifying Improvements on Non-Residential Properties
18 provided they comply with the eligibility criteria listed in the PACE Statute and all future
19 amendments thereto, along with the following consumer protections:
- 20 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or
21 otherwise secured by the property, the total amount of any non-ad valorem assessment
22 for a property under the PACE Statute may not exceed twenty percent (20%) of the just
23 value of the property as determined by the county property appraiser, excepted as
24 otherwise provided by statute;
- 25 (b) All property taxes and other assessments levied on the property tax bill have been paid
26 and have not been delinquent for the preceding three years, or the property owner's
27 period of ownership, whichever is less;
- 28 (c) There are no involuntary liens, including but not limited to construction liens on the
29 property;
- 30 (d) No notices of default or other evidence of property-based debt delinquency have been
31 recorded during the preceding three years, or the property owner's period of ownership,
32 whichever is less;

1 (e) All mortgage debt on the property is current and not delinquent; and

2 (f) That the property owner is not currently in bankruptcy proceedings.

3 (4) *Qualifying Improvements.* The PACE Agency/Authority/District and Third-Party
4 Administrator will finance energy efficiency, renewable energy and wind resistant
5 improvements that are permanently affixed to the property as more specifically described
6 in the PACE Statute. All improvements and products should identify efficiency standards
7 established by the U.S. Department of Energy, the U.S. Environmental Protection Agency,
8 or Florida state agencies as applicable. All Qualifying Improvements must comply with
9 the PACE Statute for energy efficiency, renewable energy, and wind resistance or other
10 improvements as permissible by law. PACE Agencies/Authorities/Districts and Third-
11 Party Administrators shall establish procedures confirming that the property owner
12 applying for financing through the PACE Agencies/Authorities/Districts and Third-Party
13 Administrators intends to install Qualifying Improvements, and that at the time of funding
14 such improvements have been installed.

15 (5) *Inquiries and Complaints.*

16 (a) *Complaints.* PACE Agencies/Authorities/Districts and Third-Party Administrators are
17 required to receive, manage, track, timely resolve, and report on complaints from
18 property owners regarding the funded work performed by the contractors. PACE
19 Agencies/Authorities/Districts and Third-Party Administrators must investigate and
20 mediate disputes between property owners and contractors in a timely manner.

21 (b) *Payment inquiries.* PACE Agencies/Authorities/Districts and Third-Party
22 Administrators are required to respond to inquiries and resolve any issues in a timely
23 manner, related to payments, including but not limited to prepayments and payment
24 reconciliation.

25 (c) *Review.* In the event that ten percent or more of a PACE
26 Agency's/Authority's/District's and Third-Party Administrator's projects result in
27 complaints or disputes, or such complaints or disputes remain unresolved six (6)
28 months after completion of a project, the County may review the PACE
29 Agency's/Authority's/District's and Third-Party Administrator's handling of
30 complaints and may request corrective actions or initiate suspension proceedings
31 pursuant to Section 17-508(1).

32 (6) *Data Security.* PACE Agencies/Authorities/Districts and Third-Party Administrators are

1 responsible for taking security measures that protect the security and confidentiality of
2 consumer records and information in proportion to the sensitivity of the information, and
3 as required by state and federal law.

4 (7) *Consumer Privacy.* PACE Agencies/Authorities/Districts and Third-Party Administrators
5 must develop and maintain a privacy policy that complies with local, state, and federal law
6 and, in particular, shall provide a property owner the ability to opt-out of having the property
7 owner's information shared with third-parties, except where expressly permitted by local,
8 state, and federal law.

9 (8) *Marketing and Communications.*

10 (a) A person or entity may not engage in PACE marketing practices that are or could appear
11 to be unfair, deceptive, abusive, or misleading, or that violate applicable laws or
12 regulations, that are inappropriate, incomplete or are inconsistent with the PACE
13 ordinance. Violations are subject to code enforcement proceedings.

14 (b) A person or entity may not create, use, or distribute PACE marketing material that conveys
15 the following messages: that PACE financing is a free form of public assistance, that
16 PACE financing is a Palm Beach County government program, that PACE financing will
17 be repaid by the subsequent owner of the qualifying residential property, that the
18 improvements will pay for themselves, or that the property owner will receive tax benefits
19 from the program. Violations are subject to code enforcement proceedings.

20 (9) *Protected Classes.* PACE Agencies/Authorities/Districts and Third-Party Administrators shall
21 not discriminate against individuals on the basis of race, color, ancestry, disability, national
22 origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender
23 identity and expression, or genetic information.

24 (10) *Contractor Management.*

25 (a) No contractor shall contract for or install any Qualifying Improvement pursuant to the
26 PACE program unless the contractor is properly licensed, registered, certified, or
27 otherwise legally authorized to perform such work. A PACE Agency/Authority/District
28 or Third-Party Administrator may not finance Qualifying Improvements that are
29 installed by contractors that a PACE Agency/Authority/District or Third-Party
30 Administrator knows, or should know, are not properly licensed, registered, certified,
31 or otherwise legally authorized to perform such work. PACE
32 Agencies/Authorities/Districts and Third-Party Administrators must obtain the

1 contractor's written agreement that the contractor shall comply with each of the
2 following conditions:

- 3 1. Be licensed and insured pursuant to the applicable state and local requirements;
- 4 2. Agree to comply with all program requirements and marketing guidelines; and
- 5 3. Act in good faith to timely resolve property owner complaints.

6 (b) PACE Agencies/Authorities/Districts and Third-Party Administrators for Residential
7 Properties must execute a contractor agreement with all contractors for which they intend
8 to use to complete Residential PACE projects. The contractor agreement must address at
9 a minimum the following:

- 10 1. Agree to not present a higher price for a Qualifying Improvement on financed by
11 a PACE financing agreement than the contractor would otherwise reasonably
12 present if the Qualifying Improvement were not being financed through a PACE
13 financing agreement;
- 14 2. Branding and/or marketing guidelines, including imposing enhanced monitoring
15 at a minimum for contractors found to have violated the marketing and
16 communications provisions;
- 17 3. Consumer protection code of conduct for the contractor;
- 18 4. PACE training for contractors that the contractor must attend in order to become
19 an eligible contractor; and
- 20 5. Suspension and termination provisions.

21 (c) *Kickbacks*. PACE Agencies/Authorities/Districts and Third-Party Administrators shall
22 have and shall strictly enforce anti-kickback policies and procedures that prohibit direct
23 financial or other monetary incentives to contractors in exchange for or related to such
24 contractor being awarded work under a PACE Program, excepting payment for the
25 contractor's installation of Qualifying Improvements.

- 26 1. Any person or entity who accepts, provides or facilitates kickback payments
27 or incentives in exchange for work being awarded under a PACE program
28 commits a violation of this ordinance.

29 (d) For Residential and Non-Residential Projects Less than \$250,000, before disbursing
30 funds to a PACE contractor, PACE Agencies/Authorities/Districts or Third-Party
31 Administrators must first confirm the applicable work or service has been completed,
32 either through written certification from the property owner, a recorded telephone call

1 with the property owner, time-stamped and geo-tagged photos, or a site inspection
2 through third-party means. For Non-Residential Projects equal to or larger than
3 \$250,000, PACE Agencies/Authorities/Districts and Third-Party Administrators shall
4 disburse funds in accordance with the terms of their finance agreement.

5 (11) *Financing.* PACE Agencies/Authorities/Districts and Third-Party Administrators must
6 establish pricing rules and enforcement mechanisms to ensure property owners are protected
7 from excessive or unjustified prices and charges. In addition, PACE
8 Agencies/Authorities/Districts and Third-Party Administrators must require compliance with
9 each of the following conditions prior to the issuance of any final disbursement to the
10 contractor:

- 11 (a) Contractors have certified that any necessary permits have been obtained;
- 12 (b) Verification that the Qualifying Improvements have been installed; and
- 13 (c) The property owner and the contractor have signed a final inspection and/or certificate
14 of completion that all improvements have been installed to the property owner's
15 satisfaction.

16 (12) *Reporting.* Each PACE Agency/Authority/District and Third-Party Administrator must
17 provide a report to the County on a quarterly calendar basis, due 30 days following the close
18 of the quarter. Each PACE Agency/Authority/District and Third-Party Administrator shall
19 utilize the County-supplied spreadsheet for the report. This spreadsheet shall not be modified,
20 though additional information may be supplied in a separate spreadsheet. The quarterly reports
21 shall include, at a minimum, the following information:

- 22 (a) Dates of the reporting period;
- 23 (b) List of PACE projects (including addresses including municipal jurisdiction, parcel
24 control numbers, financed amount, annual estimated payments, interest rate,
25 assessment duration, and project description) started during the reporting period,
26 separated by building type (e.g., single family, multifamily, retail, office, industrial,
27 etc.);
- 28 (c) List of PACE projects (including addresses including municipal jurisdiction and parcel
29 control numbers) completed during the reporting period, separated by building type
30 project (e.g., single family, multifamily, retail, office, industrial, etc.), For each project,
31 specify:
 - 32 1. The Qualifying Improvements made;

- 1 2. Project start date and completion date;
- 2 3. The projected energy savings and/or amount of potential renewable energy to be
- 3 generated;
- 4 4. Financial information such as projected cost per kilowatt hour saved/generated or
- 5 estimated utility bill savings;
- 6 5. Other resource savings if data is available;
- 7 6. Audits performed detailing the audit results, if applicable to the project;
- 8 7. Total amount financed, including total amount (in dollars) of financing spent on
- 9 each improvement, if multiple; and
- 10 8. Annual estimated payments.
- 11 (d) Number of actual or estimated jobs created during the reporting period, including local
- 12 versus non-local jobs and permanent versus temporary jobs;
- 13 (e) Number of applications declined during the reporting period;
- 14 (f) Resolved and unresolved complaints and/or contractor issues and status, including
- 15 category of each complaint and/ or issue, when the complaint/issue was filed, and when
- 16 the complaint/issue was resolved;
- 17 (g) Assumptions and methodologies used for energy savings, renewable energy, cost per
- 18 kilowatt hour saved/generated, other resource savings, audits, and jobs calculations
- 19 under this subsection, including third-party sources and methodologies. Describe any
- 20 changes in the methodologies and assumptions from the previous reporting period. If
- 21 available, PACE Agencies/Authorities/Districts and Third-Party Administrators shall
- 22 use nationally accepted standardized assumptions and methodologies so that reporting
- 23 is consistent. If no national standards are available, PACE
- 24 Agencies/Authorities/Districts and Third-Party Administrators shall work with the
- 25 County to agree upon and use the same assumptions and methodologies so that the
- 26 County has a consistent data. If the PACE Agencies/Authorities/Districts and Third-
- 27 Party Administrators are unable to agree on uniform assumptions and methodologies,
- 28 the County reserves the right to cite reputable, nationally recognized standard
- 29 assumption and methodology sources for these calculations that the PACE
- 30 Agencies/Authorities/Districts and Third-Party Administrators must use within 90 days
- 31 of receipt, going forward with data collection;
- 32 (h) Just value of property as determined by the county property appraiser for the most

- 1 recent calendar year;
- 2 (i) Fair Market Value used during underwriting;
- 3 (j) Method for determining the Fair Market Value used during underwriting and proof of
- 4 that determination available upon request; and
- 5 (k) Date of Confirmed Terms Call.

6 (13) *Data and Document Requests.* Each PACE Agency/Authority/District and Third-Party

7 Administrator must comply with reasonable requests for additional data or documents from

8 the County and provide such data within 60 days of the request, consistent with federal and

9 state law.

10 (14) *Incomplete Data or Late Reporting.* In the event any PACE Agency/Authority/District

11 or Third-Party Administrator fails to provide complete data or provide reports by the stated

12 due dates, they will be given 60 days to cure the defect, after which written notice will be

13 given prior to any administrative act to suspend. The suspension will take place 30 days

14 after this notice is given. After such defect, any new project starts from the PACE

15 Agency/Authority/District or Third-Party Administrator of which the reports are

16 incomplete will be suspended until the complete data is provided. The right to cure is an

17 option before suspension or termination will occur. Suspension will be done by the County

18 Administrator or designee.

19 (15) *Administrative Fees.* PACE Agencies/Authorities/Districts and Third-Party

20 Administrators will be responsible for paying administrative fees to the County on an

21 annual basis. The Board will establish fees for administrative tasks carried out by County

22 staff, including interlocal agreements, indemnification agreement for new PACE

23 Agencies/Authorities/Districts and Third-Party Administrators, Residential projects

24 funded during the year, and Non-Residential projects funded during the year. PACE

25 Agencies/Authorities/Districts and Third-Party Administrators shall send an annual

26 summary of all projects completed within that year and provide a payment per project to

27 the County.

28 **Section 5. Chapter 17, Article XVII, Section 17-508, entitled “ENFORCEMENT” is**

29 **hereby created as follows:**

30 (1) *Suspension or Termination of PACE Agency/Authority/District and Third-Party*

31 *Administrators.* In the event any PACE Agency/Authority/District or Third-Party

32 Administrator fails to incorporate and continually provide for all of the foregoing service

1 components or to otherwise abide by the provisions of this Ordinance and/or the interlocal
2 agreement the County, in its sole discretion, may suspend or terminate the interlocal
3 agreement or by other means prohibit a PACE Agency/Authority/District or Third-Party
4 Administrator from operating in the County's jurisdiction and support of the County at any
5 time upon written notice to that PACE Agency/Authority/District or Third-Party
6 Administrators. Suspension, termination or prohibition will be done by the County
7 Administrator or designee. Any project that has been initiated or received PACE financing
8 as of the time of suspension or termination shall be permitted to be completed, and continue
9 until such time that all outstanding debt has been satisfied.

10 (2) Code Enforcement Officers and any other enforcement personnel as authorized by the
11 County Administrator are authorized to enforce Section 17-507(a)(7), *Marketing and*
12 *Communications*, and Section 17-507(a)(9)(c), *Kickbacks*, of this Ordinance.

13 (3) Code Enforcement Officers and other authorized enforcement personnel do not have to
14 provide a reasonable time period to correct the violation prior to issuing a citation or notice
15 of violation and may immediately issue a citation or notice of violation if a repeat violation
16 is found or if the code enforcement officer has reason to believe that the violation presents
17 a serious threat to the public health, safety, or welfare, or if the violation is irreparable or
18 irreversible.

19 (4) A violation of Section 17-507(a)(7), *Marketing and Communications*, or Section 17-
20 507(a)(9)(c), *Kickbacks*, of this Ordinance may be enforced pursuant to terms and
21 procedures in Chapter 162, F.S., Local Government Code Enforcement Boards Act, and
22 Article 10 of the Palm Beach County Unified Land Development Code, all as may be
23 amended or recodified from time to time. Pursuant to Section 162.09(2)(d), F.S., the Palm
24 Beach County Special Master may impose fines that shall not exceed one thousand dollars
25 (\$1,000.00) per day per violation for a first violation, five thousand dollars (\$5,000.00) per
26 day per violation for a repeat violation, and up to fifteen thousand dollars (\$15,000.00) per
27 violation if the Palm Beach County Special Master finds the violation to be irreparable or
28 irreversible in nature. In determining the amount of the fine, the Palm Beach County
29 Special Master shall consider:

- 30 (a) The gravity of the violation;
- 31 (b) Any actions taken by the violator to correct the violation; and
- 32 (c) Any previous violations committed by the violator.

- 1 (5) A violation of Section 17-507(a)(7), *Marketing and Communications*, or Section 17-
2 507(a)(9)(c), *Kickbacks*, of this Ordinance may also be enforced pursuant to the procedures
3 and penalties of Chapter 162, F.S., Supplemental County or Municipal Code or Ordinance
4 Enforcement Procedures as may be amended or recodified from time to time, as follows:
- 5 (a) The County court shall have jurisdiction over all civil citations issued pursuant to this
6 Ordinance.
- 7 (b) The County shall maintain a system by which violators are given written notice of all
8 violations.
- 9 (c) Code Enforcement Officers and other authorized enforcement personnel who have
10 reasonable cause to believe that a person has committed an act in violation of this
11 Ordinance shall issue a civil citation. If the person who has committed the violation does
12 not contest the citation, the fines shall be \$400.00 but may be increased to \$500 if the
13 fine is contested in county court.
- 14 (d) Payment shall be made, either by mail or in person, to the location and within the time
15 specified upon the citation. If such person follows this procedure, the person shall be
16 deemed to have admitted to the infraction and to have waived the right to a hearing on
17 the issue of the commission of the infraction.
- 18 (e) Any person who fails to make payment within the time period specified on the citation
19 shall be deemed to have waived the right to pay the civil penalty as set forth in the
20 citation and shall appear before the county court.
- 21 (f) Any person who elects to appear before the court to contest the citation shall be deemed
22 to waive the right to pay the civil penalty. The court, after a hearing, shall make a finding
23 as to whether a violation has occurred and may impose a civil penalty not to exceed five
24 hundred dollars (\$500.00) plus court costs.
- 25 (g) If a person fails to pay the civil penalty or fails to appear in court to contest the citation,
26 he shall be deemed to have waived his right to contest the citation and, in such case, a
27 default judgment shall be entered and the judge may impose a penalty up to the maximum
28 civil penalty of five hundred dollars (\$500.00) plus court costs.
- 29 (h) Any person who refuses to sign and accept a citation issued pursuant to this Section shall
30 be guilty of a misdemeanor of the second degree, punishable as provided by Sections
31 775.082 or 775.083, F.S.

1 (6) In addition to the sanctions contained herein, the County may take any other appropriate legal
2 action to enforce the provisions of this Ordinance, including, but not limited to, cease and
3 desist orders, instituting civil action, and requesting temporary and permanent injunctions.

4 (7) It is the purpose of this Ordinance to provide additional cumulative remedies.

5 (8) Each day in violation of the provisions of this Ordinance shall constitute a separate violation
6 or offense and be punishable as such.

7 **Section 6. REPEAL OF LAWS IN CONFLICT:**

8 All local laws and ordinances in conflict with any provisions of this Ordinance are
9 hereby repealed to the extent of such conflict.

10 **Section 7. SAVINGS CLAUSE:**

11 Notwithstanding the section of this ordinance regarding repeal of laws in conflict, all
12 administrative and court orders, fines, and pending enforcement issued pursuant to this
13 authority and procedures established by Chapter 17, Article XVII, of the Palm Beach County
14 Code shall remain in full force and effect.

15 **Section 8. SEVERABILITY:**

16 If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any
17 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
18 such holding shall not affect the remainder of this Ordinance.

19 **Section 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

20 The provisions of this Ordinance shall become and be made a part of the Palm Beach
21 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
22 such, and the word Ordinance may be changed to section, article, or other appropriate word.

23 **Section 11. PENALTY:**

24 Any violation of any portion of this Ordinance shall be punishable as provided by law.

25 **Section 12. CAPTIONS:**

26 The captions, section headings and section designations used in this Ordinance are for
27 convenience only and shall have no effect on the interpretation of the provisions of this
28 Ordinance.

29 **Section 13. EFFECTIVE DATE:**

30 The provisions of this Ordinance shall become effective one hundred and eighty days
31 (180) after filing with the Department of State.

32

1 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm
2 Beach County, Florida, on this the ____ day of _____, 20____.

3

4 **JOSEPH ABRUZZO, CLERK**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

5

6

7

8

9 **By:**_____

By:_____

10 **Deputy Clerk**

Robert Weinroth, Mayor

11

12

13

14

15 **APPROVED AS TO FORM AND**

16 **LEGAL SUFFICIENCY**

17

18

19

20 **By:**_____

21 **County Attorney**

22

23 **EFFECTIVE DATE: Filed with the Department of State on the ____ day of**
24 _____, 20____.

RESOLUTION No. 2022-____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING THE OFFICIAL ADMINISTRATIVE FEE SCHEDULE TO BE CHARGED FOR REVIEWING AND PROCESSING PACE INTERLOCAL AGREEMENTS, PACE INDEMNIFICATION AGREEMENTS, AND RESIDENTIAL AND NON-RESIDENTIAL PACE PROJECTS ; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, The Palm Beach County (PBC) Ordinance No. 2017-102 established the
2 Property Assessed Clean Energy (PACE) program for Residential and Non-Residential Properties
3 to provide mechanisms for funding energy efficiency, renewable energy, and other types of
4 improvements to residential and commercial properties in the County; and,

5 **WHEREAS**, the County PACE Program is administered by the Office of Resilience; and,

6 **WHEREAS**, The Palm Beach County Ordinance No. 2022-____ provides that the Office
7 of Resilience fees shall be adopted by the Board of County Commissioners; and,

8 **WHEREAS**, it is desirable to recover costs of Office of Resilience services resulting from
9 the administration of the Palm Beach County PACE Program; and,

10 **WHEREAS**, as a result of the amended PACE Program Ordinance, the applicable new
11 administrative fees shall apply; and,

12 **WHEREAS**, the Fee Schedule will be adjusted each year according to staff hours spent on
13 administration of the PACE Program in the previous year, so that fees do not lag far behind the
14 cost of the program administration; and,

15 **WHEREAS**, it is necessary for the Office of Resilience to establish fees for the cost of
16 providing program administration as shown in Attachment A.

17 NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
18 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

19 **SECTION 1.**

20 The official schedule of fees for administration of the Palm Beach County PACE Program
21 including establishing interlocal agreements and indemnification agreements with PACE
22 Agencies/Authorities/Districts, and administrative tasks per Residential and Non-Residential

23 PACE Project completed by each year by PACE Agency/Authority/District is hereby established
24 as shown in Attachment A.

25 **SECTION 2.**

26 The Office of Resilience has the authority to publish and update as necessary a consolidated
27 Palm Beach County PACE Program Fee Schedule, reflecting fees approved by the Board of
28 County Commissioners by Resolution.

29 **SECTION 3.**

30 All resolutions or proceedings or parts thereof in conflict with the provisions of this
31 resolution are hereby repealed.

32 **SECTION 4.**

33 Should any section, paragraph, sentence clause or word of this resolution be held to be
34 unconstitutional, inoperative, or void, such holding shall not reflect the remainder of the resolution.

35 The forgoing resolution was offered by _____, who moved its
36 adoption. The motions was seconded by _____, and upon being put to vote,
37 the vote was as follows:

District 1:	Maria G. Marino	_____
District 2:		_____
District 3:	Dave Kerner	_____
District 4:		_____
District 5:	Maria Sachs	_____
District 6:		_____
District 7:	Mack Bernard	_____

The Mayor thereupon declared the resolution was duly passed on ___ of _____, 2022.

Filed with the Clerk of the Board of County Commissioners on ___ of _____, 2022.

This resolution is effective on June 1, 2023.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

BY: 
COUNTY ATTORNEY

BY: _____
DEPUTY CLERK

ATTACHMENT 3

Office of Resilience Proposed Fee Schedule*

Reso	Fee Code	Fee Description	Amount
2022-XXX		Execution of a PACE Interlocal Agreement	\$500.00
2022-XXX		Amendment of a PACE Interlocal Agreement	\$500.00
2022-XXX		Execution of a PACE Indemnification Agreement	\$500.00
2022-XXX		Amendment of a PACE Indemnification Agreement	\$500.00
2022-XXX		Per Residential PACE Project Financed	\$25.00
2022-XXX		Per Non-Residential PACE Project Financed	\$25.00

*These fees are to be paid by PACE Agencies/Authorities/Districts to the Palm Beach County Office of Resilience in a lump sum for all projects completed within that calendar year. They are to be paid within 60 days of the end of each calendar year.

MEMORANDUM

DATE: October 28, 2022

TO: Palm Beach County Board of County Commissioners

CC: County Attorney Denise Coffman; County Administrator Verdenia C. Baker;
Assistant County Administrator Patrick Rutter; Office of Resiliency Director Megan Houston

FROM: Assistant County Attorney Ryan Maher RM

Through: Chief Assistant County Attorney Michael Jones *MWJ*

RE: Overview of the Procedure for Discontinuing Palm Beach County's Property Assessed Clean Energy (PACE) Program

At the October 18, 2022, Palm Beach County Board of County Commissioners ("Board") meeting, the Board approved on preliminary reading and granted permission to advertise at its November 15, 2022 meeting, an Ordinance amending Palm Beach County Code, Chapter 17, Article XVII (Ordinance 2017-012) regarding the County's PACE Program. Also at the October 18, 2022 meeting, the Board directed the County Attorney's Office to prepare a memo describing the process for ending the PACE program for the Board's consideration at the November 15th meeting. As more fully set forth below, it is the opinion of this office that the Board can end the PACE program within the County's jurisdiction by terminating the applicable Interlocal Agreements (ILAs) with each PACE District and also repealing the companion authorizing resolutions.

Background

I. Statutory Authority

Section 163.08, Florida Statutes, (the "PACE Statute") creates the framework for PACE programs to operate in Florida. Under this section, local governments¹ are authorized to provide financing for qualifying improvements² to property owners whose properties are located within the legal boundaries of the local government. Per the PACE Statute, a local government's funding for qualified improvements is secured through financing agreements which allow local governments to levy non-ad valorem assessments against the property receiving the qualified improvement (the "benefitting property"). Local governments must submit the non-ad valorem assessments on a roll to the Tax Collector's Office for certification to secure repayment through the benefitting property owner's tax bill.³ The PACE Statute also states that all PACE applications and financing agreements are subject to local government ordinance or resolution.

¹ F.S. 163.08 defines "Local government" as "a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to 163.01(7)," and authorizes a PACE program to be "administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government."

² Qualifying improvements are improvements to real property that relate to energy conservation and efficiency, renewable energy, and/or wind resistance.

³ Subsection 4 of the PACE Statute requires non-ad valorem assessments to be collected pursuant to s. 197.3632 F.S., entitled the "Uniform method for the levy, collection, and enforcement of non-ad valorem assessments." Per

II. PACE Ordinance

In anticipation of allowing PACE Districts to provide qualified improvement financing pursuant to the PACE Statute within its legal boundaries, the County adopted Ordinance 2017-012 (the "PACE Ordinance") on April 4, 2017. Pursuant to Section 3 of the Ordinance, the rules and guidelines contained therein apply to all PACE Districts operating in unincorporated areas of Palm Beach County, and in all Palm Beach County municipalities that have not adopted their own PACE ordinances ("PBC PACE Boundaries"). The County's stated intent in adopting the Ordinance was to "establish qualifications and consumer protection disclosure requirements for PACE programs that provide financing for qualifying improvements in accordance with Section 163.08, Florida Statutes, and provisions of this Ordinance." Section 5 of the Ordinance, entitled "Pace Program Authorization," contains the procedure for PACE Districts to be authorized to operate in County, stating:

Pace agencies/authorities/districts offering financing for Qualifying Improvements pursuant to this Ordinance shall be approved by the County and authorized through interlocal agreements to provide financing subject to the requirements of this Ordinance and the PACE Statute. A resolution indicating the County's desire to join a PACE agency/authority/district shall be prepared by County staff and presented to the Board for consideration with each interlocal agreement. The interlocal agreements shall include specific terms and conditions for PACE agencies/authorities/districts to operate within Palm Beach County.

III. Resolutions and Interlocal Agreements

On August 15, 2017, the County simultaneously executed four (4) separate resolutions and accompanying ILAs authorizing the following PACE Districts to levy non-ad valorem assessments on properties within the PBC PACE Boundaries:⁴ Florida Green Finance Authority (FGFA); Florida Resiliency and Energy District (FRED); Green Corridor Property Assessed Clean Energy (Green Corridor); and Florida Pace Funding Agency (FPFA).⁵ In each of the ILAs, the PACE Districts are required to operate their PACE program in compliance with the PACE Ordinance⁶.

F.S. 197.3632(5), if the tax collector's office discovers errors or omissions on such roll, it may request the local governing board to file a corrected roll or a correction of the amount of any assessment.

⁴ Per Section 3 of the PACE Ordinance (which is incorporated by reference in each County ILA) and sections 9, 12 and 13 of FGFA, Green Corridor and FRED ILA's, which state "Pursuant to this Interlocal Agreement, the boundaries of [the PACE District] include the legal boundaries of the County. . . [the PACE District] will levy voluntary non ad valorem special assessments on benefitted properties within the boundaries pursuant to the Ordinance" and "The [PACE District] also acknowledges that all incorporated municipalities in the county that have not adopted an ordinance governing any or all of the subject matter of the Ordinance will be included in the Program." Per Section 2.01 of FPFA's ILA, it acknowledges that by execution of the ILA it is "approved to serve, to provide its lawful services, and lawfully conduct its affairs within the County," and it defines participating municipalities as "municipalities that have not adopted an ordinance governing any or all of the subject matter of the Ordinance."

⁵ Resolutions No. 2017-1101 and Exhibit 1 (FGFA); No. 2017-1097 and Exhibit 1(FRED); No. 2017-1107 and Exhibit 1 (Green Corridor); and No. 2017-1104 and Exhibit 1 (FPFA)

⁶ Section 7 of FRED's ILA stating, "The Parties agree that, the program to be offered in the County and participating municipalities will comply with program guidelines and consumer protections set forth in the Ordinance and FRED's guidelines, as may be amended from time to time. If there is a conflict between FRED's guidelines and the Ordinance, the Ordinance shall control." Section 7 of the Green Corridor and FGFA ILA's, and Section 2.04(A) of FPFA's ILA contain substantially similar language. Furthermore, pursuant to the PACE Ordinance, the "PACE Program shall mean the County's provision through interlocal agreements with PACE agencies/authorities/districts offering financing for qualifying improvements as approved by the State of Florida pursuant to F.S. § 163.08, further refined in this article, as may be amended by law."

Each PACE District has authorized Third Party Administrators to execute financing agreements under the terms of the ILAs and the Ordinance. Third Party Administrators are required to execute indemnification agreements with the County prior to operating in the County. The Districts' authorized Third Party Administrators are listed below, with those Districts and Third Party Administrators that are currently active underlined⁷:

- FGFA: Renew Financial Group LLC
- FRED: Stonehill PACE, LLC; Renovate America Inc; Greenworks Lending; Enhanced PACE Finance LLC
- Green Corridor: Ygrene Energy Fund Florida LLC (Ygrene)
- FPFA: CounterPointe Energy Solutions LLC; CounterPointe Sustainable Real Estate; FortiFi Financial Inc; Home Run Financing

Procedure for Ending the County's PACE Program

By taking no other action than repealing the PACE Ordinance, the County would relinquish its ability to enforce the added requirements and consumer protections established through the PACE Ordinance. PACE Districts and their Third Party Administrators would still be able to operate their respective PACE programs and provide PACE financing by levying non-ad valorem assessments in the County pursuant to their powers and rights under the ILAs. Under this scenario, however, the County would have lost its authority to require PACE Districts and Third Party Administrators to operate under stricter guidelines than those included in their own PACE programs and the PACE Statute.

Instead, to effectively end the PACE program within the PBC PACE Boundaries⁸, the County must first start by terminating the ILAs and repealing their respective resolutions. Pursuant to each of the ILAs, the County must provide sixty (60) days written notice of the County's intent to terminate the ILAs, and PACE Districts would be prohibited from executing any new financing agreements after the termination date. Once the ILAs are terminated, PACE Districts would only be authorized to levy non-ad valorem assessments for qualifying improvements on properties within the PBC PACE Boundaries that have executed financing agreements prior to the termination date. PACE Districts would be also authorized to continue to collect non-ad valorem assessments derived from previously executed financing agreements until the obligations under those agreements end.⁹

⁷ The Office of Resiliency provided information regarding the active status of PACE Districts and Administrators.

⁸ Termination of the ILAs will not affect any ILAs that the PACE Districts have entered into, or enter into in the future, with any individual municipalities. Green Corridor, FRED and FGFA's founding ILA's all provide that the jurisdiction of the PACE Districts shall include the boundaries of local governments that are parties to the ILA. FPFA has a different position, per Section 2.01 of its founding ILA, "[t]he boundaries or non exclusive jurisdiction of the Agency shall embrace the territory of any county or municipality throughout the state within which any person owning a property therein determines to enter into a financing agreement evidencing the levy and imposition of a non-ad valorem assessment for a Qualifying improvement funded or financed by the Agency." However, because the PACE Statute states that all applications and financing agreements are subject to a local government's ordinance or resolution and the PACE Ordinance requires that all PACE Districts enter into an ILA to operate in the County, FPFA may not operate in unincorporated Palm Beach County or municipalities that have not adopted their own PACE Ordinances without an ILA.

⁹ Section 14 of the FRED and FGFA ILAs; Section 15 of the Green Corridor ILA; and Section 3.03 of the FPFA ILA.