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

Between

CITY OF DELRAY BEACH, FLORIDA,

and

THE FLORIDA PACE FUNDING AGENCY

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

THIS NON-EXCLUSIVE INTERLOCAL AGREEMENT is made and entered into as of _____ 1, 20__ (the "Interlocal Agreement" or "this Agreement"), by and between the City of Delray Beach, Florida (the "City"), and the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, established pursuant to Section 163.01(7)(g), Florida Statutes, (the "Agency"), by and through their respective governing bodies. The purpose of this Agreement is to better secure, in an efficient and uniform manner, for local Property Owners (as hereinafter defined) the privileges and benefits provided for herein and by law, and particularly by Section 163.08, Florida Statutes, as amended (the "Supplemental Act"), relating to the voluntary determination by affected property owners to obtain and finance certain improvements to property for energy efficiency, renewable energy or wind resistance.

W I T N E S S E T H:

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

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

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

"Board of Directors" means the governing body of the Agency.

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

"Agency Charter Agreement" or "Charter" means, unless the context otherwise requires, the separate interlocal agreement which created and established the Agency, including any amendments, supplements or restatements thereto executed and delivered in accordance with the terms thereof.

“City” means the City of Delray Beach, Florida, a municipal corporation and general purpose local government duly organized and existing under and by virtue of the laws of the State of Florida.

“Financing Agreement” means the agreement authorized hereunder and by the Supplemental Act (specifically including Section 163.08(4) thereof) between the Agency and a Property Owner providing for the funding to finance Qualifying Improvements and the imposition of a non-ad valorem Special Assessment against the Property Owner’s assessed property.

“Financing Documents” shall mean the resolution or resolutions duly adopted by the Agency, as well as any indenture of trust, trust agreement, interlocal agreement or other instrument relating to the issuance or security of any bond or Obligations of the Agency and any agreement, pursuant to which the Property Owners obtain access to funds provided by the Agency.

“Interlocal Agreement” means this interlocal agreement, or if the context requires a similar interlocal agreement between the Agency and any municipality, county or other government or separate legal entity permitted by the Supplemental Act to enter into Financing Agreements as provided for therein. This Agreement simply presents a better means of coordination and communication among local governments as the Agency serves and makes available, in a non-exclusive manner, funding and financing of Qualifying Improvements by the Agency to interested private property owners as provided by general law.

“Obligations” shall mean a series of bonds, obligations or other evidence of indebtedness, including, but not limited to, notes, commercial paper, certificates or any other obligations of the Agency issued pursuant hereto, or under any general law provisions, and pursuant to the Financing Documents. The term shall also include any lawful obligation committed to by the Agency or pursuant to an interlocal agreement with another governmental body or agency and/or warrants issued for services rendered or administrative expenses.

“Pledged Funds” shall mean (A) the revenues derived from Special Assessments and other moneys received by the Agency or its designee relating to some portion thereof, (B) until applied in accordance with the terms of the Financing Documents, all moneys in the funds, accounts and sub-accounts established thereby, including investments therein, and (C) such other property, assets and moneys of the Agency as shall be pledged pursuant to the Financing Documents; in each case to the extent provided by the Board of Directors pursuant to the Financing Documents. The Pledged Funds pledged to one series of Obligations may be different than the Pledged Funds pledged to other series of Obligations. Pledged Funds shall not include any general or performance assurance fund or account of the Agency.

“Program” means the program operated by the Agency to provide financing for Qualifying Improvements undertaken within this State. The Agency’s Program is non-exclusive; and, the City may embrace or authorize its own or any similar program under the Supplemental Act as the City sees fit and in the interest of the public.

"Property Owner" means, collectively, all of the record owners of real property subject to a Financing Agreement.

"Qualifying Improvements" means those improvements for energy efficiency, renewable energy, wind resistance, or such as described in the Supplemental Act authorized to be affixed and/or installed by the Property Owner of an affected property. The term does not include similar improvements underwritten or financed by local, state or federal programs including, but not limited to State Housing Initiatives Partnership or SHIP Program, which are not secured by a special or non-ad valorem assessment.

"Special Assessments" means the non-ad valorem assessments authorized by the Supplemental Act and levied by the Agency on property owned by a Property Owner who has entered into a Financing Agreement with the Agency to fund the costs of Qualifying Improvements.

"Supplemental Act" means the provisions of, and additional and supplemental authority described in, Section 163.08, Florida Statutes, as amended.

SECTION 1.02 CONSTRUCTION.

(A) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date this Agreement is executed; and the term "hereafter" shall mean after the date this Agreement is executed.

(B) Each recital, covenant, agreement, representation and warranty made by a party herein shall be fairly deemed to be material and to have been relied on by the other party to this Agreement. Both parties have independently reviewed this Agreement with their own counsel and covenant that the provisions hereof shall not be construed for or against either the City or the Agency by reason of authorship.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the texts of the several Articles and Sections of this Interlocal Agreement and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

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

(A) The State Legislature has determined there is a compelling state interest in enabling private property owners to voluntarily finance Qualifying Improvements with local government assistance. The actions authorized by the Supplemental Act, including the financing of Qualifying Improvements through the execution of Financing Agreements and the related imposition of a Special Assessment, have been determined by the Legislature as reasonable and necessary for the prosperity and welfare of the State, and its property owners and inhabitants.

(B) The Agency has provided to the City a binding Final Judgment that expressly evidences the Agency is distinct from the City and that the City shall not in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency or its agents, and the Agency has no independent power to obligate the City.

(C) Nothing in this Agreement does, nor shall be construed to empower the Agency to obligate or foist any liability upon the City in any manner, without the express written permission of both parties; and no such permission is included in this Agreement.

(D) The availability of the non-exclusive Program offered by the Agency (without cost to, assumption of liability by or demand upon the credit of the City) and the voluntary participation in the Program by Property Owners provides an alternative financing option to private property owners who choose to finance and repay the costs to provide and install Qualifying Improvements.

(E) The Agency is authorized by law and pursuant to the provisions of the Supplemental Act to undertake the Program.

(F) This Agreement provides an alternative, supplemental and non-exclusive means to encourage and achieve, *inter alia*, immediate local economic development in a manner provided by the Legislature, provide for local commerce and job creation, as well as achieving the compelling State interest and public purposes described in the Supplemental Act.

[Remainder of page intentionally left blank.]

**ARTICLE II
IMPLEMENTATION OF A COMPELLING STATE AND LOCAL INTEREST**

SECTION 2.01. AUTHORITY.

(A) The execution hereof has been duly authorized by the resolution of the governing bodies of each party hereto.

(B) The Agency by this Agreement will and is encouraged to act to provide its lawful services, and lawfully conduct its affairs within the City.

(C) Actions hereunder are expected and intended to better achieve the compelling state interest described in Section 163.08(1), Florida Statutes, and increase local economic development.

SECTION 2.02. CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED. The Agency shall not be empowered or authorized in any manner to create a debt as against the State, county, or any municipality, and may not pledge the full faith and credit of the State, any county, or any municipality. All revenue bonds or debt obligations of the Agency shall contain on the face thereof a statement to the effect that the State, county or any municipality shall not be obligated to pay the same or the interest and that they are only payable from Agency revenues or the portion thereof for which they are issued and that neither the full faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue or refunding bonds under the provisions of law, the Charter Agreement, or any other agreement shall not directly or indirectly or contingently obligate the State, or any county or municipality to levy or to pledge any form of ad valorem taxation or other county or municipal revenues or to make any appropriation for their payment.

SECTION 2.03. ADOPTION OF RATES, FEES AND CHARGES.

(A) The Board of Directors necessarily must adopt or authorize from time to time by resolution such rates, fees or other charges for the provision of the services of the Agency to be paid by the Property Owner pursuant to a Financing Agreement described in the Supplemental Act.

(B) Such rates, fees and charges shall be adopted and revised so as to provide moneys, which, with other funds available for such purposes, shall be at least sufficient at all times to pay the expenses of administering, managing, and providing for the services and administration of the activities of the Agency, to pay costs and expenses provided for by law or the Charter Agreement and the Financing Documents, and to pay the principal and interest on the Obligations as the same shall become due and reserves therefore, and to provide for necessary administration and reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in the Charter Agreement or this Agreement, such rates, fees and charges shall always be sufficient to comply fully with any covenants contained in the Financing Documents.

(C) Such rates, fees and charges may vary from jurisdiction to jurisdiction, but shall be just and equitable and uniform at the time of imposition for the Property Owners within the same class, or within each subscribing local governmental jurisdiction, and may be based upon or computed upon any factor (including, by way of example and not limitation, competitive or market conditions, distinguishing between residential and non-residential properties or uses, distinguishing between variable costs of administrative services and local government cooperation over time) or combination of factors affecting the demand or cost of the services furnished or provided to administer the services and affairs of the Agency as may be determined by the Board of Directors from time to time.

SECTION 2.04. FINANCING AGREEMENTS.

(A) The Agency shall prepare and provide to each participating property owner the form of the Financing Agreement which complies with the Supplemental Act and is in accordance with the Financing Documents as designated by the Board of Directors from time to time.

(B) The Agency, not the City, shall be solely responsible for all matters associated with origination, funding, financing, collection and administration of each of the Agency's Special Assessments.

SECTION 2.05. IMPOSITION OF SPECIAL ASSESSMENTS PURSUANT TO FINANCING AGREEMENTS.

(A) Upon execution by the Property Owners and the Agency, the Financing Agreement or a summary or memorandum thereof shall be recorded by the Agency within five (5) days of execution or as required by Section 163.08(8), Florida Statutes, as amended. The recorded Financing Agreement, or summary or memorandum thereof, provides constructive notice that the non-ad valorem assessment to be levied on the subject property constitutes a lien of equal dignity to ad valorem taxes and assessments from the date of recordation.

(B) In a reasonably cooperative and uniform manner the Agency will provide a digital copy to the property appraiser or tax collector of the recorded Financing Agreement or summary thereof, the most recent property identification number and annual amount of the non-ad valorem assessment along with such other efficient and reasonable information necessary for the tax collector to collect such amounts as a non-ad valorem assessment on behalf of the Agency pursuant to Sections 197.3632 and 163.08, Florida Statutes.

(C) By law the Special Assessments must be collected pursuant to Sections 197.3632 and 163.08, Florida Statutes; and, are not imposed by the City, the property appraiser or the tax collector. The Special Assessments are levied and imposed solely by the Agency, and only then upon voluntary application of a private property owner as expressly enabled, authorized and encouraged by the Supplemental Act to accomplish a compelling state interest with local government assistance. The statutory duties of the property appraiser and the tax collector in each county, under section 197.3632, Florida Statutes, are ministerial and the property appraiser and tax collector are by law without discretion with regard to the collection of the Special

Assessments on the tax notice once the affected private property owner has voluntarily entered into a Financing Agreement with the Agency, and the Agency complies with the requirements of Sections 197.3632 and 163.08, Florida Statutes.

SECTION 2.06. COLLECTION OF SPECIAL ASSESSMENTS.

(A) The Agency as a local government authorized by law to impose the Special Assessments, is also required by law to use the uniform method of collecting such Special Assessments, and shall be solely responsible for professionally coordinating all interface with the tax collector or property appraiser, and minimize to the greatest extent reasonably possible the time, effort and attention of these public officials to accomplish the public purposes and direction of the Supplemental Act.

(B) To advance Program acceptance and to minimize Program participation costs, and because each Property Owner is voluntarily undertaking to achieve and underwrite the unique and compelling State interest and public purposes described in the Supplemental Act, the City and Agency both urge either (1) the waiver of such fees by the tax collector and property appraiser, (2) a charge for only marginal actual costs (which are being passed-through and paid by each voluntarily participating property owner each year); or (3) a flat fee or charge per year per tax parcel for such purposes which shall be paid by the Agency via deduction, by the institutional trustee required by the Financing Documents, or as otherwise reasonably agreed to by the Agency and these parties.

SECTION 2.07. PLEDGE OF PROCEEDS FROM NON AD VALOREM ASSESSMENTS.

(A) The Agency will take such actions as are necessary for the lawful levy of the Special Assessments against all lands and properties specially benefitted by the acquisition, construction and financing of Qualifying Improvements. If any assessment made with respect to any property shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Agency shall be satisfied that any such assessment is so irregular or defective that the same cannot be enforced or collected, the Agency will take all necessary steps to cause a new assessment to be made for the whole or any part of any Qualifying Improvements or against any property specially benefitted by such improvement, to the extent and in the manner provided by law.

(B) Pursuant to the Financing Documents and this Agreement, the Agency shall irrevocably pledge and, to the fullest extent permitted by law, pledge and assign any and all revenues derived from Special Assessments to the repayment of any debt obligation issued by the Agency pursuant to the Financing Documents.

(C) The City shall not incur or ever be requested to authorize any obligations secured by Special Assessments associated with Qualifying Improvements imposed by the Agency.

(D) Each series of Financing Documents shall be secured forthwith equally and ratably by a pledge of and lien upon the Special Assessments. The obligations of the Agency under and pursuant to the Financing Documents shall not be or constitute general obligations

or an indebtedness of the City as "bonds" within the meaning of the Constitution of Florida, but shall be payable from and secured solely by a lien upon and pledge of the Special Assessments as provided herein. Neither the Agency nor any holder of any debt obligation issued by the Agency pursuant to the Financing Documents shall ever have the right to compel the exercise of the ad valorem taxing power of the City, or other taxation in any form, of property therein to pay any amount due under any Financing Documents or any Special Assessment. The Financing Documents shall not constitute a lien upon any property of or in the City's jurisdiction except as to the respective Special Assessments in the manner provided herein and by law.

[Remainder of page intentionally left blank.]

ARTICLE III GENERAL PROVISIONS

SECTION 3.01. INTERLOCAL AGREEMENT PROVISIONS. This Agreement is deemed to be an “interlocal agreement” within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. The parties shall coordinate and file this Interlocal Agreement with the Clerk of the Circuit Court in the county in which the City is located.

SECTION 3.02. DISCLOSURE.

(A) The Agency has provided a copy of (1) the Supplemental Act, (2) the Agency’s Charter Agreement, (3) the Final Judgment in *Fla. PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct. 2011), and (4) other relevant disclosure information and background materials to the City prior to execution hereof. The City, through its own staff and advisors, has independently reviewed and considered the foregoing and other relevant information of its choosing. The City has provided to the Agency a copy of Ordinance No. 13-17 adopted on May 2, 2017 that sets forth regulations and reporting requirements for PACE program administration within the City of Delray Beach, which provisions are hereby acknowledged by the Agency.

(B) The objective of the Agency’s mission is to offer a uniform, standardized and scalable approach that provides efficiencies and economies of scale intended to attract voluntary financing of Qualifying Improvements by private property owners desirous of also achieving, a compelling state interest and stimulate a substantial and meaningful flow of private sector economic activity and new job creation. In doing so under this Interlocal Agreement, the City recognizes the non-exclusive availability of the Agency’s funding and financing program to constituent property owners and the City and Agency covenant to cooperate, coordinate and communicate on an interlocal basis.

(C) The Agency has engaged, and may engage in the future, various advisors, consultants, attorneys or other professionals or firms with recognized and focused expertise necessary to accomplish the Agency’s mission. Each of the various advisors, consultants, attorneys or other professionals engaged by the Agency have openly been, and will in the future be, disclosed to the City. The City and Agency recognize, consider and acknowledge the fact or possibility that one or more of the various professionals or firms may serve as the advisor to the Agency in its mission, and to the City or another client in providing other similar professional services, outside of the provision, funding and financing of Qualifying Improvements. Such circumstance is acceptable and will not be construed as a conflict, be objected to unreasonably, nor be used as the basis for its disqualification of such professionals or firms from any continued or future representation of either party hereto which can otherwise be resolved by a reasonable waiver. No waiver shall apply to litigation or other adversarial proceedings filed against the City.

SECTION 3.03. TERM OF AGREEMENT; DURATION OF AGREEMENT; NO EXCLUSIVITY.

(A) The term of this Interlocal Agreement shall commence as of the date first above written.

(B) The term shall continue so long as the Agency has Obligations outstanding which are secured by Pledged Revenues derived from Financing Agreements relating to any properties within the jurisdiction or boundaries of the City, or the Agency has projects for Qualified Improvements underway therein; the applicable provisions, authority and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the Program and responsibilities of Agency then underway, shall remain in effect and survive any termination until such time as those obligations and all associated remaining Program responsibilities are fulfilled (including, but not limited to, the collection of assessments in due course). Provided, however, the Agency's powers employed and exercised shall be non-exclusive, and the City is free to and reserves the right to enter into or otherwise encourage or commence another program for financing Qualified Improvements using non-ad valorem assessments either under the Supplemental Act or pursuant to its home rule powers and may provide written notice to the Agency at any time of its decision to do so.

(C) Notwithstanding subsection (B), either party may at any time terminate this Interlocal Agreement upon sixty (60) days written notice provided as required by Section 3.05. Provided, however, no termination of this Interlocal Agreement shall preclude the Agency from exercising any of its power or authority after any termination, including without limiting the generality of the foregoing that specifically associated with its mission or collection of any of its Obligations outstanding which are secured by pledged revenues derived from Financing Agreements relating to any properties within the jurisdiction or boundaries of the City. In the event the Agency's rights under this Interlocal Agreement to impose new non-ad valorem assessments shall ever end, then as of the effective date of the termination, all rights and obligations of the parties shall continue as specified in subsection (B) until such time as all Agency's Obligations, and all associated remaining Program responsibilities are fulfilled (including, but not limited to, the collection of assessments in due course).

SECTION 3.04. AMENDMENTS AND WAIVERS. Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the City and Agency.

SECTION 3.05. NOTICES.

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered (or confirmed electronic facsimile transmission) or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the parties at the following addresses:

City: City of Delray Beach
ATTN: City Manager
100 NW 1st. Avenue
Delray Beach, Florida 33444-2612

With a copy to: City of Delray Beach
ATTN: City Attorney
200 NW 1st Avenue
Delray Beach, Florida 33444-2612

Agency: Executive Director
Florida PACE Funding Agency
c/o City of Kissimmee
101 North Church Street, Fifth Floor
Kissimmee, Florida 34741

With a copy to: Program Counsel for the Florida PACE Funding Agency
P.O. Box 14043
Tallahassee, Florida 32317-4043

(B) Any of the parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or confirmed electronic facsimile transmission) or three days after the date mailed.

SECTION 3.06. QUALITY CONTROL AND COMMUNICATION. For quality control purposes the Agency and City desire, and the Agency covenants to continually develop, implement and employ policies, systems and procedures which set or reflect industry standards; with such standards being reasonably expected to change and evolve over time. This Agreement serves to establish an ongoing positive and professional line of communication between staff and agents for the parties and is encouraged. At any time, notwithstanding lack of default or lack of material breach hereunder, each party is encouraged to objectively and specifically communicate to the other in writing as provided for herein any concerns, suggestions or disapproval with performance, policies, systems or procedures being employed by each party concerning the funding and financing of Qualified Improvements. The Agency through its administrator, Executive Director, or a duly authorized designee, will promptly respond in writing to all such communications (reasonably within fifteen (15) days of receipt of any such written communication, but sooner if necessary) from the City and follow-up accordingly; and, also promptly communicate any such response, follow-up, and all related communication to the Board of Directors for review. This paragraph shall not be construed as containing any obligation for the City to receive complaints or concerns about the Agency's performance, policies, systems, or procedures, and the City is requested to and specifically authorized to refer all such complaints or concerns directly to the Agency for a response.

SECTION 3.07. IMMUNITY; LIMITED LIABILITY.

(A) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the parties shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Agreement.

(B) The City and Agency are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(o), Florida Statutes, that certain final judgment in *Fla. PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct. 2011), and this covenant of the parties hereto, the local governments who are either the incorporators, or members of the Agency, or any subsequently served or participating local government shall not be held jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and that the Agency alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. The City and Agency acknowledge and agree that the Agency shall have all of the applicable privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State.

(C) To the extent provided by law, the Agency agrees to indemnify, defend and hold harmless the City from any and all damages, claims, and liabilities arising from the negligence, gross negligence or intentional misconduct of the Agency relating to operation of the Program. Nothing in this Agreement is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing set forth herein shall constitute a waiver of sovereign immunity as set forth in § 768.28, Florida Statutes.

(D) The Agency presents an independent local government funding and financing instrumentality. Neither the City, nor the local governments who are either or both the incorporators of or served by the Agency, nor any subsequently served or participating local government in the affairs of the Agency shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, the Board of Directors or any other agents, employees, officers or officials of the Agency, except to the extent otherwise mutually and expressly agreed upon in writing, and neither the Agency, the Board of Directors or any other agents, employees, officers or officials of the Agency have any authority or power to otherwise obligate either the City, the local governments who are either or both the incorporators or members of the Agency, nor any subsequently served or participating local government in the affairs of the Agency in any manner.

SECTION 3.08. BINDING EFFECT. This Agreement shall be binding upon the parties, their respective successors and assigns and shall inure to the benefit of the parties, their respective successors and assigns.

SECTION 3.09. SEVERABILITY In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 3.10. EXECUTION IN COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 3.11. APPLICABLE LAW.

(A) A breach of this Agreement shall mean a material failure to comply with the Supplemental Act or any covenants or provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach, and shall continue to take all such actions until such breach is cured, or be subject to termination for cause.

(B) At all times the parties may proceed at law or in equity to enforce their rights under this Agreement using all available remedies.

(C) The venue of any legal or equitable action that arises out of or relates to this Agreement shall be in the appropriate state court in Palm Beach County, unless otherwise required by law. In any such action, Florida law shall apply and the parties waive any right to jury trial.

SECTION 3.12. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

[Remainder of page intentionally left blank.]

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

**THE CITY COMMISSION OF THE CITY
OF DELRAY BEACH**

(SEAL)

By: _____
Cary Glickstein, Mayor

Attest:

Approved as to form and legal sufficiency:

Katerri Johnson, City Clerk

R. Max Lohman, City Attorney

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

THE FLORIDA PACE FUNDING AGENCY

(SEAL)



By: _____

Michael H. Steigerwald, Executive Director

A handwritten signature in blue ink, appearing to read "Michael H. Steigerwald", written over a horizontal line.

ATTEST:

A handwritten signature in black ink, appearing to read "Donald T. Smallwood", written over a horizontal line.

Donald T. Smallwood, Assistant Secretary