

Prepared by:

Exhibit 2

Return original or certified
recorded document to:



**BROWARD COUNTY PACE AMENDED AND RESTATED INTERLOCAL AGREEMENT WITH
[REDACTED]
RELATING TO THE FUNDING AND FINANCING OF QUALIFYING IMPROVEMENTS**

This agreement ("Agreement") is between Broward County, a political subdivision of the State of Florida ("County"), and [REDACTED], a [REDACTED] ("Program Administrator") (each a "Party" and collectively referred to as the "Parties").

RECITALS

- A. The Agreement was entered into pursuant to Section 163.01, Florida Statutes, also known as the "Florida Interlocal Cooperation Act of 1969."
- B. The Program Administrator represents and warrants that it is a duly organized legal entity established pursuant to Section 163.01(7), Florida Statutes.
- C. The purpose of this Agreement is to authorize the Program Administrator to offer property owners within Broward County the ability to obtain PACE Financing (as defined below) for qualifying improvements authorized pursuant to Section 163.08, et seq., Florida Statutes, as amended (the "PACE Statute").

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, and ordinances of any federal, state, county, municipal, or other governmental entity, and any county or municipal ordinance or resolution authorized or permitted by the PACE Statute, as may be amended.

1.2. **Board** means the Board of County Commissioners of Broward County, Florida.

- 1.3. **Broward PACE Act** means Chapter 20, Article VII, Division 8, of the Code.
- 1.4. **Code** means the Broward County Code of Ordinances, as amended.
- 1.5. **Contract Administrator** means the Deputy Director and Chief Resilience Officer of the Resilient Environment Department, or such other person designated in writing by the Deputy Director and Chief Resilience Officer of the Resilient Environment Department.
- 1.6. **Debt Obligations** means any bonds, obligations, or other evidence of indebtedness, including, but not limited to, notes, commercial paper, certificates, or any other obligations, of the Program Administrator. The term shall also include any obligation of the Program Administrator under law or pursuant to an interlocal agreement with another governmental entity and any warrants issued for services rendered or administrative expenses.
- 1.7. **Financing Agreement** means the agreement between the Property Owner and a Program Administrator or third-party administrator to finance a Qualifying Improvement through a Special Assessment on the affected real property.
- 1.8. **PACE Financing** means financing for one or more Qualifying Improvements through a Special Assessment on the affected real property within the County under the authority of the PACE Statute.
- 1.9. **PACE Program** means the program operated by the Program Administrator pursuant to the PACE Statute to provide PACE Financing for Qualifying Improvements.
- 1.10. **Program Administrator** means the legal entity identified in the opening paragraph of this Agreement. The term “Program Administrator” should be construed consistent with the definition of Program Administrator in Section 163.08(2) of the PACE Statute and includes any third-party administrator(s) as defined by Section 163.08(7) of the PACE Statute.
- 1.11. **Property Owner** means each person or entity that is a record owner of the real property subject to the PACE Financing.
- 1.12. **Qualifying Improvements** has the meaning as defined in Section 163.08(4) of the PACE Statute.
- 1.13. **Special Assessment** means the non-ad valorem assessment authorized by the PACE Statute and levied by the Program Administrator on real property to finance Qualifying Improvements.

ARTICLE 2. SCOPE OF SERVICES

- 2.1. Authorization; Continuity.
- 2.1.1. Limited, Nonexclusive Authorization. Pursuant to the Broward PACE Act and the PACE Statute, this Agreement authorizes the Program Administrator to offer and operate

its PACE Program within the jurisdictional boundaries of Broward County on the terms and conditions set forth in this Agreement during the time this Agreement remains in effect. The Program Administrator's rights herein are limited and nonexclusive. The County may, as it elects, enter into similar or other interlocal agreements, or otherwise authorize, deauthorize, commence, continue, or terminate any other program administrators to provide PACE programs within Broward County, to the extent permitted by Applicable Law.

2.1.2. Continuity of Services. Any actions of the Program Administrator prior to the Effective Date of this Agreement regarding the provision of PACE Financing of a Qualifying Improvement, Financing Agreements, or Special Assessments, to the extent such actions are in compliance with Applicable Law and a prior interlocal agreement with Broward County, shall be valid. The County shall be deemed a "Party" of the Program Administrator's organizational agreements only to the extent necessary to permit the Program Administrator to perform its PACE Program in Broward County, except to the extent of any conflict with Applicable Law or this Agreement, in which event terms of the Applicable Law and this Agreement shall prevail.

2.2. Deauthorization. Pursuant to the Broward PACE Act and the PACE Statute, the termination, expiration, or other effective invalidation of this Agreement automatically deauthorizes the Program Administrator and its PACE Program from operating within Broward County as of the date of such termination, expiration, or other effective invalidity of this Agreement.

2.3. Rates. The Program Administrator must annually establish the applicable maximum rates, fees, and other charges imposed on Property Owners in connection with utilization of the Program Administrator's PACE Program, including the rates paid by the Property Owner through the Financing Agreement (collectively, "Rates"). Such Rates must be just and equitable at the time of imposition for all Property Owners within Broward County. The Program Administrator must provide at least thirty (30) days' prior written notice to the County of any meeting of its governing body at which will be considered any proposed increase(s) in Rates or any material change to the documentation required to be submitted to County under Section 20-176.133(d) of the Broward PACE Act.

2.4. Documentation Supporting Authorization. Within thirty (30) days after any change in the information and documentation submitted by the Program Administrator to the County pursuant to Section 20-176.133(d) of the Code, the Program Administrator shall notify the County in writing of the change and provide such updated information and documentation to the County. In addition, the Program Administrator must notify the County within thirty (30) days after any authorization or deauthorization of the Program Administrator by any municipality within Broward County.

2.5. Municipal Opt-Outs; Municipal Authorizations and Deauthorizations.

2.5.1. Any municipality that effectively opted out from the Program Administrator's PACE Program prior to the Effective Date of this Agreement shall be deemed an Opt-Out Municipality without the requirement of any further action by that municipality under this section, unless and until that municipality elects to participate as set forth in Section 2.5.3.

2.5.2. A municipality may also opt out of the Program Administrator's PACE Program by providing at least ninety (90) days' prior written notice to the Program Administrator and the County of election to opt out and stating the effective date of each election (which date must be at least ninety (90) days after receipt of such notice of election). If a municipality provides written notice pursuant to this section to the County and the Program Administrator of its election to opt out, the applicable municipality shall be deemed an Opt-Out Municipality upon the effective date of such election stated in the written notice, unless and until that municipality elects to participate as set forth in Section 2.5.3.

2.5.3. An Opt-Out Municipality shall remain an Opt-Out Municipality unless and until it provides to the County and the Program Administrator a Resolution or other documentation, approved by its governing body, that rescinds any election to opt out and approves participation in the Program Administrator's PACE Program.

2.5.4. Unless expressly authorized by the Opt-Out Municipality, the Program Administrator may not solicit, process, or approve applications for, or enter into Financing Agreements with Property Owners, regarding Qualifying Improvements to real property located within that Opt-Out Municipality, and may not levy Special Assessments arising from Financing Agreements that were recorded during the time period that the municipality was an Opt-Out Municipality on real property located within that Opt-Out Municipality.

2.5.5. Notwithstanding an election to opt out by any Municipality, the Program Administrator shall comply with this Agreement and the Broward PACE Act countywide as the minimum standards for its PACE Program and its Financing Agreements within Broward County. The Program Administrator acknowledges and agrees that the Broward PACE Act may be enforced countywide, including within any Opt-Out Municipality.

ARTICLE 3. TERM AND TIME OF PERFORMANCE

3.1. Term. This Agreement begins on the first day after which it is fully executed by the Parties and recorded in the Official Records of Broward County, Florida ("Effective Date"), and continues for a period of ten (10) years ("Initial Term"), unless earlier terminated as provided in this Agreement. The Initial Term and any Extension Term(s), as those terms are defined in this article, are collectively referred to as the "Term." The Parties may extend this Agreement for consecutive ten (10) year terms (each an "Extension Term") on the same terms and conditions stated in this

Agreement by written approval by an authorized representative of the Program Administrator and formal approval by the Board prior to the expiration of the then-current term.

3.2. Time of the Essence. Time is of the essence regarding the Program Administrator's performance of the duties, obligations, and responsibilities required of the Program Administrator by this Agreement.

3.3. Survival. Unless otherwise expressly stated herein, the obligations of the County and the Program Administrator under this Agreement with respect to any Financing Agreements recorded during the Initial Term and any Extension Term(s) of this Agreement and with respect to any Special Assessments validly placed on real property within Broward County during the Term of this Agreement shall survive termination or expiration of this Agreement.

ARTICLE 4. FINANCING AGREEMENTS; SPECIAL ASSESSMENTS

4.1. The Program Administrator shall utilize only Financing Agreements that comply with the PACE Statute and the Broward PACE Act. The Program Administrator shall ensure that the Financing Agreement, or a summary memorandum thereof, is recorded in the Official Records of Broward County, Florida, within ten (10) business days after complete execution by the Parties.

4.2. The Program Administrator, and not the County, shall be solely responsible for all matters associated with origination, funding, financing, imposition, recordation, and administration of any and all Financing Agreements and levy of Special Assessments.

4.3. The Program Administrator is solely responsible for timely provision of the necessary information regarding the Financing Agreements and Special Assessments to the Tax Collector and Property Appraiser as required herein or under Applicable Law or otherwise necessary to permit those officers to perform their official duties. In such form and format and at such times or intervals as may be reasonably requested by the Tax Collector or the Property Appraiser, the Program Administrator shall provide the most recent property identification number(s), the annual amount of the Special Assessment, and any other information requested by the Property Appraiser to perform its official duties and/or by the Tax Collector to collect such amounts as a non-ad valorem assessment on behalf of the Program Administrator pursuant to Applicable Law, including without limitation Section 197.3632, Florida Statutes, and the PACE Statute.

4.4. The Program Administrator represents and warrants, acknowledging that the County, the Tax Collector, and the Property Appraiser are relying on such representations and warranties, that the Special Assessments: (i) must be collected pursuant to Sections 197.3632 and 163.08, et seq., Florida Statutes; (ii) are not imposed by the County, the participating municipality, the Property Appraiser, or the Tax Collector; and (iii) are levied and imposed solely by the Program Administrator, and only upon voluntary application of a property owner as authorized by the PACE Statute. The Program Administrator further acknowledges and stipulates that the Program Administrator is required by law to use the uniform method of collecting such Special Assessments, and that the statutory duties of the Property Appraiser and the Tax Collector with respect to the Special Assessments are ministerial in nature.

4.5. The Program Administrator will take such actions as are necessary for the lawful levy of the Special Assessments against all real property subject to the Financing Agreements. If any Special Assessment made with respect to any real property is, in whole or in part, annulled, vacated, or set aside by any court or by the Program Administrator, then the County, the Tax Collector, and the Property Appraiser shall have no obligation(s) with respect to such Special Assessment to the extent it is so annulled, vacated, or set aside unless and until otherwise determined by a court of competent jurisdiction.

**ARTICLE 5. NO AUTHORITY TO PLEDGE OR OBLIGATE THE COUNTY;
PROHIBITED PRACTICES; COMPLIANCE WITH PACE LAWS**

5.1. No Authority to Pledge or Obligate County. The Program Administrator agrees that neither it nor any affiliated third-party administrator or any of the Program Administrator's or such third-party administrator's contractors, subcontractors, or agents are empowered or authorized in any manner to create a debt as against the State of Florida, the County, or any municipality, and the Program Administrator may not pledge the full faith and credit of the State of Florida, the County, or any municipality. Any issuance of Debt Obligations by the Program Administrator or any affiliated third-party administrator shall not, directly or indirectly, primarily, contingently, or otherwise, obligate the State of Florida, the County, or any 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. Each Debt Obligation of the Program Administrator or any affiliated third-party administrator must expressly state on its face that it does not obligate the State of Florida, the County, or any municipality to pay any portion thereof or any interest thereon, and that neither the full faith and credit nor the taxing power of the State of Florida or of any county or any municipality within the State of Florida is pledged to the payment of any portion of the principal or the interest of such Debt Obligations.

5.2. No County Liability for Program Administrator's Debt Obligations. Neither the County, any applicable municipality, nor any other taxing authority or governmental entity shall in any manner be obligated to pay any debt, obligation, or liability of the Program Administrator arising as a result of any actions of the Program Administrator or any affiliated third-party administrator, including without limitation the Program Administrator's and any affiliated third-party administrator's governing board, members of such board, and any agents, employees, officers, or officials. In no event shall the Program Administrator or any affiliated third-party administrator, their governing bodies, or any of their agents, employees, officers, or officials have any authority or power to otherwise obligate the County, any applicable municipality, or any other taxing authority or local government in any manner whatsoever. The County shall not incur or ever be requested to authorize any obligations secured by Special Assessments associated with Qualifying Improvements imposed by the Program Administrator or any affiliated third-party administrator.

5.3. No Ad Valorem Pledge. The Program Administrator agrees that neither it, any affiliated third-party administrator, any of the Program Administrator's or such third-party administrator's contractors, subcontractors, or agents, nor any holder of any Debt Obligation issued in

association with the Program Administrator's PACE Program shall ever have the right to compel the exercise of the ad valorem taxing power or the non-ad valorem assessment power of the County, or other taxation in any form, of property within Broward County. Neither the Debt Obligations nor the Financing Agreements shall constitute a lien upon any property of or in Broward County except as to the respective Special Assessments in the manner provided herein and by Applicable Law.

5.4. Nondiscrimination. With regard to any activity authorized by this Agreement, the Program Administrator agrees that neither it nor any affiliated third-party administrator or any of the Program Administrator's or such third-party administrator's contractors, subcontractors, or agents shall discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement or in offering or performing the Program Administrator's PACE Program. The Program Administrator shall include the foregoing or similar language in its contracts with all affiliated third-party administrators, contractors, and subcontractors. In no event shall Rates be affected or determined on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression.

5.5. Use of County Name or Logo. The Program Administrator agrees that neither it nor any affiliated third-party administrator or any of the Program Administrator's or such third-party administrator's contractors, subcontractors, or agents shall create, develop, publish, or distribute, or permit the creation, development, publication, or distribution of, any marketing, advertising, or communications materials, including without limitation any poster, circular, book, pamphlet, flyer, website, stationery, newsletter, disclosure, or other material or publication, that includes the official logo of Broward County, or any facsimile thereof, in any manner whatsoever, or includes any statement or implication of affiliation with or endorsement by the County. Any violation of this section, Section 21-1 of the Code, or Section 20-176.134(b)(3) of the Broward PACE Act, by the Program Administrator, any affiliated third-party administrator, or of their contractors, subcontractors, or agents, is a violation of this Agreement.

5.6. Compliance with PACE Laws. The Program Administrator agrees that it and any affiliated third-party administrator and any of the Program Administrator's or such third-party administrator's contractors, subcontractors, or agents must fully comply with all applicable requirements of the PACE Statute and the Broward PACE Act, including as each may be amended from time to time, and which are incorporated as if fully set forth herein.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1. Representation of Authority. The Program Administrator represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of the Program Administrator, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that the Program Administrator has with any third party or violates Applicable Law. The Program Administrator further represents and warrants that execution of this Agreement is within the Program Administrator's legal powers, and each individual executing

this Agreement on behalf of the Program Administrator is duly authorized by all necessary and appropriate action to do so on behalf of the Program Administrator and does so with full legal authority.

6.2. Solicitation Representations. The Program Administrator represents and warrants that all statements and representations made by the Program Administrator in connection with the negotiation or approval of this Agreement were true and correct when made and are true and correct as of the date the Program Administrator executes this Agreement, unless otherwise expressly disclosed in writing by the Program Administrator.

6.3. Interlocal Agreement. This Agreement is deemed to be an “interlocal agreement” within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. The Program Administrator shall record this Agreement in the Official Records of Broward County, Florida, and the county of the Program Administrator’s principal place of business.

6.4. Public Entity Crime Act. The Program Administrator represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that statute. The Program Administrator further represents that there has been no determination that it committed a “public entity crime” as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether the Program Administrator has been placed on the convicted vendor list.

6.5. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. The Program Administrator represents that it has not been placed on the “discriminatory vendor list” as provided in Section 287.134, Florida Statutes, and that it is not a “scrutinized company” pursuant to Sections 215.473 or 215.4725, Florida Statutes. The Program Administrator represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with the County on any of the grounds stated in Section 287.135, Florida Statutes. The Program Administrator represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

6.6. Claims Against Program Administrator. The Program Administrator represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of the Program Administrator, threatened against or affecting the Program Administrator, the outcome of which may: (i) affect the validity or enforceability of this Agreement; (ii) materially and adversely affect the authority or ability of the Program Administrator to perform its obligations under this Agreement; or (iii) have a material and adverse effect on the consolidated financial condition or results of operations of the Program Administrator or on the ability of the Program Administrator to conduct its business as presently conducted or as proposed or contemplated to be conducted.

6.7. Verification of Employment Eligibility. The Program Administrator represents that the Program Administrator and third-party administrator have registered with and use the E-Verify

system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If the Program Administrator or third-party administrator violates this section, the County may immediately terminate this Agreement for cause and the Program Administrator shall be liable for all costs incurred by the County due to the termination.

6.8. Warranty of Performance. The Program Administrator represents and warrants that it and any affiliated third-party administrator possess the knowledge, skill, experience, and financial capability required to provide the PACE Program and perform the obligations of this Agreement, the Financing Agreements, and Special Assessments. The Program Administrator represents and warrants that the PACE Program shall be operated and administered in a skillful and professional manner, and that the quality of all services rendered by it and any affiliated third-party administrator shall equal or exceed prevailing industry standards for the provision of such services.

6.9. Prohibited Telecommunications Equipment. The Program Administrator represents and certifies that the Program Administrator and any affiliated third-party administrator do not use, and for the Initial Term and any Extension Term(s) will not use or provide, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 C.F.R. §§ 52.204-24 through 52.204-26.

6.10. Entities of Foreign Concern. By execution of this Agreement, the undersigned authorized representative of the Program Administrator hereby attests under penalty of perjury as follows: the Program Administrator and any affiliated third-party administrator are not owned by the government of a foreign country of concern, are not organized under the laws of nor has its principal place of business in a foreign country of concern, and the government of a foreign country of concern does not have a controlling interest in the Program Administrator or any affiliated third-party administrator; and the undersigned authorized representative of the Program Administrator declares that they have read the foregoing statement and the facts stated in it are true. Terms used in this section that are not otherwise defined in this Agreement shall have the meanings ascribed to such terms in Section 287.138, Florida Statutes.

6.11. Breach of Representations. The Program Administrator acknowledges that the County is materially relying on the representations, warranties, and certifications stated in this article and the County shall be entitled to exercise any or all remedies available, whether at law or in equity, if any such representation, warranty, or certification is untrue, including without limitation: (i) recovery of damages incurred; (ii) termination of this Agreement without liability to the Program Administrator; and (iii) debarment of the Program Administrator.

ARTICLE 7. INDEMNIFICATION

The Program Administrator shall indemnify, hold harmless, and defend the County and all of the County's current, past, and future officers, agents, and employees (collectively, "Indemnified

Party”) from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys’ fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach of this Agreement by the Program Administrator or any affiliated third-party administrator, by any violation of law by the Program Administrator or any affiliated third-party administrator, or by any intentional, reckless, or negligent act or omission of the Program Administrator, its officers, employees, or agents, including without limitation any affiliated third-party administrator and its officers, employees, and agents, arising from, relating to, or in connection with this Agreement (collectively, a “Claim”). If any Claim is brought against an Indemnified Party, the Program Administrator shall, upon written notice from the County, defend each Indemnified Party with counsel satisfactory to the County or, at the County’s option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

ARTICLE 8. INSURANCE

8.1. Throughout the Term, the Program Administrator and any affiliated third-party administrator shall, at their sole expense, maintain the minimum insurance coverages stated in Exhibit A in accordance with the terms and conditions of this article. The Program Administrator and any affiliated third-party administrator shall maintain insurance coverage against claims relating to any act or omission by the Program Administrator, any affiliated third-party administrator, their agents, representatives, employees, or subcontractors in connection with this Agreement. The County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

8.2. The Program Administrator and any affiliated third-party administrator shall ensure that “Broward County” is listed and endorsed as an additional insured as stated in Exhibit A on all policies required under this article.

8.3. On or before the Effective Date or at least fifteen (15) days prior to commencement or continuation of its PACE Program within Broward County, as may be requested by the County, the Program Administrator shall provide the County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by the County, the Program Administrator shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after the County’s request.

8.4. The Program Administrator shall ensure that all insurance coverages required by this article, including insurance coverages of any affiliated third-party administrator, remain in full force and effect without any lapse in coverage throughout the Term and until all performance required of the Program Administrator has been completed, as determined by Contract Administrator. The Program Administrator, any affiliated third-party administrator, or their respective insurer shall provide notice to the County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification,

and at least ten (10) business days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide the County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

8.5. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by the County's Risk Management Division in writing.

8.6. If the Program Administrator or any affiliated third-party administrator maintains broader coverage or higher limits than the insurance requirements stated in Exhibit A, the County shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance, or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by the Program Administrator and any affiliated third-party administrator.

8.7. The Program Administrator and any affiliated third-party administrator shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit A and submit to the County for approval at least fifteen (15) days prior to the Effective Date or commencement or continuation of its PACE Program within Broward County. The Program Administrator and any affiliated third-party administrator shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against the County. The County may, at any time, require the Program Administrator and any affiliated third-party administrator to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Any deductible or self-insured retention may be satisfied by either the named insured or the County, if so elected by the County, and the Program Administrator and any affiliated third-party administrator shall obtain same in endorsements to the required policies.

8.8. Unless prohibited by the applicable policy, the Program Administrator and any affiliated third-party administrator waive any right to subrogation that any of the Program Administrator's or affiliated third-party administrator's insurers may acquire against the County and shall obtain same in an endorsement of the Program Administrator's or affiliated third-party administrator's insurance policies.

8.9. The Program Administrator and any affiliated third-party administrator shall require that each subcontractor maintains insurance coverage that adequately covers the services provided by that subcontractor for its PACE Program within Broward County on substantially the same insurance terms and conditions required of the Program Administrator and any affiliated third-party administrator under this article. The Program Administrator and any affiliated third-party administrator shall ensure that all such subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the subcontractors' applicable insurance policies. The Program Administrator and any affiliated third-party administrator shall not permit any subcontractor to provide services unless and until all applicable requirements of this article are satisfied.

8.10. If the Program Administrator, any affiliated third-party administrator, or any subcontractor fails to maintain the insurance required by this Agreement, the County may pay any costs of premiums necessary to maintain the required coverage, and the Program Administrator shall reimburse such costs within thirty (30) days of County's written demand for payment. If requested by the County, the Program Administrator shall provide, within one (1) business day, evidence of each subcontractor's compliance with this article.

8.11. If any of the policies required under this article provide claims-made coverage: (i) any retroactive date must be prior to the Effective Date; (ii) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit A; and (iii) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, the Program Administrator and any affiliated third-party administrator must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit A.

ARTICLE 9. TERMINATION

9.1. Termination for Cause. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within thirty (30) days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following: (i) the Program Administrator's or any third-party administrator's violation of the Broward PACE Act or the PACE Statute; (ii) determination by a court of competent jurisdiction that the Program Administrator is not properly organized and/or not authorized to operate in Broward County; and (iii) a voluntary or involuntary petition for insolvency or assignment for the benefit of creditors or appointment of a receiver for the Program Administrator or any affiliated third-party administrator. Termination for cause by the County may be by action of the Board or by the County Administrator. If the County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination pursuant to Section 9.2 effective sixty (60) days after such notice was provided.

9.2. Termination on Notice. This Agreement may also be terminated by the County or the Program Administrator, without any cause and for any reason, upon at least sixty (60) days' prior written notice to the other Party. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

9.3. Effect of Termination. Termination of this Agreement is effective on the effective date of the termination (provided the notice complies with Sections 9.1 or 9.2). Termination of this Agreement and repeal of the Program Administrator's authorization to operate within Broward County pursuant to Section 20-176.133(b) of the Code constitute deauthorization of the Program Administrator's PACE Program within Broward County, but shall not preclude the Program Administrator from exercising any of its power or authority pertaining to Financing Agreements

recorded prior to the effective date of termination, including, without limitation, enforcing existing recorded Financing Agreements and levying Special Assessments as a result of Financing Agreements recorded prior to the effective date of deauthorization, except as may be limited by the PACE Statute or the Broward PACE Act. Notwithstanding the foregoing, as of the effective date of deauthorization, the Program Administrator must immediately cease any and all: (i) marketing; (ii) advertising; (iii) offering, accepting, or approving new applications; or (iv) entering into or recording new Financing Agreements, except as may be expressly authorized by an Opt-Out Municipality.

9.4. Notice of termination shall be provided in accordance with the “Notices” section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

ARTICLE 10. MISCELLANEOUS

10.1. Public Records. The Program Administrator and any affiliated third-party administrator shall fully comply with the obligations of Chapter 119, Florida Statutes. For all records provided by the Program Administrator or any affiliated third-party administrator pursuant to this Agreement, the Program Administrator or affiliated third-party administrator must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material: (i) that the Program Administrator or affiliated third-party administrator contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes; or (ii) for which the Program Administrator or affiliated third-party administrator asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, the Program Administrator or affiliated third-party administrator must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by the County, the Program Administrator or affiliated third-party administrator must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to the County for records designated by the Program Administrator or affiliated third-party administrator as Restricted Material, the County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by the Program Administrator or affiliated third-party administrator, or the claimed exemption is waived. Any failure by the Program Administrator or affiliated third-party administrator to strictly comply with the requirements of this section shall constitute the Program Administrator’s or affiliated third-party administrator’s waiver of the County’s obligation to treat the records as Restricted Material. The Program Administrator or affiliated third-party administrator must indemnify and defend the County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

10.2. Audit Rights and Retention of Records. The County shall have the right to audit the books, records, and accounts of the Program Administrator, any affiliated third-party administrator, and all subcontractors that are related to this Agreement. The Program Administrator shall require in its agreements with any affiliated third-party administrator and all subcontractors, and in its registrations of all qualifying improvement contractors pursuant to Section 163.083, Florida Statutes, that each entity shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement, to performance under this Agreement, and to compliance with the PACE statute and Broward PACE Act and that each such entity shall provide such books, records, and accounts to the Program Administrator within thirty (30) days of the conclusion of its services related to each Financing Agreement and each Special Assessment and the qualifying improvement contractor's completion of work on each Qualifying Improvement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, the Program Administrator, any affiliated third-party administrator, and all subcontractors shall make same available in written form at no cost to the County. Additionally, the Program Administrator shall preserve all such books, records, and accounts of all subcontractors and registered qualifying improvement contractors related to each Qualifying Improvement receiving a Financing Agreement for residential property in accordance with its requirements to retain public records or for five (5) years, whichever is longer. The Program Administrator and any affiliated third-party administrator shall provide the County with reasonable access to the Program Administrator's and any affiliated third-party administrator's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

The Program Administrator and any affiliated third-party administrator shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. This article shall survive any dispute or litigation between the Parties, and the Program Administrator expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by the County). The Program Administrator hereby grants the County the right to conduct such audit or review at the Program Administrator's and/or any affiliated third-party administrator's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. The Program Administrator and any affiliated third-party administrator shall make all such records and documents available electronically in common file formats or via remote access if, and to the extent, requested by the County.

10.3. Independent Contractor. The Program Administrator is an independent contractor of the County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. Neither the Program Administrator, any affiliated third-party administrator, nor their agents shall act as officers, employees, or agents of the

County. Neither the Program Administrator nor any affiliated third-party administrator shall have the right to bind the County to any obligation not expressly undertaken by County under this Agreement.

10.4. Regulatory Capacity. Notwithstanding the fact that the County is a political subdivision with certain regulatory authority, the County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If the County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to the County's regulatory authority as a governmental body separate and apart from this Agreement and shall not be attributable in any manner to the County as a Party to this Agreement.

10.5. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by the County or the Program Administrator, nor shall anything included herein be construed as consent by the County or the Program Administrator to be sued by third parties in any matter arising out of this Agreement.

10.6. Third-Party Beneficiaries. Neither the Program Administrator nor the County intends to primarily or directly benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

10.7. Notices. Unless otherwise stated herein, for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Broward County Resilient Environment Department
Attn: Dr. Jennifer Jurado, Deputy Director and Chief Resilience Officer
115 South Andrews Avenue, Room 329B, Fort Lauderdale, Florida 33301
Email address: jjurado@broward.org

FOR PROGRAM ADMINISTRATOR:

[Redacted]

Email address: [Redacted]

10.8. Assignment; Successors and Assigns. Neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by the Program Administrator. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit the County to immediately

terminate this Agreement, in addition to any other remedies available to the County at law or in equity. 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.

10.9. Conflicts. During the Term, none of the Program Administrator's officers or employees shall serve as an expert witness against the County in any legal or administrative proceeding in which they or the Program Administrator is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's expert opinion that is adverse or prejudicial to the interests of the County in connection with any such pending or threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude the Program Administrator or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If the Program Administrator utilizes a third-party administrator, the Program Administrator shall require all such third-party administrators, by written contract, to comply with the provisions of this section to the same extent as the Program Administrator.

10.10. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. The County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

10.11. Compliance with Laws. The Program Administrator, any affiliated third-party administrator, and the PACE Program must comply with all Applicable Law, including, without limitation, the PACE Statute, the Broward PACE Act, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

10.12. Anti-Human Trafficking. By execution of this Agreement by the undersigned authorized representative of the Program Administrator, the Program Administrator hereby attests under penalty of perjury that the Program Administrator and any affiliated third-party administrator does not use coercion for labor or services, as such terms are defined in Section 787.06, Florida Statutes; under penalties of perjury, the undersigned authorized representative of the Program Administrator declares that they have read the foregoing statement and that the facts stated in it are true.

10.13. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

10.14. Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

10.15. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated. Any reference to approval by the County shall require approval in writing, unless otherwise expressly stated.

10.16. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

10.17. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION, EXPIRATION, OR OTHER INVALIDITY OF THIS AGREEMENT.**

10.18. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Program Administrator.

10.19. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same, including specifically the interlocal agreement titled [REDACTED], and dated [REDACTED], between the County and the Program Administrator, except to the extent stated herein. Any and all prior agreements still in effect between the Parties in any form relating to the PACE Program are hereby terminated as of the effective date of this Agreement, except: (i) as stated in Section 2.1.2, to the extent necessary to permit the Program Administrator to perform the PACE Program within the jurisdictional boundaries of Broward County, subject to the municipal jurisdiction limitations in

Section 2.5; and (ii) any agreements with the Broward County Tax Collector regarding the collection and disbursement of Special Assessments shall continue to be valid to the extent such agreements comply with Applicable Law and have not otherwise expired or been terminated. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

10.20. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached exhibit is incorporated into and made a part of this Agreement.

10.21. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: Broward County, through its Board of County Commissioners, signing by and through its County Administrator, authorized to execute same by Board action on the ___ day of _____, 20__; and Program Administrator, signing by and through its duly authorized representative.

COUNTY

BROWARD COUNTY, by and through
its County Administrator

By: _____
County Administrator

____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Attorney's Name (Date)
Senior/Assistant County Attorney

By _____
Attorney's Name (Date)
Deputy County Attorney

MCO/JB/gmb
Amended Form PACE ILA
12/12/2024
#1079102.8

BROWARD COUNTY PACE AMENDED AND RESTATED INTERLOCAL AGREEMENT WITH

RELATING TO THE FUNDING AND FINANCING OF QUALIFYING IMPROVEMENTS

PROGRAM ADMINISTRATOR

PROGRAM ADMINISTRATOR NAME

By: _____
Authorized Signer

Print Name and Title

_____ day of _____, 20__

Exhibit A Minimum Insurance Requirements

INSURANCE REQUIREMENTS

Project: PACE Interlocal Agreement
Agency: Natural Resources Division

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury Property Damage Combined Bodily Injury and Property Damage Personal Injury Products & Completed Operations	\$1,000,000	\$2,000,000
AUTO LIABILITY <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>			Bodily Injury (each person) Bodily Injury (each accident) Property Damage Combined Bodily Injury and Property Damage	\$500,000	
<input type="checkbox"/> EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>					
<input checked="" type="checkbox"/> WORKER'S COMPENSATION <i>Note: U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water.</i>	N/A	<input checked="" type="checkbox"/>	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY			Each Accident	\$100,000	
<input checked="" type="checkbox"/> PROFESSIONAL LIABILITY (ERRORS & OMISSIONS)	N/A		Each Claim:	\$1,000,000	\$2,000,000
<input checked="" type="checkbox"/> CYBER LIABILITY	N/A		Each Claim:	\$2,000,000	
Description of Operations: Broward County is additional insured for liability. Insured's insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Waiver of subrogation applies in favor of Broward County. For Claims-Made policies insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.					

CERTIFICATE HOLDER:
Broward County
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

 Digitally signed by
 COLLEEN A.
 POUNALL
 Date: 2024.07.31
 14:52:17 -04'00'
 Risk Management Division