

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: September 18, 2018 Consent Regular
 Workshop Public Hearing

Department
Submitted By: County Administration
Submitted For: Office of Resilience

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: The executed Indemnification Agreement received during the month of March 2018, between PACE Funding Group LLC (PFG), as an Administrator of the Florida Resiliency and Energy District (FRED), and Palm Beach County, Florida.

Summary: The Board of County Commissioners (BCC) has authorized a County PACE program to provide mechanisms for funding energy efficiency, renewable energy, and wind resistant improvements for residential and commercial properties by levying non-ad valorem assessments on property owners' tax bills. The County enters into interlocal agreements with multiple PACE agencies/authorities/districts for them to provide the financing for qualifying improvements. Having multiple agencies/authorities/districts encourages competition and provides consumer choice. FRED is an agency/authority/district seeking to add PFG as a PACE administrator. The County Administrator signed an Indemnification Agreement between the County and PFG on March 26, 2018. The Indemnification Agreement acknowledges that PFG is a third-party administrator for FRED, and PFG agrees to indemnify and hold the County harmless as PFG assists FRED in providing a Property Assessed Clean Energy (PACE) program in Palm Beach County. The Office of Resilience (OOR) oversees the County's PACE program. Countywide (JB)

Background and Justification: On April 4, 2017, the BCC adopted Ordinance 2017-012, known as the Palm Beach County PACE Program Ordinance. On August 15, 2017 (R2017-1097), the BCC established an interlocal agreement between Palm Beach County and FRED for FRED to provide a PACE program within the County; the BCC also authorized the County Administrator to execute indemnification agreements with subsequent administrators of FRED to provide that such subsequent administrator of FRED shall indemnify and hold harmless the County.

Attachment:

1. Indemnification Agreement
-

Recommended by: Megyn S Houston 8/22/18
Department Director Date

Approved by: Poe 8/31/18
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	<u>0</u>	_____	_____	_____	_____
Operating Costs	<u>0</u>	_____	_____	_____	_____
External Revenues	<u>0</u>	_____	_____	_____	_____
Program Income (County)	<u>0</u>	_____	_____	_____	_____
In-Kind Match (County)	<u>0</u>	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	_____	_____	_____	_____
Is Item Included in Current Budget?		Yes <u>n/a</u>		No <u>n/a</u>	
Does this item include the use of federal funds?		Yes _____		No <u>X</u>	
Budget Account No.:	<u>n/a</u>				
Fund	Department	Unit	Object	Program	
_____	_____	_____	_____	_____	

B. Recommended Sources of Funds/Summary of Fiscal Impact:
n/a

C. Department Fiscal Review: S. Neary

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

Robert Bauer 8/24/18 Dr. J. Jacobson 8/28/18
 OFMB 8/23 Contract Development and Control 8/28/18

B. Legal Sufficiency:

[Signature] 8/31/18
 Assistant County Attorney

C. Other Department Review:

 Department Director

INDEMNIFICATION AGREEMENT BETWEEN PACE FUNDING GROUP LLC., AS AN ADMINISTRATOR OF THE FLORIDA RESILIENCY AND ENERGY DISTRICT, AND PALM BEACH COUNTY, FLORIDA

This Indemnification Agreement (the "Agreement") is entered into this 2/26, 2018 by and between Pace Funding Group, LLC, a CA limited liability company ("PFG"), as a third-party the administrator for the Florida Resiliency and Energy District ("FRED"), and Palm Beach County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

WHEREAS, pursuant to Ordinance 2017-012 adopted by the Palm Beach County Board of County Commissioners on April 4, 2017 (the "Pace Program Ordinance"), this Agreement shall be applicable within the unincorporated areas of Palm Beach County, and in all municipalities that have not adopted an ordinance governing any or all of the subject matter of the Pace Program Ordinance, regardless of the time of passage of the municipal ordinance ("participating municipalities"); and

WHEREAS, the County and the FRED have entered into that certain Interlocal Agreement dated August 15, 2017 (the "Interlocal Agreement") which authorizes FRED to operate in Palm Beach County pursuant to the PACE Program Ordinance for the purposes of providing a Property Assessed Clean Energy ("PACE") program; and

WHEREAS, PFG is a third party administrator for FRED, and PFG will be operating on behalf of the FRED within Palm Beach County; and

WHEREAS, PFG has agreed to provide the County with a separate indemnification agreement for the benefit of the County and participating municipalities.

NOW, THEREFORE, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. To the extent permitted by applicable law, PFG shall indemnify and hold harmless the County and participating municipalities and their officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County and participating municipalities or their officers, employees, agents or

instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Interlocal Agreement by PFG or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. This indemnity shall not cover any liability, losses or damages caused by the negligence or willful misconduct of the County and participating municipalities. PFG shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County and participating municipalities, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. PFG expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County and participating municipalities or their officers, employees, agents and instrumentalities as herein provided.

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

[Signature Pages Follow]

[Signature Page to Indemnification Agreement with Pace Funding Group, LLC]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this 26 day of MARCH, 2018.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA

By: *James Brub*
Assistant County Attorney

By: *Verdenia C. Baker*
County Administrator or Designee

Date: *3-26-18*

For the Board of County Commissioners
Palm Beach County, Florida
SHARON R. BOCK, CLERK

Attest:

By: _____
Deputy Clerk

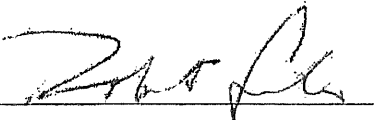
Date: _____

Approved as to terms and conditions

By: *Tom Van Arman*
Deputy County Administrator

[Signature Page to Indemnification Agreement with Pace Funding Group, LLC]

PACE FUNDING GROUP, LLC

By: 
Name: ROBERT G. LEE
Title: CEO
Date: 2/26/2018