

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

**Meeting Date:** April 2, 2019

(X) Consent  
( ) Workshop

( ) Regular  
( ) 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:** Two executed Indemnification Agreements received during the month of January 2019 between Counterpointe Energy Solutions Residential LLC (CESR) and Palm Beach County (Agreement 1) and between Counterpointe Sustainable Real Estate (CSRE) and Palm Beach County (Agreement 2).

**Summary:** The Board of County Commissioners (BCC) has authorized a Property Assessed Clean Energy (PACE) program to finance 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 signs interlocal agreements with multiple PACE agencies/authorities/districts for them to finance qualifying improvements, which encourages competition and promotes consumer choice. Florida PACE Funding Agency (FPFA) is a PACE agency/authority/district that uses Counterpointe Energy Solutions (FL) (CESFL) as FPFA's PACE administrator. CESFL wants to delegate administrator duties to affiliated companies CESR and CSRE. Doing so requires indemnification agreements that acknowledge that CESR and CSRE are FPFA administrators that will indemnify and hold the County harmless as they carry out the PACE program in the County's jurisdiction. On January 9, 2019, the County Administrator signed Agreement 1 and Agreement 2 to agree to such terms. Countywide (JB)

**Background and Justification:** The Office of Resilience oversees the County's PACE program. On April 4, 2017, the BCC adopted the County's PACE Ordinance (No. 2017-012). On August 15, 2017 (R2017-1104), the BCC adopted a resolution that: approved an interlocal agreement between the County and FPFA for FPFA to provide a PACE program within the County; and approved an indemnification agreement between the County and FPFA's administrator CESFL. The resolution also authorizes the County Administrator to execute indemnification agreements with other FPFA administrators.

**Attachments:**

1. Indemnification Agreement 1
2. Indemnification Agreement 2

**Recommended by:**

*Megan S Houston*

3-5-19

**Department Director**

**Date**

**Approved by:**

*Paul*

3/8/19

**Assistant County Administrator**

**Date**

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	\$0	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes \_\_\_\_\_ No X

Does this item include the use of federal funds? Yes \_\_\_\_\_ No X

Budget Account No.:

Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_ Program \_\_\_\_\_

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

C. Department Fiscal Review: S. Henry

## III. REVIEW COMMENTS

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

Pellegrino 2/27/19  
OFMB 2/27  
2/27

Ann J. Jacobson 3/5/19  
Contract Development and Control  
3/5/19

### B. Legal Sufficiency:

Anna Bruch 3/6/19  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

## Attachment 1

### **INDEMNIFICATION AGREEMENT BETWEEN COUNTERPOINTE ENERGY SOLUTIONS RESIDENTIAL, LLC, AS A FINANCIAL SERVICES PROVIDER TO THE FLORIDA PACE FUNDING AGENCY, AND PALM BEACH COUNTY, FLORIDA**

This Indemnification Agreement (the "Agreement") is entered into ~~December 9, 2018~~ <sup>January 9, 2019</sup> by and between CounterPointe Energy Solutions Residential, LLC ("CESR"), as a financial services provider to the Florida PACE Funding Agency ("FPFA"), and Palm Beach County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

**WHEREAS**, the County and the FPFA have entered into an Interlocal Agreement ("Interlocal Agreement") to authorize the FPFA to operate in Palm Beach County pursuant to the Palm Beach County PACE Program Ordinance for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

**WHEREAS**, CESR is a financial services provider to the FPFA and CESR would be operating the AllianceNRG Program on behalf of the FPFA within Palm Beach County; and

**WHEREAS**, CESR has agreed to provide the County with a separate indemnification agreement for the benefit of the County,

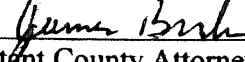
1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. CESR shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Interlocal Agreement by CESR or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. CESR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. CESR expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.
3. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in conjunction

Attachment 1

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.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this 9 day of January, ~~2018~~ 2019

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By:   
Assistant County Attorney  
Date 1/9/19

PALM BEACH COUNTY, FLORIDA

By:   
County Administrator or Designee

For the Board of County Commissioners  
Palm Beach County, Florida

Governmental Center  
301 N. Olive Avenue, 12<sup>th</sup> Floor  
West Palm Beach, Florida 33401

SHARON R. BOCK, CLERK  
Attest:

By: Deputy Clerk

\_\_\_\_\_  
Date

COUNTERPOINTE ENERGY SOLUTIONS  
RESIDENTIAL, LLC  
555 S. Federal Hwy., Suite 350  
Boca Raton, FL 33432

By:   
Name: Steve Cropper  
Title: President

12/21/18  
Date

## Attachment 2

### INDEMNIFICATION AGREEMENT BETWEEN COUNTERPOINTE SUSTAINABLE REAL ESTATE LLC, AS A FINANCIAL SERVICES PROVIDER TO THE FLORIDA PACE FUNDING AGENCY, AND PALM BEACH COUNTY, FLORIDA

This Indemnification Agreement (the "Agreement") is entered into ~~December 9, 2018~~ <sup>January</sup> 9, 2019 by and between Counterpointe Sustainable Real Estate LLC ("CSRE"), as a financial services provider to the Florida PACE Funding Agency ("FPFA"), and Palm Beach County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

**WHEREAS**, the County and the FPFA have entered into an Interlocal Agreement ("Interlocal Agreement") to authorize the FPFA to operate in Palm Beach County pursuant to the Palm Beach County PACE Program Ordinance for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

**WHEREAS**, CSRE is a financial services provider to the FPFA and CSRE would be operating the CounterpointeSRE Program on behalf of the FPFA within Palm Beach County; and

**WHEREAS**, CSRE has agreed to provide the County with a separate indemnification agreement for the benefit of the County,

1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. CSRE shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Interlocal Agreement by CSRE or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. CSRE shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. CSRE expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.
3. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in conjunction

Attachment 2

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.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this 9 day of January, ~~2018~~ 2019

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: [Signature]  
Assistant County Attorney  
Date 1/9/19

PALM BEACH COUNTY, FLORIDA

By: [Signature]  
County Administrator or Designee

For the Board of County Commissioners  
Palm Beach County, Florida

Governmental Center  
301 N. Olive Avenue, 12<sup>th</sup> Floor  
West Palm Beach, Florida 33401

SHARON R. BOCK, CLERK  
Attest:

By: Deputy Clerk

\_\_\_\_\_  
Date

COUNTERPOINTE SUSTAINABLE REAL ESTATE  
LLC  
2600 Maitland Center Blvd., Suite 163  
Maitland, FL 32751

By: [Signature]  
Name: Erie Ajlmi  
Title: Managing Partner  
Date 12/19/18