

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: September 10, 2019 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: Two executed indemnification agreements received during the month of June 2019 and July, 2019 between Florida Resiliency and Energy District (FRED) and Palm Beach County, Florida and between Florida PACE Funding Agency (FPFA) and Palm Beach County, Florida.

Summary: The Board of County Commissioners (BCC) has authorized a Property Assessed Clean Energy (PACE) program for third parties to provide funding for 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 (Districts) for them to provide the financing for qualifying improvements. Having multiple Districts encourages competition and provides consumer choice. FRED is a District seeking to add Greenworks Lending as a PACE administrator for commercial projects. The County Administrator signed an indemnification agreement (Indemnification Agreement 1) between the County and Greenworks Lending on June 27, 2019, which acknowledges that Greenworks Lending is a third-party administrator for FRED and that Greenworks Lending agrees to indemnify and hold the County harmless as Greenworks Lending assists FRED. Additionally, FPFA is a District seeking to add Energy Efficient Equity (E3) as a PACE administrator for commercial projects. The County Administrator signed an indemnification agreement (Indemnification Agreement 2) between the County and E3 on July 26, 2019, which acknowledges that E3 is a third-party administrator for FPFA and that E3 agrees to indemnify and hold the County harmless as E3 assists FPFA. Countywide (SS)

Continued on Page 3

Attachment:

1. Indemnification Agreement 1
2. Indemnification Agreement 2

Recommended by:  8-12-19
 Department Director **Date**

Approved by:  8/20/19
 Assistant County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	<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 n/a No n/a

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

Budget Account No.: n/a

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:

[Signature] 8/14/19 [Signature] 8/15/19
OFMB Contract Development and Control

B. Legal Sufficiency:

[Signature] 8/20/19
Assistant County Attorney

C. Other Department Review:

Department Director

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, the BCC established an interlocal agreement between Palm Beach County and FRED (R2017-1097) and an interlocal agreement between Palm Beach County and FPFA (R2017-1105) for FRED and FPFA to provide PACE programs within the County. The BCC also authorized the County Administrator to execute indemnification agreements with subsequent administrators of FRED and FPFA to provide that such subsequent administrator of FRED or FPFA shall indemnify and hold harmless the County. The Office of Resilience (OOR) oversees the County's PACE program.

ATTACHMENT \

AGREEMENT BETWEEN GREENWORKS LENDING LLC,
AS AN ADMINISTRATOR OF THE FLORIDA
RESILIENCY AND ENERGY DISTRICT, AND PALM
BEACH COUNTY

This Agreement (the "Agreement") is entered into this 27 day of June, 2019 by and between Greenworks Lending LLC, a Delaware limited liability company authorized to conduct business in Florida ("Greenworks"), as a third-party administrator for the Florida Resiliency and Energy District ("FRED"), and Palm Beach County, a political subdivision of the State of Florida ("Palm Beach 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, Palm Beach County and 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, Greenworks is a third party administrator for FRED, and Greenworks will be operating on behalf of FRED within Palm Beach County; and

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

NOW, THEREFORE, the Parties hereby agree as follows:

1. The foregoing recitals are incorporated into this Agreement and approved.
2. To the extent permitted by applicable law, Greenworks shall indemnify and hold harmless Palm Beach 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 Palm Beach 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 Greenworks 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 Palm Beach County and participating municipalities and their officers, employees, agents

and instrumentalities. Greenworks 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 in connection therewith in the name of Palm Beach County and participating municipalities, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Greenworks expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend Palm Beach 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 of the Fifteenth Judicial Circuit 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 27 day of June, 2019.

PALM BEACH COUNTY, FLORIDA

By: Vandana C. Bate
County Administrator or Designee

Date: 6-27-19

For the Board of County Commissioners
Palm Beach County, Florida

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

SHARON R. BOCK, CLERK
Attest:

By: Deputy Clerk

Date

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

[Signature]

CLERK

GREENWORKS LENDING LLC

By: Jessam Bailey

Date: 04/29/19

Name: Jessica Bailey

Title: CEO

ATTACHMENT 2

**INDEMNIFICATION AGREEMENT BETWEEN Energy Efficient Equity Inc, AS
A PACE PROGRAM ADMINISTRATOR OF THE FLORIDA PACE FUNDING
AGENCY, AND PALM BEACH COUNTY, FLORIDA**

This Indemnification Agreement (the "Agreement") is entered into June 26, 2019 by and between Energy Efficient Equity Inc ("E3"), as a PACE Program administrator of the Florida PACE Funding Agency ("FPFA"), and Palm Beach County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

WHEREAS, pursuant to the 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 Ordinance, regardless of the time of passage of the municipal ordinance ("participating municipalities"); and

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

WHEREAS, E3 is a third party PACE Program administrator for the FPFA and E3 would be operating on behalf of the FPFA within Palm Beach County; and

WHEREAS, E3 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. E3 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 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 E3 or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. E3 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. E3 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.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this 26 day of July, 2019.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
Assistant County Attorney
Date 7/19/19

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, 12th Floor
West Palm Beach, Florida 33401

SHARON R. BOCK, CLERK
Attest:

By: Deputy Clerk _____
Date _____

ENERGY EFFICIENT EQUITY INC

By: [Signature] 6/26/2019
Date _____

Todd E. Wilson
COO
11111 Santa Monica Blvd, Suite 950

Los Angeles, CA 90025