

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 7, 2020

() Consent
() Workshop

(X) Regular
() Public Hearing

Department

Submitted By: County Administration

Submitted For: Office of Resilience

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Indemnification agreement between PACE Funding Group, LLC, as an Administrator of Florida PACE Funding Agency, 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 (ILAs) with multiple PACE agencies/authorities/districts (Districts) for them to provide the financing for qualifying improvements. Districts are then required to promptly obtain indemnification agreements from all third party administrators. In the ILA between Palm Beach County and the Florida PACE Funding Agency (FPFA) PACE district (R 2017-1105), the BCC authorized the County Administrator or designee to execute such indemnification agreements with subsequent administrators of FPFA. The BCC then rescinded such delegated authority on September 10, 2019. The Office of Resilience is bringing forth this item because FPFA seeks to add PACE Funding Group (PFG) as a PACE administrator for residential projects, thus requiring an indemnification agreement. The BCC approved an indemnification agreement between PFG and Palm Beach County on September 18, 2018 when PFG was acting as an administrator for a different PACE district, the Florida Resiliency and Energy District, LLC. Now PFG is operating through FPFA, therefore requiring a new indemnification agreement between PFG, as an administrator for FPFA, and Palm Beach County. This indemnification agreement (Attachment 1) acknowledges that PFG is a third-party administrator for FPFA and that PFG agrees to indemnify and hold the County harmless as PFG assists FPFA. Countywide (SS)

Background and Policy Issues: 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).

Attachment:

- 1. Indemnification Agreement

Recommended by: Meaghan Stouffer 3-9-20
Department Director **Date**

Approved by: [Signature] 3/11/20
Assistant County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
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] 3/11/2020
OFMB 3/10

[Signature] 3/13/2020
Contract Development and Control
3/12/2020 TW

B. Legal Sufficiency:

[Signature] 3/13/20
Assistant County Attorney

C. Other Department Review:

Department Director

ATTACHMENT 1

AGREEMENT BETWEEN PACE FUNDING GROUP, LLC,
AS ADMINISTRATOR OF FLORIDA PACE FUNDING
AGENCY, AND PALM BEACH COUNTY

This Agreement (the "Agreement") is entered into this ____ day of _____, 2020 by and between PACE Funding Group, LLC, as the administrator of the Florida PACE Funding Agency ("FPFA"), 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 the FPFA have entered into that certain Interlocal Agreement dated 8/15/17 ("the Interlocal Agreement") which authorizes FPFA to operate within Palm Beach County for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

WHEREAS, PACE Funding Group is a third party administrator for the FPFA, and PACE Funding Group will be operating on behalf of the FPFA within Palm Beach County; and

WHEREAS, PACE Funding Group 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, PACE Funding Group 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 PACE Funding Group or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. PACE Funding Group 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 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. PACE Funding Group 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 _____ day of _____, 2020.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Scott Stone, Assistant County Attorney

Date: _____

BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY

By: _____
Dave Kerner, Mayor Date

ATTEST:

By: _____
Sharon R. Bock, Clerk and Comptroller Date

PACE FUNDING GROUP, LLC

By: Bob Giles Date 2/27/2020

Name: Bob Giles

Title: CEO