Agenda Item:  $\it 3FF-1$ 

## PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

### AGENDA ITEM SUMMARY

Meeting Date: Oc	tober 18, 2022	( ) Consent ( ) Workshop	(X) Regular ( ) Public Hearing
Department Submitted By: Submitted For:	County Administration Office of Resilience		

### I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve**: an indemnification agreement between Stonehill PACE, LLC, as an Administrator of Florida Resiliency and Energy District, and Palm Beach County, Florida.

Summary: The Board of County Commissioners (BCC) has authorized a County 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 owner 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 obtain indemnification agreements from all third-party administrators, whom the Districts use to execute PACE financing. In the ILA between Palm Beach County and the Florida Resiliency and Energy District (FRED) district (R 2017-1098), the BCC authorized the County Administrator or designee to execute such indemnification agreements with subsequent administrators of FRED. The BCC then rescinded such delegated authority at the September 10, 2019, BCC meeting. The Office of Resilience is bringing forth this item because FRED seeks to add Stonehill PACE, LLC (Stonehill PACE) as a PACE third-party administrator for commercial projects, thus requiring an indemnification agreement. This indemnification agreement acknowledges that Stonehill PACE is a third-party administrator for FRED and that Stonehill PACE agrees to indemnify and hold the County harmless as Stonehill PACE assists FRED. Countywide (RM)

**Background and Justification:** On April 4, 2017, the BCC adopted the County's PACE Ordinance (No. 2017-012). The Office of Resilience oversees compliance with the County's PACE Ordinance.

Attachments:

1. Indemnificati	on Agreement	
Recommended by	meg S HowA.	9-20-22
	Department Director	Date
Approved by:	Assistant County Administrator	10/2/22 Date

## II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years		2023	2024	2025	2026	2027
Capital Expe	enditures		:			
Operating C	osts					
External Rev	venues					
Program Inc	ome (County	y)		:		
In-Kind Mate	ch (County)					
NET FISCA	L IMPACT	\$0			¥.	<u> </u>
# ADDITIO		e)				
Is Item Inclu	ded in Curre	ent Budget?	Yes _		No X	
Does this ite	em include th	ne use of fed	eral funds?	Yes	No X	
Budget Acc	ount No.:					
Fund	Department	Unit	Object	Program		
В.	n/a	ded Sources			scal Impact:	
			EW COMME	O		
Α.	OFMB Fisca	al and /or Co			omments:	
	OFMB JA	arta 9/21/2003 1/21 1921	<u> </u>	1.3.	Jaulan ment and Co	9)30/22 ntrol
В.	Legal Suffic	ciency:				
_	Assistant C	ounty Attorn	iey			
C.	Other Depa	rtment Revie	w:			
	Department	t Director				

# AGREEMENT BETWEEN STONEHILL PACE, LLC, AS AN ADMINISTRATOR OF THE FLORIDA RESILIENCY AND ENERGY DISTRICT, AND PALM BEACH COUNTY

This Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between Stonehill PACE, LLC a Delaware limited liability company authorized to conduct business in Florida ("Stonehill PACE"), 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, Stonehill PACE is a third party administrator for FRED, and Stonehill PACE will be operating on behalf of FRED within Palm Beach County; and

WHEREAS, Stonehill PACE 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, Stonehill PACE 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 Stonehill PACE 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. Stonehill PACE 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. Stonehill PACE 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. Nothing herein shall prevent Stonehill PACE from obtaining an indemnity of Stonehill PACE from any other party for any liability of Stonehill PACE pursuant to this Agreement.

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.

	HEREOF, the Partie		de and executed
this Agreement on this	day of	, 2022.	
	PALM BEACH CO	UNTY, FLORID	A
	By:		
	County May	or or Designee	
	Date:		
	For the Board of Co	The State of the S	ners
	Palm Beach County	, Florida	
	Governmental Cent	er	
	301 N. Olive Avenu	ie, 12th Floor	
	West Palm Beach, I	Florida 33401	
	JOSEPH ABRUZZ	O, CLERK	
	Attest:		
	By: Deputy Clerk		
			Date

[Signatures continued on the following page]

STONEHILL PACE, LLC, a Delaware limited liability company

By

Date: August 2<sup>nd</sup>, 2022

Name: Kevin Cadin

Title: Authorized Signatory

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IN WITNESS W this Agreement on this	day of	, 2022.
	PALM BEACH CO	DUNTY, FLORIDA
	Ву:	
		yor or Designee
	Date:	
	For the Board of C	ounty Commissioners
	Palm Beach Count	y, Florida
	Governmental Cen	ter
	301 N. Olive Aver	ue, 12th Floor
	West Palm Beach,	Florida 33401
	JOSEPH ABRUZZ	ZO, CLERK
	Attest:	
	By: Deputy Clerk	
		Date

[Signatures continued on the following page]

STONEHILL PACE, LLC, a Delaware limited liability company

By:

Date: August 2<sup>nd</sup>, 2022

Name: Kevin Cadin

Title: Authorized Signatory