

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: December 6, 2022

(X) 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 approve: an indemnification agreement between Petros PACE Administrator, LLC (Petros PACE), as an Administrator of Florida Green Finance Authority, 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 Green Finance Authority (FGFA) district (R 2017-1103), the BCC authorized the County Administrator or designee to execute such indemnification agreements with subsequent administrators of FGFA. The BCC then rescinded such delegated authority at the September 10, 2019, BCC meeting. The Office of Resilience is bringing forth this item because FGFA seeks to add Petros PACE as a PACE third-party administrator for commercial projects, thus requiring an indemnification agreement. This indemnification agreement acknowledges that Petros PACE is a third-party administrator for FGFA and that Petros PACE agrees to indemnify and hold the County harmless as Petros PACE assists FGFA. 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. Indemnification Agreement

Recommended by:	<u>Megan S. Howard</u>	<u>11-17-22</u>
	Department Director	Date
Approved by:	<u>Pat</u>	<u>11/21/22</u>
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
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. Healy

III. REVIEW COMMENTS

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

Lisa M. [Signature] 11/15/2022
OFMB 9/16/15 (M) 11/15
[Signature] 11/17/22
Contract Development and Control

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

AGREEMENT BETWEEN PETROS PACE
ADMINISTRATOR, LLC, AS ADMINISTRATOR OF THE
FLORIDA GREEN FINANCE AUTHORITY PACE
PROGRAM, AND PALM BEACH COUNTY

This Agreement (the "Agreement") is entered into this 20th day of October, 2022 by and between Petros PACE Administrator, LLC, a Texas limited liability company ("Petros"), as the administrator of the Florida Green Finance Authority PACE Program ("FGFA"), 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 FGFA have entered into that certain Interlocal Agreement dated August 15, 2017 ("the Interlocal Agreement") which authorizes FGFA to operate within Palm Beach County for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

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

WHEREAS, Petros 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, Petros 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 Petros or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. Petros shall pay all claims and 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. Petros 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.

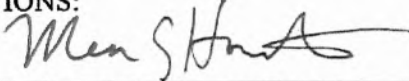
IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this 20th day of October, 2022.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: 
Ryan Maher, Assistant County Attorney

Date: 11/17/2022

APPROVED AS TO TERMS AND CONDITIONS:

By: 
Megan Houston, Department Director

Date: 11/17/2022

BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY

By: _____
Mayor Date

ATTEST:

By: _____
Joseph Abruzzo, Clerk and Comptroller Date

PETROS PACE ADMINISTRATOR, LLC

By:  10/20/22
Date

Name: Mansoor Ghori

Title: Manager