Agenda Item: <u>3DD-1</u>

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 5, 2023

(X) Consent () Workshop () Regular() Public Hearing

DepartmentSubmitted By:County AdministrationSubmitted For:Office of Resilience

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an indemnification agreement between Forbright Bank, 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 The BCC then rescinded such delegated authority at the September 10, 2019, BCC meeting.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 Forbright Bank as a PACE third-party administrator for commercial projects, thus requiring an indemnification agreement. This indemnification agreement acknowledges that Forbright Bank is a third-party administrator for FRED and that Forbright Bank agrees to indemnify and hold the County harmless as Forbright Bank 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. Indemnification Agreement

Recommended by: Department Diréctor Approved by: **Assistant County Administrator** Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028
Capital Expenditures	\$0				
Operating Costs	\$0				
External Revenues	\$0				
Program Income (County	/) (\$500)				
In-Kind Match (County)	\$0				
NET FISCAL IMPACT	<u>(\$500)</u>	\$0	\$0	<u>\$0</u>	<u>\$0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0
Is Item Included in Curre	nt Budget?	Yes _		No <u>X</u>	
Does this item include the use of federal funds? Yes				No <u>X</u>	

Budget Account No.:

Fund 0001 Department 261 Unit 2101 Object 2909 Program _____

- **B.** Recommended Sources of Funds/Summary of Fiscal Impact: There is a \$500 fee that PACE third-parties pay the County to cover administrative costs. This goes into the County's general fund, not the Office of Resilience.
- C. Department Fiscal Review:____

III. REVIEW COMMENTS

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

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B. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

Department Director

Contract Development and Cont

AGREEMENT BETWEEN FORBRIGHT BANK, AS AN ADMINISTRATOR OF THE FLORIDA RESILIENCY AND ENERGY DISTRICT, AND PALM BEACH COUNTY

This Agreement (the "Agreement") is entered into this _____day of ______, 2023 by and between Forbright Bank, a Maryland company authorized to conduct business in Florida ("Forbright"), 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 2022-030 amending Ordinance 2017-012 and adopted by the Palm Beach County Board of County Commissioners on November 16, 2022 (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, Forbright is a third party administrator for FRED, and Forbright will be operating on behalf of FRED within Palm Beach County; and

WHEREAS, Forbright 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, Forbright 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 Forbright or its employees, 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 their officers, employees, agents, 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 Forbright or its employees, 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. Forbright 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. Forbright 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 ______, 20____.

By:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

PALM BEACH COUNTY, FLORIDA

County Mayor or Designee

By:_____ Ryan Maher, Assistant County Attorney

Date:_____

For the Board of County Commissioners Palm Beach County, Florida

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

JOSEPH ABRUZZO, CLERK Attest:

By: Deputy Clerk

Date

APPROVED AS TO TERMS AND

CONDITIONS: Mgn) Jours Bv:

Date: 11-3-23

Date:

Forbright Bank

Aling By: him Date: 10/30/2023

Name: Brian L. Deering

Title: Sales Operations Director, CPACE Lending

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