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August 28, 2024

MEMORANDUM

TO: Morris Richardson, County Attorney

RE: Item F.22., Resolution Amending Commercial Property Assessed Clean Energy (PACE) Program to Conform to Recent Legislation

The Board of County Commissioners, in regular session on August 27, 2024, approved and adopted Resolution No. 24-075, amending prior Resolution No. 18-040 and Resolution No. 22-067, to conform with recent State legislation; and authorized the County Manager to sign amendments to existing interlocal agreements with commercial PACE program administrators to comply with statutory revisions. Enclosed is a fully-executed Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/tr

Encl. (1)

cc: County Manager

RECEIVED

SEP 03 2024

Brevard County Attorney

RESOLUTION NO. 24-075

A RESOLUTION OF THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING RESOLUTION NO. 18-040 AND RESOLUTION NO. 22-067 REGARDING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM TO CONFORM TO RECENT LEGISLATION AMENDING SECTION 163.08, FLORIDA STATUTES, COMMONLY KNOWN AS “THE FLORIDA PACE ACT”; PROVIDING FOR A FORM AMENDMENT TO EXISTING INTERLOCAL AGREEMENTS BETWEEN BREVARD COUNTY AND PACE PROGRAM ADMINISTRATORS; DELEGATING AUTHORITY TO SIGN SUCH AMENDMENTS TO THE COUNTY MANAGER; AMENDING BREVARD COUNTY’S PACE PROGRAM TO ONLY AUTHORIZE PACE FINANCING FOR “COMMERCIAL PROPERTY” AS NEWLY DEFINED IN THE FLORIDA PACE ACT, IF SUCH “COMMERCIAL PROPERTY” IS NOT OWNED BY A NON-PROFIT ORGANIZATION; DIRECTING COUNTY OFFICIALS, OFFICERS, AND EMPLOYEES TO TAKE SUCH ACTIONS AS MAY BE NECESSARY OR DESIRABLE IN FURTHERANCE OF THE PURPOSES OF THIS RESOLUTION; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on March 20, 2018, the Board of County Commissioners of Brevard County (“Board”) adopted Resolution No.18-040 which created a Property Assessed Clean Energy Program (PACE) Program within Brevard County, for the benefit of residential, commercial, and industrial property owners and authorized certain PACE providers to provide PACE financing within Brevard County via Interlocal Agreements; and

WHEREAS, on August 2, 2022, the Board adopted Resolution No. 22-067, rescinding in part Resolution No. 18-040, by terminating the PACE Program as to single-family residential properties and non-profit organizations, effective October 31, 2022; and

WHEREAS, Resolution 18-040, Resolution 22-067, and the implementing interlocal agreements with authorized PACE providers were governed by Section 163.08, Florida Statutes (commonly known as the “Florida PACE Act”); and

WHEREAS, the Florida PACE Act was amended by Chapter 2024-273, Laws of Florida, effective July 1, 2024, and now is codified in Sections 163.08 through 163.087, Florida Statutes (the “Act”); and

WHEREAS, Section 9, Chapter 2024-273, Laws of Florida, provides that any contract, agreement, authorization, or interlocal agreement with a PACE provider (now termed a “program administrator”) must be amended to comply with the Act; and

WHEREAS, this Resolution is enacted to revise the existing authorization in Resolutions 18-040 22-067 so that program administrators may provide commercial PACE financing in compliance with the Act, as amended; and

WHEREAS, a Board-approved Form Amendment to Interlocal Agreements with Program Administrators is attached as **Exhibit A**; and

WHEREAS, the Board of County Commissioners of Brevard County desires to delegate the authority to the County Manager to sign amendments to interlocal agreements with existing program administrators using the approved form; and

WHEREAS, the Board of County Commissioners of Brevard County finds that the provisions of this Resolution serve the community’s interests while providing for the public comfort, safety, health, welfare, and quality of life of the residents of Brevard County, Florida.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, does hereby amend Resolution No. 18-040 and Resolution No. 22-067 as follows:

Section 1. Recitals. The recitals set forth above are adopted by the Board as the findings of the County and are incorporated herein.

Section 2. Amended to Incorporate Changes to the Florida PACE Act. Resolution No. 18-040 and Resolution No. 22-167 are hereby amended to incorporate by reference the changes to the Florida PACE Act, as enacted in Section 9 of Chapter 2024-273, Laws of Florida, effective July 1, 2024, and now codified in Sections 163.08 through and including 163.087, Florida Statutes (the “Act”), as may be amended from time to time.

Section 3. References to Section 163.08. All references to Section 163.08, Florida Statutes in Resolution No. 18-040 and Resolution No. 22-167 are hereby amended to refer to Sections 163.08 through and including 163.087, Florida Statutes.

Section 4. Program Administrators. Resolution No. 18-040 and Resolution No. 22-167 are hereby amended to incorporate the new term “program administrator,” defined in the Act as “a county, a municipality, a dependent district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7) which directly operates a program for financing qualifying improvements and is authorized pursuant to s. 163.081 or 163.082.” The term “PACE provider” as used in Resolution 18-040 and Resolution 22-167 shall mean “program administrator” as defined in the Act.

Section 5. Commercial PACE (C-PACE) Only. Resolution No. 18-040 and Resolution No. 22-167 are hereby amended to incorporate changes in the Act relating to the terms “residential property” and “commercial property.” Brevard County’s PACE Program specifically authorizes PACE financing only for certain “commercial property”, as defined in the Act, which is not owned by a non-profit organization.

“Residential property” is defined in the Act at s. 163.08(6) as “real property zoned as residential or multifamily residential and composed of four or fewer dwelling units.”

“Commercial property” is defined in the Act at s. 163.08(2) as “real property other residential property. The term includes, but is not limited to, a property zoned multifamily residential which is composed of five or more dwelling units; and real property used for commercial, industrial, or agricultural purposes.”

Section 6. Form of Amendment; Delegation of Authority. The Form Amendment to Interlocal Agreements with Program Administrators (“Amendment”) as attached in **Exhibit A** hereto is incorporated by reference herein, and is approved for use with any of the program administrators who have existing contracts with Brevard County and who might desire to continue to provide C-PACE financing in Brevard County. In addition, any amendment to interlocal agreements in substantially the same form as the Amendment in Exhibit A may be signed by the County Manager, to whom this authority is hereby delegated.

Section 7. Survival of Prior Provisions. Provisions of Resolution No. 2018-040 and Resolution 2022-067 not amended by this Resolution are hereby restated and in remain in effect.

Section 8. Severability. If any one or more of the provisions of this Resolution shall for any reason be held illegal or invalid, such illegality or invalidity shall not affect any other provision contained herein.

Section 9. Effective Date. This Resolution is effective upon approval by the Board of County Commissioners of Brevard County.

DONE, ORDERED, AND ADOPTED by the Board of County Commissioners of Brevard County, Florida, in regular session, this 27th day of August, 2024.

Attest:

BY:

Rachel Sadoff, Clerk

(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

BY:

Jason Steele, Chair

(as approved by the Board on 8/27/2024)

EXHIBIT A

FORM OF AMENDMENT TO INTERLOCAL AGREEMENTS WITH PROGRAM ADMINISTRATORS

AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN [PROGRAM ADMINISTRATOR] AND BREVARD COUNTY

WHEREAS, on March 20, 2018, the Board of County Commissioners of Brevard County (the "Board") adopted Resolution No. 18-040 creating a Property Assessed Clean Energy Program ("PACE") program within Brevard County for the benefit of residential, commercial and industrial property owners; and

WHEREAS, on _____, Brevard County and the [Program Administrator Name] executed that certain [Name of Agreement], as recorded in Official Records Book [____], Page [____], of the Public Records of Brevard County, Florida (the ("[Shortened Name of Agreement]")); and

WHEREAS, the [Shortened Name of Agreement] allows the [Program Administrator's Name] to finance qualifying improvements for real properties located within Brevard County through a voluntary assessment program (the "PACE Program"), and

WHEREAS, on August 2, 2022, pursuant to Resolution No. 22-027, the Board of County Commissioners for Brevard County informed [Program Administrator's Name] that Brevard County was partially terminating the [Shortened Name of Agreement]'s authorization of [Program Administrator's Name] to provide PACE funding for single-family residential properties and properties owned by nonprofit organizations effective October 31, 2022; and

WHEREAS, the [Program Administrator's Name]'s PACE Program was previously governed by Section 163.08, Florida Statutes ("the Florida PACE Act"); and

WHEREAS, the Florida PACE Act was amended by Chapter 2024-273, Laws of Florida, effective July 1, 2024, and is now codified in Sections 163.08 through and including 163.087, Florida Statutes (the "Act"); and

WHEREAS, Section 9 of Chapter 2024-273, Laws of Florida provides that any applicable contract, agreement, authorization or interlocal agreement must be amended to comply with the statutory amendment; and

WHEREAS, Brevard County and [Program Administrator's Name] desire to amend the [Shortened Name of Agreement] and agree to be bound by all of the terms and provisions in the Florida PACE Act, as amended by Chapter 2024-273, Laws of Florida, (the "Act"), as may be amended from time to time; and

WHEREAS, based on changes in the Act, Brevard County has enacted Resolution No. 24-_____, in which it has amended its PACE Program to authorize program

administrators to provide PACE financing only for “commercial property” which is not owned by a non-profit organization.

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

SECTION 1. DEFINITIONS. Any capitalized terms used in this Amendment, but not otherwise defined herein, shall have the meaning specified for such term in the [Shortened Name of Agreement].

SECTION 2. AMENDMENT TO THE [Shortened Name of Agreement]. Brevard County and [Program Administrator’s Name] acknowledge and agree that the [Program Administrator’s Name]’s PACE Program shall be governed by the Act, and to the extent the requirements of the Act conflict with the [Shortened Name of Agreement], the requirements of the Act shall control. Except as specifically amended hereby, the [Shortened Name of Agreement] shall remain in full force and effect.

SECTION 3. PARTIAL TERMINATION. Brevard County and [Program Administrator’s Name] acknowledge and agree that Brevard County partially terminated the [Shortened Agreement Name]’s authorization of [Program Administrator’s Name] to provide PACE funding for single-family residential properties and to non-profit organizations effective October 31, 2022.

SECTION 4. AMENDMENT TO ONLY AUTHORIZE PACE FINANCING FOR “COMMERCIAL PROPERTY” WHICH IS NOT OWNED BY A NON-PROFIT ORGANIZATION. Brevard County and [Program Administrator’s Name] acknowledge and agree that Brevard County, in adopting Resolution No. 24-____, has amended its PACE Program to specifically authorize PACE financing only for “commercial property” as defined in the Act, which is not owned by a non-profit organization. “Commercial property” is defined in the Act as follows: “real property other than residential property. The term includes, but is not limited to, a property zoned multifamily residential which is composed of five or more dwelling units; and real property used for commercial, industrial, or agricultural purposes.”

SECTION 5. RECORDING. This Amendment shall be filed by the [Program Administrator’s Name] and recorded in the public records of Brevard County, in accordance with Section 163.01(11), Florida Statutes.

SECTION 6. EFFECTIVE DATE. This Amendment shall become effective upon the recordation of the Amendment, in accordance with Section 4, above.

Signature Pages to follow.

Signature Page to Amendment

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be signed by its duly authorized representative, on the _____ day of _____, 202__.

Seal

Attest:

Brevard County:

By: _____
Rachel Sadoff, County Clerk

By: _____
County Manager [Date]

[The remaining portion of this page is intentionally left blank.]

Signature Page to Amendment

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be signed by its duly authorized representative, on the _____ day of _____ 20__.

WITNESS:

Signature

Print Name

Address:

[Name of Program Administrator]

By: _____
_____[Title] Date

WITNESS:

Signature

Print Name

Address:

STATE of FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me b means of [] physical presence or [] online notarization this _____ day of _____, 20 __, by _____, as _____ on behalf of _____, who is personally known to me/has produced _____ as identification.

(SEAL)

Printed/Typed Name: _____
Notary Public – State of Florida
Commission Number _____