



VIA CERTIFIED MAIL

January 20, 2023

Dear Pinellas County Economic Development Department:

I'm writing to share some promising changes in the Florida PACE Funding Agency's operations that will have a positive impact on property owners in your county.

Since its inception in 2011, the Florida PACE Funding Agency and its partners have been working diligently to provide all eligible property owners with an affordable and accessible financing option to make needed property improvements to resist the impacts of hurricanes and tropical storms, reduce energy usage, and improve access to renewable energy. As we have seen just this year, natural disasters are affecting all of Florida's property owners, and low-to-moderate income homeowners often lack access to the ability to secure their homes against these natural disasters.

There is no single solution to solve the challenges facing Florida's property owners during these trying times. Limited, and frequently expensive, property insurance availability and the need to continually make investments to harden properties against weather-related disasters will continue to disadvantage the State financially, particularly as higher proportions of losses are borne by Citizens Property Insurance.

This is the reason that the Legislature adopted section 163.08 of the Florida Statutes, commonly referred to as the Property-Assessed Clean Energy, or PACE, program. Though PACE is not the only financing option for these qualifying improvements, it is a necessary and extremely useful tool in helping homeowners to affordably manage property maintenance and economic uncertainty.

The Florida PACE Funding Agency has long been a leader in advancing the mission of PACE statewide while championing consumer protection measures. To provide clarity on the respective responsibilities for carrying out the PACE program, the Agency underwent a judicial validation process that concluded this fall. This process finally determined that improvements such as seawalls that harden properties against storm surge qualify for PACE financing, and further clarified that the Agency has independent authority to carry out its mission of offering PACE financing statewide, without requiring additional efforts from individual counties or cities.

The Agency has an agreement with the County to offer the PACE program to the County's property owners. That Agreement is no longer necessary for the Agency to provide its program in Collier County, and this letter therefore serves as notice of termination of that Agreement, effective 60 days from the date of this letter, or on March 21, 2023. Alternatively, the Agency is willing to dispense with the Agreement if the County prefers through earlier mutual termination. Henceforth, the Agency's program will be conducted independently, and not under the Agreement.

This means that PACE financing will remain available to property owners in your county, and every county in the state, with industry-standard homeowner protections—and for the first time, it will be available to property owners in municipalities in your county. The Agency will operate on a uniform statewide basis,

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Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



and invites participation from Pinellas County through a new interlocal agreement that facilitates information sharing and feedback. The interlocal agreement is not necessary to provide PACE in your county, but you will likely find collaboration on helping property owners harden homes and businesses against natural disasters beneficial. Attached, please find the new Interlocal Agreement (ILA).

A brief overview of both the PACE process, from the county's perspective, and an overview of the takeaways from the judicial validation proceeding, are included here. While the ruling only directly impacts the Florida PACE Funding Agency's relationship with counties and cities, other PACE authorities may be treated the same way by Florida law, and dialogue with those entities is encouraged. Florida PACE Funding Agency staff is always available for communication and assistance, so please reach out if necessary to: Info@FloridaPACE.gov.

Sincerely,

A handwritten signature in black ink, appearing to be "M. Moran", written in a cursive style.

Michael A. Moran

Executive Director

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MEMORANDUM REGARDING PACE JUDICIAL VALIDATION

From: Jamy Dinkins, CivForge Law, P.A.

Date: December 1, 2022

The Florida PACE Funding Agency obtained a judgment this fall from the Circuit Court in Leon County validating up to \$5,000,000,000 in PACE bonds and establishing several pertinent legal concepts. Each of those is detailed below.

SEAWALLS ARE QUALIFYING IMPROVEMENTS UNDER THE PACE STATUTE

PACE assessments, or assessments for "Qualifying Improvements" under section 163.08, can be imposed by a local government such as the Florida PACE Funding Agency when they are used to fund and finance improvements to real property that fit into one of three criteria: energy efficiency, renewable energy, and wind-resistance. Previously, there was a question as to whether improvements (such as seawalls) that protect a property against wind-driven water damage (i.e., storm surge during a tropical storm) are wind-resistance improvements for purposes of the state statute. The recent judicial validation determined that they are. Accordingly, a property owner may now use PACE financing to install a seawall on property that is at risk for damage from storm surge.

THE COLLECTION OF PACE ASSESSMENTS IS A MINISTERIAL DUTY OF THE TAX COLLECTOR, NOT SUBJECT TO ADDITIONAL CONTRACTUAL DEMANDS OR TIMEFRAMES

As a method of consumer protection, PACE assessments must be collected using the Uniform Method of Collection, a process by which assessments are collected on the same bill as taxes. The Uniform Method imposes a ministerial duty on each county's tax collector to place assessments on the tax bill without questioning the authority or propriety of the assessments—the Legislature has committed that judgment to the local government imposing the assessments. Unfortunately, some tax collectors in the state have ignored this law, and Florida Department of Revenue direction, and imposed unlawful conditions or timeframes on the collection of PACE assessments.

In addition, the Uniform Method requires reimbursement of actual costs of collection to the tax collectors, with a cap of two percent of the collection. This cost is passed on to property owners. While counties who have calculated actual costs arrive at a number consistently below one percent, some tax collectors do not calculate the costs and instead charge the statutory maximum.

The recent judicial validation directs tax collectors to place the assessments on the same bill as taxes without these conditions and to report, on request, the actual costs of collection so that they may be reimbursed (as opposed to simply charging the statutory cap on expenses).

FPFA HAS INDEPENDENT AUTHORITY TO IMPOSE ASSESSMENTS STATEWIDE

The PACE statute does not grant authority to any entity to impose assessments. Rather, it allows entities who already have such a power to impose the specific type of assessment described, within the limitations of the statute.

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Some general purpose local governments have attempted to use home-rule power to limit the authority of other local governments to impose PACE assessments. This can come in the form of prohibiting PACE assessments altogether, imposing a fee on assessments, or requiring adherence to particular contracts or extra-statutory conditions. **The recent judicial validation clarifies that such ordinances apply only to those programs administered by the municipality or county adopting the ordinance, but not to those PACE programs administered by other local governments.** The judicial validation further clarifies that, because the Florida PACE Funding Agency derives its authority to impose assessments from state statute, it does not need further authority or permission from a general purpose local government to operate within any particular territory, and no local government has liability, responsibility, or authority relating to PACE programs of another local government.

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INTERLOCAL AGREEMENT

between

THE FLORIDA PACE FUNDING AGENCY

and

[NAME OF COUNTY], FLORIDA

relating to

PROVISION OF FUNDING AND FINANCING FOR QUALIFYING IMPROVEMENTS

THIS INTERLOCAL AGREEMENT is made and entered into as of _____ 1, 202_, (“Agreement”), by and between the Florida PACE Funding Agency, a separate legal entity and unit of local government established pursuant to section 163.01(7), Florida Statutes (“Agency”), and [Name of County], a political subdivision of the State of Florida (“County”), by and through their respective governing bodies, for the purpose of recognizing the authority of the Agency to fund and finance qualifying improvements within the boundaries of the County, assisting the County with coordinating efforts to mitigate the effects of, and adapt to, climate events, and coordinating efforts to reduce energy consumption and mitigate damage from hurricanes and other windstorms.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Agency and the County hereby agree as follows:

1. FINDINGS.

(A) Agency and County have reviewed the provisions of section 163.08(1), Florida Statutes, and find those facts as originally determined by the Legislature to be true in relation to the County and its inhabitants as of the date of this Agreement, and therefore incorporate those recitals as if fully set forth herein.

(B) Agency and County find that County has no liability or obligation relating to the activities of the Agency, and Agency’s authority is derived from state statute and governed by Agency’s governing board, not ordinance or resolution of County.

(C) County will benefit from the provision of standard periodic reports from Agency to quantify Agency’s activity within the boundaries of County for the purpose of environmental and windstorm mitigation calculation, planning, and reporting.

2. AUTHORITY. The execution of this Agreement has been duly authorized by Resolution of the governing bodies of each party hereto. Nothing within this Agreement limits the authority of Agency to enter into similar agreements with other local

governments or provide its program outside of the boundaries of County. Nothing within this Agreement limits the authority of County to establish programs of a similar nature, or to contract with or otherwise enable other local governments to provide similar programs within the boundaries of County.

3. RESPONSIBILITIES OF AGENCY.

(A) Agency will provide County with access to a report no less frequently than once per calendar quarter that quantifies basic, aggregate information about Agency activities within the boundaries of County. This report will include, for example, number and value of projects completed within the boundaries of Subdivision, both monthly and in aggregate.

(B) Agency will conduct a public meeting in the third quarter of each calendar year at which comments and suggestions may be submitted to the governing body by County, in addition to written or verbal communication between Agency staff and County staff as the need arises.

(C) Agency will promptly respond to specific constituent concerns brought to the attention of Agency by County.

4. RESPONSIBILITIES OF COUNTY. County will forward any complaint or other communication from a constituent to Agency promptly for Agency resolution.

5. ADMINISTRATION.

(A) Agency and County are both units of local government within the State of Florida, and as such, are subject to the provisions of chapter 119, Florida Statutes. Nothing within this Agreement changes the rights or responsibilities of the parties with respect to public records.

(B) Agency and County are both units of local government within the State of Florida, and as such, are invested with certain privileges and immunities from liability and exemptions from laws, ordinances, and rules which apply to the activity of officials, officers, agents, or employees of public bodies. Nothing within this Agreement disturbs or constitutes a waiver by either party of any such privilege, immunity, or exemption.

(C) The term of this Agreement will begin on the date first written above, and will continue until terminated by either party upon ninety (90) days' written notice delivered to the other. No amendment, supplement, modification, or waiver of this Agreement is binding unless executed in writing by both parties. The parties understand that termination of this agreement does not affect the obligations and authorities of the parties to initiate or collect non-ad valorem assessments under section 163.08, Florida Statutes. If this Agreement is terminated for any reason, the Agency will operate in the County as recognized in *Florida PACE Funding Agency v. State*, No. 2022-CA-1562 (Fla. 2d

Cir. Ct. Oct. 6, 2022), which recognized Agency has independent authority to conduct its programs within the boundaries of County without transfer of power from County.

(D) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes any prior agreements, understandings, negotiations, and discussions of the parties, written or oral, with respect thereto. This Agreement is binding on the parties, their respective successors, and assigns, and inures to the benefit of the parties, their respective successors, and assigns. This Agreement may not be assigned except to the lawful governmental successor of a party.

(E) Should any portion of this Agreement be held to be invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other aspect of this Agreement.

(F) This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which constitute but one and the same document. A true and correct facsimile copy may serve as an original in all respects.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed under seal and entered into as of the date first written above.

FLORIDA PACE FUNDING AGENCY

[NAME OF COUNTY]

By: _____
Mike Moran, Executive Director

By: _____
[Name and title]

(seal)

(seal)

Attest: _____
Wendi Leach, Director of Operations

Attest: _____
[Name and title]