

Grants & Contracts - Transmittal Memo

DATE: September 5, 2018

FROM: Purchasing Division, Contracts

TO: Sean McLendon

CONTRACT #: 10995

VENDOR: Energy District

DESCRIPTION: #10995 Energy District ILA negotiated enhanced consumer protections.

APPROVED BY: Board of County Commissioners

APPROVAL DATE: 8/28/2018

RECEIVED ON: September 5, 2018

TERM START: 8/28/2018

TERM END: 8/27/2021

AMOUNT: 0.00

RFP/BID #:

POR #
(ENCUMBERANCE):

ACTIONS REQUIRED: Please forward a copy to the vendor & retain a copy for your files.

**INTERLOCAL AGREEMENT BETWEEN THE FLORIDA RESILIENCY AND
ENERGY DISTRICT AND ALACHUA COUNTY**

This Interlocal Agreement (the "Interlocal Agreement"), made and entered into this 28th day of August, 2018, by and between Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County," and Florida Resiliency and Energy District ("FRED"), hereinafter referred to as the "District" (collectively referred to as "Parties");

WITNESSETH:

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, Section 163.08, Florida Statutes, authorizes financing of qualifying improvements through agreements for property to be subject to a voluntary, non-ad valorem assessment process as the repayment mechanism, commonly known as PACE; and

WHEREAS, Section 163.08, Florida Statutes, provides that a local government may partner with one or more local governments to provide and finance qualifying improvements; and

WHEREAS, the District was organized per Section 163.01(7), Florida Statutes, in order to finance qualifying improvements in accordance with Section 163.08, Florida Statutes, as a means of implementing and financing a qualifying improvements program for energy and water conservation and efficiency, renewable-energy and wind-resistance improvements, and to provide additional services consistent with law; and

WHEREAS, on December 8, 2015, the County adopted Resolution 15-130, agreeing to join multiple PACE districts, pursuant to Section 163.08, Florida Statutes, in order to finance qualifying improvements in the County; and

WHEREAS, the County would like to request membership with the District, including additional residential disclosure and consumer protections; and

WHEREAS, the Parties have determined that it shall serve the public interest to enter into this Interlocal Agreement to make the most efficient use of their powers and the County desires to approve its Agreement with the District.

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

1. Term. This Interlocal Agreement shall commence on the 28th day of August, 2018 and continue for a period of three years, terminating on 8/27/2021.
2. Purpose. The purpose of this Interlocal Agreement is to approve the County's membership in the District and to authorize the District, or its agent, to finance

qualifying improvements, as defined in Section 163.08, Florida Statutes, (“PACE Statute”) for residential and non-residential property owners in the County.

3. Qualifying Improvements. As used in this Interlocal Agreement, the term “qualifying improvements” has the meaning provided in the PACE Statute, including any energy conservation and efficiency improvement, any renewable energy improvement, and any wind resistance improvement.
4. The District. The District was established by an Interlocal Agreement between the Town of Lake Clarke Shores and the City of Fernandina Beach (hereinafter “Founding Interlocal Agreement”). Through this Interlocal Agreement, the jurisdiction of the District is expanded to include the area of the County. The County is requesting membership in the District and establishing standards for the District’s Third Party Administrator (“Provider”) when operating within the County.
5. Interlocal Agreement. By approving its membership with the District, the County accepts and incorporates the terms of the District’s Founding Interlocal Agreement (**Exhibit A**). This Founding Interlocal Agreement provides additional terms applicable only to the relationship between the County and the District and the financing of qualifying improvements for residential and non-residential property owners in the County. If there are inconsistencies between the provisions of this Interlocal Agreement and the District’s Founding Interlocal Agreement, then this Interlocal Agreement’s provisions will govern.
6. Non-Exclusive. This Interlocal Agreement is non-exclusive, meaning the County specifically reserves the right to participate with or join any other entity providing a similar program or create its own program under the PACE Statute.
7. Residential Disclosure and Consumer Protection. As a condition precedent to operating within the County and financing qualifying improvements for residential property owners only within the County, the District and the Provider agree to comply with and share with citizens seeking PACE services the following enhanced residential disclosure and consumer protection measures:

(a) Alachua County – Enhanced Residential Disclosure and Consumer Protections:

i. Scope of Financing Agreement

A financing agreement may only be used for qualifying improvements including energy conservation and efficiency, renewable energy, and wind resistance improvements as defined by Section 163.08, Florida Statutes, as may be amended by law.

ii. Consumer Eligibility

For PACE financing and qualifying improvements on residential property within the County, the District may finance qualifying improvements on residential properties provided they comply with the following criteria inclusive of all eligibility criteria listed in the PACE Statute and all future amendments thereto:

- a. Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under the PACE Statute may not exceed twenty percent (20%) of the just value of the property as determined by the county property appraiser, excepted as otherwise provided by statute; and
- b. All property taxes and other assessments levied on the property tax bill have been paid and have not been delinquent for the preceding three years, or the property owner's period of ownership, whichever is less; and
- c. There are no involuntary liens in excess of \$1,000, including but not limited to construction liens on the property; and
- d. No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding three years, or the property owner's period of ownership, whichever is less; and
- e. All mortgage debt on the property is current and not delinquent; and
- f. All mortgage-related debt on the underlying property may not exceed 90% of the property's fair market value ("FMV"); and
- g. The total mortgage-related debt on the underlying property plus the PACE program financing may not exceed the FMV of the property.

iii. Fair Market Value

Fair market value means the just value of real property determined by the Alachua County Property Appraiser, by a credentialed commercial property appraiser or licensed realtor, or by an automated valuation service or model from a reputable third-party source.

iv. Disclosure Requirements

- a. In addition to any disclosure requirements in the PACE Statute, the District, when extending financing pursuant to the PACE Statute and levying non-ad valorem assessments to fund the qualifying improvements, shall present to the property owner a separate, written notice ("Rights and Responsibilities Notice") disclosing the following:

1. The estimated total amount of the debt, including amount financed, fees, fixed interest rate, capitalized interest and the effective rate of the interest charged ("Annual Percentage Rate" or "APR");
2. A statement notifying the property owners with an escrow or impound account to pay property taxes that payment begins immediately and that they should contact their lender to ensure that the escrow payments are adjusted accordingly.
3. For residential properties, the District may only offer fixed simple interest rates and payments that fully amortize the obligation. Variable or negative amortization financing terms are not permitted. Variable interest rates shall be allowed for commercial properties. Capitalized interest included in the original balance of a PACE financing does not constitute negative amortization.
4. The repayment process and terms, amounts and a schedule that fully amortizes the amount financed including the estimated annual PACE assessment;
5. That the PACE assessment will appear on the property owner's tax bill;
6. That there is no discount for paying the PACE assessment early;
7. The nature of the lien recorded and that of the PACE assessment will be collected in the same manner as real estate taxes. That failure to pay the PACE assessment may cause a tax certificate to be issued against the property, and that failure of payment thereof may result in the loss of property subject to the PACE assessment, including homestead property, in the same manner as failure to pay property taxes;
8. The specific improvements to be financed and installed and that such improvements and PACE assessment may or may not affect the overall value of the property;
9. A PACE assessment payment term that does not exceed the useful life of the improvements;
10. The District shall disclose the following to all participating property owners regarding prepayment of PACE assessments:
 - (i) Information as to any accrued interest that may be due upon early payment;

- (ii) The right of pre-payment without penalty for residential projects; and
 - (iii) Notice that the property owner may be required to pay any PACE assessment in full at the time of refinance or sale of the property;
 - 11. The 3 business-day right to cancel the financing for residential property owners.
 - 12. Renewable Energy Credits, carbon credits or any derivatives of similar nature, should a mechanism be created in law or regulation to formulate them that come about due to the PACE assessment shall remain in the ownership of the property owner.
- b. The Notice must be delivered to the property owner by the District or its Provider and must be signed and dated by the property owner prior to or contemporaneously with the property owner's signing of any legally enforceable documents under the PACE program. The District or its Provider must keep the signed Notice with the property owner's executed financing agreement.
 - c. The District shall record, or cause to be recorded, the financing agreement or a summary memorandum of the financing agreement, in accordance with Section 163.08(8), Florida Statutes.
 - d. To the best of the District's ability, the District shall inform all participating property owners of generally available rebates, credits, and incentives available for the project and that the property owner may have the right to apply those rebates, credits, and incentives received for the project to defray the project costs;
 - e. Provide all participating residential property owners with a copy of the enhanced residential disclosure and consumer protections included in this Agreement, titled "Rights and Responsibilities Notice."
- (b) Neither the District nor the Provider may levy a non-ad valorem assessment under this Interlocal Agreement on a property until the property owner verifies, in writing, that the work performed by the Provider, or its agents and contractors, is completed to the property owner's satisfaction.
8. Liability. The Parties are each individually and separately liable and responsible for the actions of its own officers, agents, governing bodies, and employees in the performance of their respective obligations under this Interlocal Agreement. Except as specified herein, the Parties shall each individually defend any action or proceeding brought

against their respective agency pursuant to, or arising from, this Interlocal Agreement. The Parties are individually responsible for all of their respective costs, attorneys' fees, expenses, and liabilities incurred as a result of any claims, demands, suits, actions, damages, and causes of action, including the investigation or defense thereof, arising out of, or related to, this Interlocal Agreement.

9. Responsibilities of Providers. As a condition to operating within the County, the Provider, when acting as the District's agent, shall perform the following tasks associated with the District's work:

- (a) Engage, educate, and follow-up with all District or Provider contractors performing work in Alachua County regarding the enhanced residential disclosure and consumer protections afforded under this Interlocal Agreement and any processes for project approval or payment requirements;
- (b) Take appropriate and proportional action up to and including dismissal of any contractor who does not comply with insurance or licensing requirements, who inaccurately or deceptively markets the PACE program, or who performs faulty or incomplete upgrades authorized under this Interlocal Agreement;
- (c) The financing term may not exceed the useful life of the installed qualifying improvements;
- (d) Apply interest rates based on the repayment term, or as negotiated with the capital provider, at a fixed rate;
- (e) Verify the projected energy savings, if applicable of any bid summaries provided with a project application and provide a detailed disclosure of the estimated "useful life" or any upgrades provided and the repayment term of the assessment;
- (f) Send notice to existing mortgage lenders and allow the property owner to receive notice of any adjustment of escrow or other measure taken by the lender.

10. Carbon or Similar Credits. The property owner retains the right to any carbon credits, or credit in an equivalent program, earned or received due to upgrades or projects provided by the District or Provider pursuant to this Interlocal Agreement or the PACE Statute.

11. Indemnification.

- (a) To the extent provided by law, the District agrees to protect, defend, reimburse, indemnify and hold the County, its agents, employees, and elected officers ("Indemnified Parties") free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands,

damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature (collectively, a "Claim") arising out of or caused by any direct or indirect act, omission, or fault, whether active or passive, of the District or the Provider, of anyone acting under their direction or control, or on their behalf in connection with or incident to the performance of this Interlocal Agreement. The District's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law, but in no event shall they apply to liability caused by the negligence or willful misconduct of the County.

- (b) The District will promptly request and obtain from its Provider, and any subsequent provider, a separate indemnification agreement as to its actions and activities on behalf of the District concerning all of the subject matter of this Interlocal Agreement for the benefit of the County (**Exhibit B**).
- (c) Nothing in this Interlocal Agreement constitutes a waiver by the County or by the District of its sovereign immunity or the liability limits set forth in 768.28, Florida Statutes.
- (d) Nothing in this Interlocal Agreement is intended to inure to the benefit of any third-party or for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. In the event any Claim is brought against an Indemnified Party, the District, shall upon written notice from an Indemnified Party, defend each Indemnified Party against each such Claim by counsel satisfactory to the Indemnified Party or, at the Indemnified Party's option, it may elect to provide its own defense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

12. Notice. Except as otherwise provided in this Interlocal Agreement, any notice of default or termination from either the County or the District must be in writing and sent by certified mail, return receipt requested, or by personal delivery with receipt. For purposes of all notices, District and County representatives are:

If to FRED:

The Florida Resiliency and Energy District
c/o Florida Development Finance Corporation
William "Bill" F. Spivey, Jr.
Executive Director
156 Tuskawilla Road, Suite 2340
Winter Springs, FL 32708
bspivey@fdpcbonds.com

and Issuer's Counsel with Broad and Cassel
Joseph Stanton, Esq.
Bank of America Center
390 North Orange Avenue
Suite 1400
Orlando, FL 32801-4961
407.839.4200 (t)
jstanton@broadandcassel.com

If to County:
County Manager
12 SE First Street, Second Floor
Gainesville, FL 32601

With a Copy to:
County Attorney
12 SE First Street, Second Floor
Gainesville, FL 32601

13. Agreements with Tax Collector. The District acknowledges that the County has no authority to bind the County Tax Collector and the District will be required to enter into a separate agreement therewith, to establish the fees (if any) to be charged by the Tax Collector for the collection or handling of the District's non-ad valorem assessments.
14. Records. The Parties shall each maintain their own respective records and documents associated with this Interlocal Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
15. Termination. A Party may unilaterally terminate this Interlocal Agreement, without cause, with 30 calendar days' written notice to the other Parties. Termination of this Interlocal Agreement is prospective only and may not be interpreted to preclude another Party from exercising or satisfying its existing rights at the time of termination. Termination of this Interlocal Agreement removes the County from the District's jurisdiction, but such termination or the expiration of this Interlocal Agreement does not impact existing contractual relationships between property owners within the County and the District or the Provider or property owners whose applications were approved for financing prior to the termination or expiration date.
16. Law and Venue. Interlocal Agreement is governed in accordance with the laws of the State of Florida. Venue for any disputes or causes of action arising out of this Interlocal Agreement is in Alachua County.
17. Severability. Paragraphs 8 and 11 are essential and indivisible provisions of this Interlocal Agreement and must be interpreted to provide the broadest protection to the County. If either paragraph 8 or paragraph 11 is declared void by a court of law, then the entire Interlocal Agreement shall be deemed void. If any other provision of this Interlocal Agreement is declared void by a court of law, all other provisions will remain in full force and effect.

18. Non-waiver. The failure of any party to exercise any right in this Interlocal Agreement may not be considered a waiver of such right
19. Attachments. All attachments to this Interlocal Agreement are incorporated into and made part of this Interlocal Agreement by reference.
20. Construction. This Interlocal Agreement may not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the Parties. The Parties recognize that all Parties have substantially contributed to the preparation of this Interlocal Agreement.
21. Counterparts. This Interlocal Agreement may be executed in any number and by the different Parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.
22. Amendments. The Parties may not amend, modify, or alter the terms or conditions set forth herein unless the amendment, modification, or alteration is contained in a written document, executed by the Parties with the same formalities as this Interlocal Agreement.
23. Entire Agreement. This Interlocal Agreement constitutes the entire agreement for the County's membership in the District and the County's authorization to perform services within Alachua County pursuant to the PACE Statute and supersedes all prior written or oral agreements, understandings, or representations.
24. Effective Date. This Interlocal Agreement is effective on the date executed by all Parties.

SIGNATURE PAGE TO LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this 28th day of August, 2018.

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA

By: [Signature] Date _____
Lee Pinkoson, Chair

For the [] of ALACHUA COUNTY,

APPROVED AS TO FORM

[Signature]
Alachua County Attorney's Office

Attest: [Signature]
By: [Signature]
Jesse K. Irby II, Clerk

(SEAL)

[SIGNATURE PAGE TO LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT]

WITNESS:

[Signature]
RYAN BARTELO

FLORIDA DEVELOPMENT FINANCE
CORPORATION on behalf of FLORIDA
RESILIENCY AND ENERGY DISTRICT

By:

[Signature]
William "Bill" F. Spivey, Jr.
Executive Director

WITNESS:

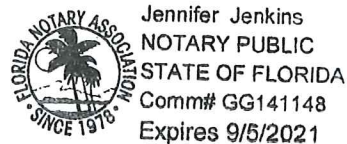
[Signature]
Alisha Rodriguez

STATE OF FLORIDA
COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 20th day of August, 2018, by William "Bill" F. Spivey, Jr., Executive Director of the Florida Development Finance Corporation, who is personally known to me has produced _____ as identification.

(SEAL)

[Signature]
Printed/Typed Name: Jennifer Jenkins
Notary Public-State of Florida
Commission Number: GG141148



**INDEMNIFICATION AGREEMENT BETWEEN THE FLORIDA DEVELOPMENT
FINANCE CORPORATION, AS ADMINISTRATOR OF THE FLORIDA RESILIENCY
AND ENERGY DISTRICT, AND ALACHUA COUNTY, FLORIDA**

This Indemnification Agreement (the "Agreement") is entered into 28th day of August, 2018 by and between the Florida Development Finance Corporation, as the administrator of the Florida Resiliency and Energy District (the "Authority"), and Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners ("County") (collectively, the "Parties").

WHEREAS, the County and the Florida Resiliency and Energy District have proposed to enter into an Interlocal Agreement ("Interlocal Agreement") to authorize the Florida Resiliency and Energy District to operate in Alachua County for the purposes of providing a Property Assessed Clean Energy (PACE) program; and

WHEREAS, The Florida Development Finance Corporation is the third party administrator for the Florida Resiliency and Energy District and the Florida Development Finance Corporation would be operating on behalf of the Florida Resiliency and Energy District within Alachua County; and

WHEREAS, The Florida Development Finance Corporation has agreed to provide the County with a separate indemnification agreement for the benefit of the County.

NOW, THEREFORE, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated into this Agreement.
2. The Florida Development Finance Corporation shall indemnify and hold harmless the County and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its 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 to the extent provided by the Florida Development Finance Corporation or its employees, agents, servants, partners, principals, administrators, subcontractors, or agents. The Florida Development Finance Corporation 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 of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Florida Development Finance Corporation expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its 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 Eighth Judicial Circuit in and for Alachua County, Florida, the United States District Court for the Northern District of Florida or United States Bankruptcy Court for the Northern District of Florida, as appropriate.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this 28th day of August, 2018.

BOARD OF COUNTY COMMISSIONERS
ALACHUA COUNTY, FLORIDA

By: [Signature]
Lee Pinkoson, Chair

ATTEST:

By: [Signature]
Jesse K. Irby, II, Clerk of Commission

APPROVED AS TO FORM

[Signature]
Sylvia E. Torres, Interim County Attorney

ATTEST:
Corporation

By: [Signature]
Print Name: LYAN T. BATTEN

The Florida Development Finance

By: [Signature]
Print Name: WILLIAM F. SPIVEY JR

Approved as to form and legality:

By: [Signature]
Kathleen Stangle