

**ASSESSMENT CONTRACT**

**THIS ASSESSMENT CONTRACT** (this “Contract”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) by and among THE CITY OF LA VISTA, a Nebraska municipal corporation, (“City”), which created **THE LA VISTA PACE DISTRICT**, a clean energy assessment district pursuant to Ordinance No. 1359 (“LVPD”),\_\_\_\_\_, a \_\_\_\_\_ (“Lender”), and, a \_\_\_\_\_ (“Property Owner”), and is made a part of that certain Construction Loan Agreement dated as of the same date made by and between Lender and Property Owner, such Construction Loan Agreement hereafter referred to as the “Loan Agreement.”

**W I T N E S S E T H:**

**WHEREAS**, Property Owner is the owner of certain real property located at \_\_\_\_\_ in the City (as further described on **Exhibit A** attached hereto, the “Property”);

**WHEREAS**, the City has adopted Ordinance No. 1359, which is incorporated herein by this reference (the “Ordinance”), by which the Municipality created a clean energy assessment district comprised of all areas within the City and its extraterritorial jurisdiction pursuant to Nebraska Revised Statute Sections 13-3201 to 13-3211, inclusive, and known as the “Property Assessment Clean Energy Act,” (the “Act”) and provides for repayment of financed costs through annual assessments pursuant to assessment contracts entered with property owners and third party lenders;

**WHEREAS**, Property Owner has obtained and recorded in the office of Register of Deeds of Sarpy County the acknowledged and verified written consent and subordination agreement required by Neb. Rev. Stat. Section 13-3205(2)(a) of all persons or entities that currently hold mortgage liens or deeds of trust on the Property, if any, to the Loan, as herein defined and this Contract, and represents to the City that all applicable requirements and conditions of Neb. Rev. Stat. Section 13-3205(2) have been satisfied;

**WHEREAS**, Property Owner intends to make energy efficiency improvements (as such term is used in Neb. Rev. Stat. §13-3203(3) of the Act) at the Property, as described on **Exhibit B** attached hereto and including the information required by Neb. Rev. Stat. Section 13-3203(3)(a) (the “Project”);

**WHEREAS**, Lender has agreed to make a loan to Property Owner in the amount of \$ \_\_\_\_\_ (the “Loan”), the proceeds of which will be used to fund the implementation of the Project, and the repayment of which will be made from PACE special assessments levied on the Property pursuant to the Act and this Contract;

**WHEREAS**, City has agreed to direct the Sarpy County Treasurer to levy special assessments, collect or cause the collection of the special assessments, record such special assessments as a lien on the Property, as allowed by the Act, and remit payments on such special assessments to Lender to be applied to pay down the Loan, all as more particularly set forth herein;

**WHEREAS**, City is authorized to enter into this Contract pursuant to the Act.

**NOW, THEREFORE**, for and in consideration of the making of the Loan and the financing and collection arrangements between Lender, Property Owner and City, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Lender, Property Owner and City agree as follows:

1. Defined Terms. The words and phrases as specifically defined in NEB. REV. STAT. § 13-3203, as amended, or in the Ordinance shall have their defined meanings. The following capitalized terms used in this Contract shall have the meanings defined or referenced below or in the Recitals above:

“Bi-Annual Installment” means the portion of the Loan Amount that is due in a particular year as more fully described in Sections 2 and 5 hereof and shown on **Exhibit C**, as may be increased by the County Treasurer Fee, if applicable, pursuant to Section 5(a).

“County Treasurer” means the office of the Sarpy County Treasurer.

“Register of Deeds” means the office of the Register of Deeds for Sarpy County.

“Lender Parties” shall have the meaning set forth in Section 12(a) hereof.

“Liabilities” shall have the meaning set forth in Section 11(a) hereof.

“Loan” shall have the meaning set forth in the Recitals above.

“Loan Amount” means, as of any date of computation, the outstanding amount of all principal under the Note, accrued but unpaid interest and any applicable penalties, costs, fees, charges, late payment charges, default interest rate charges, prepayment premiums or administrative expenses related to the Loan, including without limitation, the administrative fees set forth in Section 14 hereof and any and all other administrative fees to be paid to County Treasurer or Lender by Property Owner in connection with the Loan.

“Loan Agreement” shall have the meaning set forth in the Preamble above.

“Note” shall have the meaning given such term in the Loan Agreement.

“PACE Special Assessments” means the aggregate amount of all Bi-Annual Installments of the Loan Amount, which Bi-Annual Installments shall be levied as special assessments pursuant to Section 13-3205(7) of the Act.

“City Parties” shall have the meaning set forth in Section 11(a) hereof.

“Tax Year” means the period from January 1 through the following December 31.

2. Payments. The Loan Amount shall be payable in Bi-Annual Installments. The Loan shall bear interest, including default interest, at the rates set forth in the Note and payments shall be due under the Note and the Loan Agreement as more fully described therein and in Section 5 of this Contract, ending upon payment in full of the Loan Amount and all other charges, fees, expenses and other amounts due under this Contract, the Loan Agreement and the Note. The amounts of the Bi-Annual Installments are based on a Loan Amount as of the date of this Contract of \$ \_\_\_\_\_. The Loan shall be fully amortized over the term of the Loan,

and shall be repaid on the terms set forth in this Contract, the Loan Agreement and the Note. Each year during the term of this Contract, Lender shall supply City with the amount of the Bi-Annual Installment for such year by delivering a completed Lender Installment Certificate in the form attached hereto as **Exhibit D** on or before December 31 of such year. Should Lender fail to deliver a Lender Installment Certificate on or before December 31 of any year, with a copy to the Property Owner, the Bi-Annual Installment shall be presumed to be the same as the Bi-Annual Installment for the applicable year as shown on **Exhibit C**, with any surplus or shortfall to be addressed by adjusting the amount of the subsequent year's Bi-Annual Installment.

3. Consent to PACE Special Assessments.

(a) By entering into the Contract, City hereby agrees to enforce the PACE Special Assessments and impose the Bi-Annual Installments as special assessments pursuant to the Act in the manner specified in this Contract. Upon execution of this Contract, City will cause this Contract to be recorded against the Property in the office of the Register of Deeds.

(b) Property Owner hereby agrees and acknowledges: (i) that Property Owner has received or will receive a special benefit by financing the Project through LVPD that equals or exceeds the total amount of the PACE Special Assessments (ii) that the Property is subject to the PACE Special Assessments and consents to the levy of the Bi-Annual Installments; (iii) that Property Owner shall pay the Bi-Annual Installments when due pursuant to the terms set forth in this Contract, the Loan Agreement and the Note; (iv) that Bi-Annual Installments of the PACE Special Assessments are a lien on the Property as provided in the Act and the Ordinance.

4. Term. This Contract shall remain in full force and in effect until the Loan Amount and all other charges, fees, expenses and other amounts due under this Contract, the Loan Agreement and the Note have been paid in full.

5. Bi-Annual Installments.

(a) During the term of this Contract, City expects to collect the Bi-Annual Installments with the assistance of the County Treasurer. The County Treasurer shall collect the Bi-Annual Installments and City, the Property Owner and the Lender agree that the County Treasurer may deduct from such Bi-Annual Installments a collection fee in such amount as allowed by law (the "County Treasurer Fee").

(b) The aggregate amount of all PACE Special Assessments shall equal the Loan Amount and any such amount as needed to pay the County Treasurer Fee, as shown on **Exhibit C** attached and incorporated by this reference.

(c) Property Owner hereby agrees to pay the property tax bills and Bi-Annual Installments for the Property during the term of this Contract, which shall not exceed the weighted average useful life of the energy project, in a timely fashion so as to avoid any default or delinquency in such payment.

(d) If Property Owner fails to pay all or part of any Bi-Annual Installment when due, the parties hereto acknowledge and agree that (i) default interest on the unpaid amounts of the Bi-Annual Installments shall accrue in favor of Lender as set forth in the

Note, (ii) such default interest shall be added to the PACE Special Assessments and shall be included as part of the Bi-Annual Installments due thereafter unless and until all such accrued and unpaid default interest is paid in full, and (iii) such default interest shall be in addition to any and all penalties and interest that may be imposed by or accrue in favor of City as a result of Property Owner's failure to pay real estate or other property taxes or other assessments on the Property. In addition, Bi-Annual Installments shall continue to be levied as special assessments notwithstanding Property Owner's failure to pay all or part of any past Bi-Annual Installment, such that the County Treasurer shall continue to levy Bi-Annual Installments, including default interest to be paid to Lender, until the Loan Amount, including all accrued and unpaid interest, is paid in full.

(e) Property Owner hereby acknowledges and agrees that failure to pay any Bi-Annual Installment of the PACE Special Assessments, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing in favor of Lender on the amounts due, in addition to penalties and interest that may accrue in favor of City. In addition, City shall record a PACE lien on the Property as a result of any delinquent Bi-Annual Installments of the PACE Special Assessments. Furthermore, Property Owner agrees not to seek a compromise of any delinquent Bi-Annual Installment.

6. Loan Amount; Prepayment.

(a) Subject to the terms and conditions in the Loan Agreement, Lender agrees to disburse to Property Owner the Loan Amount.

(b) Property Owner may only prepay the Loan as set forth in the Construction Loan Agreement. In the event of any permitted prepayment, Lender shall certify to Property Owner and City the aggregate amount due on the Loan, including principal, interest, and fees and any prepayment premium, within thirty (30) days of receipt of a written request for prepayment from Property Owner. City shall certify to Property Owner and Lender any and all amounts collected by City and not yet remitted to Lender within fifteen (15) days of receipt of a written request for prepayment by Property Owner, as well as any administrative fees payable, but not yet collected, as of the anticipated prepayment date. To the extent that City has received any funds from Property Owner prior to Property Owner's requested date of prepayment, but has not yet remitted the same to Lender, City shall remit the same to Lender on or before the date of Property Owner's requested date of prepayment. No prepayment shall be effective, and no funds paid by Property Owner or City will be applied to the Loan Amount, unless and until Lender receives the full Loan Amount from City and Property Owner. Property Owner acknowledges that failure of City to remit any funds held by City on or prior to Property Owner's requested date of prepayment may result in additional interest due in connection with such prepayment.

(c) Without the prior written consent of Lender, which consent may be given or withheld in Lender's sole discretion, the Loan may not be prepaid in part and, if such consent is given, any such partial prepayment must be made in strict compliance with the terms and conditions set forth in such written consent, which terms and conditions may

include a prepayment penalty. Any partial prepayment in violation of this provision will not be accepted by Lender. Notwithstanding the foregoing, Property Owner shall not be deemed to have made a prepayment if Property Owner decides to pay any Bi-Annual Installment in full, as opposed to payment on an installment basis, for any given year, as applicable.

(d) Lender, pursuant to Neb. Rev. Stat. Section 13-3205(3)(b), shall verify final costs of the energy project and ensure that any amounts paid by the City toward the costs of the energy project will not exceed such final costs.

7. Collection of Bi-Annual Installments; Payments to Lender.

(a) The County Treasurer shall follow reasonable and customary practices to collect the Bi-Annual Installments once levied, including assessing penalties and charging interest.

(b) City agrees to separately account for any Bi-Annual Installment payments collected or otherwise received for the Property. City shall remit the collected Bi-Annual Installment payments to Lender in accordance with the payment schedule set forth in this Contract.

8. Other Obligations Payable from Special Charges. City will not issue or incur any obligations payable from the proceeds of the PACE Special Assessments nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge upon the PACE Special Assessments or the Bi-Annual Installments, except for administrative fees as provided in this Contract or as allowed by the Act.

9. City Representations regarding Loan and Loan Documents. The undersigned on behalf of City hereby represents to Lender and to Property Owner that (i) he is entering this Contract pursuant to applicable provisions of the Act and City of La Vista Ordinance No. 1359 (ii) it is his intent and belief that this Contract is and will be the valid and legally enforceable obligation of City, enforceable in accordance with its terms except to the extent that enforcement thereof may be subject to legal challenge, including without limitation bankruptcy and other similar laws affecting creditors' rights generally, and (iii) to his knowledge this Contract and the dollar amount and all other terms and conditions set forth herein are in compliance with the provisions of the Act and the Ordinance. City shall at all times, to the extent permitted by law and from time to time authorized by the City Council of City, defend, preserve and protect the PACE Special Assessments created by this Contract.

10. Re-Levy of Special Charge. If City shall have omitted to cause the assessment or collection of any PACE Special Assessments when it is required by this Contract or by the Act or Ordinance to have done so, then City shall take all necessary steps that are then available to cause new PACE Special Assessments (equal in amount to those not assessed, levied or collected plus interest and penalties, if any, thereon) to be levied against the Property in addition to those PACE Special Assessments otherwise to be levied or assessed against the Property.

11. Waiver of Claims Against City.

(a) For and in consideration of City's execution and delivery of this Contract, Property Owner, for itself and for its successor-in-interest to the Property and for any one claiming by, through or under Property Owner, hereby waives the right to recover from City, LVPD, or any officials, agents, employees, attorneys or representatives of City or LVPD (collectively, the "City Parties"), and fully and irrevocably releases, indemnifies, holds harmless, and shall defend the City Parties, and each of them, from and against, any and all claims, costs, expenses, obligations, liabilities, causes of action or damages including attorneys' fees and court costs, that Property Owner may now have or hereafter acquire against any of the City Parties and arising out of, accruing from or related to (i) this Contract, (ii) the disbursement of the Loan Amount, (iii) the levy and collection of the Bi-Annual Installments, (iv) the imposition of the lien of the PACE Special Assessments, (v) the performance of the Project, (vi) the Project, (vii) any damage to or diminution in value of the Property that may result from construction or installation of the Project, (viii) any injury or death that may result from the construction or installation of the Project, (ix) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Project, (x) the merchantability and fitness for any particular purpose, use or application of the Project, (xi) the amount of energy savings resulting from the Project or any assured performance guaranty, (xii) the workmanship of any third parties under any agreements including any construction contracts, and (xiii) any other matter with respect to the Program (collectively, the "Liabilities"). This release includes without limitation claims, costs, expenses, obligations, liabilities, causes of action and damages of which Property Owner is not presently aware or which Property Owner does not suspect to exist which, if known by Property Owner, would materially affect Property Owner's release of the City Parties. Notwithstanding the foregoing, Property Owner's release under this section shall not extend to Liabilities arising from City's intentional default, gross negligence or willful misconduct.

(b) This Section 11 shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by Property Owner and the termination of this Contract.

12. Waiver of Claims Against Lender.

(a) For and in consideration of Lender's execution and delivery of this Contract, Property Owner, for itself and for its successor-in-interest to the Property and for any one claiming by, through or under Property Owner, hereby waives the right to recover from the Lender and any and all officials, agents, employees, attorneys and representatives of Lender (collectively, the "Lender Parties"), and fully and irrevocably releases the Lender Parties from, any and all claims, obligations, liabilities, causes of action or damages including attorneys' fees and court costs, that Property Owner may now have or hereafter acquire against any of the Lender Parties and accruing from or related to the Liabilities, as defined above. This release includes claims, obligations, liabilities, causes of action and damages of which Property Owner is not presently aware or which Property Owner does not suspect to exist which, if known by Property Owner, would materially affect Property Owner's release of the Lender Parties. Notwithstanding the foregoing, Property Owner's

release under this Section shall not extend to Liabilities arising from Lender's intentional default, gross negligence or willful misconduct.

(b) The waivers and releases by Property Owner contained in this Section shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by Property Owner and the termination of this Contract.

13. Administrative Fees.

(a) Property Owner agrees to pay a one-time administration processing fee to City in the amount of \_\_\_\_\_% of the project costs financed through the Loan (i.e., the Loan amount less all fees and expenses incurred in issuing the Loan), or \_\_\_\_\_ and /100 Dollars (\$\_\_\_\_\_). Such payment shall be included in the initial Bi-Annual Installment.

(b) The Bi-Annual Installments shall include a Bi-Annual administrative fee to be collected by City in the amount of \$\_\_\_\_\_per year as of January 1<sup>st</sup> of each year. This fee shall be included, on a Bi-Annual basis, in the Bi-Annual Installments to be set forth on Schedule of Bi-Annual Installments attached hereto as **Exhibit C**.

14. Project Completion. Upon completion of the Project, Property Owner will submit to City and Lender a written certification from Property Owner and the contractor(s), if any, that performed the work incident to the construction and installation of the Project, stating the actual cost of the Project. If the actual cost of the Project is less than the Loan Amount advanced by the Lender, the Property Owner shall immediately repay to City the excess of the amount advanced over such actual cost of the Project and City shall remit the full amount thereof to Lender.

15. Notices.

All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by registered or certified mail, return receipt requested, postage prepaid; or (c) sent to the parties at their respective addresses indicated herein by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to Property Owner, to:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other person or address as Property Owner shall furnish to Lender and LVPD in writing.

(b) If to Lender, to:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



(with a copy to)

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other person or address as Lender shall furnish to Property Owner and City in writing.

(c) If to City, to:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(with a copy to)

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other person or address as City shall furnish to Property Owner and Lender in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt (or refusal to accept delivery); if sent by registered or certified mail, such communication shall be deemed delivered upon actual receipt (or refusal to accept delivery); and if sent by overnight courier pursuant to this Section, such communication shall be deemed delivered upon receipt. Any party to this Contract may change its address for the purposes of this Contract by giving notice thereof in accordance with this Section.

16. Assignment or Sale by Lender. Property Owner and City agree that Lender may, at its option, assign the Loan, and its rights and obligations under the Loan (including this Contract, the Note and the other Loan Documents). Property Owner, City and Lender acknowledge and agree that there are no limitations on the right of Lender to assign its interests in the Loan.

17. Supremacy. In the event of any conflict, inconsistency or ambiguity between the provisions of this Contract and the provisions of the Loan Agreement, the provisions of this Contract shall control.

18. Compliance with Laws. Lender and Property Owner hereby agree to comply with all applicable federal, state and local lending and disclosure requirements and with the provisions of the Act.

19. Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed a single agreement.

20. Amendment. This Contract may be amended only by a writing signed by Property Owner, Lender and City.

21. Severability. If any one or more of the provisions of this Contract shall be found to be invalid, illegal or unenforceable in any respect of to any extent, such finding shall not affect the validity, legality or enforceability of the remaining provisions of this Contract.

22. Transferability. Property Owner, Lender and City agree that the obligations of this Contract, including without limitation the obligation to pay annual assessments, are covenants that shall run with the land and be obligations that are binding on all future owners of the Property.

23. Effect of Subdivision of Property. No subdivision of the Property subject to this Contract shall be valid unless an amendment to this Contract divides the total Bi-Annual Assessment due between the newly subdivided parcels pro rata to the special benefit realized by each subdivided parcel.

24. Incorporation by Reference. All recitals at the beginning of this Contract and all Exhibits referenced in this Contract shall be incorporated into this Contract by reference.

**[Signature Page Follows]**

Executed as of the date set forth above.

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_ , before me, the undersigned, a Notary Public, appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that s/he is the \_\_\_\_\_ of the \_\_\_\_\_, a \_\_\_\_\_, and that said instrument was signed on behalf of said company by authority of its members, and said individual acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said company.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

(SEAL)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in \_\_\_\_\_

My commission expires:\_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_ , before me, the undersigned, a Notary Public, appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of \_\_\_\_\_ a \_\_\_\_\_ limited liability company, and that said instrument was signed on behalf of said company by authority of its members, and said individual acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said company.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in \_\_\_\_\_

(SEAL)

My commission expires: \_\_\_\_\_.

**CITY OF LA VISTA**

By: \_\_\_\_\_  
 Name:  
 Title:

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public, appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that she/he is the Community Development Director of the City of La Vista, a Nebraska Corporation, which created, a clean energy assessment district pursuant to City of La Vista Ordinance No. 1359, and that this instrument was signed on behalf of said City by authority of its governing body, and said individual acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said City.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

\_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Notary Public in and for said State  
 Commissioned in \_\_\_\_\_

(SEAL)

My commission expires:\_\_\_\_\_.