

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
AUGUST 5, 2019 AGENDA

Subject:	Type:	Submitted By:
LA VISTA PROPERTY ASSESSED CLEAN ENERGY DISTRICT	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	CHRIS SOLBERG SENIOR PLANNER

SYNOPSIS

A public hearing has been scheduled and an ordinance prepared to establish a La Vista PACE District comprised of all areas of the City and its extra-territorial zoning jurisdiction and enact related terms to enable PACE financing for commercial and industrial development projects in the City of La Vista.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval.

BACKGROUND

Property Assessed Clean Energy (PACE) is a development tool that serves public purposes of building performance upgrades that among other things improve energy efficiency, water conservation, and renewable energy generation by providing an alternative financing method. PACE financing is repaid through annual assessments on the benefited property. The City has no financial obligation.

Chris Peterson of PACE Sage Capital delivered a presentation on the PACE financing method during the July 2, 2019 City Council meeting. Following the presentation, the City Council directed staff to prepare the necessary implementation materials to establish such a program in La Vista. A proposed ordinance and other documents are presented for this purpose.

ORDINANCE NO.

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO CREATE A CLEAN ENERGY ASSESSMENT DISTRICT; TO ESTABLISH DEFINITIONS; TO PROVIDE FOR THE FINANCING, ADMINISTRATION, AND COLLECTIONS, TO PROMOTE ENERGY EFFICIENCY IMPROVEMENTS AND RENEWABLE ENERGY SYSTEMS; AND TO PROVIDE THE EFFECTIVE DATE HEREOF.

WHEREAS, the City of La Vista desires to create a clean energy assessment district to enable property assessed clean energy financing for its property owners; and,

WHEREAS, the City also desires to authorize the clean energy assessment district to enable third-party lenders to accept applications and enter into financing agreements with property owners within the boundaries of the district; and,

WHEREAS, this Ordinance, upon execution, shall create a clean energy assessment district, which shall be known as the La Vista PACE District, as authorized by Nebraska Revised Statute Sections 13-3203 and 13-3204(3), which boundaries shall be the corporate boundaries of the City of La Vista and its extraterritorial jurisdiction.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA VISTA:

Section 1. Findings and Determinations. That the City Council of the City of La Vista, Nebraska (the "City"), hereby finds and determines as follows:

Pursuant to NEB. REV. STAT. §§13-3201 to 13-3211, inclusive, the Property Assessed Clean Energy Act (the "Act"), energy efficiency and the use of renewable energy are important for preserving the health and economic well-being of Nebraska's citizens. Using less energy decreases the cost of living and keeps the cost of public power low by delaying the need for additional power plants. To further these goals, it is necessary for the City to promote energy efficiency improvements and renewable energy systems. Upfront costs for energy efficiency improvements and renewable energy systems may prohibit or deter many property owners from making improvements. It is necessary for the City to implement an alternative financing method through the creation of a clean energy assessment district.

Financing energy projects to further these goals is a valid public purpose and can be accomplished through Property Assessed Clean Energy ("PACE") financing, which is used to overcome the upfront costs for energy efficiency improvements and renewable energy systems by using private capital and equity, rather than public debt.

Pursuant to the Act and NEB. REV. STAT. § 13-3204, the City of La Vista is authorized to establish a clean energy assessment district so that owners of qualifying property can access PACE financing for energy efficiency improvements or renewable energy improvements to their properties located in the City. The City also may enter into an agreement with one or more other municipalities pursuant to the Interlocal Cooperation Act, NEB. REV. STAT. §§ 13-801, et seq., for the joint creation, administration, or creation and administration of clean energy assessment districts, pursuant to NEB. REV. STAT. § 13-3210. The City declares its intent that the provisions of this Ordinance shall be in conformity with federal and state laws. The City enacts this Ordinance pursuant to the Act, as amended.

Section 2. Title and Definitions. That this Ordinance shall be known and may be cited as "The City of La Vista Property Assessed Clean Energy (PACE) Ordinance." Except the words and phrases specifically defined below or in NEB. REV. STAT. § 13-3203, as amended, words and phrases used in this Ordinance shall have their customary meanings. As used in this Ordinance, the following words and phrases shall have the following meanings:

"District" means the La Vista PACE District, created pursuant to this Ordinance, as authorized by NEB. REV. STAT. §§ 13-3203 and 13-3204(3), which boundaries shall be the corporate boundaries of the City and its extraterritorial jurisdiction.

"District Administrator" means the Community Development Director of the City or a designated representative, or a third-party administrator selected by the City.

"PACE financing" means funds provided to the owner(s) of qualified property by third-party lender, pursuant to the Act and this Ordinance, for an energy efficiency improvement or renewable energy system(s).

"Qualifying Property" means commercial property, including multifamily residential property having more than four dwelling units, and industrial property located in the District.

Section 3. District Boundaries and Requirements Pursuant to NEB. REV. STAT. § 13-3204(3).

- A. The City finds that the financing of energy efficiency improvements and renewable energy systems is a valid public purpose. Such public purposes include, but are not limited to, reduced energy and water costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment.
- B. The boundaries of the District shall be the corporate boundaries of the City and its extraterritorial jurisdiction, as allowed pursuant to NEB. REV. STAT. § 13-3204(1).
- C. The District Administrator shall use a form contract for assessment contracts among the City, the owner of the qualifying property, and a third-party lender, containing terms as attached hereto as Exhibit "A," governing the terms and conditions of financing and annual assessments in accordance with the Act, including NEB. REV. STAT. § 13-3205(1), which provides for repayment of the costs financed through annual assessments upon the qualifying property benefited by the energy project.
- D. The District Administrator is authorized to enter into assessment contracts on behalf of the City.
- E. The District Administrator will use a financing application process and eligibility requirements, which shall be more specifically defined in a program manual created by the District Administrator as attached hereto as Exhibit "B," for financing energy projects in accordance with the requirements of the Act and accepted by the third-party lender. The application process and program eligibility requirements shall be, at a minimum, as follows:
 - i. Submission of an application as attached hereto as Exhibit "C" to the District Administrator, which shall include, but not be limited to, the following information:
 - a) Applicant name and contact information, including property owner and developer;
 - b) Project location and legal description;
 - c) Identification of contractor or supplier, including anticipated PACE contractor and a copy of the approved bid for the energy efficiency project;

- d) Project description;
 - e) Total project cost;
 - f) Description of proposed improvements;
 - g) Description of energy efficiency project to be financed;
 - h) Amount of requested assessment;
 - i) Interest rate on the PACE assessment and any required fees;
 - j) Term of assessment;
 - k) Energy savings report indicating estimated energy savings and estimated cost savings for the energy project;
 - l) Whether the applicant is requesting a waiver of the estimated economic benefit requirement;
 - m) Title report showing any mortgage or lien holders;
 - n) Lender consent;
 - o) Projected jobs created by PACE project;
 - p) Project environmental benefits;
 - q) Funding source;
 - r) All other such information as needed to demonstrate the project complies with all the requirements of the Act.
- ii. The District Administrator may grant an applicant's request to waive the estimated economic benefit requirement. If the District Administrator denies the applicant's waiver request, the applicant may appeal the denial by submitting a request in writing to the Assistant City Administrator of the City. The appeal shall be mailed by certified mail or hand delivered to the Assistant City Administrator within fourteen days after the denial. The Assistant City Administrator will review the matter on the record made by the District Administrator and, after providing the applicant an informal opportunity to be heard, the Assistant City Administrator will make the final decision.
- iii. The District Administrator shall review the application to determine whether the energy project meets the eligibility requirements of the Act and this Ordinance. An energy project shall not be eligible for PACE financing if the qualifying property is subject to any of the following:
- a) Delinquent ad valorem taxes;
 - b) Delinquent personal property taxes;
 - c) Delinquent special assessments;
 - d) Overdue or delinquent water or sewer charges;

- e) Involuntary liens, including but not limited to construction liens;
 - f) Notice of default pursuant to any mortgage or deed of trust related to the qualifying property, or
 - g) If the property owner or property developer is delinquent in the payment of any assessment required to be paid for any energy efficiency improvement financed pursuant to the Act.
 - iii. If the energy project is determined to be eligible under the terms of the Act and as required in this Ordinance, the District Administrator shall review the application and approve, request additional information, or deny the application at his/her sole discretion.
 - iv. Upon approval of an application, the District Administrator is authorized to proceed with and execute an assessment contract.
- F. Pursuant to NEB. REV. STAT. § 13-3205(7), annual assessments agreed to under an assessment contract shall be levied against the qualifying property and collected in accordance with the Act.
- G. The District shall establish procedures to determine the following in the future:
- i. Provisions for an adequate debt service reserve fund created under Section 13-3209, if applicable;
 - ii. Provisions for an adequate loss reserve fund created under Section 13-3208, if applicable; and
 - iii. Any application, administration, or other program fees to be charged to owners participating in the program that will be used to finance costs incurred by the City as a result of the program;
- Any costs shall be deducted before remitting the assessment to the third-party PACE program administrator.
- H. The assessment term shall not exceed the weighted average useful life of the energy project paid for by the annual assessments.
- I. Any energy efficiency improvement that is not permanently affixed to the qualifying property upon which an annual assessment is imposed to repay the cost of such energy efficiency improvement must be conveyed with the qualifying property if a transfer of ownership of the qualifying property occurs during the assessment term.
- J. Prior to the effective date of any contract that binds the purchaser to purchase qualifying property upon which an annual assessment is imposed, the owner shall provide notice to the purchaser that the purchaser assumes responsibility for payment of the annual assessment as provided in NEB. REV. STAT. § 13-3205(3)(d), and that the obligations set forth in the assessment contract, including the obligation to pay annual assessments, are a covenant that shall run with the land and be assessed upon future owners of the qualifying property.
- K. In connection with providing PACE financing, the City will provide for marketing and participant education.
- L. The City shall obtain, or applicable third-party lenders shall obtain and provide to the City, verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended.

Section 4. Authorization for PACE Program. That, pursuant to NEB. REV. STAT. § 13-3204(1), the District shall be governed by the La Vista City Council.

- A. The District Administrator shall comply with the Act and the provisions of this Ordinance and follow any applicable City procurement policy and procedures for selecting a third-party administrator, should a third-party administrator be selected for the administration of the PACE program. Any such third-party administrator must ensure that there is no financial requirement, liability, or exposure to the District or City. The District Administrator as defined in Section 2 of this ordinance may serve as the administrator of the PACE program for the District and City.
- B. The District or City may also engage the services of a state or local financing agency for the purposes of providing conduit bond financing for the District or City as part of its third-party administration.
- B. Upon selection of a third-party administrator, that third-party administrator may, on behalf of the City, accept applications for financing energy efficient improvements within the District boundaries, facilitate the financing application process, and review eligibility requirements for financing energy projects in accordance with the requirements of the Act and as accepted by the third-party lender.
- C. The District may be expanded via the Interlocal Cooperation Act in order to create a program of sufficient size and scale to attract qualified third-party administrators and/or to promote energy efficiency across multiple political subdivisions, as authorized under the Act.

Section 5. Liability of City Officials; Liability of City. That notwithstanding any other provision of law to the contrary, officers, officials, employees, or agents of the City, the District, or Sarpy County shall not be personally liable to any person or entity for any claims, liabilities, costs, or expenses, of whatever kind or nature, under, arising out of, or related to the City's or District's participation in the District's PACE Program or any PACE Financing, including, without limitation, claims for or related to uncollected PACE Assessments. Not in limitation of the foregoing, the City has no liability to a property owner or lender for or related to energy savings improvements or funding under a PACE Financing or Program, other than to remit PACE Assessments received in accordance with the Act.

Section 6. This Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by the law, and satisfaction of any conditions set forth in this Ordinance.

PASSED AND APPROVED THIS 5TH DAY OF AUGUST 2019.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

Exhibit A

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. _____ (“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.”

WITNESSETH:

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. _____, 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. [REDACTED], (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 1st 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.

(SEAL)

Printed Name: _____
Notary Public in and for said State
Commissioned in _____

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. _____, 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.

(SEAL)

Printed Name: _____
Notary Public in and for said State
Commissioned in _____

My commission expires:_____.

La Vista PACE DISTRICT Program Manual

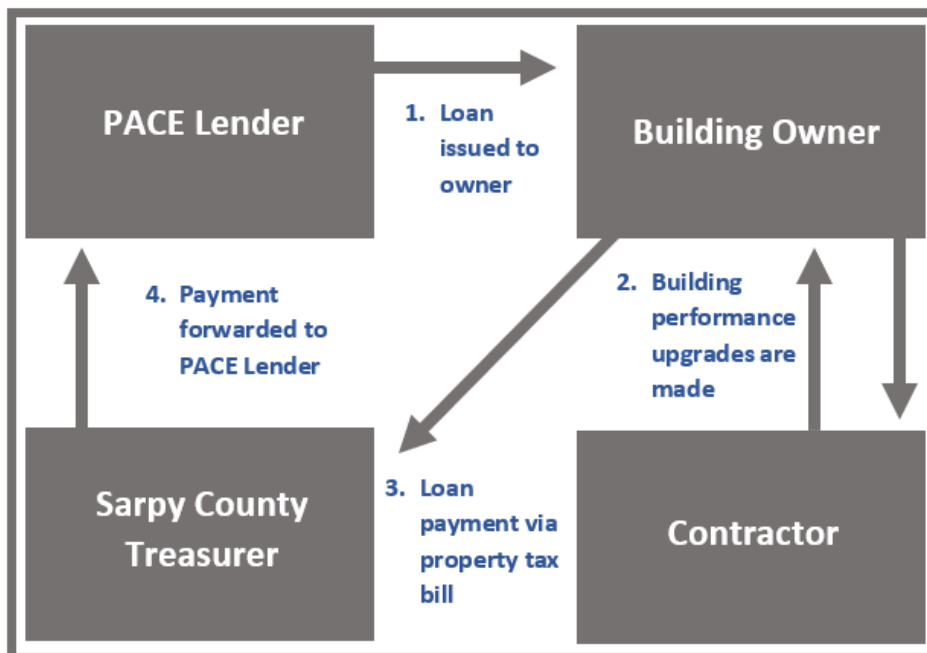
SUMMARY

Property Assessed Clean Energy, or PACE is a financing tool enabling development of clean energy projects and energy efficient buildings and operations. Nebraska State Law {Nebraska Revised Statute Sections 13-3203 and 13-3204(3)} allows for the creation of Clean Energy Districts and defines PACE-eligible projects. City of La Vista Ordinance no. [REDACTED] passed by the La Vista City Council on [REDACTED], 2019 created the La Vista PACE District (LVPD) and provides further requirements for implementation of a PACE program in La Vista. The City Ordinance also directs the Community Development Director of the City as the District Administrator (or his/her designee) to create a program manual that describes the application process, eligibility and other relevant program guidance. This LVPD Program Manual was created to satisfy that requirement.

The State law and the City ordinance provide the minimum requirements for a PACE application and project, as well as the circumstances under which an application or project will not be eligible for PACE financing. This program manual provides guidance for the program and clarification on topics not specifically addressed by either the State Law or City ordinance.

The intent of this program is to incentivize the reduction of energy, water, wastewater and solid waste usage/generation in our community. The City of La Vista views PACE as a tool to encourage developers and property owners to go beyond the requirements of energy and building codes to achieve meaningful reductions in energy and water use and waste generation.

PACE Transactional Diagram



Terminology

It should be noted that references to “energy project”, “energy efficiency” or “energy savings” throughout this document are intended to include projects, efficiencies and savings associated with energy, water, wastewater, solid waste, storm water or other eligible utility projects or equipment under the LVPD program consistent with this section.

Boundaries of the LVPD

Currently, only qualifying projects located within the La Vista city limits or its extraterritorial jurisdiction (“ETJ”) are eligible for PACE financing. Other local government jurisdictions within the State of Nebraska may join the LVPD upon establishment of an inter-local agreement.

Eligible Property Types

Although State Law allows for commercial, industrial, residential, and agricultural projects to be eligible for PACE; at this time, the City ordinance and the LVPD program only allows for commercial (including multifamily residential property comprised of more than four dwelling units) and industrial PACE projects.

Eligible Project Types

Projects including new construction and the rehabilitation of existing buildings and operations are eligible for PACE financing in the LVPD. The types of project improvements eligible for PACE financing within the LVPD include, but are not limited to the following:

- (a) Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems;
- (b) Storm windows and doors; multi-glazed windows and doors; heat absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
- (c) Automated energy control systems;
- (d) Heating, ventilating, or air conditioning and distribution system modifications or replacements;
- (e) Caulking, weather-stripping, and air sealing;
- (f) Replacement or modification of lighting fixtures to reduce the energy use of the lighting system;
- (g) Energy recovery systems, including but not limited to, cogeneration and trigeneration systems;
- (h) Daylighting systems;
- (i) Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;
- (j) Facilities providing for water conservation or pollutant control;
- (k) Roofs designed to reduce energy consumption or support additional loads necessitated by other energy efficiency improvements;
- (l) Installation of energy-efficient fixtures, including, but not limited to, water heating systems, escalators, and elevators;
- (m) Energy efficiency related items (i.e. demolition/drywall replacement, etc. incident to efficiency equipment or material installation) so long as the cost of the energy efficiency related items financed does not exceed twenty-five percent of the total cost of the energy;

- (n) Waste recycling systems and support equipment;
- (o) Any other installation or modification of equipment, devices, or materials approved as a utility cost-saving measure by the municipality;
- (p) Renewable energy systems including but not limited to the following:
 - (i) Nonhazardous biomass;
 - (ii) Solar and solar thermal energy;
 - (iii) Wind energy;
 - (iv) Geothermal energy;
 - (v) Methane gas captured from a landfill or elsewhere; and
 - (vi) Photovoltaic systems;
 - (vii) Renewable energy system does not include an incinerator;
 - (viii) Renewable energy resource does not include petroleum, nuclear power, natural gas, coal, or hazardous biomass.

Timing and Eligibility

While applicants are encouraged to submit an application to the LVPD PACE program prior to or concurrently with the application for a building permit, the City will accept PACE applications for projects with an open building permit and/or not having received a final certificate of occupancy. PACE applications and instructions are available at [REDACTED] and are included in this manual as Attachment 1. Building permit applications and instructions are available at: [REDACTED].

Annual Assessment and Average Weighted Useful Life

Section 13-3203 (1) of the State law requires an "agreement to pay an annual assessment for a period not to exceed the weighted average useful life of the energy project." The weighted average useful life includes only physical improvements to a property for which an average useful life may be calculated. Furthermore, the improvement must qualify as an energy efficiency improvement under Section 13-3203(3) of the Nebraska State law or other eligible improvement listed under "Eligible Project Types" (above).

Eligible Costs

Section 13-3205(1) of the State law states "the costs financed under the assessment contract may include the cost of materials and labor necessary for installation, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees incurred by the owner pursuant to the installation."

Savings to Investment Ratio ("SIR")

Nebraska State Law requires the savings realized by an energy project to equal or exceed the principal cost of the energy project. Therefore, an SIR of 1.0 or greater is required for all energy projects. The SIR is generally calculated by dividing the projected energy savings for the life of the improvements by the cost of the eligible energy efficiency improvements. When calculating the SIR, the SIR for individual discrete components of the project for which PACE funding is being requested must be provided. The City's approval will be based on the total SIR for the entire project meeting an SIR of 1.0 or greater.

Applicants should include estimated operations and maintenance costs, and projected increases (escalations) in the cost of energy use, in the calculations.

The applicable City official will evaluate the methodology used to determine the energy savings calculations. At this time, the City does not favor one methodology over another. However, please include in the application an explanation of the methodology used to determine the SIR. The City may prescribe a methodology at a future date.

Energy Projects and Building Codes

The City requires an energy project to meet all relevant energy and building codes. However, for new construction, only aspects of the energy project that exceed energy and building codes are eligible for PACE financing in the LVPD. Nebraska energy codes are presented at http://www.neo.ne.gov/home_const/iecc/iecc_codes.htm.

Costs associated with building to these requirements are eligible under the LVPD with the exception of new construction which is required to exceed such requirements as referenced above. In both new construction and rehabilitation projects, an engineer must demonstrate that the savings generated by the energy project will exceed the cost of the energy project through the life of the PACE loan, as required by State law for loans of \$250,000 or greater.

Verification of Completed Energy Project

Section 13-3204(m) of the Nebraska State Law requires the municipality to obtain verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended. To meet these criteria, City Inspectors must sign off on components of the project for which they have jurisdiction. Additionally, a professional engineer licensed in the State of Nebraska must provide a letter to the applicable City official stating the systems or improvements were properly installed and are operating as intended.

Funding Level and Fees

The LVPD fee structure is summarized in the following table:

Application Fee	Administrative Fee	Annual Fee
\$1,000.00	1% of loan not to exceed \$40,000	\$500.00

The application fee is collected at the time of application. This fee is not refundable.

An administrative fee is due upon approval of the PACE project. The administrative fee shall be subject to a 50% reduction for a project requiring submission of Tax Increment Financing (TIF) fees.

The annual administrative fee will be collected throughout the life of the loan.

LVPD Application Instructions

The City's PACE application is included in this manual as Attachment 1 and is also located at the following web address: [\[redacted\]](#), along with other PACE-related resources. A link to the State law and City ordinance appear on this webpage, as well.

Your completed applications should be submitted to: cbrodersen@cityoflavista.org.

Applicants should, as best as they can, provide responses to questions within the application form, rather than relying on attachments. Attachments providing supporting data, drawings, and calculations are acceptable.

Provided below is clarification for specific sections of the application.

Project Details

Please describe the entire project, not just PACE components of the project. Please include drawings, maps, and photographs, when appropriate.

Financing Details

Applicants may add rows to the tables provided in this section.

A Professional Engineer licensed in Nebraska is required to determine/approve the energy savings calculations for Class I applications.

Other Topics

Applying for both PACE and TIF

If the project requires both PACE and TIF funding, applicants should indicate as such on the application.

Who reviews the applications?

The District Administrator, the District Administrator's representative or a designated third party administrator will review the applications. Please direct inquiries and submit your application to: cbrodersen@cityoflavista.org, receiving applications on behalf of the District Administrator.

Who approves the applications?

The City/LVPD has established a seven (7) member PACE Review Committee appointed by the Community Development Director. The Committee makes a recommendation to the District Administrator to approve or disapprove the applications or may request additional information from the applicant. The District Administrator will approve or disapprove the application based upon recommendations of the Committee and will provide a letter to the applicant with the decision.

2 Attachments

1) LVPD Application

2) Sample Assessment Contract

City of La Vista
 Community Development Director
 Community Development Department
 8116 Park View Blvd
 La Vista, NE 68133

PACE PROJECT APPLICATION



Name of Project: _____

Property Owner Information

Legal Name of Property Owner (Applicant): _____

Contact Person: _____

Tax ID Number (FEIN or SSN): _____

Address: _____ City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ E-mail: _____

Property Information

Address: _____ City: _____ State: _____ Zip: _____

Property Legal Description: _____

Property Type: _____ Tax Key Number (APN#): _____

Assessed Property Value: _____ Appraised Property Value: _____

Building Size: _____ Year Building Built: _____

Other PACE Projects

Does the property owner hold any other PACE loans and has the property owner previously applied for PACE? _____ Yes _____ No

If yes, please provide details:

Office Use Only

Rec'd By	Date Rec'd	Zoning at Project Site	PACE Application Fee (Due at Submission)	Administrative Fee (Due at Closing)

☐ Approved Condition(s): _____

☐ Disapproved Reason(s): _____

By: _____ Date: _____

Project Narrative: Briefly describe the overall project. *Submit separate sheets if necessary.*

Project Details: *Submit separate sheets if necessary*

Measure	Description /Specification of Energy/Water/Waste Measure
#1	
#2	
#3	
#4	
#5	
#6	

Note: Energy, water and waste savings should be over term of financing period rather than useful life, unless useful life is less than the term.

Measure #	Construction Costs/Bids	Estimated Useful Life (yrs.)	Year #1 Energy, Water & Waste Savings	Year #1 Maintenance & Operational Savings	Over Term Energy, Water & Waste Savings (specify % growth/yr.)	Over Term Maintenance & Operational Savings (specify % growth/yr.)	Over Term Total Savings (Energy + Water + Waste +O&M)
#1							
#2							
#3							
#4							
#5							
#6							
Estimated total energy savings (in kBtu, kwh or therms)							
Estimated total water savings (gal.), and/or waste reduced/recycled (tons)							
On-site renewable capacity (In kW)							
Expected \$ amount of utility incentives, rebates, solar tax credits, other benefits <i>Please specify which</i>							
Name, credentials, contact info of agent determining energy & water savings data							
Total costs of improvements/measures							
Name of General Contractor firm Licensed in NE & bonded? Yes/No							
General contractor contact person Contact person phone Contact person email							
Optional: Energy Subcontractors (if any) <i>(after name, indicate if licensed and bonded)</i>							
Projected Jobs created by PACE Project and Project Environmental Benefits							

Mortgage Lien & Deed of Trust Holder Information: *Signed mortgage lien or deed of trust holder consent and subordination agreement required. (Attach additional pages if more than 1 mortgage or lien holder)*

Financial institution name	
Financial institution contact person	
Contact person phone & email	

Financing Details

PACE capital provider	
PACE consultant (if any)	
Proposed PACE term (<i>in years</i>)	
Proposed interest rate and any Fees	
Annual assessment amount	
LVPD administrative fee	
Financing closing date (est.)	

Approval Criteria

Please mark all that apply. *Note: property owner refers to the legal entity which owns the property.*

- ☐ Applicant owns the property where the project will be located.
- ☐ Proposed improvements will be affixed to the property.
- ☐ The property owner has sufficient resources to complete the project.
- ☐ There are no delinquent ad valorem taxes for this property.
- ☐ There are no delinquent personal property taxes for this property.
- ☐ There are no delinquent special assessments for this property.
- ☐ There are no overdue or delinquent water or sewer charges for this property.
- ☐ There are no involuntary liens, including but not limited to construction liens for this

property.

- ☐ There are no notices of default pursuant to any mortgage or deed of trust related to this property.
- ☐ The property owner has not declared bankruptcy in the last 5 years.
- ☐ The property owner is solvent and has no significant pending legal action.
- ☐ There are no unresolved or pending violations or complaints of violations of the La Vista Municipal Code for this property.
- ☐ The property owner understands that the estimated economic benefit, including, but not limited to, energy cost savings, maintenance cost savings, and other property operating savings expected from the energy project during the financing period, is equal to or greater than the principal cost of the energy project.
- ☐ The property owner is duly organized, validly existing and in good standing in the state of its organization, with authority to do business under the laws of the State of Nebraska.
- ☐ All owners of the property are aware of and approve the project.
- ☐ The property owner has obtained an acknowledged and verified written consent and subordination agreement executed by each mortgage holder or trust deed beneficiary stating that the mortgagee or beneficiary consents to the imposition of the annual assessment and that the priority of the mortgage or trust deed is subordinated.
- ☐ The property owner possesses all legal authority necessary to execute all project documents.
- ☐ All required permits, consents, approvals and authorizations in connection with the project have been obtained or will be obtained.

If any of these criteria are not met, please attach an explanation.

Required Application Documents and Information

The following documents and information are needed at time of application submission to obtain approval for funding:

- Applicant name and contact information, including property owner and developer. *
- Project location and legal description.*
- Identification of contractor or supplier, including anticipated PACE contractor.*
- Submit a copy of the approved bid for the energy efficiency project (attach signed bid/estimate).
- Project description.*
- Total project cost.*
- Description of proposed improvements.*
- Description of energy efficiency project to be financed.*
- Amount of requested assessment.*
- Interest rate on the PACE assessment and any required fees.*
- Term of assessment.*
- Energy savings report indicating estimated energy savings and estimated cost savings for the energy project.*
- Whether the applicant is requesting a waiver of the estimated economic benefit requirement.
- Title report showing any mortgage or lien holders. (attach title report)
- Lender consent (*attach consent document*)
- Projected jobs created by PACE project.*
- Projected environmental benefits.*
- Energy analysis report (attach engineer's report identifying qualifying energy and water conservation measures, energy and water conservation cost savings, maintenance cost savings, and other property operating savings expected from the energy and water conservation project).
- Funding source.*
- Assessment contract
- Completed application or attachments with required information.

**** included on application form or as attachment.***

Submission Instructions

Submit this application and necessary documents to cbrodersen@cityoflavista.org.

Approval Process

The City will issue a decision (or request additional information) for all projects within 30 calendar days for non - time critical applications. Approval timeline does not begin until a full application is received by City. Review times can be accelerated for time critical applications.

Property Owner Signature

To the best of my knowledge, the statements made above are complete, true and accurate. I hereby certify that I am authorized to submit this application and affix my signature below. I recognize that submission of this application does not guarantee approval for funding.

Signature

Title

Printed name

Date