

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 York, a political subdivision and city of the first class of the State of Nebraska ("City"), _____, 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 the subject real property located in York County, Nebraska, referred to herein as the "Property" and described on Exhibit "A" attached;

WHEREAS, the City has adopted Ordinance No. _____ (the "Ordinance"), an ordinance to enable the City to create a clean energy assessment district pursuant to Nebraska Revised Statute Sections 13-3201 to 13-3211, as amended from time to time, and known as the "Property Assessment Clean Energy Act," (the "Act");

WHEREAS, Property Owner has obtained the written consent 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 to this Contract;

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 (the "Project"), which shall include a description of the energy project, including the estimated cost of the energy project and a description of the estimated savings prepared in accordance with standards acceptable to the City;

WHEREAS, Property Owner shall provide a mechanism for verifying the final costs of the energy project upon its completion; and ensuring that any amounts advanced, financed, or otherwise paid by the City toward the costs of the energy project will not exceed the final cost of the energy 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;

WHEREAS, the City has agreed that when allowed and appropriate under the Act, it will take action to cause the levy of special assessments, record such special assessments as a lien on the Property, and collect or cause the collection of the special assessments, and remit any payments it receives 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:

"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".

"Register of Deeds" means the office of the Register of Deeds for York 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 13 hereof and any and all other administrative fees to be paid to 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 Installments of the Loan Amount, which Installments may be levied as special assessments pursuant to the Act.

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

2. Payments. The Loan Amount shall be payable as a property tax assessment on the Property in scheduled Installments due on the dates shown on the attached Exhibits "C" and "D". 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 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 the City with the amount of the Installment for such year by delivering a completed Lender Installment Certificate in the form attached hereto as Exhibit "D" by or before _____ of each year. Should Lender fail to deliver a Lender Installment Certificate on or before that date for any given year, the Installment shall be presumed to be the same as the Installment for the applicable year as shown on "C", with any surplus or shortfall to be addressed by adjusting the amount of the subsequent year's Installment.

3. Consent to PACE Special Assessments.

(a) By entering into the Contract, the City hereby agrees to enforce the PACE Special Assessments and impose the Installments as special assessments pursuant to the Act. Upon execution of this Contract, the City will cause this Contract to be recorded against the Property in the office of the Register of Deeds. The cost of such recording shall be paid by or collected from the Property Owner.

(b) Property Owner hereby agrees and acknowledges: (i) that Property Owner has received or will receive a special benefit by financing the Project through the City 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 Installments; (iii) that Property Owner shall pay the Installments when due pursuant to the terms set forth in this Contract, the Loan Agreement and the Note; (iv) that 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. Installments.

(a) The aggregate amount of all PACE Special Assessments shall equal the Loan Amount as shown on Exhibit "C" attached and incorporated by this reference.

(b) Property Owner hereby agrees to pay the property tax bills and Installments for the Property during the term of this Contract in a timely fashion so as to avoid any default or delinquency in such payment.

(c) If Property Owner fails to pay all or part of any Installment when due, the parties hereto acknowledge and agree that (i) default interest on the unpaid amounts of the 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 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 the 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, Installments shall continue to be levied as special assessments notwithstanding Property Owner's failure to pay all or part of any past Installment, 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 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 the City. In addition, the City shall record a PACE lien on the Property as a result of any delinquent Installments of the PACE Special Assessments. Furthermore, Property Owner agrees not to seek a compromise of any delinquent 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 the 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. The City shall certify to Property Owner and Lender any and all amounts collected by the 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 the 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 Installment in full, as opposed to payment on an installment basis, for any given year, as applicable.

7. Collection of Installments; Payments to Lender; Required Reports.

(a) The City shall follow reasonable and customary practices to cause the PACE Special Assessments to be levied, including assessing penalties and charging interest, when appropriate under the Act.

(b) All Installment payments shall be billed by Lender, and paid by Property Owner directly to the Lender, as the Lender shall so direct.

(c) The Property Owner shall report to the City by December 15 of each year the remaining loan balance and the assessments collected in the current calendar year.

(d) In the event of a failure of the Property Owner or its successors to pay any Installment of the PACE Special Assessments prior to delinquency, resulting in a PACE lien on the Property, the City agrees to exercise the remedies available to the City under the law, but only upon first receiving written confirmation from Lender that such Installment has not been paid prior to delinquency and prior to the expiration of any applicable notice and cure period under the Loan Agreement.

(e) The parties acknowledge and agree that any then-existing mortgage lender (of which Property Owner provides written notice) shall have the right, but not the obligation, to cure any default in the payment of any Installment by paying such Installment in full. The City and Lender shall accept such cure as if made by Property Owner. The City has no obligation to provide any notice or any opportunity to cure any default to any third party, except as 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 Installments, except as provided in this Contract or as allowed by the Act.

9. City Representations regarding Loan and Loan Documents. City hereby represents to Lender and to Property Owner that (i) it is and will be duly authorized under all applicable laws to execute this Contract, (ii) 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 bankruptcy and other similar laws affecting creditors' rights generally, and (iii) this Contract and the dollar amount and all other terms and conditions of the Loan as set forth herein, the Loan Agreement and the Note are in compliance with the provisions of the Act and the Ordinance. City shall at all times, to the extent permitted by law, defend, preserve and protect the PACE Special Assessments created by this Contract and all the rights of Lender hereunder against all claims and demands of all other persons whomsoever.

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 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, and Lender, and Lender's successors and assigns, hereby waive the right to recover from City and any and all officials, agents, employees, attorneys and representatives of City (collectively, the "City Parties"), and fully and irrevocably release the City Parties from, any and all claims, obligations, liabilities, causes of action or damages including attorneys' fees and court costs, that Property Owner and/or Lender may now have or hereafter acquire against any of the City Parties and accruing from or related to (i) this Contract, (ii) the disbursement of the Loan Amount, (iii) the levy and collection of the 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, (xiii) any liability for any delinquency of payments due from Property Owner or failure to pay any such payments as required by this Contract, and (xiv) any other matter with respect to the Program (collectively, the "Liabilities"). This release includes claims, obligations, liabilities, causes of action and damages of which Property Owner and/or Lender are not presently aware or which Property Owner and/or Lender do not suspect to exist which, if known by Property Owner and/or Lender, would materially affect Property Owner's or Lender's release of the City Parties. Notwithstanding the foregoing, the release under this section shall not extend to Liabilities arising from City's intentional default, gross negligence or willful misconduct.

(b) The waivers and releases by Property Owner and Lender 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.

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 administrative processing fee to the City in the amount of 1% of the project costs financed through the Loan (i.e., the Loan amount less all fees and expenses incurred in issuing the Loan), not

to exceed Forty Thousand Dollars (\$40,000.00) . The administrative fee shall be subject to a 50% reduction for a project that is also responsible for tax increment financing (TIF) fees. The TIF reduction to the administrative fee is calculated before the cap is considered . For example: an administrative fee of \$54,000 is reduced to \$27,000 before considering the administrative cap of \$40,000. Such payment shall be included in the initial Installment.

(b) The Installments shall include a yearly administrative fee to be collected by City in the amount of \$250.00 per year as of January 1st of each year. This fee shall be included, on a yearly basis, in the Installments to be set forth on Schedule of 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 CITY 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:

City of York
Attn: City Administrator
100 E. 4th St.
P.O. Box 276
York, NE 68467

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 but not limited to the obligation to pay assessments, are covenants that shall run with the land and be binding obligations upon 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.

[Signature Page Follows]

Executed as of the date set forth above.

_____, LENDER

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 _____, 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.

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

My commission expires: _____

Executed as of the date set forth above.

CITY OF York

By: _____
Name:
Title: Mayor

ATTEST:

Name: Amanda Ring
Title: City Clerk

ACKNOWLEDGMENT

State of Nebraska)
)
County of York) ss

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 Mayor of the City of York, a political subdivision of the State of Nebraska, and that said 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 board .

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 _____

My commission expires: _____

EXHIBIT "A"

Legal Description of Property

EXHIBIT "B"

Description of the energy project, including the estimated cost of the energy project and description of the estimated savings prepared in accordance with standards acceptable to the City.

EXHIBIT "C"

Schedule of Installments

The above Installments are based on the following assumptions:

1. Interest is calculated on an actual (365 day) year basis, compounded Bi-Annually.
2. There is no Installment due _____ 30, 20____. The amount shown above for such date represents capitalized interest.
3. The Lender disburses all Loan proceeds to Property Owner (as defined in the Construction Loan Agreement) on _____, 20____. Interest accrues from the date of disbursement at the interest rate stated in the Loan Agreement. Property Owner acknowledges that an amount equal to all interest that shall accrue from the date of disbursement until the date of the anticipated receipt of the initial Installment by Lender (_____, 20____), shall be disbursed to Lender at Closing.
4. After the initial Installment , CITY will adjust the PACE Special Assessments and the subsequent Installments , if necessary, to reflect the actual PACE Special Assessments due pursuant to the Assessment Contract, as certified to CITY by Lender.

The undersigned , an authorized representative of the Lender hereby certifies that the information contained in this Installment Certification is true and accurate, and may be relied upon by City in connection with those certain Construction Loan Agreements and those certain Assessment Contracts as detailed above.

LENDER:

By:	Date:
Printed Name:	Title: