

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
OCTOBER 20, 2020 AGENDA

Subject:	Type:	Submitted By:
INTERLOCAL AGREEMENT – PACE ADMINISTRATION	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRUCE FOUNTAIN COMMUNITY DEVELOPMENT DIR.

SYNOPSIS

A resolution has been prepared to approve an interlocal agreement between La Vista and Sarpy County for La Vista to administer the application review and approval process for the Sarpy County PACE District.

FISCAL IMPACT

The City of La Vista will receive the \$1,000 application fee for all Sarpy County PACE projects to compensate for staff's time, so there will be no fiscal impact on the budget.

RECOMMENDATION

Approval.

BACKGROUND

A resolution has been prepared to consider an interlocal agreement between the City of La Vista and Sarpy County for La Vista staff to administer the Sarpy County PACE District application review and processing.

The La Vista Property Assessed Clean Energy District was established by City Council on August 5, 2019. Since the establishment of the PACE District, La Vista has received two applications. Sarpy County has received some interest from developers for the use of PACE, and has requested an agreement for La Vista staff to administer their program. La Vista staff have the capacity to review additional PACE project applications.

The draft agreement is attached.

RESOLUTION NO.

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT BETWEEN SARPY COUNTY AND THE CITY OF LA VISTA FOR PACE APPLICATION REVIEW FOR THE SARPY COUNTY PACE DISTRICT.

WHEREAS, the City of La Vista established the La Vista Property Assessed Clean Energy District on August 5, 2020; and

WHEREAS, Sarpy County is interested in establishing a PACE District and has requested the assistance of La Vista staff in the administration of their program; and

WHEREAS, the City of La Vista has the experience and capacity necessary to review additional applications for PACE financing; and

WHEREAS, an interlocal cooperation agreement has been drafted;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of La Vista, Nebraska, that the interlocal agreement between Sarpy County and the City of La Vista regarding PACE application review for the Sarpy County PACE District is hereby approved in form and content submitted with this resolution, subject to any additions, subtractions, or changes as the City Administrator or any designee of the City Administrator determines necessary or appropriate in consultation with the City Attorney, and that the Mayor or any designee of the Mayor is hereby authorized to execute said agreement on behalf of the City of La Vista.

PASSED AND APPROVED THIS 20TH DAY OF OCTOBER, 2020.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the "Agreement"), dated as of _____, 2020, is by the City of La Vista, Nebraska, (the "City") and Sarpy County, Nebraska (the "County") (collectively, the "Parties") pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801, et seq. as amended from time to time.

RECITALS

WHEREAS, in accordance with the provisions of Nebraska Revised Statutes Sections 13-3201 through 13-3211, known as the Property Assessed Clean Energy Act (the "PACE Act"), municipalities within the State of Nebraska are authorized to form property assessed clean energy assessment ("PACE") districts for the purpose of providing an additional financing tool to developers and property owners to encourage them to incorporate clean energy, reduce energy consumption, renewable energy, and promote efficient and effective management of natural resources and storm water, all as more fully set forth in the PACE Act;

WHEREAS, financing of PACE projects is a valid general public purpose that does not utilize general public funds to finance the costs of materials, equipment, design, installation, and implementation of PACE improvements in a qualifying property, but rather the qualifying property is separately assessed in an annual amount sufficient to repay the PACE financing loan over the average weighted useful life of the PACE project improvements;

WHEREAS, the PACE Act permits two or more municipalities to enter into an agreement pursuant to the Nebraska Interlocal Cooperation Act to jointly administer PACE districts, or a municipality to contract with a third party for the administration of PACE districts;

WHEREAS, the City established and administers a PACE program and district with respect to areas within the City ("LVPD"). The County, concurrent with this Agreement, created a PACE program and district for areas within unincorporated areas of the County ("SCPD") based on documents that are the same in form and content as the documents used to create the LVPD, including without limitation the ordinance or resolution creating the clean energy assessment district, manual, and application ("Governing Documents"). The County desires the City to assist the County, and the City is willing to assist the County, with administration in connection with processing applications under the County PACE program in compliance with the PACE Act, including application receipt, review, and recommendations to the Sarpy County PACE District Administrator ("SCPDA") for proposed PACE projects within the SCPD geographic area, which shall exclude any area wholly or partly within the corporate boundaries or extraterritorial jurisdiction of any village or city ("PACE Administrative Support");

WHEREAS, the City and County intend for this Agreement to be effective on the date of the last party to sign ("Effective Date"); and,

WHEREAS, the City and the County desire to enter into this Agreement to set forth the rights and obligations of the Parties with respect to County PACE Administrative Support.

NOW, THEREFORE, in consideration of the above and foregoing, the Parties agree as follows:

Section 1. Duration of Agreement. This Agreement shall commence on the Effective Date as defined above and remain in effect for one year, subject to annual renewal for one or more additional equivalent term(s) unless either party provides notice of nonrenewal at least 30 days before the last day of the initial or any renewal term. Provided, however, that this Agreement shall immediately terminate upon the occurrence of any of the following:

- (i) City and the County mutually agree in writing to terminate this Agreement;
- (ii) LVPD or SCPD is discontinued; or
- (iii) revisions, amendments, terminations or other modification of the Act or other federal or state statute require the termination of this Agreement.

Section 2. Purpose. The purpose of PACE is to provide developers and property owners with the opportunity to obtain additional financing for PACE eligible projects; to encourage the use of renewable energy, energy efficient improvements, materials, equipment and projects; and provide the assessment mechanisms for the repayment of private financing over the period of the average weighted useful life of the PACE project.

Section 3. Administrative Support Services. The County and the SCPD designate the La Vista PACE District Administrator (“LVPDA”) to provide PACE Administrative Support for the SCPD program. Specifically, the LVPDA, in conjunction with the PACE Review Committee established by the Parties, shall review SCPD PACE project applications; determine if the application appears to include all information required in applications under the Governing Documents; and on this basis recommend approval or disapproval of the application or to request additional information from the applicant. Final approval or denial of PACE project applications and/or waiver requests will be the responsibility of, and issued in letter form by, the SCPDA at his/her sole discretion. SCPD application and/or waiver appeals shall be handled by the County or SCPD in accordance with the appeals process as outlined in County Resolution no. 2020-326. SCPD Governing Documents shall be the same as those for LVPD projects, which County adopted to initiate the SCPD and are incorporated herein by reference. The LVPDA shall use the SCPD Governing Documents to provide Administrative Support Services for SCPD projects. SCPD assessment contracts may differ from assessment contracts of the LVPD and, for purposes of this Agreement, Governing Documents and Administrative Support Services under this Agreement shall exclude the terms or conditions of any SCPD assessment contract. The County shall be solely responsible for SCPD assessment contracts or any act or omission in connection with any such assessment contract.

Section 4. Assessments; Program Fees. The annual PACE assessments agreed upon under the assessment contract between the project applicant and the SCPD shall be levied against the qualifying property. Payment of the annual assessments may be made directly from the property owner to the PACE project lender, or to the County for distribution to the lender or other party entitled to the distribution, in accordance with the assessment contract. If assessment payments are made directly to the PACE project lender, the property owner shall make payment

of the annual program fee to the SCPD and the LVPD as required when due. City shall be compensated for Administrative Support pursuant to this Agreement through the annual program fees paid by the property owner during the term of the assessment contract and in accordance with the PACE assessment contract. The application fee due from the property owner shall be one hundred percent (100%) paid to the City. The administrative fees and annual fees due from the property owner under the assessment contract shall be one hundred percent (100%) paid to Sarpy County. An annual budget shall be prepared by the SCPDA and the LVPDA based on the estimated annual program fees. The County will be solely responsible for any actions connected with PACE assessments, including without limitation, execution and filing of assessment contracts, assessments and collections. In the event of a default in the payment of any assessment or program fee by the property owner, the County, after receipt of notice from the PACE lender or the Administrator (as applicable), shall file a notice of assessment lien in the Register of Deeds office of Sarpy County.

Section 5. Governing Law. This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Nebraska.

Section 6. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and this Agreement shall be liberally construed so as to carry out the intent of the parties to it.

Section 7. Notices. Any notice, request or other communication required or permitted to be given under this Agreement shall be given in writing by delivering it against receipt for it, by depositing it with an overnight delivery service or by depositing it in a receptacle maintained by the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the respective parties at the addresses shown herein (and if so given, shall be deemed given when mailed). Notice sent by any other manner shall be effective upon actual receipt by the party to be notified. Actual notice, from whomever and however given or received, shall always be effective when received. Any party's address for notice may be changed at any time and from time to time, but only after thirty (30) days' advance written notice to the other parties and shall be the most recent address furnished in writing by one party to the other parties. The giving of notice by one party which is not expressly required by this Agreement will not obligate that party to give any future notice.

If to the City: City of La Vista
8116 Park View Blvd
La Vista, NE 68128

Attention: Community Development Director

If to the County: Sarpy County Clerk
1210 Golden Gate Drive
Papillion, NE 68046

Attention: Deb Houghtaling

If to the Sarpy County PACE District: Sarpy County Planning And Building
1210 Golden Gate Drive
Suite 1240
Papillion, NE 68046

Attention:

If to the La Vista PACE District: City of La Vista
8116 Park View Blvd
La Vista, NE 68128

Attention: PACE District Administrator

Section 8. Parties in Interest. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of any terms or provisions contained in this Agreement or any standing or authority to enforce the terms and provisions of this Agreement. This Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person or entity.

Section 9. General. The headings used in this Agreement are included for reference only and shall not be considered in interpreting, applying or enforcing this Agreement. The words "shall" and "will" as used in this Agreement have the same meaning. This Agreement shall not be modified or amended in any manner except by a writing signed by all the parties hereto. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof. All prior negotiations, representations or agreements not expressly incorporated into this Agreement are hereby superseded and cancelled. The parties acknowledge and represent that this Agreement has been jointly drafted by the parties, that no provision of this Agreement will be interpreted or construed against any party solely because the party or its legal counsel drafted such provision and that each of them has read, understood and approved the language and terms set forth herein. This Agreement may be executed in multiple counterparts, each of which shall constitute but one agreement. All signatures need not be on the counterpart. Except for tasks to be performed by City as described in this Agreement, County shall have all responsibilities with respect to the SCPD. Recitals at the beginning of this Agreement shall be incorporated into this Agreement by reference.

Section 10. Amendments. The parties acknowledge that from time to time the Agreement may require amendments to support the Parties interests and obligations under the C-P ACE Program. Such requests for amendment from either Party shall not be unreasonably denied or delayed. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of the Parties

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EXECUTED as of the date first set out above.

CITY OF LA VISTA, NEBRASKA

By: _____
Name: _____
Title: _____

[Add the necessary approvals, acknowledges, etc.]

SARPY COUNTY, NEBRASKA

By: _____

Name: _____

Title: _____

[Add the necessary approvals, acknowledges, etc.]

