

ORDINANCE NO. _____

1 AN ORDINANCE to create a clean energy assessment district; to establish definitions; to
2 provide for the financing, administration, and collections, to promote energy efficiency
3 improvements and renewable energy systems; and to provide the effective date hereof.

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

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

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

13 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LINCOLN:

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

16 Pursuant to NEB. REV. STAT. §§13-3201 to 13-3211, inclusive, the Property
17 Assessment Clean Energy Act (the "Act"), energy efficiency and the use of renewable energy are
18 important for preserving the health and economic well-being of Nebraska's citizens. Using less
19 energy decreases the cost of living and keeps the cost of public power low by delaying the need
20 for additional power plants. To further these goals, it is necessary for the City to promote energy
21 efficiency improvements and renewable energy systems. Upfront costs for energy efficiency

1 improvements and renewable energy systems may prohibit or deter many property owners from
2 making improvements. It is necessary for the City to implement an alternative financing method
3 through the creation of a clean energy assessment district.

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

8 Pursuant to the Act and NEB. REV. STAT. § 13-3204, the City of Lincoln is authorized
9 to establish a clean energy assessment district so that owners of qualifying property can access
10 PACE financing for energy efficiency improvements or renewable energy improvements to their
11 properties located in the City. The City may enter into an agreement pursuant to the Interlocal
12 Cooperation Act, NEB. REV. STAT. §§ 13-801, et seq., for the creation, administration, or
13 creation and administration of clean energy assessment districts, pursuant to NEB. REV. STAT.
14 § 13-3210. The City declares its intent that the provisions of this Ordinance shall be in conformity
15 with federal and state laws. The City enacts this Ordinance pursuant to the Act, as amended.

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

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

1 "District Administrator" means the Mayor of the City or a designated
2 representative, or a third-party administrator selected by the City.

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

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

9 Section 3. District Boundaries and Requirements Pursuant to NEB. REV. STAT. § 13-
10 3204(3).

11 A. The City finds that the financing of energy projects is a valid public purpose.

12 B. The boundaries of the District shall be the corporate boundaries of the City and its
13 extraterritorial jurisdiction, as allowed pursuant to NEB. REV. STAT. § 13-
14 3204(1).

15 C. The District Administrator shall use a form contract for assessment contracts among
16 the City, the owner of the qualifying property, and a third-party lender, containing
17 terms as attached hereto as Exhibit "A," governing the terms and conditions of
18 financing and annual assessments in accordance with the Act, including NEB.
19 REV. STAT. § 13-3205(1), which provides for repayment of the costs financed
20 through annual assessments upon the qualifying property benefited by the energy
21 project.

22 D. The District Administrator is authorized to enter into assessment contracts on behalf
23 of the District.

1 E. The District Administrator will use a financing application process and eligibility
2 requirements, which shall be more specifically defined in a program manual created
3 by the District Administrator, for financing energy projects in accordance with the
4 requirements of the Act and accepted by the third-party lender. The application
5 process and program eligibility requirements shall be, at a minimum, as follows:

6 i. Submission of an application to the District Administrator, which shall
7 include, but not be limited to, the following information:

8 a) Applicant name and contact information, including property owner
9 and developer;

10 b) Project location and legal description;

11 c) Identification of contractor or supplier, including anticipated PACE
12 contractor and a copy of the approved bid for the energy efficiency
13 project;

14 d) Project description;

15 e) Total project cost;

16 f) Description of proposed improvements;

17 g) Description of energy efficiency project to be financed;

18 h) Amount of requested assessment;

19 i) Interest rate on the PACE assessment and any required fees;

20 j) Term of assessment;

21 k) Estimated energy savings;

22 l) Title report showing any mortgage or lien holders;

23 m) Lender consent;

- 1 n) Projected jobs created by PACE project;
- 2 o) Project environmental benefits;
- 3 p) Energy savings report;
- 4 q) Funding source;
- 5 r) All other such information as needed to demonstrate the project
- 6 complies with all the requirements of the Act.
- 7 ii. The District Administrator shall review the application to determine
- 8 whether the energy project meets the eligibility requirements of the Act and
- 9 this Ordinance. An energy project shall not be eligible for PACE financing
- 10 if the qualifying property is subject to any of the following:
- 11 a) Delinquent ad valorem taxes;
- 12 b) Delinquent personal property taxes;
- 13 c) Delinquent special assessments;
- 14 d) Overdue or delinquent water or sewer charges;
- 15 e) Involuntary liens, including but not limited to construction liens;
- 16 f) Notice of default pursuant to any mortgage or deed of trust related
- 17 to the qualifying property, or
- 18 g) If the property owner or property developer is delinquent in the
- 19 payment of any assessment required to be paid for any energy
- 20 efficiency improvement financed pursuant to the Act.
- 21 iii. If the energy project is determined to be eligible under the terms of the Act
- 22 and as required in this Ordinance, the District Administrator shall review
- 23 the application and recommend approval, request additional information, or

1 deny the application at his/her sole discretion.

2 iv. Upon approval of an application, the District Administrator is authorized to
3 proceed with an assessment contract.

4 F. Pursuant to NEB. REV. STAT. § 13-3205(7), annual assessments agreed to under
5 an assessment contract shall be levied against the qualifying property and collected
6 in accordance with the Act.

7 G. The District shall establish procedures to determine the following in the future:

8 i. Provisions for an adequate debt service reserve fund created under Section
9 13-3209, if applicable;

10 ii. Provisions for an adequate loss reserve fund created under Section 13-3208,
11 if applicable; and

12 iii. Any application, administration, or other program fees to be charged to
13 owners participating in the program that will be used to finance costs
14 incurred by the City as a result of the program;

15 Any costs shall be deducted before remitting the assessment to the third-party
16 PACE program administrator.

17 H. The assessment term shall not exceed the weighted average useful life of the energy
18 project paid for by the annual assessments.

19 I. Any energy efficiency improvement that is not permanently affixed to the
20 qualifying property upon which an annual assessment is imposed to repay the cost
21 of such energy efficiency improvement must be conveyed with the qualifying
22 property if a transfer of ownership of the qualifying property occurs during the
23 assessment term.

1 J. Prior to the effective date of any contract that binds the purchaser to purchase
2 qualifying property upon which an annual assessment is imposed, the owner shall
3 provide notice to the purchaser that the purchaser assumes responsibility for
4 payment of the annual assessment as provided in NEB. REV. STAT. § 13-
5 3205(3)(d), that the obligations set forth in the assessment contract, including the
6 obligation to pay annual assessments, are a covenant that shall run with the land
7 and be assessed upon future owners of the qualifying property.

8 K. In connection with providing PACE financing, the District will provide for
9 marketing and participant education.

10 L. After an energy project is completed, the District and/or its third-party lenders shall
11 obtain verification that the renewable energy system or energy efficiency
12 improvement was properly installed and is operating as intended.

13 Section 4. Authorization for PACE Program. That, pursuant to NEB. REV. STAT. § 13-
14 3204(1), the District shall be governed by the Lincoln City Council.

15 A. The District Administrator shall comply with the Act and the provisions of this
16 Ordinance and follow approved City procurement policy and procedures for
17 selecting a third- party administrator for the administration of the PACE program.
18 The third-party administrator must ensure that there is no financial requirement,
19 liability, or exposure to the District. The City Planning Department may serve as
20 the administrator of the PACE program for the District.

21 B. The District may also engage the services of a state or local financing agency for
22 the purposes of providing conduit bond financing for the District as part of its third-
23 party administration.

1 C. Upon selection of a third-party administrator, that third-party administrator may,
2 on behalf of the District, accept applications for financing energy efficient
3 improvements within the District boundaries, facilitate the financing application
4 process, and review eligibility requirements for financing energy projects in
5 accordance with the requirements of the Act and as accepted by the third-party
6 lender.

7 D. The District may be expanded via the Interlocal Cooperation Act in order to create
8 a program of sufficient size and scale to attract qualified third-party administrators
9 and/or to promote energy efficiency across multiple political subdivisions, as
10 authorized under the Act.

11 Section 5. Liability of City Officials; Liability of City. That notwithstanding any other
12 provision of law to the contrary, officers and other officials of the City, the District, and Lancaster
13 County shall not be personally liable to any person for claims, of whatever kind or nature, under
14 or related to the City's participation in the District's PACE Program, including, without limitation,
15 claims for or related to uncollected PACE Assessments. The City has no liability to a property
16 owner for or related to energy savings improvements funded under a PACE Program.

17 Section 6. This ordinance shall be published, within fifteen days after the passage hereof,
18 in one issue of a daily or weekly newspaper of general circulation in the City, or posted on the
19 official bulletin board of the City, located on the wall across from the City Clerk's office at 555 S.
20 10th Street, in lieu and in place of the foregoing newspaper publication with notice of passage and
21 such posting to be given by publication one time in the official newspaper by the City Clerk. This
22 ordinance shall take effect and be in force from and after its passage and publication or after its
23 posting and notice of such posting given by publication as herein and in the City Charter provided.

Introduced by:

Roy Christensen

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2018:

Mayor