

**Scott Dzurka**  
*Mayor*

**Brad Gurski**  
*Vice Mayor*

**Eric Hufnagel**  
*Commissioner*

**Jean Ruestman**  
*Commissioner*

**Chris Hyzer**  
*Commissioner*



**Chad A. Gamble, P.E.**  
*City Manager*

**Mindy J. Seavey**  
*City Clerk*

**Kristina Kinde**  
*City Treasurer*

**Michael Homier**  
*City Attorney*

**Justin Smith**  
*Director of Public Services*

**CITY OF ST. JOHNS  
CITY COMMISSION MEETING  
PROPOSED AGENDA**

**Monday, September 25, 2023, 6:00 p.m.  
Room 2200 – Clinton County Courthouse**

**\*Listen to Meeting Via Telephonic Conference**

**Dial 1 929 205 6099**

**<https://zoom.us/j/2050014286>**

**Meeting ID: 205 001 4286**

**\*Please note, you will not be able to make public comments through Zoom;  
only in-person attendees will be able to participate in public comments.**

**A. OPENING: (6:00 pm – 6:05 pm)**

1. Invocation
2. Pledge of Allegiance
3. Consent Agenda (*Action Item*)

***The staff proposes the following items for the Consent Agenda. If any Commissioner wishes to discuss any of these items, it should be placed on the regular agenda. The remaining items and recommendations may be approved en masse:***

- a. Approval of Minutes
  - Regular meeting of August 28, 2023
  - Special meeting of September 12, 2023 at 5:30 p.m.
  - Special meeting of September 12, 2023 at 6:00 p.m.
- b. Receipt of Warrants
  - In the amount of \$3,223,425.69
- c. Set Halloween Trick-or-Treat Hours
  - Staff recommends the city commission set the Halloween trick-or-treat hours for Tuesday, October 31, 2023 between the hours of 6:30 p.m. and 8:00 p.m. with the beginning and ending of the candy-gathering period to be signaled by the fire whistle.
- d. Wastewater Department Building 1 and 2 Roof Replacement
  - Staff recommends the city commission approve the agreement with Superior Services to replace the roofs on building 1 and 2 in the amount of \$29,595.43. This contract has been reviewed by the city attorney and was found to be legally sufficient.

*100 East State Street, P.O. Box 477, St. Johns, Michigan 48879-0477  
(989) 224-8944 Fax (989) 224-2204  
E-mail: [csj@stjohnsmich.com](mailto:csj@stjohnsmich.com)*

- e. Temporary Traffic Control Orders - #385-23 through #392-23
    - Staff recommends the city commission approve temporary traffic control orders 385-23 through 392-23 inclusively and authorize the City Manager and Chief of Police to endorse with signatures for immediate effect.
  - f. Axon Agreement - Body-Worn Cameras, Mobile Dash-Cameras, Interview Room Camera
    - Staff recommends the city commission approve the Axon camera and equipment contract and its endorsement by Mayor Dzurka.
  - g. 3" Wastewater Fee and Rate Schedule Change
    - Staff recommends the city commission approve amending the 23/24 Fee and Rate Schedule to correct the 3" Quarterly Ready to Serve Charge to \$1,662.33.
  - h. Fishbeck - As needed services for regulatory assistance
    - Staff recommends the city commission approve the as needed proposal from Fishbeck for a not to exceed amount of \$10,000 and authorize the mayor to sign. This contract has been reviewed by the city attorney and was found to be legally sufficient.
  - i. Spicer Group - 2023 Storm GIS Assistance – Mapping & Media Linking
    - Staff recommends the city commission approve the 2023 Storm GIS Assistance – Mapping & Media Linking from Spicer Group and the amount for the project not to exceed \$6,500 as amended by the city attorney and authorize the mayor and clerk to sign.
4. Approval of Agenda: *(6:05 pm – 6:07 pm) Action Item*

**B. PUBLIC HEARINGS:**

**C. PERSONS WISHING TO PRESENT TESTIMONY:**

- 1. Introduce Interns - Emma Burnham & Genevieve Hills  
*(6:07 pm – 6:10 pm) Discussion only*
- 2. Introduce Police Officer Marymargaret Bradbury  
*(6:10 pm – 6:13 pm) Discussion only*
- 3. Jon Wylie, Lean & Green Michigan – PACE Program  
*(6:13 pm – 6:23 pm) Discussion only*
- 4. Public comment - agenda & non-agenda items *(6:23 pm – 6:26 pm) Discussion only*  
*Each speaker is only entitled to one (1) three-minute time during each Public Comment period.*

**D. COMMUNICATIONS:**

**E. OLD BUSINESS:**

- 1. Wilson Center Updates and Commission Comments *(6:26 pm – 6:40 pm) Discussion only*

**F. NEW BUSINESS:**

1. Construction Equipment Purchase from Michigan CAT – Resolution #29-2023  
*(6:40 pm – 6:43 pm) Action Item*  
*(Presenter: Justin Smith, Director of Public Services)*
2. Logo Design Options Review and Approval *(6:43 pm – 6:55 pm)*  
*Discussion and/or Action Item*  
*(Presenter: Chad Gamble, City Manager)*
3. City Manager Comments *(6:55 pm – 7:05 pm) Discussion only*
4. Commissioner Comments *(7:05 pm – 7:15 pm) Discussion only*

**G. ADJOURNMENT: (7:15 pm)**

(Next Regular Meeting Scheduled for **Monday, October 23, 2023, 6:00 p.m.**)

NOTICE: People with disabilities needing accommodations for effective participation in this meeting should contact the city clerk 989-224-8944 at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodation.



# CONSENT AGENDA



## **CITY OF ST. JOHNS**

### **CITY COMMISSION MINUTES**

**AUGUST 28, 2023**

The regular meeting of the St. Johns City Commission was called to order by Mayor Dzurka at 6:00 p.m. at the Clinton County Courthouse, 100 East State Street, 2<sup>nd</sup> Floor, Suite #2200, St. Johns, Michigan.

COMMISSIONERS PRESENT: Eric Hufnagel, Brad Gurski, Scott Dzurka, Chris Hyzer

COMMISSIONERS ABSENT: Jean Ruestman

STAFF PRESENT: Chad Gamble, City Manager; Kristina Kinde, City Treasurer; Mindy J. Seavey, City Clerk; Justin Smith, Director of Public Services; Anne Seurnynck, City Attorney

Mayor Dzurka asked if any of the commissioners or persons present wished to discuss any of the items on the consent agenda.

There were none.

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the consent agenda be approved as presented.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

#### **a. Approval of Minutes**

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the minutes of the July 24, 2023 regular meeting be approved as presented.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

#### **b. Receipt of Warrants**

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that warrants be approved as presented in the amount of \$1,803,010.27.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

c. Wastewater Department Service Truck Purchase

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission approve the purchase of a new service truck from Young Chevrolet in the amount of \$80,710.00.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

d. Police Department Generator

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission approve the expenditure of \$12,233.00 for the purchase and installation of a building generator by ESM Electric for the Police Department as described in ESM Electric estimate number 39878.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

e. Principal Shopping District/Downtown Development Authority Appointment

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission appoint Emily Baudoux to a vacancy on the Principal Shopping District and Downtown Development Authority Boards as recommended (term expiring June 30, 2027).

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

f. Water Department Work Truck Purchase

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission approve the purchase of the new work truck from Young Chevrolet in the amount of \$57,514.00

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

g. National Night Out Donation Summary

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Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission accept the memo and summary of donations per the City Donation Policy.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

h. Purchase of 2024 Chevy 2500 HD Crew Cab Work truck

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission approve the replacement of the current 2006 Chevy 2500 work box pickup with a Chevy 2500 HD Crew Cab work truck from Young's Chevrolet in the amount of \$52,844.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

i. Proposed Merit Bonuses

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission approve a \$900 bonus for Mindy Seavey and Justin Smith for their high performance and additional responsibilities during the 4-month search for a City Manager.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

j. MML Property & Liability Insurance Renewal

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission approve renewal of the city's insurance with the Michigan Municipal League property and liability insurance pool in the amount of \$136,173 with a policy coverage period of October 1, 2023 through September 30, 2024.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

k. Michigan Municipal League Annual Meeting – Designation of Voting Delegate

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission designate Commissioner Eric Hufnagel as the city's voting delegate at the Michigan Municipal League Convention on October 18-20, 2023.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

### AGENDA

Mayor Dzurka asked if there were any additions or deletions to the agenda.

There were none.

Motion by Commissioner Hufnagel seconded by Commissioner Gurski that the city commission approve the agenda as presented.

### **AGENDA**

#### **A. OPENING:**

1. Invocation
2. Pledge of Allegiance
3. Consent Agenda

*The staff proposes the following items for the Consent Agenda. If any Commissioner wishes to discuss any of these items, it should be placed on the regular agenda. The remaining items and recommendations may be approved en masse:*

- a. Approval of Minutes
  - Regular meeting of July 24, 2023
- b. Receipt of Warrants
  - In the amount of \$1,803,010.27
- c. Wastewater Department Service Truck Purchase
  - Staff recommends the city commission approve the purchase of a new service truck from Young Chevrolet in the amount of \$80,710.00.
- d. Police Department Generator
  - Staff recommends the city commission approve the expenditure of \$12,834.98 for the purchase and installation of a building generator by ESM Electric for the Police Department as described in ESM Electric estimate number 39878.
- e. Principal Shopping District/Downtown Development Authority Appointment
  - The St. Johns PSD/DDA Boards of Directors recommends the city commission appoint Emily Baudoux to a vacancy on the Principal Shopping District and Downtown Development Authority Boards as recommended (term expiring June 30, 2027).
- f. Water Department Work Truck Purchase
  - Staff recommends the City Commission approve the purchase of the new work truck from Young Chevrolet in the amount of \$57,514.00.
- g. National Night Out Donation Summary

-Staff recommends the City Commission accept the memo and summary of donations per the City Donation Policy.

h. Purchase of 2024 Chevy 2500 HD Crew Cab Work truck

-Staff recommends the city commission approve the replacement of the current 2006 Chevy 2500 work box pickup with a Chevy 2500 HD Crew Cab work truck from Young's Chevrolet in the amount of \$52,844.

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-Staff recommends the city commission approve a \$900 bonus for Mindy Seavey and Justin Smith for their high performance and additional responsibilities during the 4-month search for a City Manager.

j. MML Property & Liability Insurance Renewal

-Staff recommends the City Commission approve renewal of the city's insurance with the Michigan Municipal League property and liability insurance pool in the amount of \$136,173 with a policy coverage period of October 1, 2023 through September 30, 2024.

k. Michigan Municipal League Annual Meeting – Designation of Voting Delegate

-Staff recommends the city commission designate Commissioner Eric Hufnagel as the city's voting delegate at the Michigan Municipal League Convention on October 18-20, 2023.

4. Approval of Agenda:

**B. PUBLIC HEARINGS:**

**C. PERSONS WISHING TO PRESENT TESTIMONY:**

1. Public comment - agenda & non-agenda items

**D. COMMUNICATIONS:**

**E. OLD BUSINESS:**

1. Resolution #23-2023 to Adopt an Ordinance to Repeal and Replace Chapter 54 of Title V of the Code of Ordinances to Provide for Industrial Pretreatment Regulations (Ordinance #677)
2. Resolution #24-2023 to Adopt an Ordinance to Regulate the Keeping of Animals Ordinance (Ordinance #678)
3. Resolution #25-2023 to Adopt an Ordinance to Eliminate the Limit on Psychological Patients in Medical Facilities (Ordinance #679)

**F. NEW BUSINESS:**

1. Resolution #26-2023 to Introduce an Ordinance to Amend the City's Zoning Ordinance to Conditionally Rezone Property
2. Phase 3 (Downtown) Camera Project
3. Logo Design Services – King Media

4. Resolution #27-2023 Authorizing Submittal of a Michigan Department of Labor and Economic Opportunity - Community Center Grant Application and Authorizing Chad A. Gamble, P.E. as Official Representative
5. Body-Worn Cameras, Mobile Dash-Cameras, Interview Room Camera procurement and upgrade with supporting
6. City Manager Comments
7. Commissioner Comments

**G. ADJOURNMENT:**

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

PUBLIC HEARINGS

PERSONS WISHING TO PRESENT TESTIMONY

1. Public Comment

Mayor Dzurka asked if there were any public comments.

Heather Hanover, PSD/DDA Director & 401 S. Oakland Street, was present. She thanked the city for help with the Mint Festival Street Party (Justin, Jordan, Jeremy) and said Chief Kirk was there all the time. She said the new city manager volunteered two days and Mayor Dzurka volunteered for three days and they appreciated that. She discussed cameras and said maybe they could get them for downtown for parking enforcement and accidents.

Ed Thelen, 110 W. Cass, was present. He thanked the entire city staff for their response on Thursday's storm. He said it was the 3<sup>rd</sup> worst storm he has seen in 30 years here. He said the city should get a good shout-out and the response was fantastic. He said he would also appreciate your support for Bill's presentation tonight for the grant.

COMMUNICATIONS

OLD BUSINESS

1. Resolution #23-2023 to Adopt an Ordinance to Repeal and Replace Chapter 54 of Title V of the Code of Ordinances to Provide for Industrial Pretreatment Regulations (Ordinance #677)



Attorney Seurnyck said this ordinance was introduced at the last meeting.

Supervisor Whitford said if anyone has any questions, he would be happy to answer them.

Motion by Commissioner Gurski seconded by Commissioner Hyzer that the city commission adopt Resolution #23-2023 to Adopt an Ordinance to Repeal and Replace Chapter 54 of Title V of the Code of Ordinances to Provide for Industrial Pretreatment Regulations.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

2. Resolution #24-2023 to Adopt an Ordinance to Regulate the Keeping of Animals Ordinance (Ordinance #678)

Chris Khorey, McKenna, said there was a recommendation from the planning commission to adopt the zoning ordinance. He said it allows chickens and bees on residential property, which are not currently allowed. He said there are no limits on pets in this ordinance. He said we already held the first reading.

There was a discussion of:

- The planning commission taking out the number of pets limits.
  - There is a restriction on dogs within the existing ordinance; not number of pets (2).
  - Looking at other municipalities and there has been a lot of conversation about feral animals.
  - At the next planning commission meeting they will have a hearing.

Motion by Commissioner Gurski seconded by Commissioner Hufnagel that the city commission adopt Resolution #24-2023 to Adopt an Ordinance to Regulate the Keeping of Animals.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

3. Resolution #25-2023 to Adopt an Ordinance to Eliminate the Limit on Psychological Patients in Medical Facilities (Ordinance #679)

Chris Khorey, McKenna, said currently our ordinance places limits on psychiatric or incarcerated patients. This ordinance removes psychiatric limits and defines incarcerated.

Motion by Commissioner Hufnagel seconded by Commissioner Hyzer that the city commission adopt Resolution #25-2023 to Adopt an Ordinance to Eliminate the Limit on Psychological Patients in Medical Facilities.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

### NEW BUSINESS

#### 1. Resolution #26-2023 to Introduce an Ordinance to Amend the City's Zoning Ordinance to Conditionally Rezone Property

Chris Khorey, McKenna, said there is a recommendation from the planning commission for a conditional rezoning agreement for 5 parcels. This is the block bounded by Railroad, Higham, Oakland and Spring Streets. There is a proposal for additional housing units. but not increasing the parking; rezoning from R-3 to CBD. He discussed R-3 and CBD (Central Business District) zoning and said CBD doesn't have a parking requirement. He discussed 1 parking space per unit; 66 units and 66 parking spaces. There have been discussions of the number of 2-bedroom units proposed. He said this is a first reading.

City Manager Gamble said he had a chance to get a tour with Mr. Harris last week. He said the issue is to encourage more development and addressing parking issues downtown. What requirements should be placed on the development? How does city address those issues in partnership with the developer?

There was a discussion of:

- 1:1 ratio for parking. Normally, a 2:1 ratio, which may be excessive.
- Working with developer to manage congestion before it happens.
- On-street parking.
- Congestion during the day in city lot at Spring/Higham Streets.
- In CBD, there are no parking requirements. We need to update this policy.
- Right-sizing the amount of parking spaces.
- Be careful on approving developments that weigh heavily on existing parking in the downtown.

Ken Harris, developer, was present. He said he is seeing a demand on 2-bedroom apartments because people want an office or single person needs more space for their stuff. He said sometimes we are giving up green space for parking.

There was a discussion of:

- Stormwater removal issues in the downtown area.
  - Has an on-site detention pond along Higham Street.
- Proposed ratio for parking spots.
  - Another 7-10 spots total.
  - 10% - 72.6; 15% - 76, 20% - 80.
    - The 15% ratio for parking.
- Possibly locating those spaces on Oakland Street.

Attorney Seurnyck discussed having to look at the issue of those spaces on public property and if they would be dedicated spaces. Also, she discussed having to amend the documents that are in front of the commission.

There was a discussion of:

- Amending the resolution at the 5<sup>th</sup> “whereas” to 76 parking spaces; also put that in the conditional rezoning agreement.
  - Ratio of 1:1.15 equals 76 spaces.
- A special meeting for this is set for September 12<sup>th</sup>.
- The 76 spaces would be within the space of the development.

Chris Khorey, McKenna, asked Mr. Harris to submit the site plan with the extra parking spaces.

Motion by Commissioner Gurski seconded by Commissioner Hyzer that the city commission adopt Resolution #26-2023 to Introduce an Ordinance to Amend the City’s Zoning Ordinance to Conditionally Rezone Property, clarifying under 2b the 76 parking spots at a minimum of 1.15 (ratio).

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

## 2. Phase 3 (Downtown) Camera Project

Chief Kirk said a city-wide security assessment done and cameras were in place at the city park and downtown. He said we started to have errors and brought in a contractor. We decided to try to do cameras in three phases. He said the police dept and city park were put in place (first 2 phases). He said fiber and WIFI was already completed downtown. He said it is starting to become a budget issue due to the vandalism. He discussed his recommendation for phase 3 of the camera project and said each of the systems has the ability to be expanded.

There was a discussion of:

- Internet outages
  - There is a battery back-up.
- All 3 systems tie together.
- We bid out phases 1 & 2.

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission approve phase 3 of downtown camera project.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

### 3. Logo Design Services – King Media

City Manager Gamble said he received inspiration from the DDA and their logo redesign efforts. He discussed a lot of significant projects in the city; social media efforts, wayfinding signage, etc. He said we asked for a proposal from King Media and they have the familiarity with us and immersion that needs to take place.

There was a discussion of:

- The DDA logo and conversation.
- In line with what we have been discussing in strategic planning.

Commissioner Hufnagel asked if it would be trademarked.

Colleen King, King Media, was present. She said it is costly to trademark and probably not worth it at this time. She said they don't recommend that the logo be trademarked. She discussed a brand book, but it is not included in this price. She said a brand book is a usage guide on how people can use it.

Mayor Dzurka said the DDA has a logo they are utilizing. How do you foresee bringing common identity?

Ms. King said she calls it a family of logos. She said they would present it to their design team. She said they have to be compatible. She said they have a good head start with brand definition, color, and fonts.

Motion by Commissioner Hyzer seconded by Commissioner Gurski that the city commission approve the proposal for the evaluation and study of possible revisions to the City Logo by King Media for the contracted amount of \$8,400.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

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Motion carried.

4. Resolution #27-2023 Authorizing Submittal of a Michigan Department of Labor and Economic Opportunity - Community Center Grant Application and Authorizing Chad A. Gamble, P.E. as Official Representative

City Manager Gamble said the Wilson Center will be talked about later. He said there is a grant opportunity that has \$60 million statewide funding. It is for capital projects as well as programs. The grant could leverage a large portion of the construction of the buildout for the Wilson Center as well as two years' worth of programming. He said the grant deadline was amended due to the storm until September 7<sup>th</sup>. He said the commission was given a resolution substitution with a \$590,000 commitment of the city and overall project cost of \$2.5 million. He said this would be a grant of \$1.81 million if approved.

There was a discussion of:

- This is consistent with conversations that have been taking place with staff and commissioners in the last several years.
- Wonderful opportunity for us to leverage outside dollars.
- The financial commitment would not be additional. This is recognizing that we would have a contribution, but they are not additional funds.

Motion by Commissioner Gurski seconded by Commissioner Hufnagel that the city commission adopt Resolution #27-2023 Authorizing Submittal of a Michigan Department of Labor and Economic Opportunity - Community Center Grant Application and Authorizing Chad A. Gamble, P.E. as Official Representative.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

5. Body-Worn Cameras, Mobile Dash-Cameras, Interview Room Camera procurement and upgrade with supporting software

Chief Kirk said this been on our radar for quite some time as a recognized best practice. He discussed maintenance of equipment, storage, answering FOIA's. He said we are the last department in the county to put body-worn cameras into use; it is not statutorily required. He said they applied for a grant and it provides \$2,000 for each camera (11 cameras). He said they did put in for an extended warranty of the Watchguard system and within a week were notified it won't be supported. He said they tried to find the best solution for us. They estimate it will take up to ten months to get this. He discussed the benefits of AXON.

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There was a discussion of:

- Replacements if a camera gets broken.
  - Any failure and it is replaced; automatically replaced at 2½ years.
- Having a back-up purchased, if needed.
  - They would order one additional body camera.
- If there is an interagency agreement to assist one another if there is a temporary shortage.
- Whether the officers were receptive to this.
- Training to be provided by the vendor.
- Changes to policies/procedures
  - Yes, with Lexipol we have model policies and they continue to be updated.

Motion by Commissioner Hufnagel seconded by Commissioner Gurski that the city commission approve the recommendation to acquire body worn and vehicle fleet cameras, with supporting software, from AXON Technology as detailed in the attached quote.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

#### 6. City Manager Comments

City Manager Gamble said reminded the commission of the signage proposal developed by King Media. He discussed the hard work by King Media, input from the DDA and businesses. We are getting final comments on this and then will be going into production. Mr. Smith will be working with Jeremy Ritter in locating and right sizing signs in the downtown. Our objective is to have the signs up on or about the 1<sup>st</sup> of November. He discussed the parking reminder card and educational phase in November/December with enforcement in the new year. He discussed the storm and said we had some amazing luck in regards to the number of trees down and the lack of damage to structures. He said he did send out several emergency management briefings. He highlighted the over and above activities by police, fire, and public works and said they worked Friday, Saturday and Sunday. He commended their hard work and the amazing job they did to clean-up the city. He highlighted a specific story that was a write-up from Deputy Chief Tobias regarding the Portland Football team returning from Ovid and they sheltered at the police department to wait out the storm. We held interview for interns for social media and have two very impressive candidates. He said the Wilson Center was first and foremost on his agenda and discussed the meetings of city staff and the lawyers on all 3 sides discussing the 3 primary documents and they have undergone a large scrubbing. He said he received the documents late today from multiple reviews. We will hold a meeting on September 12<sup>th</sup> at 6 pm at the St. Johns Police



Department headquarters, due to a PowerPoint presentation and also this chamber was not available. He discussed the agenda and process. We will hold a second special meeting on October 10<sup>th</sup> at 6 pm at police headquarters to vote on this issue. He said we are excited to use the website and upload documents. He handed out a version of the electronic version that will be there. He said the agenda and documents should be posted late tomorrow to our website.

#### 7. Commissioner Comments

Commissioner Hufnagel echoed the thanks to staff. He said there was a great effort for the Mint Festival and storm clean-up and they are committed to great service. Thank you to the city manager for absorbing a lot of information. He said he sees him getting out there and not getting overwhelmed by it and he appreciated him digging right in. Thank you for the communication to commissioners. He said he really appreciated having the city manager's comments added to the agenda and said it is helpful to them especially if we are only meeting once per month. Thank you for the request for commission action document and being able to have staff lay out the background and rationale.

Commissioner Hyzer echoed the public works staff on what they do and what they do during storm events; excellent job. He congratulated Chief Kirk and his staff and April for the National Night Out event. He said it was well done and well attended. He said with the Mint Festival it was a busy month.

Commissioner Gurski echoed comments, thanks to DPS, fire and police. He said it should be noted as we go through these events that trees become a topic of conversation. He said we did a tree survey a decade ago or so and it may be time to revisit that as well as replacing some of these trees moving forward. He said the damage trees can cause is extensive. He said that August was a great month for the city with great events. He said he has spoken to many residents and they were pleased to meet Chad and talk to the mayor. He said thank you and he appreciated everything everyone is doing.

Mayor Dzurka commended city staff for the series of events, great work from the DPW staff, and police staff as well. It was great during the Mint Festival to hear the daily reports. He recognized the DDA and Chamber for tireless hours into so many events and they made the city shine. At our last meeting, we talked about a social district and he said a small group is being formed. He said Commissioner Hyzer going to participate on that committee and he recognized him for his work in helping out. He thanked Chad for his work on the Wilson Center and said it is a great process you have laid out here. He discussed documents, addressing questions, and clarification as we come to some resolution over the next 6-8 weeks. He gave an update on the planning commission and said the use of golf carts around town they are going to look at. He said for Fantasy

Forest, the St. Johns Area Community Foundation donated \$75,000; along with the city's \$75,000. He said there are other pending grant opportunities out there. He said he and Chad had a chance to meet with new school superintendent, Anthony Berthiaume regarding opportunities. He said they are entering into strategic planning. Commissioners Hyzer and Ruestman are part of our school outreach committee. He was going back to look at and discuss that. He said the Midwest MI Trail Authority met and one of the things that came up was vandalism. He said all the trails are being kept up very nicely. We have an immense trail system here in Mid-Michigan. He discussed budgetary appropriations in this year's state budget that may expand that.

#### ADJOURNMENT

Motion by Commissioner Gurski seconded by Commissioner Hyzer that the meeting be adjourned.

YEA: Hufnagel, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

The meeting was adjourned at 7:52 p.m.

**CITY OF ST. JOHNS**  
**CITY COMMISSION MINUTES**  
**SPECIAL MEETING**  
**SEPTEMBER 12, 2023**

The special meeting of the St. Johns City Commission was called to order by Mayor Dzurka at 5:30 p.m. at the St. Johns Police Department, 409 South Whittemore Street, St. Johns, Michigan.

COMMISSIONERS PRESENT: Eric Hufnagel, Jean Ruestman, Brad Gurski, Scott Dzurka, Chris Hyzer

COMMISSIONERS ABSENT: None

STAFF PRESENT: Chad Gamble, City Manager; Mindy J. Seavey, City Clerk; Kristina Kinde, Treasurer; Justin Smith, Director of Public Services

Approval of Agenda

Motion by Commissioner Hyzer seconded by Commissioner Hufnagel that the city commission approve the agenda as presented.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

Public Comment

There were no public comments.

Resolution #28-2023 to Adopt an Ordinance to Amend the City's Zoning Ordinance to Conditionally Rezone Property

City Manager Gamble said this has been through the planning commission and first reading in regards to rezoning with the conditions as noted at your prior commission meeting. He said the recommendation is that the city grant final approval. He said at our last meeting, there was an agreement for the 66 housing units and there would be 1.15 parking spaces per unit on private property. He said the developer was agreeable to this.

Mayor Dzurka said this is also known as the FC Mason site.

**CITY COMMISSION MINUTES  
SPECIAL MEETING**

**SEPTEMBER 12, 2023**

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Motion by Commissioner Gurski seconded by Commissioner Hyzer that the city commission adopt Resolution #28-2023 to Adopt an Ordinance to Amend the City's Zoning Ordinance to Conditionally Rezone Property.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

301 N. Oakland – Special Land Use in CBD (Central Business District)

City Manager Gamble said the special land use was required because of the height restriction in CBD (Central Business District). He said CBD has a maximum height of 35' and the proposed construction will exceed the limit by 2' with a total height of 37'. He said the recommendation is that the commission approve this special land use.

There was a discussion of:

- The developer wanted to make sure he had this in place since he knew he was going to be close.
- The height of the existing building on the property.
- New building would have a pitched roof.
- There were no concerns issued by neighbors regarding the height of the building.

Motion by Commissioner Ruestman seconded by Commissioner Gurski that the city commission approve the special land use in the CBD at 301 North Oakland.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

Adjournment

Motion by Commissioner Hyzer seconded by Commissioner Gurski that the meeting be adjourned.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

The meeting was adjourned at 5:37 p.m.

**CITY OF ST. JOHNS**  
**CITY COMMISSION MINUTES**  
**SPECIAL MEETING**  
**SEPTEMBER 12, 2023**

The special meeting of the St. Johns City Commission was called to order by Mayor Dzurka at 6:01 p.m. at the at the St. Johns Police Department, 409 South Whittemore Street, St. Johns, Michigan.

COMMISSIONERS PRESENT: Eric Hufnagel, Jean Ruestman, Brad Gurski, Scott Dzurka, Chris Hyzer

COMMISSIONERS ABSENT: None

STAFF PRESENT: Chad Gamble, City Manager; Mindy J. Seavey, City Clerk; Kristina Kinde, Treasurer; Scott Hogan, Attorney (Zoom)

OTHERS PRESENT: Jeff Deehan, Dymaxion; Brendan Fox, Dymaxion; Ken Jones, Studio Intrigue

Approval of Agenda

Motion by Commissioner Ruestman seconded by Commissioner Hyzer that the city commission approve the agenda as presented.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

Presentation by Dymaxion

Brenden Fox from Dymaxion was present. He said they are very excited to be back in front of you. He said he is both a resident of St. Johns and an employee of Dymaxion Development.

He discussed:

- What is the Wilson Center Project
  - This is a passion project; discussed the Holmes Street School in Lansing.
- How did we get here
  - Timeline
  - 16+ public meetings and input sessions
  - 50+ project team meetings
- Our product

**CITY COMMISSION MINUTES  
SPECIAL MEETING**

**SEPTEMBER 12, 2023**

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- How will this work
  - Good fences make good neighbors
  - 50/50 partners

There was a discussion of:

- Clarification of the word “condominium”.
- Environmental remediation: lead paint, asbestos containing materials and the remediation would be conducted by Dymaxion prior to closing.

Presentation by the City

City Manager Gamble discussed his economic development experience. He thanked Kristina Kinde, Mindy Seavey, Tammy Wright and King Media for work in getting documents ready for this meeting.

He discussed:

- Wilson Center Team Members
- Website information and summary
- Summary and status of purchase agreement
- Purchase agreement at a glance
- Purchase agreement options
- Considerations and influences of decisions
- Wilson Center by the numbers
- Optional Additional Space to Support Gym/Auditorium
- Review of proposed development documents
- Outstanding/popular questions from community
- Grant applications submitted by the city to date

Discussion of legal documents

Commissioner Hyzer said he appreciated the breakdown of revenues. He discussed a Brownfield. He said we will recoup our costs over the next 15 years. He said if we bought the building none of the other taxing authorities are getting money and we aren't either. He discussed remediation costs. He said he appreciated the pie chart and breakdown.

Mayor Dzurka said for slides #11 & #12, refresh people of what is included in the \$1.6 million.



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City Manager Gamble said restoration to restrooms, painting, application of entrance and making ADA compliant, fire doors.

Ken Jones, Studio Intrigue, was present. He said also sprinkling, heating/cooling, new restrooms, restoration of areas of gym and auditorium.

City Manager Gamble said electrical upgrades also.

Mayor Dzurka said the chart on slide 11, the \$1.6 million is included in there. He discussed our actual costs thus far. He said on the development agreement, #5 on slide 17 is a significant change on that parking lot. He said there was potentially a development there. He thanked Dymaxion. On slide 18, #2 issues of ongoing costs. He said the estimated ongoing costs are not included. He said he had a question on item #8 on the development agreement regarding construction liens.

Scott Hogan, attorney, was present on Zoom. He said a contractor cannot file a construction lien against a public building. On the Dymaxion side, if there is a construction lien, they would have to take care of getting rid of that lien. A contractor could only affect Dymaxion's side of the project.

City Manager Gamble said there is also additional protection in there on page 17, section 7, item #7 (developer to provide proof of financing).

Public Comments/Questions

Ed Thelen was present. He said he lives to the north of the Wilson Center project. He thanked Dymaxion for putting parking back in the parking lot. He discussed the grants are a big part to finance this, \$2 million is huge. What is the plan to finance \$2.7 million if we don't get the grant?

Susan DeRosa was present. She thanked Dymaxion and the city for making presentations. She said it has been a long 11 months. She discussed attending 6 city commission meetings this year; she doesn't live in the city limits; she is interested in the potential to preserve and enhance space; it is a cultural asset that could not be reproduced for 3 times that amount; the potential for Dymaxion; potential development of multi-use space; and said she is interested in the potential to plan for January 2025 like we did in 2006 for the Sesquicentennial.

Bill Tennant was present. He thanked the city and Dymaxion for everything they have done; it has been a long haul. He said he appreciated the effort and presentations today

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**SEPTEMBER 12, 2023**

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and putting all the documents on the website. He discussed a lot of misinformation going around; he is 100% in on this project; this project needs to get going and is an important part of our community for years and years; the project brings people together, brings in housing, a win for our community and lots of good will come from this happening; cooperation on concert in the park series; a good partnership to keep the venue going with lots of wonderful things; and the school board 100 years ago and their foresight to put an auditorium in that building.

Cheryl Cole was present. She discussed the parking lot and asked if the city has any say in how the parking lot with weeds, etc. was being managed; the unknown costs for the future; who is going to manage the whole new arena (clarified, to who will manage the auditorium and gym when everything is said and done); she hopes King Media is not involved; she hopes it turns out to be a good thing; and how you are going to make your money.

Roberta Cocco, resident, was present. She discussed that she appreciated the clarity and organization; expressed appreciation for Dzurka's curiosity and questions; you are elected to represent us and encouraged the rest of the commission to have questions; appreciated Chad scrubbing the documents; she was unclear about construction documents we approved a couple of months ago cost \$52,000 with Studio Intrigue, the line item was over \$100,000 and she would appreciate clarity; another line item for over \$100,000 around engineering documents, if you could clarify that; cities are not developers, there isn't any evidence of a city becoming a developer in a project like this successfully, any research or business plans that would help; echoed concerns around theater costs, and who will run it and who will fund it; will taxpayers of St. Johns will fund and pay for something that the county is utilizing; have we considered to ask the county to support these endeavors as well; kudos to Jeff on the parking lot; the 50/50 split and Commissioner Hufnagel expressed concerns with that in the past; \$140,000 for last the bit and \$350,000 to develop it, would like clarity around that; and her concern with the treasurer providing the revenue numbers for this.

Tom Webb was present. He thanked Dymaxion for their presentation and clarity. When he saw the parking lot issue was there, it solves a few questions. He discussed he always knew when they invested in the building they weren't going to spend money on a building that wasn't structurally sound; good investment on their part and for the community; opportunity to sell the community; makes the community attractive; discussed outdoor venues we have in the city and all of those things are assets; auditorium and gym would be an indoor asset; entertainment venue for all ages; place where we have entertainment and recreation venue; and benefit to surrounding community and they also spend money here.

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Lori Zelenka was present. She discussed she got onto the city website there was no reminder on there for the 6:00 meeting; before they said would take more than 69 parking spaces, where are people going to park cars; you said people would be able to use the gym and auditorium in January 2025, if they haven't developed apartments yet who is going to pay for heat or if the roof starts leaking, is it a 50/50 split still; does not seem like a fair split; if Dymaxion decides they no longer want they building and sell it off, is the city stuck with their share; they can then sell it for low income housing and are the neighbors stuck with that; and is it truly beneficial to the city to get stuck with a 50/50 payment deal and repairs and bills and everything else when the city will own such a small share of that building?

Duane Witter, Waterford Parkway, was present. He discussed he is new to the city; he thinks the presentations have been fantastic; we needed this information 6-8 months ago to stop the negative stuff we see on Facebook; we have been informed with figures; is there not recreational or arts grants available; any idea what this will actually cost the taxpayer per year; a similar project in Fremont and they were leased out before the building opened; and he appreciated you did away with off-street parking.

Amber Haubert was present. She discussed she is concerned big time for our future; putting all of this money into a building and we don't need to have that responsibility; can be responsibility through Dymaxion where the gymnasium can still be utilized; we can take our own money and build a gym; you wanted to hear feedback of citizens of this town; things around town that have been needed to be worked on and this money could be poured into that; huge responsibility for younger generation; and you hired King Media to hear our priorities and people said they wanted recreational opportunities and downtown development, why wasn't a survey put out to taxpayers to see what we want.

Chriz DeLiso was present. He discussed an option would have been to continue to rent the space; you had an agreement to rent for a couple of years for a very attractive price; you went two years without being able to rent those spaces, is there any compensation coming our way for that from Dymaxion; with apartments, do we know the breakdown of one bedroom vs. two bedroom apartments; one bedroom apartments attract transients; what part of the contract obliges them to keep the plan of 49 apartments and not reducing size of apartments and making them smaller; and what happens if 5-10 years down the road they sell to someone else and if they want to put in section 8 apartments.

Mayor Dzurka thanked everyone. He said some of the questions may have already been answered on the website. We are going to be thorough in the next couple of weeks to answer the questions.

**CITY COMMISSION MINUTES  
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City Manager Comments

City Manager Gamble reminded everyone we will be working on answering questions and placing the answers on the website. Our target is to have them posted by September 26<sup>th</sup>.

Mayor Dzurka said they have a lot of decisions ahead as a board. He thanked the presenters for their thorough presentations.

City Manager Gamble reminded everyone they can still ask questions, email [csj@stjohnsmi.gov](mailto:csj@stjohnsmi.gov) by noon on September 14<sup>th</sup>.

Adjournment

Motion by Commissioner Hyzer seconded by Commissioner Gurski that the meeting be adjourned.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

The meeting was adjourned at 7:36 p.m.

**CITY OF ST. JOHNS, MICHIGAN**  
**REQUEST FOR COMMISSION ACTION**  
**September 05, 2023**

<b>Department: Wastewater</b>	<b>Attachments:</b>
<b>Subject: <i>Wastewater Department Building 1 and 2 Roof Replacement</i></b>	<b>[ X ] Superior Roofing Quote</b> <b>[ ]</b> <b>[ ]</b>
<b>Prepared by: Jordan Whitford Wastewater Supervisor</b>	<b>Approved by: Chad A. Gamble, P.E. City Manager</b>

**SUMMARY/HIGHLIGHT:** Included in the 2023/2024 budget is replacement of building #1's roof at the WWTP. This roof is original to the building that was built during the 1970's. Although maintenance on the roof has been performed over the years, we have recently had some leaks that require patches to be installed. Ultimately this roof and many others are at the end of their lifespan and are overdue for replacement.

Over the past months staff has worked with multiple contractors to provide professional opinions on the most practical replacement methods and their associated costs. By conducting this process, we were not only able to obtain three bids, we were also able to include a roof replacement on building 2 while still falling under our budget. Quality bids for this project ranged from \$29,595.43 (Superior Roofing) to \$31,640 (Roofing Innovations) with the third contactor (Custom Roofing Solutions) falling below both bids however, did not offer a replacement method that met Michigan energy code and failed to provide another bid when asked to match the other manufactures replacement methods.

**BACKGROUND/DISCUSSION:** Over the last few year staff reviewed the integrity of the buildings around the wastewater treatment campus. Some of the biggest concerns found were the condition of building roofs. Other than four buildings, many of the roofs on campus are nearing 50 years old. With that knowledge, we have been aggressively planning for roof replacements within the CIP. We were able to complete the roof on our main lab/office building last year, two roofs planned this current year, and three planned for next year.

**STRATEGIC PLAN OBJECTIVE:** Public Facilities – Goal #1: Continue to offer High Quality Services and Facilities for Residents

**FISCAL IMPACT:** This roof replacement was a budgeted line item within the 23-24 FY budget and funds are available in account 592-560-818.077.

**RECOMMENDATION:** Staff recommends the City Commission approve the agreement with Superior Services to replace the roofs on building 1 and 2 in the amount of \$29,595.43. This contract has been reviewed by the City attorney and was found to be legally sufficient.



Duro-Last Roofing  
Bid Proposal



City of St. Johns  
100 East State Street  
Saint Johns, MI 48879

### Property:

St. Johns Waste Water Treatment  
950 Old U.S. 27  
Saint Johns, MI 48879



## Roof Section: 1 & 2

We hereby submit specifications and estimates for:

### **Installation of complete Duro-Last roof system on 870 square feet per Duro-Last specifications.**

Roof system shall be mechanically attached in accordance with the Duro-Last specification manual (copy available upon request) as follows:

#### Quality Assurance

**Pre-job inspection** – Core cuts shall be made to evaluate the existing roof assembly for number of roofs, moisture content and thermal resistance. Pullout tests shall be conducted with proposed fastener to test the integrity of the deck. Submit results of pullout tests to Duro-Last Engineering.

**Engineering** – Duro-Last Engineering to calculate the placement and number of fasteners required to meet a 60 lb. wind uplift in accordance with *ASCE 7 Wind Load Provisions*.

#### Installation

**Tear Off** – Complete removal of all roofing material down to the structural deck. Remove all debris off site to a state licensed land fill. Clean and inspect deck for any necessary repairs. Repair or replace decking as necessary. Addition to base bid \$16 per square foot replaced.

**Solid Wood Blocking** – Install or replace solid wood blocking as necessary to facilitate proper attachment of edge metal and gutter. Addition to base bid \$4 per linier foot.

**Insulation** – Install 5.2 inches of iso insulation and 1/2" DensDeck (R value 30) in multiple layers staggered minimum 12 inches, mechanically attached with five fasteners per 4 x 8 sheet.

**Membrane** – Over new iso insulation install 60 mil white Duro-Last mechanically attached in accordance with Duro-Last Engineering wind design.

**Penetrations Flashing** – All plumbing stacks, vents, curbs, sky lights, roof hatch, scuppers, and drains if any to be flashed with pre-engineered, custom fabricated stack, curb and drain flashings.

**Walls** – Flash walls, minimum 8" above the roof and terminate using 1 ¾ inch fascia bar with vinyl cover term bar; or flash up and over the top and terminate on the outside edge of the wall.

**Roof Edge and Wall Termination** – Along roof edge and walls install 6 inch face two-piece compression metal formed from 24-gauge pre-finished steel from standard color chart.

**Two Way Breather Vents** – Install one vent for each 1,000 square feet of roof area.

**Walk Way Protection** – Install 2 30" x 60" *Duro-Trac II Walk Pads* at roof access points, service doors of RTU's, and walk ways. Additional walk way pads shall be an addition to base bid \$45 per unit.

Post Project

**Inspection** – Duro-Last Quality Assurance Department to inspect roof installation upon completion for adherence to specifications prior to warranty issuance.

**Warranty** – Provide 25 Year No Dollar Limit Warranty issued by Duro-Last (copy enclosed)

Safety

**Fall Protection** – All mandated OSHA regulations for fall protection shall be followed.

General Conditions

**Building and Special Access Permits** – Building and other permits that may be required, such as to block streets or parking spaces shall be an addition to base bid.

**Electric Conduit** - Conduit that exists beneath the steel deck (if any) may be impacted by roofing operations, by both deck replacement and mechanical fasteners. Removal, repair, or replacement of conduit to be by others and is excluded from our base bid.

**Owner / Tenant Operations** – Loading materials, ground staging, and working hours will be performed to minimize disruption to owner, tenants, and customers.

This Proposal was created by:  
**Jimmy Wisniewski - 8/24/2023**

**TERMS AND CONDITIONS:**

FINANCE CHARGES as well as a \$35 per month late payment processing fee will apply if the balance is unpaid 30 days from date of invoice. The "FINANCE CHARGES" are computed on a periodic rate of 2.08% per month which, is an ANNUAL PERCENTAGE RATE of 25%. Acceptance of this proposal constitutes agreement to these terms. **Credit Card Surcharge: A surcharge of 3% will be charged on payment amounts exceeding \$5,000.00 per contract paid by credit card.**

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specification involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon, strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

**This proposal may be withdrawn if not accepted within 10 days.**

**2022-2023 Material Pricing & Availability Note:** The construction industry is currently experiencing unprecedented shortages and delays in obtaining construction materials to the extent that reliable assurance of material availability, delivery dates, timely delivery and firm pricing of materials cannot be obtained. The parties acknowledge that some of the materials and products to be used and installed in the construction of the Project may become unavailable, delayed in shipment and/or subject to price increases due to circumstances beyond the control of the Contractor.

If a specified product is unavailable or shipment is delayed, Contractor shall provide written notice to Owner and shall be afforded additional time and substitute products may be considered.

If there is a significant increase or decrease in the price of materials, equipment or products between the date of this Agreement and the time when the Project is scheduled for installation of the affected material, the Contract Sum shall be adjusted to reflect the current cost to obtain the materials, provided that the Contractor provides written notice and documentation of the adjusted costs.

Disconnection and/or reconnection of air conditioning or heating units, mechanical or electrical, which may be necessary to facilitate reroofing, is to be done by others and is excluded from base bid. Superior Services RSH Inc. will not be held responsible for any damage to electrical, gas, or mechanical connections. Owner is advised that roof system is mechanically attached. Fasteners are designed to, and will penetrate the structural deck. Electrical conduit if any, beneath or on top of the deck could be damaged. In the event of a complete tear off, conduit on top of the deck if any, could be damaged. Contractor shall not and is not responsible for any damages or losses therefrom.

The cost of building permits, if any, which may be required by local building authorities are an addition to Base bid. Any and all additional engineering services or inspections required by building authority are an addition to Base bid.

All rotted wood shall be replaced on a time and material basis or as noted in proposal contract. This proposal when accepted shall constitute the entire agreement between the parties hereto. We will use precaution during inclement weather when reroofing, however we are not to be held responsible for interior damage to building, including plaster, furnishings and personal belongings during progress of work. We shall not be responsible for any damage or delay due to strikes, fire, accidents, or other causes beyond our control, nor for inherent defects in the premises on which work is to be done. Due precaution will be taken, but we must be allowed access to buildings and will not be responsible for any damage to lawns or shrubberies, sidewalks, driveways, sprinkler systems, water lines, septic tanks or lines, fiberglass or plastic roofs, screen enclosures, pools and patios. Please be advised, in the areas where you have open beam ceilings there may be light debris and small rocks sifting through the sheathing boards. Please take precautions to cover any carpeting or furniture that you do not wish to be soiled as we cannot be responsible for such damage. Any loose objects should be taken down, as vibrations from work could cause damage. Any structural changes or wood work would be the responsibility of the buyer unless otherwise specified herein. By acceptance of this agreement, owner agrees that Superior Services RSH Inc. shall have no liability whatsoever for any claims (to person or property) arising out of, or associated in any way with the existence, growth, creation, disturbance, elimination and/or migration of mold, mildew, or any other organic substance including any associated spores and the migration of such spores. This agreement constitutes the entire understanding of the parties and no other understanding shall be binding unless in writing signed by both parties.

We Propose hereby to furnish material and labor, complete in accordance with these specifications, for the sum of **\$29,595.43**.

Payable as follows: **50% down; Balance on completion - Net 10 days**

**Commented [HM1]:** The City should be aware of the potential change in price.

**Commented [HM2]:** Same as above.

**Commented [HM3]:** Note that contractor is not responsible for damage from the mechanical attachment.

**Commented [HM4]:** Note again that contractor is not responsible for any damage from fire, accidents or other causes beyond our control.

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**Authorized Signature:**

A handwritten signature in black ink, appearing to read "Robert S. Heins Pres.", written over a light gray background.

**Robert S. Heins, President  
Superior Services R.S.H., Inc.**

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**ACCEPTANCE OF PROPOSAL:**

The prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined.

Signature \_\_\_\_\_ Date \_\_\_\_\_

City of St. Johns



**Duro-Last Roofing  
Bid Proposal**



City of St. Johns  
100 East State Street  
Saint Johns, MI 48879

### Property:

St. Johns Waste Water Treatment  
950 Old U.S. 27  
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Disconnection and/or reconnection of air conditioning or heating units, mechanical or electrical, which may be necessary to facilitate reroofing, is to be done by others and is excluded from base bid. Superior Services RSH Inc. will not be held responsible for any damage to electrical, gas, or mechanical connections. Owner is advised that roof system is mechanically attached. Fasteners are designed to, and will penetrate the structural deck. Electrical conduit if any, beneath or on top of the deck could be damaged. In the event of a complete tear off, conduit on top of the deck if any, could be damaged. Contractor shall not and is not responsible for any damages or losses therefrom.

**The cost of building permits, if any, which may be required by local building authorities are an addition to Base bid. Any and all additional engineering services or inspections required by building authority are an addition to Base bid.**

All rotted wood shall be replaced on a time and material basis or as noted in proposal contract. This proposal when accepted shall constitute the entire agreement between the parties hereto. We will use precaution during inclement weather when reroofing, however we are not to be held responsible for interior damage to building, including plaster, furnishings and personal belongings during progress of work. We shall not be responsible for any damage or delay due to strikes, fire, accidents, or other causes beyond our control, nor for inherent defects in the premises on which work is to be done. Due precaution will be taken, but we must be allowed access to buildings and will not be responsible for any damage to lawns or shrubberies, sidewalks, driveways, sprinkler systems, water lines, septic tanks or lines, fiberglass or plastic roofs, screen enclosures, pools and patios. Please be advised, in the areas where you have open beam ceilings there may be light debris and small rocks sifting through the sheathing boards. Please take precautions to cover any carpeting or furniture that you do not wish to be soiled as we cannot be responsible for such damage. Any loose objects should be taken down, as vibrations from work could cause damage. Any structural changes or wood work would be the responsibility of the buyer unless otherwise specified herein. By acceptance of this agreement, owner agrees that Superior Services RSH Inc. shall have no liability whatsoever for any claims (to person or property) arising out of, or associated in any way with the existence, growth, creation, disturbance, elimination and/or migration of mold, mildew, or any other organic substance including any associated spores and the migration of such spores. This agreement constitutes the entire understanding of the parties and no other understanding shall be binding unless in writing signed by both parties.

**We Propose hereby to furnish material and labor, complete in accordance with these specifications, for the sum of \$29,595.43.**

**Payable as follows: 50% down; Balance on completion - Net 10 days**

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**Authorized Signature:**

A handwritten signature in black ink, appearing to read "Robert S. Heins Pres.", written over a light gray grid background.

**Robert S. Heins, President  
Superior Services R.S.H., Inc.**

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**ACCEPTANCE OF PROPOSAL:**

The prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined.

Signature \_\_\_\_\_ Date \_\_\_\_\_

City of St. Johns

**CITY OF ST. JOHNS, MICHIGAN**  
**REQUEST FOR COMMISSION ACTION**  
**September 25, 2023**

<b>Department: Police</b>	<b>Attachments:</b>
<b>Subject: Traffic Control Orders-Downtown Parking Plan</b>	[ X ] TCO 385-23 [ X ] TCO 386-23 [ X ] TCO 387-23 [ X ] TCO 388-23 [ X ] TCO 389-23 [ X ] TCO 390-23 [ X ] TCO 391-23 [ X ] TCO 392-23
<b>Prepared by: Chief of Police, David Kirk</b>	<b>Approved by: City Manager, Chad A. Gamble, P.E.</b>

**SUMMARY/HIGHLIGHT:** Parking, particularly as it is related to the downtown district, has been a point of discussion and planning for some time. A recent review of priorities related to parking has been completed and a new Downtown Parking Plan was approved on March 20, 2023. Subsequent to this meeting a new signage plan was developed to reflect and communicate these changes and generally update and improve the existing parking signage downtown. With this completion, traffic control orders necessary to align parking regulations with this process have been completed and are ready for action by the City Commission.

**BACKGROUND/DISCUSSION:** The city departments that will be involved in the roll out, and administration of the new plan, have reviewed the plans and have completed the necessary prerequisites and are prepared to move forward with its implementation. The target installation of the new signage will be on or about November 1, 2023, with full implementation and enforcement after January 1, 2024.

**STRATEGIC PLAN OBJECTIVE:** A high priority for the strategic plan is to make and keep the downtown vibrant and attractive to all those who live in and as well as those who patronize the businesses there. To achieve that priority, careful planning, that balances the interests of all involved, is necessary. The proposed plan has participated in elaborate planning which required several modifications to presented plans. The plan being implemented, including traffic controls related to parking, is believed to be attentive to and in line with the desired balance and is ready for execution.

**FISCAL IMPACT:** The creation and execution of traffic control orders has no costs associated with it and for that reason, no fiscal impact.

**RECOMMENDATION:** Staff recommends the approval of traffic control orders 385-23 through 392-23 inclusively and authorize the City Manager and Chief of Police to endorse with signatures for immediate effect.

CITY OF ST JOHNS  
MICHIGAN

TRAFFIC CONTROL ORDER # 385-23

TEMPORARY ORDER

By authority vested in me by Section 2.53 of the Uniform Traffic Code for Cities, Townships, and Villages, the same having been validly adopted by the City of St. Johns and presently effective, I ORDER AND DIRECT THAT:

In the 200 and 300 blocks of N. Brush Street overnight parking be allowed with a permit.

This TEMPORARY TRAFFIC CONTROL ORDER shall become effective at 8:00 a.m. on October 1, 2023, and shall continue in effect for ninety (90) days thereafter, unless sooner revoked or suspended; PROVIDED, however, that upon approval by the City Commission of the City of St. Johns, this order shall become permanent.

Dated \_\_\_\_\_

\_\_\_\_\_  
Chief of Police – David Kirk

Dated \_\_\_\_\_

\_\_\_\_\_  
City Manager - Chad Gamble

CERTIFICATE OF CLERK

I certify that the foregoing TRAFFIC CONTROL ORDER was filed in my office on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and under my direction was entered in the TRAFFIC CONTROL ORDER BOOK, according to law.

Dated \_\_\_\_\_

\_\_\_\_\_  
City Clerk – Mindy J. Seavey

PERMANENT ORDER

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at a regular meeting of the City Commission of the City of St. Johns, at which a quorum was present, the foregoing TEMPORARY TRAFFIC CONTROL ORDER was duly approved by the City Commission and the same is hereby designated a PERMANENT TRAFFIC CONTROL ORDER.

Dated \_\_\_\_\_

\_\_\_\_\_  
Mayor – Scott Dzurka

CITY OF ST JOHNS  
MICHIGAN

TRAFFIC CONTROL ORDER # 386-23

TEMPORARY ORDER

By authority vested in me by Section 2.53 of the Uniform Traffic Code for Cities, Townships, and Villages, the same having been validly adopted by the City of St. Johns and presently effective, I ORDER AND DIRECT THAT:

In the 200 and 300 blocks of N. Spring Street overnight parking be allowed with a permit.

This TEMPORARY TRAFFIC CONTROL ORDER shall become effective at 8:00 a.m. on October 1, 2023, and shall continue in effect for ninety (90) days thereafter, unless sooner revoked or suspended; PROVIDED, however, that upon approval by the City Commission of the City of St. Johns, this order shall become permanent.

Dated \_\_\_\_\_

\_\_\_\_\_  
Chief of Police – David Kirk

Dated \_\_\_\_\_

\_\_\_\_\_  
City Manager - Chad Gamble

CERTIFICATE OF CLERK

I certify that the foregoing TRAFFIC CONTROL ORDER was filed in my office on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and under my direction was entered in the TRAFFIC CONTROL ORDER BOOK, according to law.

Dated \_\_\_\_\_

\_\_\_\_\_  
City Clerk – Mindy J. Seavey

PERMANENT ORDER

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at a regular meeting of the City Commission of the City of St. Johns, at which a quorum was present, the foregoing TEMPORARY TRAFFIC CONTROL ORDER was duly approved by the City Commission and the same is hereby designated a PERMANENT TRAFFIC CONTROL ORDER.

Dated \_\_\_\_\_

\_\_\_\_\_  
Mayor – Scott Dzurka



CITY OF ST JOHNS  
MICHIGAN

TRAFFIC CONTROL ORDER # 387-23

TEMPORARY ORDER

By authority vested in me by Section 2.53 of the Uniform Traffic Code for Cities, Townships, and Villages, the same having been validly adopted by the City of St. Johns and presently effective, I ORDER AND DIRECT THAT:

In the 100 block of W. Railroad Street, the first 13 spaces west of Clinton Avenue on the north side of the street only, overnight parking is allowed with a permit. (See attached map)

This TEMPORARY TRAFFIC CONTROL ORDER shall become effective at 8:00 a.m. on October 1, 2023, and shall continue in effect for ninety (90) days thereafter, unless sooner revoked or suspended; PROVIDED, however, that upon approval by the City Commission of the City of St. Johns, this order shall become permanent.

Dated \_\_\_\_\_

\_\_\_\_\_  
Chief of Police – David Kirk

Dated \_\_\_\_\_

\_\_\_\_\_  
City Manager - Chad Gamble

CERTIFICATE OF CLERK

I certify that the foregoing TRAFFIC CONTROL ORDER was filed in my office on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and under my direction was entered in the TRAFFIC CONTROL ORDER BOOK, according to law.

Dated \_\_\_\_\_

\_\_\_\_\_  
City Clerk – Mindy J. Seavey

PERMANENT ORDER

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at a regular meeting of the City Commission of the City of St. Johns, at which a quorum was present, the foregoing TEMPORARY TRAFFIC CONTROL ORDER was duly approved by the City Commission and the same is hereby designated a PERMANENT TRAFFIC CONTROL ORDER.

Dated \_\_\_\_\_

\_\_\_\_\_  
Mayor – Scott Dzurka



CITY OF ST JOHNS  
MICHIGAN

TRAFFIC CONTROL ORDER # 388-23

TEMPORARY ORDER

By authority vested in me by Section 2.53 of the Uniform Traffic Code for Cities, Townships, and Villages, the same having been validly adopted by the City of St. Johns and presently effective, I ORDER AND DIRECT THAT:

In the 200 block of E. Railroad Street, both the north and south sides of the street east of the Depot parking lot entrance, overnight parking is allowed with a permit. (See attached map)

This TEMPORARY TRAFFIC CONTROL ORDER shall become effective at 8:00 a.m. on October 1, 2023, and shall continue in effect for ninety (90) days thereafter, unless sooner revoked or suspended; PROVIDED, however, that upon approval by the City Commission of the City of St. Johns, this order shall become permanent.

Dated \_\_\_\_\_

\_\_\_\_\_  
Chief of Police – David Kirk

Dated \_\_\_\_\_

\_\_\_\_\_  
City Manager - Chad Gamble

CERTIFICATE OF CLERK

I certify that the foregoing TRAFFIC CONTROL ORDER was filed in my office on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and under my direction was entered in the TRAFFIC CONTROL ORDER BOOK, according to law.

Dated \_\_\_\_\_

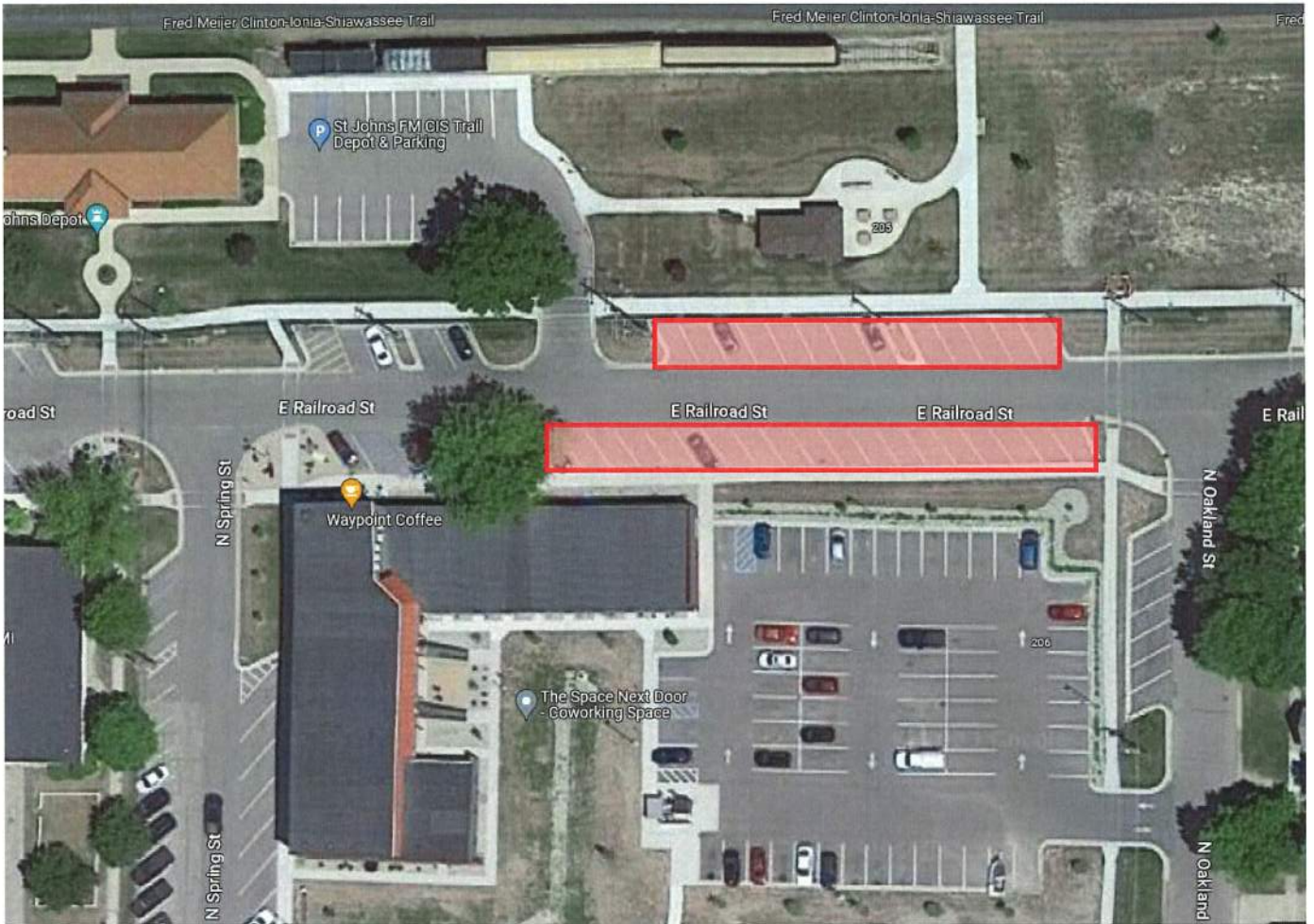
\_\_\_\_\_  
City Clerk – Mindy J. Seavey

PERMANENT ORDER

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at a regular meeting of the City Commission of the City of St. Johns, at which a quorum was present, the foregoing TEMPORARY TRAFFIC CONTROL ORDER was duly approved by the City Commission and the same is hereby designated a PERMANENT TRAFFIC CONTROL ORDER.

Dated \_\_\_\_\_

\_\_\_\_\_  
Mayor – Scott Dzurka



CITY OF ST JOHNS  
MICHIGAN

TRAFFIC CONTROL ORDER # 389-23

TEMPORARY ORDER

By authority vested in me by Section 2.53 of the Uniform Traffic Code for Cities, Townships, and Villages, the same having been validly adopted by the City of St. Johns and presently effective, I ORDER AND DIRECT THAT:

In the 300 block of N. Oakland Street, the seven angle parking spaces south of Railroad Street on the west side of the street, overnight parking is allowed with a permit. (See attached map)

This TEMPORARY TRAFFIC CONTROL ORDER shall become effective at 8:00 a.m. on October 1, 2023, and shall continue in effect for ninety (90) days thereafter, unless sooner revoked or suspended; PROVIDED, however, that upon approval by the City Commission of the City of St. Johns, this order shall become permanent.

Dated \_\_\_\_\_

\_\_\_\_\_  
Chief of Police – David Kirk

Dated \_\_\_\_\_

\_\_\_\_\_  
City Manager - Chad Gamble

CERTIFICATE OF CLERK

I certify that the foregoing TRAFFIC CONTROL ORDER was filed in my office on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and under my direction was entered in the TRAFFIC CONTROL ORDER BOOK, according to law.

Dated \_\_\_\_\_

\_\_\_\_\_  
City Clerk – Mindy J. Seavey

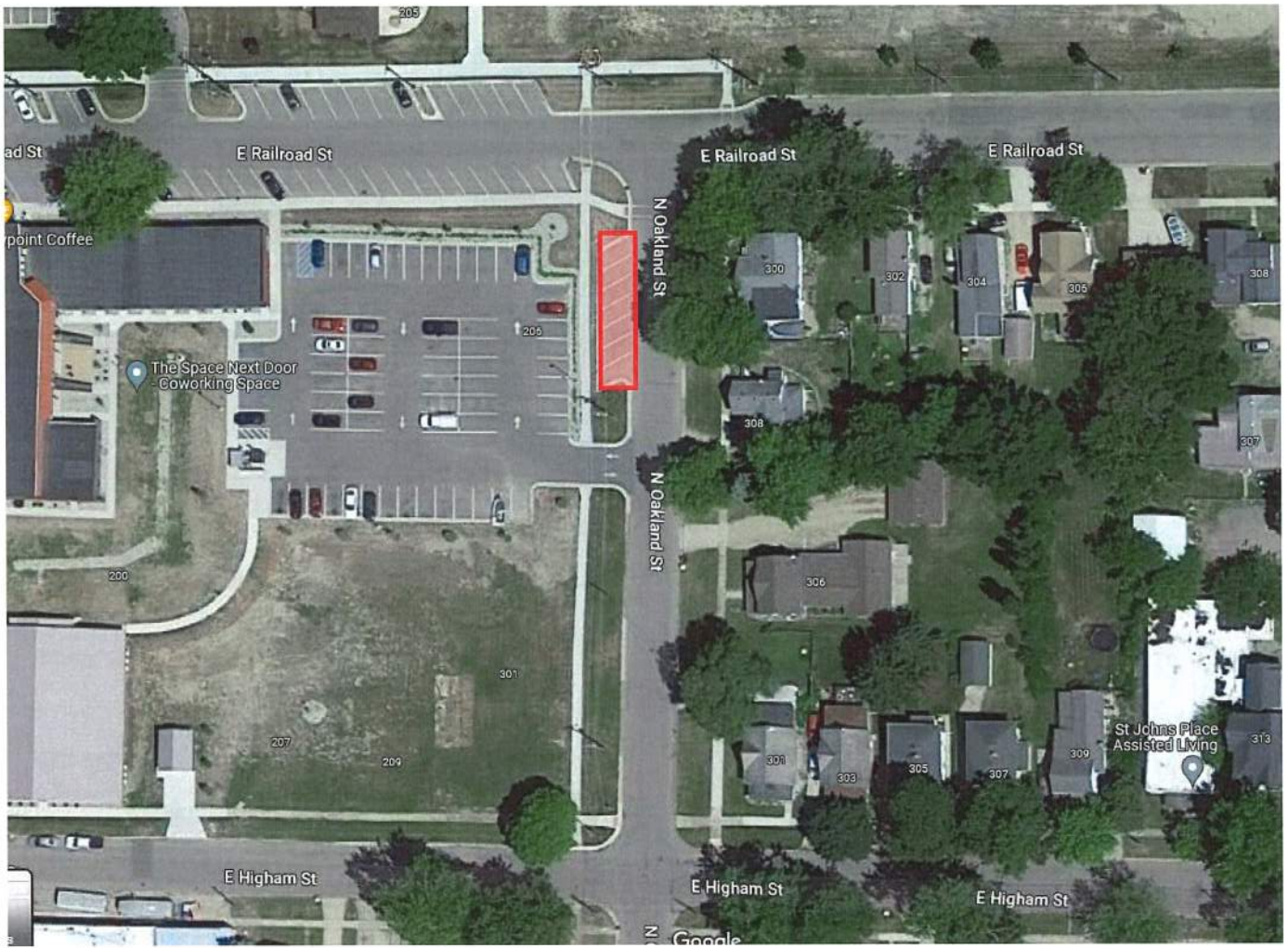
PERMANENT ORDER

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at a regular meeting of the City Commission of the City of St. Johns, at which a quorum was present, the foregoing TEMPORARY TRAFFIC CONTROL ORDER was duly approved by the City Commission and the same is hereby designated a PERMANENT TRAFFIC CONTROL ORDER.

Dated \_\_\_\_\_

\_\_\_\_\_  
Mayor – Scott Dzurka





CITY OF ST JOHNS  
MICHIGAN

TRAFFIC CONTROL ORDER # 390-23

TEMPORARY ORDER

By authority vested in me by Section 2.53 of the Uniform Traffic Code for Cities, Townships, and Villages, the same having been validly adopted by the City of St. Johns and presently effective, I ORDER AND DIRECT THAT:

On the east side of Clinton Avenue, in front of 112 N. Clinton, the two existing ADA accessible public parking spaces be used for normal daytime parking and overnight parking for hotel use only with handicap permit.

This TEMPORARY TRAFFIC CONTROL ORDER shall become effective at 8:00 a.m. on October 1, 2023, and shall continue in effect for ninety (90) days thereafter, unless sooner revoked or suspended; PROVIDED, however, that upon approval by the City Commission of the City of St. Johns, this order shall become permanent.

Dated \_\_\_\_\_

\_\_\_\_\_  
Chief of Police – David Kirk

Dated \_\_\_\_\_

\_\_\_\_\_  
City Manager - Chad Gamble

CERTIFICATE OF CLERK

I certify that the foregoing TRAFFIC CONTROL ORDER was filed in my office on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and under my direction was entered in the TRAFFIC CONTROL ORDER BOOK, according to law.

Dated \_\_\_\_\_

\_\_\_\_\_  
City Clerk – Mindy J. Seavey

PERMANENT ORDER

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at a regular meeting of the City Commission of the City of St. Johns, at which a quorum was present, the foregoing TEMPORARY TRAFFIC CONTROL ORDER was duly approved by the City Commission and the same is hereby designated a PERMANENT TRAFFIC CONTROL ORDER.

Dated \_\_\_\_\_

\_\_\_\_\_  
Mayor – Scott Dzurka



CITY OF ST JOHNS  
MICHIGAN

TRAFFIC CONTROL ORDER # 391-23

TEMPORARY ORDER

By authority vested in me by Section 2.53 of the Uniform Traffic Code for Cities, Townships, and Villages, the same having been validly adopted by the City of St. Johns and presently effective, I ORDER AND DIRECT THAT:

The following restrictions apply to City owned parking lots:

Lot 1 – Permit parking only (day/night)

Lot 2 – 2-hour limit Mon-Fri 8A-5P without a permit, daytime parking with a permit, no overnight parking

Lot 3 – Permit parking only (day/night)

Lot 4 – 2-hour limit Mon-Fri 8A-5P without a permit, no overnight parking

Lot 5A – 2-hour limit Mon-Fri 8A-5P without a permit, no overnight parking

Lot 5B – 2-hour limit Mon-Fri 8A-5P without a permit, overnight parking by permit only

Lot 6 – 2-hour limit Mon-Fri 8A-5P without a permit, daytime and overnight parking with a permit

Lot 7 – Permit parking only (day/night)

See attached map

This TEMPORARY TRAFFIC CONTROL ORDER shall become effective at 8:00 a.m. on October 1, 2023, and shall continue in effect for ninety (90) days thereafter, unless sooner revoked or suspended; PROVIDED, however, that upon approval by the City Commission of the City of St. Johns, this order shall become permanent.

Dated \_\_\_\_\_

\_\_\_\_\_  
Chief of Police – David Kirk

Dated \_\_\_\_\_

\_\_\_\_\_  
City Manager - Chad Gamble

CERTIFICATE OF CLERK

I certify that the foregoing TRAFFIC CONTROL ORDER was filed in my office on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and under my direction was entered in the TRAFFIC CONTROL ORDER BOOK, according to law.

Dated \_\_\_\_\_

\_\_\_\_\_  
City Clerk – Mindy J. Seavey

PERMANENT ORDER

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at a regular meeting of the City Commission of the City of St. Johns, at which a quorum was present, the foregoing TEMPORARY TRAFFIC CONTROL ORDER was duly approved by the City Commission and the same is hereby designated a PERMANENT TRAFFIC CONTROL ORDER.

Dated \_\_\_\_\_

\_\_\_\_\_  
Mayor – Scott Dzurka

New City  
Logo

## Downtown Public Parking Map

STREET  
ZONE  
**E**

Railroad Street W



STREET  
ZONE  
**D**

Railroad Street E1



STREET  
ZONE  
**C**

Railroad Street E2



STREET  
ZONE  
**C**

Oakland Street



STREET  
ZONE  
**E**

Brush Street



LOT  
**5A**

Higham St. W



STREET  
ZONE  
**B**

Spring Street



LOT  
**5B**

Brush St. & Higham St.



LOT  
**4**

Spring St. N



LOT  
**6**

Walker St. NW



LOT  
**3**

Higham St. E



LOT  
**7**

Walker St. SW



LOT  
**2**

Walker St. E



LOT  
**1**

Spring St. S



STREET  
ZONE  
**A**

N. Clinton Avenue



No Daytime  
Restrictions



2 Hour Limit  
8am-5pm  
Monday-Saturday



No  
Overnight  
1am-6am



Daytime  
Permit



Overnight  
Permit



Permit  
Only

CITY OF ST JOHNS  
MICHIGAN

TRAFFIC CONTROL ORDER # 392-23

TEMPORARY ORDER

By authority vested in me by Section 2.53 of the Uniform Traffic Code for Cities, Townships, and Villages, the same having been validly adopted by the City of St. Johns and presently effective, I ORDER AND DIRECT THAT:

W. McConnell Street, both the north and south sides, between Clinton Ave. and Church St.  
overnight parking allowed with a permit.

This TEMPORARY TRAFFIC CONTROL ORDER shall become effective at 8:00 a.m. on October 1, 2023, and shall continue in effect for ninety (90) days thereafter, unless sooner revoked or suspended; PROVIDED, however, that upon approval by the City Commission of the City of St. Johns, this order shall become permanent.

Dated \_\_\_\_\_

\_\_\_\_\_  
Chief of Police – David Kirk

Dated \_\_\_\_\_

\_\_\_\_\_  
City Manager - Chad Gamble

CERTIFICATE OF CLERK

I certify that the foregoing TRAFFIC CONTROL ORDER was filed in my office on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and under my direction was entered in the TRAFFIC CONTROL ORDER BOOK, according to law.

Dated \_\_\_\_\_

\_\_\_\_\_  
City Clerk – Mindy J. Seavey

PERMANENT ORDER

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at a regular meeting of the City Commission of the City of St. Johns, at which a quorum was present, the foregoing TEMPORARY TRAFFIC CONTROL ORDER was duly approved by the City Commission and the same is hereby designated a PERMANENT TRAFFIC CONTROL ORDER.

Dated \_\_\_\_\_

\_\_\_\_\_  
Mayor – Scott Dzurka

**CITY OF ST. JOHNS, MICHIGAN**  
**REQUEST FOR COMMISSION ACTION**  
**September 25<sup>th</sup>, 2023**

<b>Department: Police</b>	<b>Attachments:</b>
<b>Subject: Axon Camera Agreements</b>	[ X ] Axon 1 [ X ] Axon 2 [ X ] Axon 3
<b>Prepared by: Chief of Police, David Kirk</b>	<b>Approved by: City Manager, Chad A. Gamble, P.E.</b>

**SUMMARY/HIGHLIGHT:** This request is for approval of the Axon Camera and Equipment Contract and endorsing signatures. The award of this contract to Axon was approved by the Commission at the August 28<sup>th</sup>, 2023 meeting.

**BACKGROUND/DISCUSSION:** At the August 28<sup>th</sup>, 2023 it was noted, that currently the St Johns Police Department does not utilize body worn cameras (BWC's), and is the last police agency within Clinton County to utilize ONLY mobile dash-cameras, which are equipped with LIMITED video audio and recording. The integration of a BWC program, under a thoughtful order of polices and training greatly mitigates liability, enhances public confidence in its police department, provides unbiased and objective accounts and evidence, and, on occasion, can become a de-escalation instrument compelling both citizens and officers to behave in a more courteous and professional manner. Utilization of BWC's within the police department also provides another approach to measure performance, and complete more precise reviews related to citizen satisfaction.

The St Johns Police Department evaluated various equipment and technology related to this process and utilized an informal bidding process. This process was utilized as circumstances dictated limited suppliers making formal bidding impractical. Through this process quotes were secured from 3 vendors specializing in BWC devices and related technology. It was approved at the August 28<sup>th</sup> meeting to acquire body worn and vehicle fleet cameras, with supporting software, from AXON Technology.

**STRATEGIC PLAN OBJECTIVE:** Body worn cameras have become a contemporary best practice for law enforcement agencies. As noted earlier, St. Johns Police Department will soon be the only law enforcement agency within Clinton County that is not utilizing a body worn camera for patrol operations. The implementation of these cameras will align our department with the remainder of the county and provide an additional resource to assess patrol activity and assist in focusing training efforts in areas where deficiencies are noted. Finally, the ability to have a replacement plan built into the proposal will ensure that we are able to sustain equipment that has become vital to the maintenance of professional standards.

**FISCAL IMPACT:** The St Johns Police Department recognizes the significant startup and overall costs associated with such adoption and upgrade for this technology. In January 2023 the Department sought and received a grant through the Bureau of Justice Assistance / Small Rural Tribal Body Worn Camera Program. This grant awards the Department up to \$2,000 in reimbursement per BWC, up to 11 total cameras, totaling \$22,000.00. This grant will cover the first

year of the five-year contract. Additional required funding will be addressed in future year's budget allocations.

**RECOMMENDATION:** Staff recommends that the Commission approve the Axon camera and equipment contract and its endorsement by Mayor Dzurka.





## Master Services and Purchasing Agreement for Agency

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc. ("**Axon**"), and the agency listed below or, if no agency is listed below, the agency on the Quote attached hereto ("**Agency**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement will govern all subsequent purchases by Agency for the same Axon Devices and Services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties agree as follows:

### 1. **Definitions.**

- 1.1. "**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.
- 1.2. "**Axon Device**" means all hardware provided by Axon under this Agreement. Axon-manufactured Devices are a subset of Axon Devices.
- 1.3. "**Quote**" means an offer to sell and is only valid for devices and services on the offer at the specified prices. Any inconsistent or supplemental terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any Quote by Axon, and Axon reserves the right to cancel any orders resulting from such errors.
- 1.4. "**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

### 2. **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

- 2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 or TASER 10 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").
- 2.2. Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). The Subscription Term may be terminated upon 30 days written notice by either party. For purchase of TASER 7 or TASER 10 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote by up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

### 3. **Payment.** Axon invoices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Unless otherwise prohibited by law, Agency will pay interest on all past-due sums at the lower of one-and-a-half percent (1.5%) per month or the highest rate allowed by law. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys' fees.

### 4. **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

### 5. **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are EXW (Incoterms 2020) via common carrier. Title and risk of loss pass to Agency upon Axon's delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

### 6. **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

### 7. **Warranty.**

- 7.1. **Limited Warranty.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for one (1) year from the date of Agency's receipt, except Signal Sidearm and Axon-manufactured accessories, which Axon warrants for thirty (30) months and ninety (90) days, respectively, from the date of Agency's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the one- (1-) year hardware warranty through the extended warranty term.

- 7.2. **Disclaimer.** All software and Axon Cloud Services are provided "**AS IS**," without any warranty of any

Title: Master Services and Purchasing Agreement between Axon and Agency

Department: Legal

Version: 18.0

Release Date: 6/26/2023

kind, either express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Axon Devices and Services that are not manufactured, published or performed by Axon ("Third-Party Products") are not covered by Axon's warranty and are only subject to the warranties of the third-party provider or manufacturer.

- 7.3. **Claims.** If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon's option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon-manufactured Device or (b) ninety (90) days from the date of repair or replacement.
- 7.3.1. If Agency exchanges an Axon Device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Agency must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.
- 7.4. **Spare Axon Devices.** At Axon's reasonable discretion, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.
- 7.5. **Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Agency resells Axon Devices.
- 7.5.1. **To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement. Agency confirms and agrees that, in deciding whether to sign this Agreement, it has not relied on any statement or representation by Axon or anyone acting on behalf of Axon related to the subject matter of this Agreement that is not in this Agreement.**
- 7.5.2. **Axon's cumulative liability to any party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the twelve (12) months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.**
- 7.6. **Online Support Platforms.** Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions).
- 7.7. **Third-Party Software and Services.** Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Agency and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions), if any.
- 7.8. **Axon Aid.** Upon mutual agreement between Axon and Agency, Axon may provide certain products and services to Agency, as a charitable donation under the Axon Aid program. In such event, Agency expressly waives and releases any and all claims, now known or hereafter known, against Axon and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "**Releasees**"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of any Releasees or otherwise. Agency agrees not to make or bring any such claim against any Releasee, and forever release and discharge all Releasees from liability under such claims. Agency expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately upon notice to the Agency.



8. **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible for the performance of Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.
9. **Axon Device Warnings.** See [www.axon.com/legal](http://www.axon.com/legal) for the most current Axon Device warnings.
10. **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.
11. **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
12. **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
13. **IP Rights.** Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
14. **IP Indemnification.** Axon will indemnify Agency against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon-manufactured Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon-manufactured Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
15. **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; (c) disputes between Agency and a third-party over Agency's use of Axon Devices; (d) ensuring Axon Devices are destroyed and disposed of securely and sustainably at Agency's cost; and (e) any regulatory violations or fines, as a result of improper destruction or disposal of Axon Devices.
16. **Termination.**
- 16.1. **For Breach.** A Party may terminate this Agreement for cause if it provides thirty (30) days written notice of the breach to the other Party, and the breach remains uncured at the end of thirty (30) days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
- 16.2. **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
- ~~16.2.~~ ~~16.3.~~ **End of Subscription Term.** In accordance with Section 2, either party may terminate this Agreement upon 30 days written notice.
- ~~16.3.~~ ~~16.4.~~ **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within thirty (30) days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
17. **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, [including under the Michigan Freedom of Information Act](#), neither Party will disclose the other Party's Confidential Information during the Term and for five (5) years



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thereafter. To the extent permissible by law and the Michigan Freedom of Information Act, Axon pricing is Confidential Information and competition sensitive. If Agency receives a public records request to disclose Axon Confidential Information, to the extent allowed by law and the Michigan Freedom of Information Act, Agency will provide notice to Axon before disclosure, to the extent reasonably possible without jeopardizing compliance with the law. Axon may publicly announce information related to this Agreement.

### 18. General.

- 18.1. **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 18.2. **Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 18.3. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 18.4. **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 18.5. **Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 18.6. **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 18.7. **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 18.8. **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 18.9. **Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.
- 18.10. **Governing Law.** The laws of the country, state, province, or municipality where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 18.11. **Notices.** All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices to Agency shall be provided to the address on file with Axon. Notices to Axon shall be provided to Axon Enterprise, Inc., Attn: Legal, 17800 North 85th Street, Scottsdale, Arizona 85255 with a copy to [legal@axon.com](mailto:legal@axon.com).
- 18.12. **Entire Agreement.** This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each Party, by and through its respective representative authorized to execute this Agreement, has duly executed and delivered this Agreement as of the date of signature.

#### AXON:

Axon Enterprise, Inc.

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

#### AGENCY:

\_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_



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Date: \_\_\_\_\_

Date: \_\_\_\_\_



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## Axon Cloud Services Terms of Use Appendix

1. Definitions.

- a. **"Agency Content"** is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.
- b. **"Evidence"** is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.
- c. **"Non-Content Data"** is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.
- d. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2. **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.

3. **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

4. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

5. **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.

- a. Agency will also maintain the security of end usernames and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.
- b. To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.

6. **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic



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screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.

7. **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
8. **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for six (6) months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to twenty-four (24) hours to access.

For Third-Party Unlimited Storage the following restrictions apply: (i) it may only be used in conjunction with a valid Axon's Evidence.com user license; (ii) is limited to data of the law enforcement agency that purchased the Third-Party Unlimited Storage and the Axon's Evidence.com end user or Agency is prohibited from storing data for other law enforcement agencies; and (iii) Agency may only upload and store data that is directly related to: (1) the investigation of, or the prosecution of a crime; (2) common law enforcement activities; or (3) any Agency Content created by Axon Devices or Evidence.com.

9. **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
10. **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
11. **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
12. **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 or OSP 10 bundle. During Agency's Axon Records Subscription Term, if any, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.
  - a. The Axon Records Subscription Term will end upon the completion of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 or OSP 10 bundle, upon completion of the OSP 7 or OSP 10 Term ("**Axon Records Subscription**")
  - b. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.
  - c. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.
  - d. Users of Axon Records at the Agency may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon



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may limit usage should the Agency exceed an average rate of one-hundred (100) GB per user per year of uploaded files. Axon will not bill for overages.

13. **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
  - a. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
  - b. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
  - c. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
  - d. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
  - e. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
  - f. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
  - g. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; material in violation of third-party privacy rights; or malicious code.
14. **After Termination.** Axon will not delete Agency Content for ninety (90) days following termination. There will be no functionality of Axon Cloud Services during these ninety (90) days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these ninety (90) days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
15. **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
16. **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.
17. **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Privacy, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.



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**Axon Customer Experience Improvement Program Appendix**

1. **Axon Customer Experience Improvement Program (ACEIP).** The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Agency Content from all of its customers to provide, develop, improve, and support current and future Axon products (collectively, "ACEIP Purposes"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Agency will be a participant in ACEIP Tier 1. If Agency does not want to participate in ACEIP Tier 1, Agency can revoke its consent at any time. If Agency wants to participate in Tier 2, as detailed below, Agency can check the ACEIP Tier 2 box below. If Agency does not want to participate in ACEIP Tier 2, Agency should leave box unchecked. At any time, Agency may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.
2. **ACEIP Tier 1.**
  - 2.1. When Axon uses Agency Content for the ACEIP Purposes, Axon will extract from Agency Content and may store separately copies of certain segments or elements of the Agency Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Agency Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1<sup>1</sup>. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Agency from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Agency request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Agency may revoke the consent granted herein to Axon to access and use Agency Content for ACEIP Purposes. Within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency. In addition, if Axon uses Agency Content for the ACEIP Purposes, upon request, Axon will make available to Agency a list of the specific type of Agency Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices applicable to the Agency Content or ACEIP Content ("**Use Case**"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Agency notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Agency with a mechanism to obtain notice of that update or another commercially reasonable method to Agency designated contact) ("**New Use Case**").
  - 2.2. **Expiration of ACEIP Tier 1.** Agency consent granted herein will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to, Agency.
3. **ACEIP Tier 2.** In addition to ACEIP Tier 1, if Agency wants to help further improve Axon's services, Agency may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2 grants Axon certain additional rights to use Agency Content,

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<sup>1</sup> For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.



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in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed, or de-identified data.

☐ Check this box if Agency wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. Axon will not enroll Agency into ACEIP Tier 2 until Axon and Agency agree to terms in writing providing for such participation in ACEIP Tier 2.





## Professional Services Appendix

If any of the Professional Services specified below are included on the Quote, this Appendix applies.

1. **Utilization of Services.** Agency must use professional services as outlined in the Quote and this Appendix within six (6) months of the Effective Date.
2. **Axon Full Service (Axon Full Service).** Axon Full Service includes advance remote project planning and configuration support and up to four (4) consecutive days of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which on-site services are appropriate. If Agency requires more than four (4) consecutive on-site days, Agency must purchase additional days. Axon Full Service options include:

### System set up and configuration

- Instructor-led setup of Axon View on smartphones (if applicable)
- Configure categories and custom roles based on Agency need
- Register cameras to Agency domain
- Troubleshoot IT issues with Axon Evidence and Axon Dock ("Dock") access
- One on-site session included

### Dock configuration

- Work with Agency to decide the ideal location of Docks and set configurations on Dock
- Authenticate Dock with Axon Evidence using admin credentials from Agency
- On-site assistance, not to include physical mounting of docks

### Best practice implementation planning session

- Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies
- Discuss the importance of entering metadata in the field for organization purposes and other best practices for digital data management
- Provide referrals of other agencies using the Axon camera devices and Axon Evidence
- Recommend rollout plan based on review of shift schedules

### System Admin and troubleshooting training sessions

Step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence

### Axon instructor training (Train the Trainer)

Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations

### Evidence sharing training

Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies

### End user go-live training and support sessions

- Assistance with device set up and configuration
- Training on device use, Axon Evidence, and Evidence Sync

### [Implementation document packet](#)

Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

### Post go-live review

3. **Body-Worn Camera Starter Service (Axon Starter).** Axon Starter includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Agency to assess Agency's deployment and determine which Services are appropriate. If Agency requires more than one (1) day of on-site Services, Agency must purchase additional on-site Services. The Axon Starter options include:

### System set up and configuration (Remote Support)

- Instructor-led setup of Axon View on smartphones (if applicable)
- Configure categories & custom roles based on Agency need
- Troubleshoot IT issues with Axon Evidence and Dock access



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### **Dock configuration**

- Work with Agency to decide the ideal location of Dock setup and set configurations on Dock
- Authenticate Dock with Axon Evidence using "Administrator" credentials from Agency
- Does not include physical mounting of docks

### **Axon instructor training (Train the Trainer)**

Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations

### **End user go-live training and support sessions**

- Assistance with device set up and configuration
- Training on device use, Axon Evidence, and Evidence Sync

### **[Implementation document packet](#)**

Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

4. **Body-Worn Camera Virtual 1-Day Service (Axon Virtual).** Axon Virtual includes all items in the BWC Starter Service Package, except one (1) day of on-site services.
5. **CEW Services Packages.** CEW Services Packages are detailed below:

### **System set up and configuration**

- Configure Axon Evidence categories & custom roles based on Agency need.
- Troubleshoot IT issues with Axon Evidence.
- Register users and assign roles in Axon Evidence.
- **For the CEW Full Service Package:** On-site assistance included
- **For the CEW Starter Package:** Virtual assistance included

### **Dedicated Project Manager**

Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Agency 4–6 weeks before rollout

### **Best practice implementation planning session to include:**

- Provide considerations for the establishment of CEW policy and system operations best practices based on Axon's observations with other agencies
- Discuss the importance of entering metadata and best practices for digital data management
- Provide referrals to other agencies using TASER CEWs and Axon Evidence
- **For the CEW Full Service Package:** On-site assistance included
- **For the CEW Starter Package:** Virtual assistance included

### **System Admin and troubleshooting training sessions**

On-site sessions providing a step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence

### **Axon Evidence Instructor training**

- Provide training on the Axon Evidence to educate instructors who can support Agency's subsequent Axon Evidence training needs.
- **For the CEW Full Service Package:** Training for up to 3 individuals at Agency
- **For the CEW Starter Package:** Training for up to 1 individual at Agency

### **TASER CEW inspection and device assignment**

Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.

### **Post go-live review**

**For the CEW Full Service Package:** On-site assistance included.

**For the CEW Starter Package:** Virtual assistance included.

6. **Smart Weapon Transition Service.** The Smart Weapon Transition Service includes:

### **Archival of CEW Firing Logs**

Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW Smart Weapons that Agency is replacing with newer Smart Weapon models.



## Master Services and Purchasing Agreement for Agency

### Return of Old Weapons

Axon's on-site professional service team will ship all old weapons back to Axon's headquarters.  
Axon will provide Agency with a Certificate of Destruction

\*Note: CEW Full Service packages for TASER 7 or TASER 10 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

7. **VR Services Package.** VR Service includes advance remote project planning and configuration support and one (1) day of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which Services are appropriate. The VR Service training options include:

#### System set up and configuration (Remote Support)

- Instructor-led setup of Axon VR headset content
- Configure agency settings based on Agency need
- Troubleshoot IT issues with Axon VR headset

#### Axon instructor training (Train the Trainer)

Training for up to five (5) Agency's in-house instructors who can support Agency's Axon VR CET and SIM training needs after Axon's has fulfilled its contracted on-site obligations

#### Classroom and practical training sessions

Step-by-step explanation and assistance for Agency's configuration of Axon VR CET and SIM functionality, basic operation, and best practices

8. **Axon Air, On-Site Training.** Axon Air, On-Site training includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Agency to assess Agency's deployment and determine which Services are appropriate. If Agency's requires more than one (1) day of on-site Services, Agency must purchase additional on-site Services. The Axon Air, On-Site training options include:

#### System set up and configuration (Remote Support)

- Instructor-led setup of Axon Air App (ASDS)
- Configure agency settings based on Agency need
- Configure drone controller
- Troubleshoot IT issues with Axon Evidence

#### Axon instructor training (Train the Trainer)

Training for Agency's in-house instructors who can support Agency's Axon Air and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations

#### Classroom and practical training sessions

Step-by-step explanation and assistance for Agency's configuration of Axon Respond+ livestreaming functionality, basic operation, and best practices

9. **Axon Air, Virtual Training.** Axon Air, Virtual training includes all items in the Axon Air, On-Site Training Package, except the practical training session, with the Axon Instructor training for up to four hours virtually.

10. **Signal Sidearm Installation Service.**

- Purchases of 50 SSA units or more:** Axon will provide one (1) day of on-site service and one professional services manager and will provide train the trainer instruction, with direct assistance on the first of each unique holster/mounting type. Agency is responsible for providing a suitable work/training area.
- Purchases of less than 50 SSA units:** Axon will provide a 1-hour virtual instruction session on the basics of installation and device calibration.

11. **Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

12. **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.



## Master Services and Purchasing Agreement for Agency

13. **Access Computer Systems to Perform Services.** Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.
14. **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it
15. **Acceptance.** When Axon completes professional services, Axon will present an acceptance form ("**Acceptance Form**") to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within seven (7) calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within seven (7) calendar days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional services.
16. **Agency Network.** For work performed by Axon transiting or making use of Agency's network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency's network from any cause.



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Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

1. **TAP Warranty**. The TAP warranty is an extended warranty that starts at the end of the one- (1-) year hardware limited warranty.
2. **Officer Safety Plan**. If Agency purchases an Officer Safety Plan ("OSP"), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
3. **OSP 7 or OSP 10 Term**. OSP 7 or OSP 10 begins on the date specified in the Quote ("**OSP Term**").
4. **TAP BWC Upgrade**. If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera ("**BWC Upgrade**") as scheduled in the Quote. If Agency purchased TAP, Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
5. **TAP Dock Upgrade**. If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote ("**Dock Upgrade**"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.
6. **Upgrade Delay**. Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least ninety (90) days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote sixty (60) days before the end of the Subscription Term without prior confirmation from Agency.
7. **Upgrade Change**. If Agency wants to upgrade Axon Device models from the current Axon Device to an upgraded Axon Device, Agency must pay the price difference between the MSRP for the current Axon Device and the MSRP for the upgraded Axon Device. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
8. **Return of Original Axon Device**. Within thirty (30) days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
9. **Termination**. If Agency's payment for TAP, OSP, or Axon Evidence is more than thirty (30) days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
  - 9.1. TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
  - 9.2. Axon will not and has no obligation to provide the Upgrade Models.
  - 9.3. Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.



### Axon Fleet Appendix

If Axon Fleet is included on the Quote, this Appendix applies.

1. Agency Responsibilities.
  19. Agency must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 or Axon Fleet 3 (collectively, "**Axon Fleet**") as established by Axon during the qualifier call and on-site assessment at Agency and in any technical qualifying questions. If Agency's representations are inaccurate, the Quote is subject to change.
  20. Agency is responsible for providing a suitable work area for Axon or Axon third-party providers to install Axon Fleet systems into Agency vehicles. Agency is responsible for making available all vehicles for which installation services were purchased, during the agreed upon onsite installation dates. Failure to make vehicles available may require an equitable adjustment in fees or schedule.
2. **Cradlepoint.** If Agency purchases Cradlepoint Enterprise Cloud Manager, Agency will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Agency requires Cradlepoint support, Agency will contact Cradlepoint directly.
3. **Third-party Installer.** Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.
4. Wireless Offload Server.
  - 4.1. **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("**WOS**"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.
  - 4.2. **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.
  - 4.3. **Updates.** If Agency purchases WOS maintenance, Axon will make updates and error corrections to WOS ("**WOS Updates**") available electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.
  - 4.4. **WOS Support.** Upon request by Axon, Agency will provide Axon with access to Agency's store and forward servers solely for troubleshooting and maintenance.
5. Axon Vehicle Software.
  - 5.1. **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "**Axon Vehicle Software**"). "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.
  - 5.2. **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.





## Master Services and Purchasing Agreement for Agency

6. **Acceptance Checklist.** If Axon provides services to Agency pursuant to any statement of work in connection with Axon Fleet, within seven (7) days of the date on which Agency retrieves Agency's vehicle(s) from the Axon installer, said vehicle having been installed and configured with tested and fully and properly operational in-car hardware and software identified above, Agency will receive a Professional Services Acceptance Checklist to submit to Axon indicating acceptance or denial of said deliverables.
7. **Axon Fleet Upgrade.** If Agency has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Agency with the same or like model of Fleet hardware ("**Axon Fleet Upgrade**") as scheduled on the Quote.
  - 7.1. If Agency would like to change models for the Axon Fleet Upgrade, Agency must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Agency is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.
  - 7.2. Within thirty (30) days of receiving the Axon Fleet Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Agency does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
8. **Axon Fleet Termination.** Axon may terminate Agency's Fleet subscription for non-payment. Upon any termination:
  - 8.1. Axon Fleet subscription coverage terminates, and no refunds will be given.
  - 8.2. Axon will not and has no obligation to provide the Axon Fleet Upgrade.
  - 8.3. Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.



### Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term.** If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency. If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.
2. **Scope of Axon Respond.** The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.
3. **Axon Body 3 LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.
4. **Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.
5. **Axon Respond Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area, and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.
  - 5.1. With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.
6. **Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.





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## Axon Application Programming Interface Appendix

This Appendix applies if Axon's API Services are included on the Quote.

### 1. **Definitions.**

- 1.1. **"API Client"** means the software that acts as the interface between Agency's computer and the server, which is already developed or to be developed by Agency.
- 1.2. **"API Interface"** means software implemented by Agency to configure Agency's independent API Client Software to operate in conjunction with the API Service for Agency's authorized Use.
- 1.3. **"Axon Evidence Partner API, API or Axon API"** (collectively **"API Service"**) means Axon's API which provides a programmatic means to access data in Agency's Axon Evidence account or integrate Agency's Axon Evidence account with other systems.
- 1.4. **"Use"** means any operation on Agency's data enabled by the supported API functionality.

### 2. **Purpose and License.**

- 2.1. Agency may use API Service and data made available through API Service, in connection with an API Client developed by Agency. Axon may monitor Agency's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Agency agrees to not interfere with such monitoring or obscure from Axon Agency's use of API Service. Agency will not use API Service for commercial use.
- 2.2. Axon grants Agency a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Agency's Use in connection with Agency's API Client.
- 2.3. Axon reserves the right to set limitations on Agency's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.

### 3. **Configuration.** Agency will work independently to configure Agency's API Client with API Service for Agency's applicable Use. Agency will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Agency will inform Axon promptly of any updates. Upon Agency's registration, Axon will provide documentation outlining API Service information.

### 4. **Agency Responsibilities.** When using API Service, Agency and its end users may not:

- 4.1. use API Service in any way other than as expressly permitted under this Agreement;
- 4.2. use in any way that results in, or could result in, any security breach to Axon;
- 4.3. perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;
- 4.4. interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;
- 4.5. reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;
- 4.6. create an API Interface that functions substantially the same as API Service and offer it for use by third parties;
- 4.7. provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;
- 4.8. frame or mirror API Service on any other server, or wireless or Internet-based device;
- 4.9. make available to a third-party, any token, key, password or other login credentials to API Service;
- 4.10. take any action or inaction resulting in illegal, unauthorized or improper purposes; or
- 4.11. disclose Axon's API manual.

### 5. **API Content.** All content related to API Service, other than Agency Content or Agency's API Client content, is considered Axon's API Content, including:

- 5.1. the design, structure and naming of API Service fields in all responses and requests;



## Master Services and Purchasing Agreement for Agency

- 
- 5.2. the resources available within API Service for which Agency takes actions on, such as evidence, cases, users, or reports;
  - 5.3. the structure of and relationship of API Service resources; and
  - 5.4. the design of API Service, in any part or as a whole.
  6. **Prohibitions on API Content.** Neither Agency nor its end users will use API content returned from the API Interface to:
    - 6.1. scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;
    - 6.2. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;
    - 6.3. misrepresent the source or ownership; or
    - 6.4. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).
  7. **API Updates.** Axon may update or modify the API Service from time to time ("**API Update**"). Agency is required to implement and use the most current version of API Service and to make any applicable changes to Agency's API Client required as a result of such API Update. API Updates may adversely affect how Agency's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Agency to update API Client to the most current version of API Service. Axon will provide support for one (1) year following the release of an API Update for all depreciated API Service versions.

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**CITY OF ST. JOHNS, MICHIGAN**  
**REQUEST FOR COMMISSION ACTION**  
**September 25<sup>th</sup>, 2023**

<b>Department: Public Services</b>	<b>Attachments: Fee and Rate Study</b>
<b>Subject: 3” Waste Water Fee and Rate Schedule Change</b>	<b>[ X ] 2023-24 Fee and Rate</b> <b>[   ]</b> <b>[   ]</b>
<b>Prepared by: Director of Public Services Justin Smith</b>	<b>Approved by: City Manager, Chad A. Gamble, P.E.</b>

**SUMMARY/HIGHLIGHT:** After approval of the 2023/24 Fee and Rate Schedule it was realized that there had been a mistake made for the 3” Wastewater Rates Quarterly Ready to Serve charge. The schedule was approved with a Quarterly ready to serve amount of \$1,162.33 when in fact it should have been \$1,662.33.

**BACKGROUND/DISCUSSION:** N/A

**STRATEGIC PLAN OBJECTIVE:** N/A

**FISCAL IMPACT:** N/A

**RECOMMENDATION:** Staff recommends the 23/24 Fee and Rate Schedule be amended to correct the 3” Quarterly Ready to Serve Charge to \$1,662.33

**WASTEWATER RATES - 07/01/2023**

<b>Meter Size Inches</b>		<b>Meter Ratios (Standard)</b>	<b>Quarterly Ready to Serve Charge</b>	<b>Monthly Ready to Serve Charge</b>	<b>Commodity Charge</b>
5/8 & 3/4		1.00	\$103.89	\$34.63	\$5.29/1,000 gals. + RTS
1		2.50	\$259.74	\$86.58	
1 1/2		5.00	\$519.48	\$173.16	
2		8.00	\$831.16	\$277.05	
3		16.00	<del>\$1162.33</del> 1662.33	\$554.11	
4		25.00	\$2597.40	\$865.80	
6		50.00	\$5194.80	\$1731.60	

**West M-21 Water Main Service Area**  
**West of City Limits in Bingham Twp.**

(consumption of 399,999 gallons per quarter or less-Quarterly Billing)  
(consumption of 400,000 gallons per quarter or more-Monthly Billing)

Late penalty added to account if not paid by due date

\*2015

**WATER RATES – 07/01/2023**

<b>Meter Size Inches</b>		<b>Meter Ratios (Standard)</b>	<b>Quarterly Ready to Serve Charge</b>	<b>Monthly Ready to Serve Charge</b>	<b>Commodity Charge</b>
5/8 & 3/4		1.00	\$54.06	\$18.02	\$5.95/1,000 gals. +RTS
1		2.50	\$135.16	\$45.05	
1 1/2		5.00	\$270.32	\$90.10	
2		8.00	\$432.51	144.17	
3		16.00	\$865.03	\$288.34	
4		25.00	\$1351.61	\$450.53	
6		50.00	\$2703.77	\$901.25	

*Sprinkler meters-not billed the 1st quarter (Jan. Feb. March), but will be billed the remaining 3 quarters even if there is no usage.*

**UTILITY TAP AND CAPITAL CHARGE DEFINITIONS:**

**TAP FEE** – This fee is the actual tap (connection) in to the system, the privilege (fee) to tap the system.

**CAPITAL CHARGE FEE** – This fee is the “buy in to the system” for new users. Rationale is that residents have funded the improvements to the system over the years by paying property taxes on improved property as well as water/sewer fees whereas a vacant lot has not.

**NOTES:**

The Tap Fee is not charged to each new lot in new developments such as a subdivision as the developer installed the utilities. The developer pays one Tap Fee to the City for the entire development as he is tapping

**CITY OF ST. JOHNS, MICHIGAN**  
**REQUEST FOR COMMISSION ACTION**  
**September 11, 2023**

<b>Department: Wastewater</b>	<b>Attachments:</b>
<b>Subject:</b> <i>As needed services for regulatory assistance.</i>	<input checked="" type="checkbox"/> <i>As-needed agreement from Fishbeck.</i> <input type="checkbox"/> <input type="checkbox"/>
<b>Prepared by:</b> Jordan Whitford Wastewater Supervisor	<b>Approved by:</b> Chad A. Gamble, P.E. City Manager

**SUMMARY/HIGHLIGHT:** In 2016 staff entered into an agreement with Fishbeck to perform a local limit/headworks loading study at the wastewater treatment facility. Since then, they have worked on multiple other projects such as, the development of IPP (Industrial Pre-treatment) permits, loading evaluations of potential developments, phase 1 and 2 study at the WWTP, and most recently, the overhaul of our sewer use ordinance. By working on these projects, it has allowed Fishbeck much familiarity with our plant, NPDES permit, and staff. In turn, we have become familiar and confident with their staff and their abilities, specifically staff within their IPP division. Based off the success of these completed projects and the confidence gained with Fishbeck, we have asked them to provide an as needed agreement for IPP and regulatory services. This agreement will allow us an avenue to quickly address issues that arise within these areas and specifically projects that are beyond the scope for current staff.

**BACKGROUND/DISCUSSION:** N/A

**STRATEGIC PLAN OBJECTIVE:** Public Facilities – Goal #1: Continue to offer High Quality Services and Facilities for Residents

**FISCAL IMPACT:** The not to exceed amount of \$10,000 was budgeted in the 23-24 FY budget for engineering services in the sewage enterprise fund.

**RECOMMENDATION:** Staff recommends the City Commission approve the as needed proposal from Fishbeck for a not to exceed amount of \$10,000. This contract has been reviewed by the City attorney and was found to be legally sufficient.

September 18, 2023

Jordan Whitford  
Wastewater Division Supervisor  
City of Saint Johns  
100 East State Street, Suite 1100  
Saint Johns, MI 48879

## **Proposal for Professional Engineering Services – Wastewater Treatment Plant (WWTP) As-Needed Regulatory Assistance**

Fishbeck is pleased to provide this proposal to the City of Saint Johns (City) to provide as-needed regulatory assistance for the St. Johns Wastewater Treatment Plant during the current fiscal year beginning on July 1, 2023, and ending on June 30, 2024. We understand that regulatory-related issues periodically arise for which you may require technical consultation. We recommend the following scope of services.

## **Scope of Services**

This will be a retainer-type agreement where services are provided on an as-needed basis. Fishbeck proposes that the scope of services for this project consist of the following:

- The project will have flexible tasks and schedules, subject to your specific requests.
- Invoices will be based on actual time and expenses, using rates in effect at the time of invoice. Upon request, more significant tasks can be tracked and invoiced separately.

Activities under this program generally include technical assistance with NPDES permit compliance, Industrial Pretreatment Program (IPP), and other WWTP regulatory issues that may arise. We have applied this approach, with much success, for numerous communities statewide.

## **Schedule**

Fishbeck proposes that the project schedule remain flexible, subject to your specific requests. We are prepared to begin work upon receipt of your approval to proceed.

## **Professional Services Fees**

Fishbeck proposes to perform requested work on a time and materials basis with a not-to-exceed fee of Ten Thousand Dollars (\$10,000). Compensation will be based on the attached Rate Schedule for the personnel listed for actual time spent on the project. Invoices will be submitted every four weeks; included with our invoices will be a description of the service(s) performed in that billing cycle.

## **Authorization**

Attached is our Professional Services Agreement. If you concur with our scope of services, please sign in the space provided and return the executed contract to the attention of Jody Libka ([jlibka@fishbeck.com](mailto:jlibka@fishbeck.com)). This proposal is made subject to the attached Terms and Conditions for Professional Services. Invoices will be submitted every four weeks and payment is due upon receipt.

2. Modify paragraph 16. LEGAL EXPENSES to read as follows:

If either Client or Fishbeck makes a claim against the other as to issues arising out of the performance of this Agreement, the prevailing party will be entitled to recover its reasonable expenses of litigation, including reasonable attorney's fees. If Fishbeck brings a lawsuit against Client to collect invoiced fees and expenses, Client agrees to pay Fishbeck's reasonable collection expenses including attorney fees if Fishbeck prevails in such lawsuit.

3. Modify paragraph 19. GENERAL CONSIDERATIONS to read as follows:

Client and Fishbeck each are hereby bound and the partners, successors, executors, administrators, and legal representatives of Client and Fishbeck are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither Client nor Fishbeck shall assign this Agreement without the written consent of the other.

Neither Client nor Fishbeck will have any liability for nonperformance caused in whole or in part by causes beyond Fishbeck's reasonable control. Such causes include, but are not limited to, Acts of God, civil unrest and war, labor unrest and strikes, acts of authorities, and events that could not be reasonably anticipated.

This Agreement shall be governed by the law of the State of Michigan.

This Agreement constitutes the entire agreement between Client and Fishbeck and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

APPROVED FOR:

City of Saint Johns

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

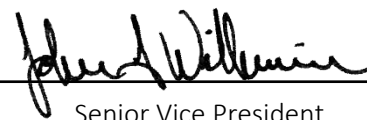
ACCEPTED FOR:

Fishbeck

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



Senior Vice President

September 18, 2023



## Professional Services Agreement

**PROJECT NAME** Wastewater Treatment Plant (WWTP) As-Needed Regulatory Assistance  
**FISHBECK CONTACT** Corrine Haybarker, PE  
**CLIENT** City of Saint Johns  
**CLIENT CONTACT** Jordan Whitford  
**ADDRESS** 100 East State Street, Suite 1100, Saint Johns, MI 48879

Client hereby requests and authorizes Fishbeck to perform the following:

**SCOPE OF SERVICES:** Provide professional engineering services in accordance with Fishbeck letter proposal dated September 18, 2023.

**AGREEMENT.** The Agreement consists of this page and the documents that are checked:

- ☒ Terms and Conditions for Professional Services, attached.
- ☒ Proposal dated September 18, 2023.
- ☐ Other:

**METHOD OF COMPENSATION:**

- ☐ Lump Sum for Defined Scope of Services
- ☒ Hourly Billing Rates plus Reimbursable Expenses
- ☐ Other:

**Budget for Above Scope of Services:** Not-to-exceed Ten Thousand Dollars (\$10,000).

**ADDITIONAL PROVISIONS (IF ANY):**

Modifications to the Terms and Conditions for Professional Services

1. Modify paragraph 13. INSURANCE to read as follows:

Client shall provide workers' compensation insurance for Client's employees.

Upon request, Client and Fishbeck shall each deliver to the other certificates of insurance evidencing their coverages.

On construction contracts designed by Fishbeck, Client shall require Contractor to purchase and maintain commercial general liability and other insurance as specified in the contract documents and to cause Fishbeck and Fishbeck's consultants, employees, and agents to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project. Contractor must agree to have their insurers endorse their insurance policies to reflect that, in the event of payment of any loss or damages, subrogation rights under this Agreement are hereby waived by the insurer with respect to claims against Fishbeck.

We appreciate this opportunity to submit our proposal and look forward to continuing working with the City. If you have any questions or require additional information, please contact me at 616.464.3934 or [cmhaybarker@fishbeck.com](mailto:cmhaybarker@fishbeck.com).

Sincerely,

A handwritten signature in black ink that reads "CM Haybarker". The signature is written in a cursive, flowing style.

**Corrine M. Haybarker,**  
Senior Environmental Engineer

Attachments  
By email

1. **METHOD OF AUTHORIZATION.** Client may authorize Fishbeck to proceed with work either by signing a Professional Services Agreement or by issuance of an acknowledgment, confirmation, purchase order, or other communication. Regardless of the method used, these Terms and Conditions shall prevail as the basis of Client's authorization to Fishbeck. Any Client document or communication in addition to or in conflict with these Terms and Conditions is rejected.
2. **CLIENT RESPONSIBILITIES.** Client shall provide all criteria and full information as to requirements for the Project and designate in writing a person with authority to act on Client's behalf on all matters concerning the Project. If Fishbeck's services under this Agreement do not include full-time construction observation or review of Contractor's performance, Client shall assume responsibility for interpretation of contract documents and for construction observation, and shall waive all claims against Fishbeck that may be in any way connected thereto.
3. **HOURLY BILLING RATES.** Unless stipulated otherwise, Client shall compensate Fishbeck at hourly billing rates in effect when services are provided by Fishbeck employees of various classifications.
4. **REIMBURSABLE EXPENSES.** Those costs incurred on or directly for Client's Project. Reimbursement shall be at Fishbeck's current rate for mileage for service vehicles and automobiles, special equipment, and copying, printing, and binding. Reimbursement for commercial transportation, meals, lodging, special fees, licenses, permits, insurances, etc., and outside technical or professional services shall be on the basis of actual charges plus 10 percent.
5. **OPINIONS OF COST.** Any opinions of probable construction cost and/or total project cost provided by Fishbeck will be on a basis of experience and judgment, but since it has no control over market conditions or bidding procedures, Fishbeck cannot warrant that bids or ultimate construction or total project costs will not vary from such estimates.
6. **PROFESSIONAL STANDARDS; WARRANTY.** The standard of care for services performed or furnished by Fishbeck will be the care and skill ordinarily used by members of Fishbeck's profession practicing under similar circumstances at the same time and in the same locality. Fishbeck makes no warranties, express or implied, under this Agreement or otherwise, in connection with Fishbeck's services.
7. **TERMINATION.** Either Client or Fishbeck may terminate this Agreement by giving ten days' written notice to the other party. In such event, Client shall pay Fishbeck in full for all work previously authorized and performed prior to the effective date of termination, plus (at the discretion of Fishbeck) a termination charge to cover finalization work necessary to bring ongoing work to a logical conclusion. Such charge shall not exceed 30 percent of all charges previously incurred. Upon receipt of such payment, Fishbeck will return to Client all documents and information which are the property of Client.
8. **SUBCONTRACTORS.** Fishbeck may engage subcontractors on behalf of Client to perform any portion of the services to be provided by Fishbeck hereunder.
9. **PAYMENT TO FISHBECK.** Invoices will be issued every four weeks, payable upon receipt, unless otherwise agreed. Interest of 1 percent per four-week period will be payable on all amounts not paid within 28 days from date of invoice, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. Any attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by Client.

Client agrees to pay on a current basis, in addition to any proposal or contract fee understandings, all taxes including, but not limited to, sales taxes on services or related expenses which may be imposed on Fishbeck by any governmental entity.

If Client directs Fishbeck to invoice another, Fishbeck will do so, but Client agrees to be ultimately responsible for Fishbeck's compensation until Client provides Fishbeck with that third party's written acceptance of all terms of this Agreement and until Fishbeck agrees to the substitution.

In addition to any other remedies Fishbeck may have, Fishbeck shall have the absolute right to cease performing any basic or additional services in the event payment has not been made on a current basis.

10. **HAZARDOUS WASTE.** Fishbeck has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at any site, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposure to such substances or conditions. Fishbeck shall not be responsible for any alleged contamination, whether such contamination occurred in the past, is occurring presently, or will occur in the future, and the performance of services hereunder does not imply risk-sharing on the part of Fishbeck.
11. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, Fishbeck's total liability to Client for any cause or combination of causes, which arise out of claims based upon professional liability errors or omissions, whether based upon contract, warranty, negligence, strict liability, or otherwise is, in the aggregate, limited to the greater of \$250,000 or the amount of the fee earned under this Agreement.

To the fullest extent permitted by law, Fishbeck's total liability to Client for any cause or combination of causes, which arise out of claims for which Fishbeck is covered by insurance other than professional liability errors and omissions, whether based upon contract, warranty, negligence, strict liability, or otherwise is, in the aggregate, limited to the total insurance proceeds paid on behalf of or to Fishbeck by Fishbeck's insurers in settlement or satisfaction of Client's claims under the terms and conditions of Fishbeck's insurance policies applicable thereto.

Higher limits of liability may be considered upon Client's written request, prior to commencement of services, and agreement to pay an additional fee.

12. **DELEGATED DESIGN.** Client recognizes and holds Fishbeck harmless for the performance of certain components of the Project which are traditionally specified to be designed by the Contractor.
13. **INSURANCE.** Client shall cause Fishbeck and Fishbeck's consultants, employees, and agents to be listed as additional insureds on all commercial general liability and property insurance policies carried by Client which are applicable to the Project. Client shall also provide workers' compensation insurance for Client's employees. Client agrees to have their insurers endorse these insurance policies to reflect that, in the event of payment of any loss or damages, subrogation rights under this Agreement are hereby waived by the insurer with respect to claims against Fishbeck.

Upon request, Client and Fishbeck shall each deliver to the other certificates of insurance evidencing their coverages.

Client shall require Contractor to purchase and maintain commercial general liability and other insurance as specified in the contract documents and to cause Fishbeck and Fishbeck's consultants, employees, and agents to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project. Contractor must agree to have their insurers endorse these insurance policies to reflect that, in the event of payment of any loss or damages, subrogation rights under this Agreement are hereby waived by the insurer with respect to claims against Fishbeck.
14. **INDEMNIFICATION.** Fishbeck will defend, indemnify, and hold Client harmless from any claim, liability, or defense cost for injury or loss sustained by any party from exposures to the extent caused by Fishbeck's negligence or willful misconduct. Client agrees to defend, indemnify, and hold Fishbeck harmless from any claim, liability, or defense cost for injury or loss sustained by any party from exposures allegedly caused by Fishbeck's performance of services hereunder, except for injury or loss to the extent caused by the negligence or willful misconduct of Fishbeck. These indemnities are subject to specific limitations provided for in this Agreement.
15. **CONSEQUENTIAL DAMAGES.** Client and Fishbeck waive consequential damages for claims, disputes, or other matters in question relating to this Agreement including, but not limited to, loss of business.
16. **LEGAL EXPENSES.** If either Client or Fishbeck makes a claim against the other as to issues arising out of the performance of this Agreement, the prevailing party will be entitled to recover its reasonable expenses of litigation, including reasonable attorney's fees. If Fishbeck brings a lawsuit against Client to collect invoiced fees and expenses, Client agrees to pay Fishbeck's reasonable collection expenses including attorney fees.
17. **OWNERSHIP OF WORK PRODUCT.** Fishbeck shall remain the owner of all drawings, reports, and other material provided to Client, whether in hard copy or electronic media form. Client shall be authorized to use the copies provided by Fishbeck only in connection with the Project. Any other use or reuse by Client or others for any purpose whatsoever shall be at Client's risk and full legal responsibility, without liability to Fishbeck. Client shall defend, indemnify, and hold harmless Fishbeck from all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting therefrom.
18. **ELECTRONIC MEDIA.** Data, reports, drawings, specifications, and other material and deliverables may be transmitted to Client in either hard copy, digital, or both formats. If transmitted electronically, and a discrepancy or conflict with the electronically transmitted version occurs, the hard copy in Fishbeck's files used to create the digital version shall govern. If a hard copy does not exist, the version of the material or document residing on Fishbeck's computer network shall govern. Fishbeck cannot guarantee the longevity of any material transmitted electronically nor can Fishbeck guarantee the ability of the Client to open and use the digital versions of the documents in the future.
19. **GENERAL CONSIDERATIONS.** Client and Fishbeck each are hereby bound and the partners, successors, executors, administrators, and legal representatives of Client and Fishbeck are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither Client nor Fishbeck shall assign this Agreement without the written consent of the other.

Neither Client nor Fishbeck will have any liability for nonperformance caused in whole or in part by causes beyond Fishbeck's reasonable control. Such causes include, but are not limited to, Acts of God, civil unrest and war, labor unrest and strikes, acts of authorities, and events that could not be reasonably anticipated.

This Agreement shall be governed by the law of the principal place of business of Fishbeck.

This Agreement constitutes the entire agreement between Client and Fishbeck and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

## End of Terms and Conditions for Professional Services

## Rate Schedule

June 10, 2023

Principal	\$260
Architect   Construction Engineer/Manager/Administrator   Engineer   Estimator   Geologist   Hydrogeologist   Industrial Hygienist   Interior Designer   Project Manager   Scientist   Surveyor	
Senior Level	\$162-\$250
Mid Level	\$142-\$162
Staff Level	\$99-\$142
Architectural Specialist   Engineering Specialist   Environmental Specialist   Health & Safety Specialist   Operations Specialist   Technical Specialist   Project Superintendent   Survey Specialist	
Senior Level	\$162-\$240
Mid Level	\$118-\$162
Staff Level	\$95-\$118
Technician	
Senior Level	\$126-\$151
Mid Level	\$112-\$126
Staff Level	\$86-\$112
Production Support	\$99
Photocopies	\$0.10/Copy
Mileage/Passenger Vehicles	\$0.70/Mile
Field and Service Vehicles	\$0.95/Mile
Equipment Schedule	Separate Schedule
Expenses and Outside Services	Cost Plus 10%

Compensation to be at one and one-half times the hourly rate for approved overtime.

Invoices are rendered every four weeks and payment is due upon receipt. A service charge of 1% per four-week period is added to accounts unpaid after 28 days from date of billing.

**CITY OF ST. JOHNS, MICHIGAN**  
**REQUEST FOR COMMISSION ACTION**  
**September 25, 2023**

<b>Department: Public Works</b>	<b>Attachments:</b>
<b>Subject: 2023 Storm GIS Assistance – Mapping &amp; Media Linking</b>	<b>[X] Spicer Group Contract for work</b> <b>[ ]</b> <b>[ ]</b>
<b>Prepared by: Jeremy Ritter</b> <b>Department of Public Works - Supervisor</b>	<b>Approved by: Chad A. Gamble, P.E.</b> <b>City Manager</b>

**SUMMARY/HIGHLIGHT:** The City continues to prioritize building and expanding our geographic information system (GIS) database. The City has contracted with Spicer for years to continue to build our database. This contract relates to the storm sewer GIS program. Spicer Group will take data from the previous work performed by Plummers and input that data into our Storm GIS mapping. Plummers previously completed televising and cleaning areas of the storm sewer system. They also collected data such as pipe size, flow, and any defects, along with video confirmation of all storm system mains. The contract associated with this RCA is seeking approval for the Spicer Group to perform the aforementioned activities.

**BACKGROUND/DISCUSSION:** Spicer Group has worked comprehensively over the past several years with the city to build the GIS database completing projects to date involving storm and sanitary sewer systems and the potable water system.

**STRATEGIC PLAN OBJECTIVE:** The continuing efforts to build and expand the City's GIS system will permit staff to manage, maintain, and operate the city's infrastructure with the most up to date and accurate information. This contract addresses the strategic plan objective PUBLIC FACILITIES Goal #1: offer high quality services to our customers.

**FISCAL IMPACT:** This project was an approve budgeted item in the 2023-24 fiscal year under budget line number 202-483-818.062.

**RECOMMENDATION:** Staff recommends the City Commission approve the 2023 Storm GIS Assistance – Mapping & Media Linking from Spicer Group and the amount for the project not to exceed \$6,500.



August 15<sup>th</sup>, 2023

Mr. Jeremy Ritter  
Department of Public Works Supervisor  
City of St. Johns  
100 E. State St., Suite 1100  
PO Box 477  
St. Johns, MI 48879

RE: 2023 Storm GIS Assistance – Mapping & Media Linking  
City of St. Johns, Clinton County, Michigan

Jeremy:

Per your request, we are furnishing you with this letter agreement to provide as-needed storm water GIS assistance.

#### **SCOPE OF WORK**

Spicer Group will:

- Integrate 2021, 2022 and 2023 storm sewer CCTV data from Plummers Environmental into the City's GIS.
- Hyperlink CCTV videos and reports into GIS.
- Continue to develop GIS base map with existing surveyed information as directed by the City and to represent new construction.
- Create customized layers as requested by the City on their GIS online base map.
- Update wall maps and map atlas books for DPW offices and operations.
- We assume one day of onsite coordination to provide media to the City on your GIS system and configuring mobile devices with the updated web map.

We would perform additional services only after you authorize the work via a Work Directive Change. Our fee for those additional services will be determined ~~at the time~~ and agreed to in writing before they are rendered.

**Commented [AC1]:** This Agreement appears to be for general GIS services unrelated to any construction project. Is this correct?

Are there any additional contract terms the City requires by resolution? Does the City have a purchasing policy or contract policy I need to review in consideration of this Agreement?

Was there a resolution or directive provided by the City authorizing this Agreement that needs to be taken into consideration?

What is the term of this Agreement? When does the City expect services to be completed by?

What termination language does the City prefer?



## **FEE SCHEUDLE**

Our proposed fee schedule follows. We will submit monthly invoices to you for our basic professional services, additional authorized services, and any reimbursable expenses. The invoice amount will be based on the actual hours spent by our staff on your project billed at the hourly rate of each staff member.

Standard hourly rates with the total amount estimated to be \$6,500  
~~c~~Charged hourly, and not to exceed.

We have calculated the fee based on our understanding of the scope of the project. If the scope changes or our understanding was incorrect, we can discuss the option of adjusting the fee or the scope of services.

Attached to this letter is a copy of our general conditions for our services which are part of this agreement. Any changes to this agreement must be agreed to in writing by both parties.

If this proposal meets with your approval, please sign and return via email, and we will proceed with the work.

We deeply appreciate your confidence in Spicer, and we look forward to working with you and for you on your project.

Sincerely,

**Tim Inman, P.E., P.S.**  
Principal



**Sam Bialorucki**  
Project Manager

**SPICER GROUP, INC**  
1400 Zeeb Drive  
St. Johns, MI 48879  
Phone: (989) 227-5005  
Cell: (847) 754-5758  
E-mail: samb@spicergroup.com

Copy: SGI File

Attachments:

- General Conditions

\_\_\_\_\_  
Above proposal accepted and approved  
by Owner.

**CITY OF ST. JOHNS**

By: \_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_

## GENERAL CONDITIONS ATTACHED TO LETTER AGREEMENT (“Agreement”)

### SECTION 1

1.1 **Preamble.** This Agreement is based upon a mutual obligation of good faith and fair dealing between the parties in its performance and enforcement. Accordingly, the OWNER (defined below) and the PROFESSIONAL (defined below), with a positive commitment to honesty and integrity, agree to the following:

That each will function within the laws and statutes that apply to its duties and responsibilities; that each will assist in the other's performance; that each will avoid hindering the other's performance; that each will work diligently to fulfill its obligations; and that each will cooperate in the common endeavor of the contract Agreement.

1.2 **Covenant not to Hire.** OWNER agrees that during the term of this Agreement and for a period of one (1) year thereafter that it will not hire for its own employment any person employed by the PROFESSIONAL in the performance of this Agreement.

1.3 **Standard of Care.** Service performed by PROFESSIONAL under this Agreement/GREEMENT will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement/GREEMENT, or in any report, opinion, document, or otherwise.

1.4 **Defects in Service.** OWNER and OWNER's personnel, contractors, and subcontractors shall upon discovery promptly report to PROFESSIONAL any defects or suspected defects in PROFESSIONAL's work, in order that PROFESSIONAL may take prompt, effective measures which in PROFESSIONAL's opinion will minimize the consequences of a defect in service. PROFESSIONAL shall not be responsible for additional costs due to any tardiness in reporting defects in service.

1.5 **Reimbursable Expenses** means the actual expenses incurred by PROFESSIONAL or PROFESSIONAL's independent professional associates or consultants, directly or indirectly in connection with the Project, such as expenses for; transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s) providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and courier services; reproduction of reports, drawings, specifications, bidding documents, and similar project-related items; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

1.6 **Standard Hourly Rates** used as a basis for payment mean those rates in effect at the time that the work is performed, for all PROFESSIONAL's personnel engaged directly on the Project, including, but not limited to, architects, engineers, surveyors, designers, planners, drafters, specification writers, estimators, other technical and business personnel. The Standard Hourly Rates include salaries and wages, direct and indirect payroll costs, and fringe benefits. The Standard Hourly Rates of personnel of PROFESSIONAL will be adjusted periodically to reflect changes in personnel and in PROFESSIONAL's overall compensation procedures and practices.

1.7 **Limitation of Liability.** To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the PROFESSIONAL and the PROFESSIONAL's officers, directors, partners, employees and subconsultants, and any of them, to the OWNER and anyone claiming by or through the OWNER, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the PROFESSIONAL under this Agreement, or the total amount of \$100,000.00, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

1.8 **Indemnification.** The PROFESSIONAL agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors, and employees (collectively, Owner/OWNER) against all damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the PROFESSIONAL's negligent performance of professional services under this Agreement.

The OWNER agrees, to the fullest extent permitted by law and without waiving governmental immunity, to indemnify and hold harmless the PROFESSIONAL, its officers, directors, employees and subconsultants (collectively, Professional/PROFESSIONAL) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER's negligent acts in connection with the Project, and the acts of its contractors, subcontractors or PROFESSIONAL or anyone for whom the OWNER is legally liable.

Neither the OWNER nor the PROFESSIONAL shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

1.9 **Severability.** Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall

Commented [AC2]: Where is this defined?

Commented [AC3]: Where is this defined?

remain in full force and effect.

1.10 **Survival.** Notwithstanding completion or termination of this Agreement for any reason, all rights, duties, and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

1.11 **Betterment.** If, due to the PROFESSIONAL's negligence, a required item or component of the Project is omitted from the PROFESSIONAL's construction documents, the PROFESSIONAL shall ~~not~~ be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the PROFESSIONAL be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

1.12 **Mediation.** In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the OWNER and the PROFESSIONAL agree that all disputes between them arising out of or relating to the Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree in writing otherwise.

~~The OWNER and the PROFESSIONAL further agree to include a similar mediation provision in all agreements with independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.~~

1.13 **Changed Conditions.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the PROFESSIONAL are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks, or other material terms of this Agreement, the PROFESSIONAL may call for renegotiation of appropriate portions of this Agreement. The PROFESSIONAL shall notify the OWNER in writing of the changed conditions necessitating renegotiation, and the PROFESSIONAL and the OWNER shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions.

1.14 **Hazardous Materials.** Both parties acknowledge that the PROFESSIONAL's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the PROFESSIONAL or any other party encounters any hazardous or toxic materials, or should it become known to the PROFESSIONAL that such materials may be present on or about the job site or any adjacent areas that may affect the performance of the PROFESSIONAL's services, the PROFESSIONAL may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the OWNER retains appropriate PROFESSIONAL's or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the job site is in full compliance with all applicable laws and regulations.

## SECTION 2

2.1 **Assignment.** Neither party to this Agreement shall transfer, sublet, or assign any rights under or interest in this Agreement (including, but not limited to, monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to subconsultants normally

contemplated by the PROFESSIONAL shall not be considered an assignment for purposes of this Agreement.

2.2 **Governing Law & Jurisdiction.** The OWNER and the PROFESSIONAL agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Michigan.

2.3 **Billing and Payment Terms.** *Payment Due:* ~~Invoices shall be submitted by the PROFESSIONAL (monthly) are due upon presentation within thirty (30) days of receipt by the OWNER. and Invoices~~ shall be considered past due if not paid within thirty (30) calendar days of the due date. *Interest:* If payment in full is not received by the PROFESSIONAL within thirty (30) calendar days of the due date, invoices shall bear interest at one-and one-half (1.5) percent of the ~~PAST DUE~~ past due amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

2.4 **Suspension of Services.** If the OWNER fails to make payments when due or otherwise is in breach of this Agreement, the PROFESSIONAL may suspend performance of service upon ten (10) calendar days' written notice to the OWNER. The PROFESSIONAL shall have no liability whatsoever to the OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by the OWNER. Upon payment in full by the OWNER, the PROFESSIONAL shall resume services under this Agreement, and the time scheduled and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expenses necessary for the PROFESSIONAL to resume performance. *Termination of Services:* If the OWNER fails to make payment to the PROFESSIONAL in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by the PROFESSIONAL. *Set-off, Backcharges, Discounts:* Payment of invoices shall not be subject to any discounts or set-offs by the OWNER unless agreed to in writing by the PROFESSIONAL. Payment to the PROFESSIONAL for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

2.5 **Collection of Costs.** In the event legal action becomes necessary to enforce the payment terms of this Agreement, the PROFESSIONAL shall be entitled to collect from the OWNER any judgement or settlement sums due, plus ~~reasonable attorneys' fees, court costs and~~ other expenses incurred by the PROFESSIONAL in connection therewith and, in addition, the reasonable value of the PROFESSIONAL's time and expenses spent in connection with such collection action, computed according to the PROFESSIONAL's prevailing fee schedule and expense policies.

2.6 **Delays.** The OWNER agrees that the PROFESSIONAL is not responsible for damages arising directly or indirectly from ~~any delays for~~ causes beyond the PROFESSIONAL's control. For

purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war, or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the OWNER or the OWNER's contractors or consultants; or discovery of any hazardous substances or differing site conditions. If the PROFESSIONAL suffers a force majeure event, the PROFESSIONAL shall give prompt written notice to the OWNER, but no later than five (5) days after the discovery of the event. The PROFESSIONAL shall use diligent efforts to end the failure or delay and to mitigate the effects for the force majeure event.

In addition, if the delays resulting from any such causes increase the cost or time required by the PROFESSIONAL to perform its services in an orderly and efficient manner, the PROFESSIONAL shall be entitled to an equitable adjustment in schedule and/or compensation provided such adjustment is mutually agreed to in writing by and between the parties.

2.7 **Delivery and Use of Electronic Files.** In accepting and utilizing any drawings, reports, and data on any form of electronic media generated and furnished by the PROFESSIONAL, the OWNER agrees that all such electronic files are instruments of service of the PROFESSIONAL, who shall be deemed the author, and shall retain all common law, statutory law, and other rights, including copyrights.

The OWNER agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The OWNER agrees not to transfer these electronic files to others without the prior written consent of the PROFESSIONAL. The OWNER further agrees to waive all claims against the PROFESSIONAL resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the PROFESSIONAL unless caused by the PROFESSIONAL's negligent performance of professional services under this Agreement.

The OWNER and the PROFESSIONAL agree that any electronic files furnished by either party shall conform to the original specifications. Any changes to the original electronic specifications by either the OWNER or the PROFESSIONAL are subject to review and acceptance by the other party. Additional services by the PROFESSIONAL made necessary by changes to the electronic file specifications shall be compensated for as aAdditional sServices.

Electronic files furnished by either party shall be subject to an acceptance period of fourteen (14) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

The OWNER is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the PROFESSIONAL and electronic files, the signed or sealed hard-copy construction documents shall govern.

In addition, the OWNER agrees, to the fullest extent permitted by law and without waiving governmental immunity, to indemnify and hold harmless the PROFESSIONAL its officers, directors, employees and subconsultants (collectively, Professional) against all damages, liabilities, or costs, including reasonable

~~attorneys' fees and defense costs,~~ arising from any changes made by anyone other than the PROFESSIONAL or from any reuse of the electronic files without the prior written consent of the PROFESSIONAL.

Under no circumstances shall delivery of electronic files for use by the OWNER be deemed a sale by the PROFESSIONAL, and the PROFESSIONAL makes no warranties, either expressed or implied, or merchantability and fitness for any particular purpose. In no event shall the PROFESSIONAL be liable for indirect or consequential damages as a result of the OWNER's use or reuse of the electronic files.

2.8 **Opinions of Probable Construction Costs.** In providing opinions of probable construction cost, the OWNER understands that the PROFESSIONAL has no control over the cost or availability of labor, equipment, or materials, or over market conditions or the Contractor's method of pricing, and that the PROFESSIONAL's opinions of probable construction costs are

Commented [AC4]: Not defined.

Commented [AC5]: Repetitive to definitional above.

made on the basis of the PROFESSIONAL's judgement and experience. The PROFESSIONAL makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the PROFESSIONAL's opinion of probable construction costs.

regulations after this date shall entitle the PROFESSIONAL to a reasonable adjustment in the schedule and additional compensation in accordance with the ~~Additional Services~~ provisions of this Agreement.

### SECTION 3

3.1 **Design Without Construction Administration.** Unless ~~a~~Authorized, it is understood and agreed that the PROFESSIONAL's ~~b~~Basic ~~s~~Services under this Agreement do not include ~~p~~project observation or review of ~~a~~the ~~c~~Contractor's performance or any other construction phase services, and that such services will be provided for by the OWNER. The OWNER assumes all responsibility for interpretation of ~~the~~ ~~c~~Contract ~~d~~Documents and for construction observation, ~~if applicable~~, and the OWNER waives any claims against the PROFESSIONAL that may be in any way connected thereto.

Commented [AC6]: Not defined.

Commented [AC7]: Not defined. Who would the contractor be and/or what would their role be in this case?

Commented [AC8]: Not defined.

3.2 **Record ~~Drawings~~Documents.** If ~~applicable to and~~ authorized by the Agreement, upon completion of the ~~W~~Work, the PROFESSIONAL shall compile for and deliver to the OWNER a reproducible set of ~~r~~Record ~~d~~Documents based upon the marked-up record drawings, addenda, change orders, and other data furnished ~~by the Contractor~~ OWNER. ~~These Record documents will show significant changes made during construction.~~ Because these ~~r~~Record ~~d~~Documents ~~are may be~~ based on unverified information provided by other parties, which the PROFESSIONAL shall assume will be reliable, the PROFESSIONAL cannot and does not warrant their accuracy.

Commented [AC9]: Not defined.

Commented [AC10]: Not defined.

Commented [AC11]: How is this applicable here?

3.3 **Certifications, Guarantees, and Warranties.** The PROFESSIONAL shall not be required to sign any documents, no matter by whom requested, that would result in the PROFESSIONAL's having to certify, guarantee, or warrant the existence of conditions whose existence the PROFESSIONAL cannot ascertain. The OWNER also agrees not to make resolution of any dispute with the PROFESSIONAL or payment of any amount due to the PROFESSIONAL in any way contingent upon the PROFESSIONAL's signing any such certification.

3.4 **Contingency Fund.** The OWNER and the PROFESSIONAL agree that certain increased cost and changes may be required because of possible omissions, ambiguities, or inconsistencies in the drawings and specifications prepared by the PROFESSIONAL ~~and, therefore, that the final construction cost of the Project may exceed the estimated construction cost.~~ [The OWNER agrees to set aside a reserve in the amount of ~~ten~~ (10) percent of the Project ~~construction~~ costs as a contingency to be used, as required, to pay for any such increased costs and changes. The OWNER further agrees to make no claim by way of direct or third-party action against the PROFESSIONAL or its subconsultants with respect to any increased costs within the contingency because of such changes ~~or because of any claims made by the Contractor relating to such changes.~~

Commented [AC12]: What is this referring to?

3.5 **Code Compliance.** The PROFESSIONAL shall put forth reasonable professional effort to comply with applicable laws, codes, and regulations in effect as of the ~~effective~~ date of ~~(submission to building authorities)~~ this Agreement. Design changes made necessary by newly enacted laws, codes, and Letter Agreement



~~3.6 — Construction Observation. Intentionally Omitted. The PROFESSIONAL shall visit the site if authorized at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the OWNER and the PROFESSIONAL, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the PROFESSIONAL, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.~~

~~Based on this general observation, the PROFESSIONAL shall keep the OWNER informed about the progress of the Work and shall endeavor to guard the OWNER against deficiencies in the work.~~

~~If the OWNER desires more extensive project observation or full time project representation, the OWNER shall request that such services be provided by the PROFESSIONAL as Additional Services in accordance with the terms of this Agreement.~~

~~The PROFESSIONAL shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the contractor in accordance with the Contract Documents.~~

~~The PROFESSIONAL shall not be responsible for any acts or omissions of the contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The PROFESSIONAL does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.~~

~~3.7.3.6 Jobsite Safety. Intentionally Omitted. Neither the professional activities of the PROFESSIONAL, nor the presence of the PROFESSIONAL or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies, the PROFESSIONAL and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The OWNER agrees that the Letter Agreement~~

~~General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the OWNER's contract with the General Contractor. The OWNER also agrees that the OWNER, the~~

~~PROFESSIONAL and the PROFESSIONAL's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance.~~

on the PROFESSIONAL's behalf. The PROFESSIONAL will pay all taxes incurred while performing services under this Agreement, including all applicable income taxes.

~~3.83.7 Lenders' Requirements.~~ The PROFESSIONAL shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgement of the PROFESSIONAL, increase the PROFESSIONAL's contractual or legal obligations or risks, or adversely affect the availability or cost of its professional or general liability insurance.

~~3.93.8 Construction Layout. Intentionally Omitted.~~ If requested by the Owner, or other authorized party, as detailed in the scope of services or as an Additional Service to this Agreement, the PROFESSIONAL shall provide construction layout stakes sufficient for construction purposes. The stakes will reflect pertinent information from the construction bidding and contract documents. The stakes shall be set in place one time by the PROFESSIONAL, staged and scheduled as requested by the Contractor. After the stakes are set, it shall be the Contractor's exclusive responsibility to protect the stakes from damage or removal. Once the stake is set, if the stake becomes unusable due to the Contractor's negligence it shall be reset by the PROFESSIONAL, only at the Contractor's direction. The cost for resetting the stakes shall be borne by the Contractor and shall be paid by the Owner or authorized representative of this Agreement to the PROFESSIONAL from monies due the Contractor from the construction contract. The Owner acknowledges and agrees that these staking requirements and the procedures and payments for restaking described in this section shall be stipulated in the General Conditions of the construction contract.

~~3.403.9 Right of Entry.~~ OWNER shall provide for PROFESSIONAL's right to enter from ~~time to time~~time to time property owned by OWNER and/or other(s) in order for ~~the~~ PROFESSIONAL to fulfill the scope of services indicated hereunder. ~~The~~ OWNER understands that use of testing or other equipment may unavoidably cause some damage, the correction of which is not part of this AGREEMENT.

~~3.443.10 Buried Utilities.~~ OWNER will furnish to PROFESSIONAL information identifying the type and location of utility lines and other man-made objects beneath the site's surface. PROFESSIONAL will take reasonable precautions to avoid damaging these man-made objects and will, prior to penetrating the site's surface, furnish to OWNER a plan indicating the locations intended for these penetrations with respect to what PROFESSIONAL has been told are the locations of utilities and other man-made objects beneath the site's surface. OWNER will approve the location of these penetrations prior to their being made and OWNER will authorize PROFESSIONAL to proceed.

~~3.12 Independent Contractor.~~ The relationship of the PROFESSIONAL to the OWNER shall be that of an independent contractor and not of an officer, employee, or agent of the OWNER. The OWNER shall have no liability to the PROFESSIONAL except to pay the PROFESSIONAL's compensation and to reimburse the PROFESSIONAL's expenses. The OWNER will not withhold Social Security and Medicare taxes from the PROFESSIONAL's compensation or make state or federal unemployment compensation contributions

Commented [AC13]: When would this be applicable under this particular agreement, if at all?



# AGENDA

**CITY OF ST. JOHNS, MICHIGAN**  
**REQUEST FOR COMMISSION ACTION**  
**September 25, 2023**

<b>Department: City Manager</b>	<b>Attachments:</b>
<b>Subject: Presentation and Introduction to Lean &amp; Green Michigan and the PACE Program</b>	<b>[ X ] LAGM PACE Step by Step Guide</b> <b>[ X ] Draft City of St. Johns PACE program Guidebook</b> <b>[ ]</b>
<b>Prepared by: Chad A. Gamble, P.E. City Manager</b>	<b>Approved by: Chad A. Gamble, P.E. City Manager</b>

**SUMMARY/HIGHLIGHT:** The City was connected to Lean and Green Michigan (LAGM) via the Lansing Economic Area Partnership (LEAP). This connection was made in order to present a program that has proven beneficial to communities to; encourage economic development, improve property valuation, increase employment, reduce energy costs, reduce greenhouse gas emissions and contribute to its general public health and welfare. This program is known as Property Assessed Clean Energy Program or PACE. Mr. Jon Wylie, Associate Counsel of LAGM will give a PowerPoint presentation to introduce the program to the Commission and take questions regarding the creation of a PACE program for the City of St. Johns.

**BACKGROUND/DISCUSSION:** N/A

**STRATEGIC PLAN OBJECTIVE:** The formation of a PACE program for the City would meet the following Strategic Master Plan objectives within the category of Land Use and Sustainability (1.a, 1.b,1.c, 2.f, 4.c)

**FISCAL IMPACT:** If the City were to consider the establishment of a PACE program this would be at no cost to the City via the services offered by LAGM.

**RECOMMENDATION:** Staff recommends the City Commission consider instituting a PACE program as a tool to encourage investment and development of commercial and industrial zoned properties.



Lean & Green Michigan, LLC (LAGM) is committed to providing the Lean & Green Michigan PACE program to Michigan municipalities, townships, and counties at no taxpayer expense. We are happy to answer any questions about PACE you may have, and have created this list of the steps involved in creating and running a PACE program to address some of the common questions we have been asked by other jurisdictions.

### **Joining Lean & Green Michigan**

#### **1. Creation of Lean & Green Michigan program**

- We have created a statewide market that brings the benefits of advertising, communications, ease-of-use and scale to participating counties.
- Our member jurisdictions pay nothing for any of these benefits.

#### **2. Drafting and passing legislation**

- LAGM provides draft legislation and modifies it to suit the specific legislative needs at no charge to the member jurisdiction.

#### **3. Process for joining**

1. Pass Resolution of Intent (Draft provided by LAGM)
2. Publish PACE Report (Draft provided by LAGM)
  - Includes naming “Authorized Official”
3. Issue Notice of Public Hearing (Draft provided by LAGM)
4. Hold public hearing and vote on Resolution to Establish (Draft provided by LAGM)

### **How a PACE Project Happens (including any local government involvement)**

#### **1. Educate building owners, energy contractors, economic developers, and others. (No cost/involvement from City or local government)**

- LAGM undertakes an ongoing communications and training program for our member jurisdiction and other participating townships, municipalities, and counties.
- To date, over 120 people from over 85 companies have been trained.
- Non-profit members of the Lean & Green Michigan public-private partnership have received grants to train various constituencies in participating counties.
- Our member jurisdictions bear none of the cost for this.

## **2. The application process**

- LAGM works with PACE customers to evaluate potential projects and help them apply for the program and submit necessary paperwork. This includes determining eligibility.
- Property owners/contractors typically reach out to Lean & Green Michigan directly.
  - *Local government typically provides information and point of contact for questions regarding PACE and Lean & Green Michigan. Typically, this will be featured on the City government website. Still, you can just direct all questions to LAGM and Lean & Green Michigan as you choose.*

## **3. Audit and Project Analysis**

- If needed, LAGM connects the property owner with a contractor or multiple contractors that can help with a more detailed analysis and audit.
- Contractor performs energy audit
- LAGM aids in economic analysis of project
- Details of Energy Conservation Measures and the projected savings are presented to the property owner with a total dollar amount for the project including labor and all admin fees.

## **4. Project closing**

- LAGM works with property owners and lenders to develop all documentation necessary to close a PACE project.
- LAGM obtains or provides the legal services necessary to create a complete, finished Special Assessment Agreement for each project.

## **5. Project finance (No cost/involvement from County or local government)**

- Our member jurisdictions will not be asked to contribute money to facilitate PACE projects. There will be no taxpayer dollars involved.
- Projects will be financed using owner-arranged financing using private capital.
  - The property owner works with LAGM to identify a lender (LAGM works with a network of lenders, but any lender can participate if they so choose)

## **6. Installation of ECMs (No cost/involvement from City or local government)**

- Contractor performs the work
- Property is enrolled in Energy Star Portfolio Manager. This free service allows property owners and LAGM to track energy usage.

## **7. Processing of PACE payments**

- **Direct pay (No cost/involvement from County or local government)**
  - If the property owner pays the lender directly, the City will incur no cost and will have no involvement. This is the program default, and we have yet to have a property owner/lender willing to pay for additional cost associated with billing through property tax bill.
- **Through property tax bill**

- *If the property owner pays the lender through the property tax bill, the local unit of government may add a fee to reflect actual administrative cost, so that there is no net cost.*
- *The actual procedure is carried out by the local government unit (City/Village/Township) in the same way that a typical special assessment would be added to the tax roll.*

## 8. Foreclosure

- A foreclosure on a PACE project is unlikely because PACE lenders only finance projects on healthy buildings. Of over \$100,000,000 in PACE projects in the U.S. to date, **we do not know of a single Commercial PACE foreclosure.**
- In the event of a default, the City will enforce the PACE lien on a coequal basis along with the property owner's other property tax obligations.
- The City/County does *not* have to include the PACE lien in its revolving fund program.
- Foreclosure and sale of the property:
  - If the property is sold for back taxes or greater, the PACE lender receives the back taxes it is owed and the City/County loses nothing.
  - If the property is sold for less than back taxes, the PACE lender receives only its pro rata share of the sale proceeds, not everything it was owed. Other entities owed back taxes also receive their pro rata share, which may be slightly more or less than they would have been if there had been no PACE lien (PACE improvements may have increased the sale price).
  - If the property cannot be sold, the PACE lender receives nothing, and again the PACE project does not cause the loss of any taxpayer money.
- It is important to remember that the PACE lien runs with the land, so the PACE lender is *never* owed future PACE payments. The future owner pays those.
- **Bottom line: the taxpayers are not putting any money into the PACE project, and the PACE lender is taking the risk.**

## 9. Ongoing monitoring, verification and maintenance (No cost or involvement from local government)

- Buildings undergoing PACE projects in our member jurisdictions must agree to enroll in the Energy Star Portfolio Manager program to monitor energy costs and savings.
- This program is free.
- Building owners may enter into maintenance contracts as part of PACE projects, but these will be between private parties.
- No taxpayer dollars will be involved.





**CITY OF ST. JOHNS  
MICHIGAN**

**PACE PROGRAM**

**date, 2023**

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# **Lean & Green Michigan™ PACE Program**

## **Executive Summary**

Public Act No. 270 of 2010 (“Act 270”) authorizes local units of government to adopt Property Assessed Clean Energy (“PACE”) programs to promote the installation of energy efficiency improvements and renewable energy systems by owners of commercial or industrial property within a district designated by the local unit of government. Act 270 allows private commercial lenders to finance energy projects; authorizes local units of government to issue bonds, notes and other indebtedness; and authorizes the assessment of properties for the cost of the energy projects. Act 270 provides for repayment to the local unit of government or the private lender through a voluntary property assessment. The property assessment remains with the property and has the same priority as other property tax and assessment liens in the event of foreclosure.

Lean & Green Michigan™ (“LAGM”) has developed a collaborative approach to PACE programs for local units of government by standardizing the administrative and legal process under which PACE programs are created and managed. Many local units of government throughout the state have joined or are in the process of joining LAGM utilizing a “shared services” approach to eliminate upfront and ongoing program costs and duplication. Further, this approach creates one efficient statewide market, allowing property owners, lenders and clean energy contractors to utilize a standardized process as they employ PACE financing in multiple jurisdictions throughout the state.

This documentation package includes the report required by Section 9 of Act 270 and provides model forms of documents for the PACE program. As many of the details of a PACE transaction are determined on a project-specific basis, adjustments to the model documents may be required to fit a particular transaction. Additionally, there are several blanks left in the documents that should be filled in when the corresponding information is known.



**CITY OF ST. JOHNS  
MICHIGAN**

**PACE PROGRAM REPORT**

This Lean & Green Michigan™ PACE Program Report contains the information required by Section 9 of Act 270. Additional information is available from the City of St. Johns ("City"). The PACE Program and Report were approved by the City Commission on date, 2023, subsequent to a public hearing held on date, 2023.

## **INTRODUCTION**

In order to encourage economic development, improve property valuation, increase employment, reduce energy costs, reduce greenhouse gas emissions and contribute to the public health and welfare in the City of St. Johns, the City Commission established the City of St. Johns Property Assessed Clean Energy Program and PACE district pursuant to Public Act No. 270 of 2010 (“Act 270”) by joining Lean & Green Michigan™ (“LAGM,” the “PACE Program” or “Program”). The PACE Program has identified specific sources of commercial funding to finance the implementation of energy efficiency improvements, renewable energy systems and energy projects within the City of St. Johns PACE district (which is coterminous with the City jurisdictional boundaries).

The City Commission passed a Resolution of Intent to create a PACE Program and a PACE district by joining the Lean & Green Michigan statewide PACE program on **date, 2023**. The City Commission published its first version of this PACE Report thereafter, and held a public hearing on **date, 2023**. The City Commission passed a Final Resolution adopting this PACE Program and PACE district on **date, 2023**.

The purpose of this PACE Report (hereinafter the “Report”) is to fulfill the requirements of Act 270. Section 9 of Act 270 requires a Report that includes: a form of contract between the City and the record owner; identification of an official authorized to enter into program contracts on behalf of the City a maximum aggregate amount for financing provided by the City under the program; an application process and eligibility requirements; a method for determining interest rates, repayment periods and the maximum amount of assessment; explanation of how assessments will be made and collected; a plan for raising capital; information regarding reserve funds and fees of the program; a requirement that the term of the assessment not exceed the useful life of the energy project; a requirement of an appropriate ratio of the amount of assessment to the assessed value of the property; requirement of consent from the mortgage holder; provisions for marketing and participant education; provisions for adequate debt service reserve fund; quality assurance and antifraud measures; and a requirement for baseline energy audits, ongoing savings measurements and performance guarantees for projects over \$250,000 in assessments.

### **1. Form of PACE Contract**

A form of a model PACE Special Assessment Agreement is attached as **Appendix A**. Individual property owners may negotiate project-specific terms to be included in an actual agreement based upon the specific energy efficiency and renewable energy improvements to be financed through the individual agreement, subject to the limitations set forth herein.

### **2. Authorized Official/PACE Administrator**

The authorized official or his/her designee, (the “Authorized Official”) is authorized to enter into PACE Program contracts on behalf of City in consultation with Lean & Green Michigan, LLC (“LAGM”). The Authorized Official is further authorized to sign any agreement, documents or certificates necessary to facilitate the participation of property owners and to facilitate the purposes hereunder.

As part of Lean & Green Michigan™, LAGM will act as PACE administrator and will manage the City of St. Johns's PACE Program. LAGM is authorized to negotiate with credit providers and PACE project participants to facilitate the use of the PACE Program and to assist PACE project applicants in obtaining owner-arranged financing.

### **3. Financing Parameters**

In establishing its PACE district, the City intends for PACE projects to be funded through owner-arranged private financing. The maximum aggregate annual amount of financing provided by the City in 2022 shall be zero dollars. The maximum aggregate dollar amount for financing provided by the City may be adjusted and/or amended on an annual basis or more frequently by the City Commission and will remain at zero dollars unless and until it is changed.

The City shall not provide any financing for PACE projects under the City of St. Johns's PACE Program. The City's PACE Program shall be solely funded through owner-arranged financing from commercial lenders, as allowed under Act 270, Section 9(1)(g)(iii). Owner-arranged financing from commercial lenders is not included under the maximum aggregate annual dollar amount for financing provided by the City under the Program. There is no limit on the maximum aggregate annual amount of financing provided by private commercial lenders under the program. The dollar amount for financing of a particular project will be established by the property owner seeking to make the property improvement and the commercial lender seeking to finance the energy improvements, as approved by LAGM and the Authorized Official.

### **4. Application Process/Eligibility Requirements**

#### **Application Process:**

The application process for financing projects under the Program shall be that of LAGM. The current application form is attached as **SAA Appendix F**. This form may be changed or amended as necessary by LAGM.

#### **Eligibility Requirements:**

The eligibility requirements for financing projects under the Program shall be those of LAGM. Eligibility requirements may be changed or amended as necessary by LAGM. The current list of eligibility requirements is attached as **SAA Appendix A**.

### **5. Financing Terms of Assessments**

The interest rate for PACE special assessment installments supplied by commercial lenders shall be negotiated by the parties based on current market conditions.

The maximum allowable repayment period of a PACE special assessment must be included in the PACE Special Assessment Agreement and will be determined on a project-

specific basis and shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 25 years.

The maximum dollar amount of a PACE special assessment shall be negotiated on a project-specific basis between the property owner and the entity providing the financing based upon the specific energy efficiency improvement(s), water efficiency improvement(s) and/or renewable energy system(s) included in the individual PACE Special Assessment Agreement.

## **6. Assessment Collection Process**

Within the parameters set forth herein, the Authorized Official will authorize one or more commercial lenders to provide financing to defray all or part of the cost of the energy improvements by special assessment upon the Special Assessment Parcel, which the Authorized Official will find is especially benefited in proportion to the costs of the energy improvements.

The Special Assessment Roll, attached as **SAA Appendix C**, will be spread by the Authorized Official on behalf of the City and without objection by the property owner to allocate one hundred percent (100%) of the PACE special assessment levy created hereby to the Special Assessment Parcel.

The PACE special assessment, as allocated by the Authorized Official on behalf of the City without objection by the property owner, will be finally established against the property and the energy projects to be constructed on the Special Assessment Parcel. The PACE special assessment will be effective immediately upon the execution of the PACE Special Assessment Agreement by the property owner. The PACE special assessment may be paid in semi-annual installments pursuant to Section 13(2) of Act 270. The Authorized Official, on behalf of the City, will confirm the Special Assessment Roll.

The Clinton County Delinquent Tax Revolving Fund (“DTRF”) shall not be used to advance, satisfy, or pay any delinquent installment of the PACE special assessment, and no City or County funds will be used to repay any PACE special assessment placed under this program. The commercial lender will waive any claim to be able to seek payment from the City or County through the DTRF in the PACE Special Assessment Agreement.

## **7. Financing Program**

LAGM has developed and will continue to develop an active roster of financial institutions, institutional investors and other sources of private capital available to finance PACE projects in Michigan. By participating in LAGM, the City helps its constituent property owners gain access to private capital made available through the statewide program. The City authorizes the use of owner-arranged financing from commercial lenders to finance qualified energy projects under the Program.

## **8. Reserve Fund**

By participating in LAGM, the City assists its constituent property owners in taking advantage of any and all appropriate loan loss reserve and gap financing programs of the



Michigan Economic Development Corporation (“MEDC”) and other federal and state entities. Such financing mechanisms can be used to finance a reserve fund if deemed necessary and appropriate by the City.

## **9. Fee Schedule**

Application, administration and program fees for record owners shall be those of LAGM. Administration and program fees will be determined on a project-specific basis and will depend on the size, nature and complexity of the energy project(s) and financing mechanism(s) involved.

## **10. Useful Life**

The maximum length of time allowable for repayment of a PACE assessment shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 25 years and will be determined on a project-specific basis by LAGM. Projects involving multiple energy efficiency improvements and/or renewable energy systems may aggregate the useful life of each improvement to determine an overall useful life figure for financing purposes. In aggregating the improvements, the property owner must appropriately weigh each improvement’s dollar cost.

## **11. Property Eligibility Parameters**

The ratio of the amount of the assessment to the market value of the property must be appropriate and shall be set forth in the PACE Special Assessment Agreement for each project. Additionally, the overall indebtedness on the property must be appropriate. In calculating the appropriate ratios, the property owner and the lender providing the financing may determine the market value of the property using either: 1) the market value of the property before the PACE project as agreed to by the property owner and the lender providing the financing using a proper measure such as a recent appraisal or two times the State Equalized Value; or 2) the market value of the property upon completion of the PACE project as agreed to by the property owner and the lender providing the financing using a proper measure such as an appraisal of the “as completed” value of the property or the current market value of the property plus 75% of the value of the PACE project.

In calculating the appropriate ratio of the amount of the assessment to the market value of the property, the cost of the energy project (excluding closing costs and interest) shall generally not exceed 25% of the market value of the property.

In calculating the appropriate ratio of total indebtedness on the property, if the property owner and the lender providing financing calculate an appropriate ratio using the market value of the property before the PACE project, prior debt secured by the building plus the PACE loan shall generally not exceed 95% of the market value of the property. If the property owner and the lender providing financing calculate an appropriate ratio using the market value upon completion of the PACE project, prior debt secured by the building plus the PACE loan shall generally not exceed 90% of the market value of the property.

LAGM and the Authorized Official may permit projects that exceed these values for reasonable cause on a case-by-case basis, and in such cases must include a letter of explanation

as an addendum to the Special Assessment Agreement.

## **12. Mortgage Consent Requirement**

If a property is subject to a mortgage the record owner must obtain written consent from the mortgagee to participate in the Program. Proof of lender consent must be submitted before a Special Assessment Agreement may be executed. A form of lender consent to participate in a PACE Program is attached as **SAA Appendix H**.

## **13. Marketing Program**

LAGM has developed an ongoing marketing and participant education program. By joining LAGM, the City gains access to this program and agrees to partner with LAGM in educating businesses in the City about opportunities to save energy, save money and improve their property value. The City authorizes the use of the City's logo by LAGM to be incorporated into the LAGM website and other communication vehicles. More information regarding the Program can be obtained at LAGM's website: [www.leanandgreenmi.com](http://www.leanandgreenmi.com); or at the City's website at <https://cityofstjohnsmi.com/>.

## **14. Quality Assurance and Antifraud Measures**

LAGM includes the following quality assurance and antifraud measures:

- i. Business integrity review on clean energy contractors conducted by Michigan Saves;
- ii. Background check process on clean energy contractors conducted by Michigan Saves; and
- iii. Other general due diligence as may be necessary or required.

## **15. Audit Requirement**

As set forth in the PACE Program Application, a baseline energy audit must be completed before an energy project is undertaken. Each contract will require and provide adequate funding for monitoring and verification of energy savings throughout the life of the special assessment.

## **16. Projects Over \$250,000**

As set forth in the PACE Special Assessment Agreement, energy projects financed with more than \$250,000 require ongoing measurements to establish energy savings and a guarantee from the contractor that the energy project will achieve a savings to investment ratio greater than one.

## **17. Amendments to the Program**

A public hearing shall not be required to amend this Program. LAGM may amend the City of St. Johns PACE program as necessary from time to time, in consultation with the City and upon approval of the City Commission of any such amendment.

**APPENDIX A  
SPECIAL ASSESSMENT AGREEMENT**

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SPACE ABOVE FOR RECORDING PURPOSES

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**PACE SPECIAL ASSESSMENT AGREEMENT  
(OWNER-ARRANGED FINANCING)**

*by and among*

**CITY OF ST. JOHNS, MICHIGAN**

*and*

**PROPERTY OWNER**

*and*

**PACE LENDER**

**Dated:** \_\_\_\_\_

# City of St. Johns PACE Special Assessment Agreement

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### APPENDIX:

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APPENDIX B:	SPECIAL ASSESSMENT PARCEL DESCRIPTION
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## City of St. Johns PACE Special Assessment Agreement

### **PACE SPECIAL ASSESSMENT AGREEMENT** **(OWNER-ARRANGED FINANCING)**

**THIS PACE SPECIAL ASSESSMENT AGREEMENT** (this “**Agreement**”) is made this **INSERT DATE** among City of St. Johns, a Michigan City corporation (the “**City**”), whose address is Clinton County Courthouse, 100 East State Street, 2nd Floor, Suite #2200, St. Johns, Michigan 48879, **PROPERTY OWNER**, a Michigan limited liability company (the “**Property Owner**”), whose address is **INSERT ADDRESS**, and **PACE LENDER**, a Michigan limited liability company (the “**Lender**”), whose address is **INSERT ADDRESS**.

#### **RECITALS:**

A. Pursuant to Act 270 and a resolution adopted by the City of St. Johns City Commission on **INSERT DATE**, the City has established the PACE Program as described in the PACE Program Report and has created the Special Assessment District under the PACE Program for the purpose, *inter alia*, of assisting a record owner of property within the Special Assessment District in obtaining Owner-Arranged Financing from a commercial lender to defray the costs of one or more Energy Projects on the property.

B. Under Act 270, the City is authorized, pursuant to an agreement with the record owner of property within the Special Assessment District, to impose a special assessment on the property to be benefitted by the Energy Projects in order to secure and provide for the repayment of the Owner-Arranged Financing.

C. The Property Owner desires to undertake certain Energy Projects on commercial property of the Property Owner located within the Special Assessment District, as described herein, and has obtained a commitment from the Lender to make the Loan to the Property Owner to defray its cost.

D. In order to induce the Lender to make the Loan to the Property Owner, the Property Owner has requested that the City enter into this Agreement to impose a special assessment on the property to be benefitted by the Energy Projects, in accordance with Act 270, which special assessment will secure and provide for repayment of the Loan from the Lender.

E. Pursuant to Act 270 and the PACE Program, the City is authorized to enter into this Agreement.

In consideration of the foregoing and the mutual covenants contained in this Agreement, the City, the Property Owner and the Lender agree that:

## City of St. Johns PACE Special Assessment Agreement

### ARTICLE I DEFINITIONS

**Section 1.01 Definitions.** Capitalized terms used in this Agreement and Recitals shall have the meanings stated in Act 270 and as stated immediately below, except to the extent the context in which they are used requires otherwise:

(a) “**Act 270**” means Act 270 of the Michigan Public Acts of 2010, commonly referred to as the Property Assessed Clean Energy Act, MCL 460.931 et seq.

(b) “**Agreement**” means this PACE Special Assessment Agreement as same may be amended and/or restated.

(c) “**Applicable Interest Rate**” means the per annum rate of interest specified in the Loan Documents at which the Special Assessment Roll bears interest as calculated by the Lender in accordance with the provisions of Section 4.01 of this Agreement.

(d) “**Authorized Official**” means the **authorized official title**, or his/her designee, who is authorized to exercise the authority of an Authorized Official under the terms of the PACE Program Report.

(e) “**Default Rate**” means the rates dictated for cities by the Michigan General Property Tax Act of 1893 as amended (MCL 211.78a and 211.78g).

(f) “**Energy Efficiency Improvement**” means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following: insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems; 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; automated energy control systems; heating, ventilating, or air-conditioning and distribution system modifications or replacements; caulking, weather-stripping, and air sealing; replacement or modification of lighting fixtures to reduce the energy use of the lighting system; energy recovery systems; day lighting systems; installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity; measures to reduce the usage of water or increase the efficiency of water usage; and any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the City Commission.

(g) “**Energy Project**” means the installation or modification of an Energy Efficiency Improvement or the acquisition, installation, or improvement of a Renewable Energy Improvement.

(h) “**Event of Default**” has the meaning set forth in Section 7.01 hereof.



## City of St. Johns PACE Special Assessment Agreement

(i) **“Force Majeure”** means unforeseeable events beyond a party’s reasonable control and without such party’s failure or negligence including, but not limited to, acts of God, acts of public or national enemy, acts of the federal government, fire, flood, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, and delays of contractors due to such causes, but only if the party seeking to claim Force Majeure takes reasonable actions necessary to avoid delays caused thereby.

(j) **“General Property Tax Act”** means the General Property Tax Act, Act 206, Public Acts of Michigan, 1893, as amended.

(k) **“Improvements”** means the Energy Efficiency Improvements and the Renewable Energy Improvements being undertaken by the Property Owner on the Special Assessment Parcel as described in **Appendix E** attached hereto.

(l) **“LAGM”** shall mean Lean & Green Michigan, LLC, a Michigan limited liability company.

(m) **“Lean & Green Michigan™”** means a statewide property assessed clean energy program open to all local units of government operated as a public-private partnership by LAGM in order to facilitate property assessed clean energy program-financed transactions.

(n) **“Lender”** has the meaning set forth in the preamble.

(o) **“Loan”** means the loan obtained by the Property Owner from the Lender pursuant to Owner-Arranged Financing to defray a portion of the cost of the Improvements under the terms of the Loan Documents.

(p) **“Loan Documents”** means the Loan Agreement, dated as of **[INSERT DATE]**, between the Property Owner and the Lender and any and all exhibits or attachments thereto, including any documents amending, restating, replacing, extending or otherwise modifying the Loan Agreement and all documents provided to the Lender from time to time by the Property Owner to evidence or secure the Loan as required pursuant to the terms of the Loan Agreement.

(q) **“Owner-Arranged Financing”** means the process by which a property owner secures financing for improvements to its property that does not involve bonds or any other form of funding provided by the City.

(r) **“PACE Program”** shall mean the property assessed clean energy program implemented by the City pursuant to Act 270 and the PACE Program Report to stimulate energy efficiency and renewable energy projects in conformity with Act 270.

(s) **“PACE Program Report”** means the Lean & Green Michigan™ PACE Program Report approved by the City of St. Johns City Commission on **[INSERT DATE]**, including any amendments or changes thereto made before the date of this Agreement.

(t) **“Payment Schedule”** has the meaning set forth in Section 4.01 hereof.

## City of St. Johns PACE Special Assessment Agreement

(u) “**Property Owner**” has the meaning set forth in the preamble.

(v) “**Renewable Energy Improvement**” means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer’s side of the meter that use one (1) or more renewable energy resources to generate electricity, gas, or other power. Renewable Energy Improvement includes a biomass stove but does not include an incinerator or digester.

(w) “**Special Assessment**” means the money obligation created pursuant to this Agreement with respect to the Special Assessment Parcel used to defray the cost of the Improvements and which shall, together with all interest, charges and penalties which may accrue thereon, be a lien upon the Special Assessment Parcel of the same priority and status as other property tax liens and other assessment liens as provided in Act 270 until such amounts have been paid in full.

(x) “**Special Assessment District**” means the Special Assessment District established as part of the PACE Program pursuant to Act 270.

(y) “**Special Assessment Parcel**” means the property located in the Special Assessment District to which one hundred percent (100%) of the Special Assessment has been spread by the City and which is more particularly described on the attached **Appendix B**.

(z) “**Special Assessment Roll**” has the meaning set forth in Section 4.01 hereof.

### ARTICLE II DESCRIPTION OF IMPROVEMENTS

**Section 2.01 Description of Improvements.** The Improvements to be acquired, constructed, installed and financed by the Property Owner under the PACE Program are described in **Appendix E** attached hereto. If after project approval, the Property Owner seeks to undertake additional Improvements, **Appendix E** may be amended or supplemented from time to time. Such additional Improvements must meet all the eligibility criteria of the PACE Program and the PACE Program Report and may be added to the original application as a modification, or submitted as a new project, at the discretion of LAGM and the Authorized Official.

### ARTICLE III COVENANTS OF THE PROPERTY OWNER

#### **Section 3.01 Acquisition, Construction and Installation of Improvements.**

(a) The Property Owner covenants and agrees to acquire, construct and install the Improvements as described in **Appendix E** on the Special Assessment Parcel described on **Appendix B** in full conformity with all applicable laws and regulations and in compliance with the PACE Program eligibility requirements set forth in **Appendix A**. If the proceeds of the Loan are not sufficient to pay the costs of the Improvements as aforesaid, the Property Owner agrees

## City of St. Johns PACE Special Assessment Agreement

to complete the Improvements and to pay that portion of the costs of the Improvements in excess of the amount of the Loan. The Property Owner acknowledges and agrees that the City makes no representation, either express or implied, that the proceeds of the Loan will be sufficient to pay the total costs of the Improvements, and the Property Owner agrees that if, after exhaustion of the proceeds of the Loan, the Property Owner shall be required to pay any portion of the costs of the Improvements from its own funds, the Property Owner shall not be entitled to any reimbursement therefore from the City or from the Lender, nor shall the Property Owner be entitled to any abatement or diminution of the amount of the Special Assessment created by this Agreement or of any interest, charges or penalties which may accrue thereon.

(b) To provide for monitoring and verification of the Energy Project, the Property Owner has created an Energy Star Portfolio Manager account and has linked this account to the LAGM Energy Star Portfolio Manager account. The Property Owner has entered all electricity bills for the Special Assessment Parcel for the year (12 consecutive months) immediately preceding the installation of the Energy Project. The Property Owner further agrees to enter its electricity bills for the duration of the Agreement on an annual basis. Annual electricity bills for the Special Assessment Parcel will be entered into the Property Owner's Energy Star Portfolio Manager account by January 31 of each year after the year for which the electricity bills are to be entered.

### ARTICLE IV PACE SPECIAL ASSESSMENT

#### **Section 4.01 PACE Special Assessment Created.**

(a) At the request of the Property Owner, the City hereby determines to assist the Property Owner in obtaining the Loan to defray a portion of the cost of the Improvements on the Special Assessment Parcel by the levy of the Special Assessment upon the Special Assessment Parcel, which the Authorized Official on behalf of the City finds is especially benefited in proportion to the cost of the Improvements. The Special Assessment created hereby has been spread by the Authorized Official on behalf of the City on the Special Assessment Roll attached hereto as **Appendix C** (the "Special Assessment Roll"), with the consent of the Property Owner, to allocate one hundred percent (100%) of the Special Assessment to the Special Assessment Parcel.

(b) The Special Assessment, as allocated by the Authorized Official with the consent of the Property Owner, is hereby finally established and levied against the Special Assessment Parcel as described on the attached **Appendix B** in the principal amount of **[INSERT LOAN AMOUNT]** as stated on the Special Assessment Roll. The Special Assessment is effective immediately upon the execution and delivery of this Agreement by the Property Owner. The Special Assessment shall be paid by the Property Owner in **[NUMBER]** semi-annual installments on the dates and in the amounts set forth in the payment schedule attached hereto as **Appendix D** (the "Payment Schedule"). The Special Assessment Roll and the Payment Schedule are hereby confirmed by the Authorized Official on behalf of the City. The unpaid amount of the Special Assessment Roll shall bear interest from the date of execution and

## City of St. Johns PACE Special Assessment Agreement

delivery of this Agreement at the Applicable Interest Rate, as calculated by the Lender in accordance with the terms of the Loan Documents, payable by the Property Owner semi-annually on each date on which any installment of the Special Assessment is due in accordance with the Payment Schedule. Notwithstanding the foregoing, (i) if any installment of the Special Assessment or any interest due and payable on the Special Assessment Roll is not paid by the Property Owner when and as the same shall become due and payable in accordance with the provisions of this Section 4.01 or (ii) any "event of default" under the Loan Documents has occurred and is continuing, the unpaid amount of the Special Assessment Roll shall bear interest at the Default Rate as calculated by the Lender in accordance with the terms of the Loan Documents, for as long as such amounts remain unpaid or for so long as such "event of default" under the Loan Documents exists and is continuing. The City, the Property Owner and the Lender agree that the Lender shall be solely responsible for the determination from time to time of the Applicable Interest Rate and the Default Rate and the amount of interest due and payable by the Property Owner on the Special Assessment Roll on each day on which interest thereon is due and payable as provided in this Agreement, and the Lender's determination thereof shall be binding on the Property Owner absent manifest error. The Property Owner and the Lender agree that the City shall under no circumstance have any obligation to determine the Applicable Interest Rate or the Default Rate or to calculate the amount of any interest payment due on the Special Assessment Roll as provided in this Agreement, and the City may conclusively rely upon the Lender's determinations thereof for the purpose of exercising and discharging all of the City's rights and obligations under this Agreement. The Lender agrees to provide, or cause to be provided, notice to the Property Owner and the City the determinations of the Applicable Interest Rate and the Default Rate, as applicable, pursuant to this Section 4.01(b) at such times, and from time to time, as the Property Owner or the City may request.

**Section 4.02 Assignment of Special Assessment Payments to Lender.** At the request of the Property Owner and the Lender, and pursuant to Section 9(g)(iii) of Act 270, the City hereby irrevocably assigns to the Lender its right to receive all installments of the Special Assessment required to be paid by the Property Owner pursuant to this Agreement, whether in accordance with the Payment Schedule or upon prepayment of the Special Assessment in whole or in part in accordance with Section 4.06 of this Agreement, together with all payments of interest due and payable on the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, as provided in Section 4.01(b) of this Agreement. In pursuance of the foregoing, the City, the Property Owner and the Lender agree that, except as provided in Section 4.05 of this Agreement, (i) all installments of the Special Assessment, whether payable in accordance with the Payment Schedule or upon prepayment of the Special Assessment in whole or in part in accordance with Section 4.06 of this Agreement, together with all payments of interest due and payable upon the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, shall be paid by the Property Owner directly to the Lender when due at such address in the United States as may be designated by the Lender in writing to the Property Owner and the City; (ii) the City shall have no obligation or duty to include any installments of the Special Assessment on any tax bill issued by the City or to bill, collect or remit to the Lender any installments of the Special Assessment or any interest due and payable upon the Special Assessment Roll; and (iii) absent receipt by the City of written notice from the Lender of a payment default in accordance with Section 4.05 hereof, the City shall be entitled to conclusively presume that all installments of the Special Assessment and all payments of interest

## **City of St. Johns PACE Special Assessment Agreement**

due and payable on the Special Assessment Roll have been made by the Property Owner to the Lender when due as required by the terms of this Agreement.

### **Section 4.03 Property Owner's Consent to Special Assessment; Waiver.**

(a) The Property Owner hereby irrevocably consents to and confirms the creation of the Special Assessment Roll and the levy of the Special Assessment established pursuant to this Agreement and EXPRESSLY WAIVES ANY AND ALL CLAIMS CHALLENGING AND DEFENSES TO, THE LEGALITY, VALIDITY, ENFORCEABILITY OR COLLECTABILITY OF THE SPECIAL ASSESSMENT, including, but not limited to, claims arising from, relating to or otherwise based upon any theory of procedural defect concerning the approval of the Improvements, the establishment of the Special Assessment District, confirmation of the Special Assessment Roll and the Payment Schedule, the City's right to place the Special Assessment lien on the Special Assessment Parcel, the collectability and due dates of the Special Assessment installments and interest due and payable on the Special Assessment Roll, or any other theory or claim. The Property Owner further waives notice of hearing and the right to file objections if and to the extent such rights exist under any special assessment ordinance of the City.

(b) Following the signing of this Agreement, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of the Special Assessment, and the Property Owner, for itself and its successors in interest, lessees, purchasers, and assigns with respect to all or any part of the Special Assessment Parcel, hereby irrevocably waives its rights to contest the Special Assessment with any adjudicative body having jurisdiction over the subject matter, including, but not limited to, the Michigan Tax Tribunal.

(c) In addition to any conditions, covenants, warranties and representations specified in the Loan Documents, the Property Owner shall not sell, transfer, alienate or convey any of its interest in the Special Assessment Parcel without first having given written notice of the Special Assessment to any successors in interest, lessees, purchasers or assigns and having made a copy of this Agreement part of any purchase contract, sale contract, lease agreement, deed or any other conveyancing instrument by which the Property Owner purports to assign all or any part of its interest in the Special Assessment Parcel to any successors in interest, lessees, purchasers, transferees, licensees and assigns. This Agreement shall be recorded against the real property constituting the Special Assessment Parcel by the PACE lender with the Register of Deeds of Clinton County, State of Michigan.

(d) The Property Owner agrees that it, its successors and assigns shall, during the term of this Agreement and the Special Assessment, pay all ad valorem real property taxes and assessments levied against the Special Assessment Parcel when due and the Property Owner specifically waives, irrevocably for itself, its successors and assigns as to any and all portions of the Special Assessment Parcel, the right to pay ad valorem real property taxes and assessments on any other installment method which may be available to property owners in the City.

(e) The City agrees that following (i) payment by the Property Owner in full of the Special Assessment, together with all accrued interest on the Special Assessment Roll, and all other interest, charges and penalties which may accrue thereon, and (ii) receipt by the City of

## City of St. Johns PACE Special Assessment Agreement

written acknowledgment from the Lender that the Special Assessment, together with all accrued interest on the Special Assessment Roll, has been paid to the Lender in full, it will promptly execute and deliver documentation discharging the lien of the Special Assessment on the Special Assessment Parcel. Until the Special Assessment liability has been fully satisfied and the lien discharged, each purchaser of all or any part of the Special Assessment Parcel, as a condition of closing on such purchase, shall execute and deliver to the City a written notice: (i) acknowledging the principal amount unpaid and outstanding on the Special Assessment; (ii) agreeing to the assumption of the liability to pay the Special Assessment, and any interest thereon, on a timely basis, when due, until the remaining balance and interest on said Special Assessment has been paid in full; (iii) acknowledging that the title insurance policy will state that the Special Assessment has not been paid at time of closing thereon; and (iv) agreeing to pay to the Lender at or prior to the close of the purchase all past due installments of the Special Assessment and all past due payments of interest on the Special Assessment Roll. The representations set forth in such written notice shall be enforceable at law and in equity, including without limitation, by way of specific performance.

**Section 4.04 Lien.** The Special Assessment is an obligation with respect to the Special Assessment Parcel, and shall, until paid, be a lien upon the Special Assessment Parcel for the amount of the Special Assessment and all interest, charges and penalties that may accrue thereon. Such lien shall be of the same character and effect as liens created pursuant to the ordinances of the City for City taxes and shall be treated as such with respect to procedures for collection as set forth in the General Property Tax Act and the ordinances of the City, including accrued interest, charges and penalties. The Special Assessment confirmed hereby is a debt to the City from the Property Owner and its successors in interest, lessees, purchasers and assigns. The right of the City to receive all installments of the Special Assessment required to be paid by the Property Owner pursuant to this Agreement, together with all payments of interest due and payable on the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, as provided in Section 4.01, has been irrevocably assigned by the City to the Lender in accordance with the provisions of Section 4.02 of this Agreement. No judgment or decree shall destroy or impair any lien of the City upon the premises assessed for such amount of the Special Assessment as may have been equitably or lawfully charged and assessed thereon. Failure of the Property Owner or any subsequent property owner to receive any notice required to be sent under the provisions of the ordinances of the City or this Agreement shall not invalidate the Special Assessment or the Special Assessment Roll and shall not be a jurisdictional requirement.

### **Section 4.05 Payment Default.**

(a) If any installment of the Special Assessment or interest due on the Special Assessment Roll shall not have been paid by the Property Owner to the Lender, as assignee of the City, at the time and in the amount required by Section 4.01 hereof (a “Payment Default”), the Lender shall, within thirty (30) days following the date such sums were due and payable (the “Payment Default Date”), deliver written notice to the City stating all of the following: (i) that a Payment Default has occurred under this Agreement; (ii) the Payment Default Date; (iii) the amount of the Special Assessment that was due and payable as of the Payment Default Date and which remains unpaid and the amount of interest on the Special Assessment Roll that was due and payable as of the Payment Default Date and which remains unpaid (collectively, the

## City of St. Johns PACE Special Assessment Agreement

“Payment Default Amount”); and (iv) an attestation by an authorized officer of the Lender that the statements contained in the foregoing notice are true, correct and complete as of the date of such notice. Upon receipt of such notice from the Lender, the City shall take such actions as may be required to cause the Payment Default Amount to be certified for collection on the summer or winter tax bill next succeeding the Payment Default Date, and such Payment Default Amount shall be collected at the same time and in the same manner as is prescribed for the collection of the City taxes under the General Property Tax Act and the ordinances of the City. The City may assess a fee for delinquent taxes, interest, penalties, and fees as provided under General Property Tax Act Section 211.78. Notwithstanding the foregoing provisions of this Section 4.05(a), if the City shall determine that the notice of the Lender described in this Section 4.05(a) was not received by the City in sufficient time to permit the Payment Default Amount to be placed for collection on the summer or winter tax bill next succeeding the Payment Default Date, such Payment Default Amount shall be certified for collection on the next summer or winter tax bill issued thereafter. The City shall be entitled to conclusively rely upon any notice of the Lender delivered pursuant to this Section 4.05(a) as to the existence of a Payment Default and as to the Payment Default Amount, and shall not be liable to the Property Owner or to any other person for any action taken by the City pursuant to the terms of this Agreement or otherwise in reliance upon the information contained in such notice. Absent receipt by the City of written notice from the Lender of a Payment Default in accordance with this Section 4.05(a), the City shall be entitled to presume conclusively that all installments of the Special Assessment and all payments of interest due and payable on the Special Assessment Roll have been made by the Property Owner to the Lender when due as required by the terms of this Agreement, and the City shall have no obligation or duty to include any installments of the Special Assessment on any tax bill issued by the City or to bill, collect or remit to the Lender any installments of the Special Assessment or any interest due and payable upon the Special Assessment Roll.

(b) The City hereby agrees that, pursuant to the assignment set forth in Section 4.04, it will cause to be paid over to the Lender all amounts received by the City from the City of St. Johns Treasurer as collections of any Payment Default Amount within forty-five (45) days of the date such sums are received by the City from the City of St. Johns Treasurer. The parties hereto expressly acknowledge and agree that in no event shall the City advance to the Lender the amount of any unpaid Payment Default Amount, and the City shall be obligated to pay over to the Lender only such sums as are actually received by the City of St. Johns Treasurer as collections of any Payment Default Amount.

(c) In the event that any interest, penalties, fees or other charges shall be imposed upon the Special Assessment Parcel or against the Special Assessment Roll or the amount of any unpaid Special Assessment pursuant to the ordinances of the City or the General Property Tax Act, by City, Michigan, for the administration, billing, collection or enforcement of the Special Assessment created hereby, such amounts shall remain a debt of the Property Owner to the City, Michigan, as their interests may appear, and shall not be deemed to have been assigned to the Lender pursuant to the terms of this Agreement or otherwise.

(d) The Lender hereby agrees and acknowledges that it shall have no right, and if such right were to be found to exist, hereby waives such right, to seek payment of any delinquent installment of the Special Assessment, and any interest, penalties, fees, or other charges, through



## **City of St. Johns PACE Special Assessment Agreement**

the Clinton County Delinquent Tax Revolving Fund (“DTRF”), or any subsequent City or County fund which may replace the DTRF, or any other City or County funds.

**Section 4.06 Prepayment of Special Assessment.** Subject to the provisions of the Loan Documents, including, without limitation, prepayment penalties, if any, the Property Owner may, upon sixty (60) days’ written notice to the Lender and the City, prepay any installment of the Special Assessment specified in the Payment Schedule by causing to be paid to the Lender the amount of the installment to be prepaid, together with accrued interest thereon to the date of prepayment. If such prepayment of any installment is not received by the Lender on the date specified for prepayment, the Lender shall promptly deliver written notice to the City that such prepayment was not received by the Lender.

**Section 4.07 Invalidity; Cure.** In the event of any invalidity of the Special Assessment, the Authorized Official, at the request of the Lender, and if the City shall have received indemnity satisfactory to the Authorized Official for its costs and expenses (including reasonable attorneys’ fees), shall cause a new Special Assessment to be made for all or any part of the Improvements in accordance with Act 270 and the PACE Program as reasonably determined by the Authorized Official. The Property Owner, on behalf of itself and its successors in interest, lessees, purchasers, and assigns, hereby waives any objections to and agrees to the imposition of such new Special Assessment; *provided, however*, that the amount of the new Special Assessment shall not exceed the unpaid principal amount of the Loan at the time the new Special Assessment shall be established.

**Section 4.08 City of St. Johns or City of St. Johns Treasurer Becoming Owner of the Special Assessment Parcel.** In the event that the City Treasurer takes ownership of the Special Assessment Parcel by operation of law, the City Treasurer and the Lender agree that while the lien on the Special Assessment Parcel will remain in full force and effect, and all principal, interest, penalties, fees, and other charges, either based on Michigan Compiled Laws or the Loan Documents will continue to accrue during the period of time that the City Treasurer owns the Special Assessment Parcel. No loan or special assessment payments, including interest, penalties, fees or other charges, are required to be paid or will be accrued by the City Treasurer to the Lender. Any and all principal, interest, penalties, fees, and other charges which accrue during the period by which the City Treasurer own the Special Assessment Parcel will, in the sole and unlimited discretion of the Lender, either be: (1) considered immediately due and payable by any person or entity who purchases the Special Assessment Parcel from the City Treasurer, and no sale or transfer of the Special Assessment Parcel is valid unless and until all principal, interest, penalties, fees, and other charges have been paid by the subsequent owner of the Special Assessment Parcel; or (2) capitalized into the outstanding principal balance of the Special Assessment, causing the Lender to provide a revised Payment Schedule in an amount necessary to amortize the new outstanding principal balance of the Special Assessment over the remaining number of payments. The lien created by the Special Assessment shall not be extinguished or released until all necessary principal and interest payments, as well as all penalties, fees, and other charges, as determined solely by Lender, have been paid and received by Lender.

## City of St. Johns PACE Special Assessment Agreement

### ARTICLE V CONDITIONS PRECEDENT

#### **Section 5.01 Conditions Precedent to the City's Obligations.**

The obligations of the City under this Agreement shall be subject to the satisfaction of the following conditions precedent on or prior to the date of execution and delivery of this Agreement by the City, unless waived in writing by the City:

(a) The City, the Property Owner and the Lender shall have authorized, executed and delivered this Agreement and all approvals required hereby shall have been secured.

(b) No action, suit, proceeding or investigation shall be pending before any court, public City Commission or body to which the Property Owner or the City is a party, or shall be threatened in writing against the Property Owner or the City, contesting the validity or binding effect of this Agreement, the Special Assessment or the Owner-Arranged Financing contemplated hereby, or which, if adversely decided, could have a material adverse effect upon the ability of the Property Owner to pay or the City to levy the Special Assessment or to assign to the Lender the right to receive payments of the Special Assessment, or which could have a material adverse effect on the ability of the Property Owner or the City to comply with any of the obligations and terms of this Agreement.

(c) There shall be no ongoing breach of any of the covenants and agreements of the Property Owner required to have been observed or performed by the Property Owner under the terms of this Agreement and no Event of Default by the Property Owner, and no event which, with the passage of time or the giving of notice or both could become an Event of Default by the Property Owner under this Agreement, shall have occurred.

(d) All documents, schedules, materials, maps, plans, descriptions and related matters which are contemplated to be made Appendices to this Agreement shall have been fully completed by the Property Owner to the City's reasonable satisfaction and such Appendices shall be true, accurate and complete.

(e) The Property Owner shall meet all eligibility requirements as set forth in **Appendix A.**

(f) The Property Owner and the Lender shall have authorized, executed and delivered the Loan Documents, and the Lender shall have funded the Loan in accordance with the terms of the Loan Documents.

(g) The Property Owner shall not have filed for bankruptcy or sought the protections of any state or federal insolvency law providing protections to debtors.

(h) The Property Owner shall have obtained consent from each holder of a mortgage interest or lien upon the Special Assessment Parcel prior to the execution and delivery of this Agreement in substantially the form set forth in the PACE Program Report.

## **City of St. Johns PACE Special Assessment Agreement**

### **ARTICLE VI REPRESENTATIONS AND WARRANTIES**

#### **Section 6.01 Representations and Warranties of the City.**

The City represents and warrants to the Property Owner that, as of the date of this Agreement:

(a) The execution and delivery of this Agreement has been duly authorized by the City, and this Agreement complies with Act 270 and constitutes a valid and binding agreement of the City, enforceable against the City in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principals of equity, including those relating to equitable subordination.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated herein is in violation of any provision of any existing law, ordinance, rule, resolution or regulation to which the City is subject, or any agreement to which the City is a party or by which the City is bound, or any order or decree of any court or governmental entity by which the City is subject.

(c) There are no delinquent taxes, special assessments, or water or sewer charges on the Special Assessment Parcel that will be assessed under this Agreement; and there are no delinquent assessments on the Special Assessment Parcel under a PACE program.

#### **Section 6.02 Representations and Warranties of the Property Owner.**

The Property Owner represents and warrants to the City and the Lender that:

(a) The Property Owner is duly organized and validly existing as a limited liability company in good standing under the laws of the State of Michigan, with power under the laws of the State of Michigan to carry on its business as now being conducted, and is duly qualified to do business in the State of Michigan; and the Property Owner has the power and authority to own the Special Assessment Parcel and to carry out its obligation to complete the Improvements.

(b) The execution and delivery of this Agreement will not result in a violation or default by the Property Owner of any provision of its Articles of Organization or Operating Agreement, or under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or other instrument of any kind or character to which it is a party and by which it is bound, or to which it or any of its assets are subject.

(c) The Property Owner is the sole and exclusive legal and equitable title owner of fee simple title to the Special Assessment Parcel and the Improvements located, or to be located, thereon and has full legal power and authority to consent to the finalization and levying of the Special Assessment as provided herein.

## City of St. Johns PACE Special Assessment Agreement

(d) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action, and this Agreement has been duly executed and delivered by the Property Owner and constitutes a valid and binding agreement enforceable against the Property Owner in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

(e) Property Owner warrants and agrees that any contractual, legal or other disputes between it and the Lender--other than matters specifically related to enforcement of property tax obligations--or the contractor involved in the Improvements, do not involve the City, and Property Owner agrees to hold the City and its agents, including but not limited to LAGM, harmless from any such disputes or causes of action.

(f) The Property Owner, the Special Assessment Parcel and the Improvements satisfy all of the PACE Program eligibility and program requirements set forth in **Appendix A**.

### **Section 6.03 Representations and Warranties of the Lender.**

The Lender represents and warrants to the City that:

(a) The Lender has experience in the market for property assessed clean energy programs and assessments and is capable of evaluating the merits and risks of its participation in the Owner-Arranged Financing contemplated by this Agreement.

(b) The Lender has made its own independent investigation of the Property Owner, the terms of this Agreement, the nature of the Special Assessment created hereby and the procedures for the collection and enforcement of the Special Assessment under this Agreement and the laws of the State of Michigan, and is not relying on the City, its agents, attorneys or employees for any of such information or with respect to the sufficiency and scope of such investigation. The Lender has not received, and is not relying on, any representations of the City with respect to the Property Owner.

(c) Lender warrants and agrees that any contractual, legal or other disputes between it and Property Owner--other than matters specifically related to enforcement of property tax obligations--do not involve the City, and Lender agrees to hold the City and its agents, including but not limited to LAGM, harmless from any such disputes or causes of action.

## **ARTICLE VII DEFAULT**

**Section 7.01 Property Owner Event of Default.** If the Property Owner shall default in the performance of any covenant or agreement on its part contained in this Agreement and such default shall continue for a period of ten (10) days after written notice thereof has been

## **City of St. Johns PACE Special Assessment Agreement**

given to the Property Owner by the City, an “Event of Default” shall be deemed to have occurred under this Agreement.

**Section 7.02 Remedies for Property Owner Event of Default.** Upon the occurrence of an Event of Default as provided in Section 7.01 hereof, the City, after giving written notice as required, without further notice of any kind, and in addition to all other rights and remedies provided at law or in equity, shall be entitled to seek and obtain a decree of specific performance of this Agreement from a court of competent jurisdiction; or the right to recover from the Property Owner any damages incurred by the City and any costs incurred by the City in enforcing or attempting to enforce this Agreement or the Special Assessment, including attorneys’ fees and expenses; or to foreclose on the Special Assessment Parcel and to sell all or any part of the Special Assessment Parcel to the extent necessary to recover any damages and costs; or any combination of the foregoing. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the City shall not be obligated to institute any of the actions or proceedings or to exercise any of the remedies authorized by this Section 7.02 upon the occurrence of an Event of Default hereunder, and that its obligations with respect to the billing, collection and enforcement of the Special Assessment or any installment thereon shall be limited to those obligations set forth in Article IV of this Agreement. The Lender acknowledges that neither the Special Assessment nor any installment thereon can be accelerated.

**Section 7.03 The City Default.** If the City shall default in the performance of any covenant or agreement on its part contained in this Agreement and shall fail to proceed in good faith to cure such default within sixty (60) days after written notice thereof has been received by the City from the Property Owner or the Lender, a “City Default” shall be deemed to have occurred under this Agreement.

**Section 7.04 Remedy for City Default.** Upon the occurrence of a City Default as provided in Section 7.03 hereof, and if the Property Owner or the Lender, as the case may be, shall have otherwise fully performed all of its obligations hereunder, the Property Owner or the Lender, after giving written notice as required, without further notice or demand, shall be entitled to seek and obtain a decree of specific performance from a court of competent jurisdiction; but neither the Property Owner nor the Lender shall have the right to seek to recover money damages against the City, including any costs or fees (including attorneys’ fees) incurred by the Property Owner or the Lender in enforcing or attempting to enforce this Agreement. Neither the occurrence of a City Default nor the institution of any proceeding or the exercise of any remedy upon the occurrence of a City Default shall negate or diminish the obligations of the Property Owner hereunder to pay the installments of the Special Assessment and interest accrued on the Special Assessment Roll and all other costs hereunder when the same shall become due and payable.

**Section 7.05 Waiver.** Failure of any party hereunder to act upon discovery of a default or to act upon the existence of an Event of Default shall not constitute a waiver of the right to pursue the remedies provided herein.

## City of St. Johns PACE Special Assessment Agreement

### ARTICLE VIII MISCELLANEOUS

**Section 8.01 Term.** Except as otherwise provided in this Agreement, the terms of this Agreement shall commence on the date first written above and shall terminate at such time as the Special Assessment liability shall have been fully satisfied as provided in Section 4.03(e) hereof.

**Section 8.02 Assignment.**

(a) Except as otherwise provided herein and as provided in Section 8.02(b) hereof, no party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of the other parties hereto excepting as otherwise expressly provided herein.

(b) The Lender and its successors and assigns may assign its rights and obligations under this Agreement and its rights in the Special Assessment, in whole but not in part; *provided, however,* that any such assignment shall be made only in accordance with applicable law; *and provided further, however,* that no such assignment shall be effective unless the City shall have first received (i) notice of the assignment disclosing the name and the address of the assignee, which shall be an address in the United States and (ii) a Certificate of Assignment executed by the assignee in the form attached to this Agreement as **Appendix G**. From and after the date of satisfaction of the conditions for the assignment of this Agreement as provided in this Section 8.02(b), the assignee of the Lender shall be a party hereto and shall have the rights and obligations of the Lender specified hereunder, and such assignee shall be deemed to be the “Lender” for all purposes of this Agreement.

**Section 8.03 Notices.** All notices, certificates or communications required by this Agreement to be given shall be in writing and shall be sufficiently given and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows, or to such other address as such party may specify by written notice to the other parties hereto:

## City of St. Johns PACE Special Assessment Agreement

If to the City: CITY OF ST. JOHNS  
Clinton County Courthouse, 100 East State Street,  
2nd Floor, Suite #2200, St. Johns, Michigan 48879  
Attn: [authorized official name]

With a copy to: City of St. Johns PACE Administrator  
Lean & Green Michigan  
500 Temple Street, Suite 6270  
Detroit, MI 48201

If to the Property Owner: PROPERTY OWNER  
ADDRESS

With a copy to: The Lender

With a copy to: City of St. Johns PACE Administrator  
Lean & Green Michigan  
500 Temple Street, Suite 6270  
Detroit, MI 48201

If to the Lender: PACE LENDER  
ADDRESS

With a copy to: City of St. Johns PACE Administrator  
Lean & Green Michigan  
500 Temple Street, Suite 6270  
Detroit, MI 48201

**Section 8.04 Amendment and Waiver** No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by each party hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

**Section 8.05 Entire Agreement.** This Agreement constitutes the entire agreement between the City, on the one hand, and the Lender and the Property Owner, on the other hand. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, between the City, on the one hand, and the Lender or the Property Owner, on the other hand.

**Section 8.06 Execution in Cityverparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.



## City of St. Johns PACE Special Assessment Agreement

**Section 8.07 Captions.** The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

**Section 8.08 Applicable Law.** This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

**Section 8.09 Mutual Cooperation.** Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement. Each party to this Agreement shall exercise reasonable diligence in reviewing, approving, executing and delivering all documents necessary to accomplish the purposes and intent of this Agreement. Each party to this Agreement also shall use its best efforts to assist the other parties to this Agreement in the discharge of its obligations hereunder and to assure that all conditions precedent to the financing arrangements are satisfied.

**Section 8.10 Binding Effect; No Third-Party Beneficiary.** This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns. In no event shall the provisions of this Agreement be deemed to inure to the benefit of or be enforceable by any third party, except for permitted assigns.

**Section 8.11 Force Majeure.** No party hereto shall be liable for the failure to perform its obligations hereunder if said failure to perform is due to Force Majeure. Said failure to perform shall be excused only for the period during which the event giving rise to said failure to perform exists; *provided, however*, that the party seeking to take advantage of this Section shall notify the other party in writing, setting forth the event giving rise to said failure to perform, within ten (10) business days after the occurrence of said event.

[SIGNATURES ON THE FOLLOWING PAGE]

**City of St. Johns PACE Special Assessment Agreement**

**IN WITNESS WHEREOF**, the CITY, PROPERTY OWNER, and PACE LENDER have caused this PACE Special Assessment Agreement to be duly executed and delivered as of the date first written above.

Witnessed:

**PROPERTY OWNER**

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

\_\_\_\_\_  
Signature of:

Its:

Witnessed:

**CITY OF ST. JOHNS**

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

\_\_\_\_\_  
Signature of:

Its: AUTHORIZED OFFICIAL

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

\_\_\_\_\_  
Signature of:

Its: AUTHORIZED OFFICIAL

Witnessed:

**PACE LENDER**

By: Its:

\_\_\_\_\_  
Signature of:

**City of St. Johns PACE Special Assessment Agreement**

State of Michigan     )  
                                      ) ss  
City of St. Johns     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_ the Authorized Signatory of \_\_\_\_\_ on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
City, State  
My Commission expires \_\_\_\_\_

State of Michigan     )  
                                      ) ss  
City of St. Johns     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by [CITY AUTHORIZED OFFICIAL] on behalf of City of St. Johns.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_, \_\_\_\_\_  
My Commission expires \_\_\_\_\_

State of \_\_\_\_\_)  
                                      )ss  
City of \_\_\_\_\_     )

The foregoing instrument was acknowledged before me this **number** day of **month**, 202\_, by PACE LENDER OFFICIAL the Authorized Signatory of PACE LENDER, on behalf of PACE LENDER.

\_\_\_\_\_  
Notary Public  
CITY, STATE  
My Commission expires \_\_\_\_\_

## City of St. Johns PACE Special Assessment Agreement

### **APPENDIX A** **PROGRAM ELIGIBILITY CHECKLIST**

Property is privately owned commercial or industrial real property within City of St. Johns's jurisdictional boundaries, which may be owned by any individual or private entity, whether for-profit or non-profit. MCL 460.933(g). Multi-family residential property is included in the definition of commercial property.

There are no delinquent ad valorem taxes, special assessments, or water or sewer charges on the property. The Authorized Official at his discretion may disqualify properties that although not currently delinquent, have been delinquent within six months of the application's submission. MCL 460.941(2)(a).

There are no delinquent assessments on the property under a PACE program. MCL 460.941(2)(b).

The term of assessment shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 30 years. Projects that consist of multiple energy efficiency improvements or renewable energy systems with varying lengths of useful life may blend the lengths to determine an overall assessment term that does not exceed the useful life of the improvements in aggregate. MCL 460.939(i).

An appropriate ratio must be determined for the amount of assessment in relation to the assessed value of the property. MCL 460.939(j).

Written consent from the mortgage holder must be obtained if the property is subject to a mortgage. MCL 460.939(k).

A baseline energy audit must be conducted for the property that is approved by LAGM. Such approval may be granted retroactively if the audit meets the standards of LAGM. MCL 460.939(o).

For projects financed for more than \$250,000, a performance guarantee must be provided by the contractor(s) to guarantee a savings to investment ratio greater than one (1). MCL 460.939(p). The performance guarantee must meet the standards set by LAGM.

For projects financed for more than \$250,000, financial and logistical arrangements for ongoing measurement and verification of energy savings that meet standards set by LAGM. MCL 460.939(p).

**City of St. Johns PACE Special Assessment Agreement**

**APPENDIX B**

**SPECIAL ASSESSMENT PARCEL DESCRIPTION**

Parcel Number:

Address:

LEGAL DESCR:

**City of St. Johns PACE Special Assessment Agreement**

**APPENDIX C**

**SPECIAL ASSESSMENT ROLL**

PACE Project Special Assessment

Parcel Number:

Address:

St. Johns:

Owner:

Assessment:

Percent:

I certify that the above is the special assessment role created for the PACE project referenced in this document in the applicable City in the State of Michigan, subject to payment of the special assessment as outlined in Appendix C of this document.

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Dated

**City of St. Johns PACE Special Assessment Agreement**

**APPENDIX D**

**PAYMENT SCHEDULE  
(TBD)**



**City of St. Johns PACE Special Assessment Agreement**

**APPENDIX E**

**DESCRIPTION OF IMPROVEMENTS**

**APPENDIX F**

**PACE Program Application**

**Property and Property Owner Information**

1. **Property/Parcel Legal Name(s)** (as they appear on property tax records)

Parcel #: \_\_\_\_\_

Address: \_\_\_\_\_

Owner: \_\_\_\_\_

2. **Property Type** (double-click to check all that apply)

☐ Agricultural

☐ Commercial (including multifamily with 4 or more units)

- Type of commercial property - \_\_\_\_\_

☐ Industrial

☐ Nonprofit

3. **Property Record Owner(s) Contact Information**

Property Owner/Company Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

4. **Property Owner(s) Type**

☐ Individual

☐ LLP

☐ LLC

☐ Corporation

☐ 501(c)3

☐ Other \_\_\_\_\_

5. **Property Valuation**

State Equalized Value (SEV): \$ \_\_\_\_\_

Date of SEV: \_\_\_\_\_

Valuation (per Appraisal): \$ \_\_\_\_\_

Date of Appraisal: \_\_\_\_\_

6. **Existing Liens Against Property** (tax, special assessment, water or sewer charges, etc.)

Amount	Type	End Date
\$ _____	_____	_____
\$ _____	_____	_____

Total Dollar Amount of Liens Against Property: \$ \_\_\_\_\_

7. **Balance of Any Mortgage(s):**

	Amount of Mortgage	Name of Mortgage Holder
Mortgage	\$ _____	_____
Additional Debt on Property	\$ _____	_____

- a. **Consent:** If subject to a mortgage - Consent by mortgage holder(s) must be obtained.

## City of St. Johns PACE Special Assessment Agreement

### Energy Project Information

1. **PACE Project Developer** (Lean & Green Michigan can make referrals if necessary.)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Other Contractors: \_\_\_\_\_

2. **Overall Energy Project Cost:** \_\_\_\_\_

3. **Savings to Investment Ratio\*** (as provided in Savings Guarantee)

3a. Year 1: \_\_\_\_\_

3b. Overall: \_\_\_\_\_

4. **Useful Life of Energy Project Measures:** \_\_\_\_\_ years

5. **User ID for Energy Star Portfolio Manager** (for property): \_\_\_\_\_

### PACE Loan Details

1. **PACE Lender/Capital Provider** (Lean & Green Michigan can make referrals if necessary.)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

2. **Requested Assessment Amount**

Energy Project Cost:	\$	_____
Energy Audit	\$	_____
Engineering/Architect Plans	\$	_____
Building Permit Fees	\$	_____
Other (Please explain)	\$	_____
<b>Total Assessment Amount:</b>	<b>\$</b>	<b>_____ (Total of all lines above)</b>

3. **Requested Assessment Repayment Period:** \_\_\_\_\_ years

4. **Interest Rate Offered by Lender:** \_\_\_\_\_ %

#### All Attachments to Application:

- ☐ Appraisal
- ☐ Baseline energy audit on the property, including useful life calculations of individual measures.
- ☐ Cash flow analysis\*
- ☐ Savings guarantee\*
- ☐ Lender Consent from mortgage holder
- ☐ Mortgage statement
- ☐ Property tax record
- ☐ Title report

## City of St. Johns PACE Special Assessment Agreement

### APPENDIX G

#### FORM OF CERTIFICATE OF ASSIGNMENT

This Certificate of Assignment of the Special Assessment Agreement (“**Assignment**”), dated effective as of date, 20\_\_ (the “**Effective Date**”), is made by INSERT LENDER (“**Assignor**”) to (whoever lender is assigning their interest in the loan to) (“**Assignee**”). Assignor and Assignee are referred to at times, each individually as a “**Party**,” and collectively as the “**Parties**.”

#### Agreement

1. For good and valuable consideration and the payment of [INSERT PAYMENT AMOUNT] ([INSERT NUMERICAL VALUE]), the receipt and sufficiency of which is hereby acknowledged, confessed, stipulated and agreed upon by Assignor, Assignor ASSIGNS, BARGAINS, GIVES, SETS OVER, CONVEYS, TRANSFERS and DELIVERS to Assignee all of Assignor’s rights, title, interest, obligations, and duties under the Special Assessment Agreement entered into by Assignor, (whoever lender is assigning their interest in the loan to), and County or City? (the “**Transferred Interest**”), together with all of Assignor’s rights to receive payments from the Property Owner attributable to the Transferred Interest arising on and after the date of this Assignment.

2. Assignor warrants that: (i) it is authorized to execute this document; (ii) it is conveying good, indefeasible title to the Transferred Interest; and (iii) the Transferred Interest is free and clear of all liens and encumbrances, and no party has any rights in or to acquire, or hold as security, or otherwise, the Transferred Interest.

3. Assignor hereby agrees to make, execute and deliver to Assignee any and all further instruments of conveyance, assignment or transfer, and any and all other instruments, as may be necessary or proper to carry out the purpose and intent of this Assignment and/or to fully vest Assignee in all rights, titles, interests obligations, and duties of Assignor in and to the Transferred Interest, which instruments shall be delivered to Assignee as soon as possible without any condition or delay on the part of Assignor.

4. Assignee hereby accepts all of Assignor’s rights, title, interest, obligations, and duties under the Special Assessment Agreement and agrees to be bound by its terms. From and after the date of this Assignment and satisfaction of the conditions contained in Section 8.02(b) of the Special Assessment Agreement, Assignee shall be a party to the Special Assessment Agreement and shall have the rights and obligations of the Assignor specified thereunder, and Assignee shall be deemed to be the “Lender” for all purposes of the Special Assessment Agreement.

5. All notices, certificates or communications provided pursuant to the Special Assessment Agreement to Assignee shall be delivered as provided in the Special Assessment Agreement to:

**City of St. Johns PACE Special Assessment Agreement**

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Attention)

IN WITNESS WHEREOF, Assignor and Assignee hereby agree to be bound by the terms of this Assignment and each has executed this Assignment to be effective as of the Effective Date.

ASSIGNOR:

\_\_\_\_\_  
[INSERT LENDER]

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

Its: \_\_\_\_\_

ASSIGNEE:

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

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

Its: \_\_\_\_\_

## City of St. Johns PACE Special Assessment Agreement

### APPENDIX H

#### FORM OF LENDER CONSENT

##### Lender Consent and Acknowledgement of Owner Participation in City of St. Johns, Michigan, PACE Program

This acknowledgement is granted date, 20, by Name of Mortgage Holder (the “Lender”), and for the benefit of PROPERTY OWNER (the “Property Owner”), and the City of St. Johns (the “City”) in the State of Michigan.

#### Recitals

A. Pursuant to Public Act No. 270 of 2010, the City established the City Property Assessed Clean Energy (“PACE”) Program on date, 20, by resolution, to promote installation of energy efficiency improvements and/or renewable energy systems.

B. The Property Owner has applied to the Program to finance the amount of \$ AMOUNT OF FINANCING, to be paid back as an assessment on Property Owner’s real property, described in **Appendix D** attached hereto (the “Property”), over a period of twenty years.

C. Owner has previously executed a mortgage, deed of trust, dated , 20, to the Lender, covering the Property, to secure a promissory note in the sum of \$ AMOUNT OF LOAN, and recorded on , 20 at , Page, Clinton County Register of Deeds.

D. Repayment by the Property Owner under the PACE Special Assessment Agreement will be a statutory assessment levied against the Property notice of which shall be recorded against the Property in the Office of the City Clerk/Register of Deeds for the City, and which assessment, together with interest and any penalties, shall constitute a lien (the “Lien”) on the Property, and shall be collected subject to the terms agreed to between the parties and as contained in the PACE Special Assessment Agreement.

#### Consent and Acknowledgement

Lender acknowledges that it has been informed of the Property Owner’s participation in the City of St. Johns PACE Program and agrees that Property Owner’s execution of the PACE Special Assessment Agreement will not constitute a default under Lender’s Deed of Trust.

Execution of this Consent and Acknowledgement by Lender’s representative shall constitute full and complete consent to the Property Owner’s participation in the City of St. Johns PACE Program.

**City of St. Johns PACE Special Assessment Agreement**

Name of Lender: \_\_\_\_\_

Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

STATE OF MICHIGAN

CITY OF ST. JOHNS

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, on behalf of \_\_\_\_\_.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_, City, State of \_\_\_\_\_  
Acting in \_\_\_\_\_ City  
My Commission Expires: \_\_\_\_\_



**CITY OF ST. JOHNS, MICHIGAN**  
**REQUEST FOR COMMISSION ACTION**  
**September 25<sup>th</sup> 2023**

<b>Department: Public Services</b>	<b>Attachments:</b>
<b>Subject: Construction Equipment Purchase</b>	<b>[ X ] Finance Agreement</b> <b>[   ]</b> <b>[   ]</b>
<b>Prepared by: Justin Smith</b> <b>Director of Public Services</b>	<b>Approved by: Chad A. Gamble, P.E.</b> <b>City Manager</b>

**SUMMARY/HIGHLIGHT:** The current lease from Michigan CAT on three pieces of construction equipment is due to expire at the end of September. Due to the increased price of used construction equipment, coupled with our low “guaranteed buyback” from CAT, the city stands to gain a significant amount of equity to purchase the machines in accordance with our current lease agreement with Michigan CAT versus entering into a new lease. This action seeks approval for the purchase of the currently leased equipment. Staff will then work to leverage our equity and move into a new lease in the future.

**BACKGROUND/DISCUSSION:** At the July City Commission Meeting, Commissioners approved the plan to enter into a purchase agreement for the current equipment.

**STRATEGIC PLAN OBJECTIVE:** Public Facilities Goal #1: Continue to Offer High Quality Services and Facilities for Residents.

**FISCAL IMPACT:** Funds were budgeted for and approved for this purchase in the 23/24 Budget.

**RECOMMENDATION:** Staff recommends the Commission approve the purchase of the three pieces of construction equipment from Michigan CAT and authorize the Mayor and Clerk to sign associated financing documents reviewed by the City’s attorneys.



# Lease-Purchase Agreement

Lease Purchase Agreement Number: 110896-001

This Lease-Purchase Agreement dated the 27<sup>th</sup> day of September, 2023 (the "Lease"), by and between Bell Bank Equipment Finance, a division of Bell Bank, whose address is 15490 101<sup>st</sup> Ave N, Suite 200, Maple Grove, MN 55369, as agent for one or more persons (the "Lessor") and City of St Johns, located in Clinton County, as Lessee (the "Lessee"), whose address is 100 E State St, Saint Johns, MI 48879-1550.

## WITNESSETH:

WHEREAS, Lessee is authorized by State statutes to acquire (1) 2018 Caterpillar 259D Track Loader w/489 Hours, by entering into a lease-purchase agreement; and

WHEREAS, pursuant to a resolution duly adopted by the Lessee on see attached, the Lessee has determined that it is necessary to further the construction and maintenance purposes of the Lessee that it acquire (1) 2018 Caterpillar 259D Track Loader w/489 Hours described herein as Equipment; and

WHEREAS, Lessor is willing to acquire the Equipment and to lease and sell it to Lessee pursuant to this Lease;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

## ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 **Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

**Authorized Representative:** Shall mean (a) with respect to the Lessee, the officer of the Lessee or any other Person or Persons at any time designated by resolution of Lessee's governing body or written certificate conferring authority upon such person to act on behalf of the Lessee with respect to this Lease; and (b) with respect to the Lessor, any authorized signatory of the Lessor authorized by their bylaws to act or to execute documents on behalf of the Lessor.

**Certificate of Acceptance:** The Certificate of Acceptance of Lessee the form of which is attached hereto as Exhibit C.

**Code:** The Internal Revenue Code of 1986, as amended and any regulations promulgated thereunder by the United States Department of the Treasury.

**Commencement Date:** The date upon which Lessee's obligations to make Lease-Purchase Payments accrues as evidenced by the issuance to Lessor of the Certificate of Acceptance attached hereto as Exhibit C.

**Contractor:** Each of the manufacturers or vendors from whom Lessee (or Lessor at Lessee's request) has ordered or will order or with whom Lessee (or Lessor at Lessee's request) has contracted or will contract for the manufacture, delivery and/or installation of the Equipment.

**Cost or Costs:** The costs of acquisition and installation of the Equipment and all other costs incidental and related thereto, including the costs of preparation, marketing and sale of this Lease.

### **Equipment:**

The (1) 2018 Caterpillar 259D Track Loader w/489 Hours described in the attached Exhibit A which is being leased and purchased by Lessee pursuant to this Lease.

**Fiscal Year:** Each twelve (12) month fiscal period of Lessee commencing on the \_\_\_\_\_ of \_\_\_\_\_ and ending on the \_\_\_\_\_ of \_\_\_\_\_ the following year.

**Independent Counsel:** An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

**Interest:** The portion of any Lease-Purchase Payment designated as and comprising interest as shown in the attached Exhibit B.

**Lease:** This Lease-Purchase Agreement dated as of 9/27/2023, whereby the Lessor has leased the Equipment to Lessee, as the same may from time to time be amended or modified.

**Lease-Purchase Payment:** The payment due from Lessee to Lessor on each Payment Date, as shown on Exhibit B.

**Net Proceeds:** Any insurance proceeds, paid with respect to the Equipment, remaining after payment therefrom of all expenses incurred in the collection thereof.

**Payment Date:** The date upon which any Lease-Purchase Payment is due and payable as provided in Exhibit B.

**Permitted Encumbrances:** As of any particular time: (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to the provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and amendments hereto, (iii) Lessor's interest in the Equipment, and (iv) any mechanic's, laborers, material person's supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a Contractor or which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

**Person or Persons:** An individual, partnership, corporation, trust or unincorporated organization.

**Prepayment Price:** With respect to the Equipment, as of any Payment Date, the amount so designated and set forth opposite such date in the attached Exhibit B.

**Principal:** The portion of any Lease-Purchase Payment designated as principal in the attached Exhibit B.

**Request for Disbursement of Funds:** The Request for Disbursement of Funds of Lessee, the form of which is attached hereto as Exhibit C-1.

**Specifications:** The bid specifications and/or purchase order pursuant to which Lessee has ordered the Equipment from a Contractor.

**State:** The State of Michigan.

**State and Federal Law or Laws:** The Constitution and any law of the State and any charter, ordinance, rule or regulation or any agency or political subdivision of the State, and any law of the United States, and any rule or regulation of any federal agency.

**Term, Term of this Lease or Lease Term:** The period commencing on the execution of this Lease and ending on the date the last Lease-Purchase Payment is due and payable, as shown on Exhibit B.

Section 1.2 **Exhibits.** The following Exhibits are attached to and by reference made part of this Lease:

**Exhibit A:** A description of the Equipment including the serial number thereof which shall be inserted when available.

**Exhibit B:** A schedule to be completed by Lessor as provided in Section 4.1, indicating the date upon which the Term of this Lease shall end, the date and amount of each Lease-Purchase Payment coming due under the Lease Term and the amount of Principal and Interest comprising each Lease-Purchase Payment.

**Exhibits C and C-1:** A Certificate of Acceptance of Lessee with a Request for Disbursement of Funds attached indicating that the Equipment has been or will be delivered and installed in accordance with the Specifications, and has been accepted by Lessee, the date on which Lease-Payments shown in Exhibit B shall commence, and that certain other requirements have been met by Lessee.

**Exhibit D:** An opinion of counsel to Lessee as to the organization, nature and powers of Lessee, the validity, execution and delivery of this Lease and various related documents; the absence of litigation; and related matters.

**Exhibit E:** A form of resolution of the governing body of Lessee, relating to this Lease and, if applicable, certain federal tax matters.

## **ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES**

Section 2.1 **Representations, Covenants and Warranties of Lessee.** Lessee represents, covenants and warrants as follows:

- (a) Lessee is a political subdivision and municipal corporation, duly organized and existing under the Constitution and laws of the State.
- (b) Lessee is authorized under the Constitution and laws of the State to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.

- (c) The officer of Lessee executing this Lease has been duly authorized to execute and deliver this Lease under the terms and provisions of a resolution of Lessee's governing body, or by other appropriate official action.
- (d) In authorizing and executing this Lease, Lessee has complied with all open meeting laws, public bidding and other State and Federal laws applicable to this Lease and the acquisition of the Equipment by Lessee.
- (e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other Person, firm or corporation, except as provided under the terms of this Lease.
- (f) Lessee will use the Equipment during the Lease Term only to perform its essential governmental functions.
- (g) Lessee will take no action that would cause the interest portion of the Lease-Purchase Payments to become includable in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the "Code") and Treasury Regulations promulgated thereunder (the "Regulations"), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest portion of the Lease-Purchase Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations.
- (h) Upon execution of this Lease-Purchase Agreement, and upon each request for a disbursement of funds hereunder, Lessee will provide to Lessor a completed and executed copy of the Certificate of Acceptance attached hereto as Exhibit C.
- (i) Upon the execution of this Lease, Lessee will provide to Lessor an opinion of its legal counsel in the form attached hereto as Exhibit D.
- (j) Lessee will submit to the Internal Revenue Service an information reporting statement at the time and in the form required by the Code.
- (k) Lessee will cause a resolution substantially in the form attached hereto as Exhibit E to be adopted by its governing body.
- (l) Lessee does not reasonably anticipate that it will issue tax-exempt obligations (not including "private activity bonds" as defined in Section 141 of the Code) in an aggregate amount in excess of \$10,000,000 during the calendar year in which the Term commences, and this Lease is designated as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code relating to deductibility of interest by financial institutions.

Section 2.2 **Representations, Covenants and Warranties of Lessor.** Lessor represents, covenants and warrants as follows:

- (a) Lessor has the power to enter into this Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same.
- (b) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or agreement or instrument to which Lessor is now a party or by which Lessor is bound; constitutes a default under any of the foregoing; or results in the creation or imposition any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Equipment, except Permitted Encumbrances.

### ARTICLE III AGREEMENT TO LEASE

Section 3.1 **Lease.** Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon terms and conditions set forth in this Lease and subject to the option to purchase set forth in Section 4.3 hereof.

Section 3.2 **Possession and Enjoyment.** Lessor hereby covenants to provide Lessee during the Term with the quiet use and enjoyment of the Equipment, and Lessee intends to during the Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in the Lease. Lessor will, at the request of Lessee and at Lessee's cost, join any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so. All warranties extended upon the Equipment by the Contractors shall inure to the benefit of the Lessee during the term of this Lease.

Section 3.3 **Lessor Access to Equipment.** Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Equipment. Lessee further agrees that Lessor shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Lessee to perform its obligations hereunder.

Section 3.4 **Tax and Ownership and Lessee.** The Lessor warrants and represents that it shall not at any time during the term of the Lease claim depreciation, cost recovery deductions, or tax credit for federal income tax purposes with respect to the equipment, or portion thereof, and that it shall not take any position for federal income tax purposes that is inconsistent with the unequivocal title and ownership for any and all tax purposes of the Lessee.

## ARTICLE IV TERM OF LEASE

Section 4.1 **Lease Term.** This Lease shall be in effect for a Term commencing upon the execution hereof and ending as provided in Section 4.2.

Section 4.2 **Termination of Lease Term.** The Term of this Lease will terminate upon the occurrence of the first of the following events:

- (a) A default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII without payment of all Lease-Purchase Payments; or
- (b) The payment by Lessee of all Lease-Purchase Payments and all other amounts authorized or required to be paid by Lessee hereunder.
- (c) Nonappropriation of funds by Lessee pursuant to Section 12.7 hereof.

Section 4.3 **Option to Purchase.** Lessee has the option to purchase the Equipment by paying the applicable prepayment price in accordance with Section 10.1 hereof.

## ARTICLE V LEASE-PURCHASE PAYMENTS

Section 5.1 **Lease-Purchase Payments.** Lessee agrees to pay Lease-Purchase Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Lease-Purchase Payments shall be paid to Lessor at its offices at the address specified in Section 1.1 of this Lease, or to such other Person or entity to which Lessor has assigned such Lease-Purchase Payments as specified in Article XI, at such place as such assignee may from time to time designate in lawful money of the United States of America to Lessor or, in the event of assignment of the right to receive Lease-Purchase Payments by Lessor, to its assignee. Interest shall accrue from the date of the Certificate of Acceptance.

Section 5.2 **Source of Payment.** All Lease-Purchase Payments required to be paid Lessor pursuant to this Lease shall be paid from moneys duly budgeted, appropriated, obligated and otherwise provided and made available therefor by Lessee.

Section 5.3 **Interest Component.** A portion of each Lease-Purchase Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Lease-Purchase Payment.

Section 5.4 **Lease-Purchase Payments to be Unconditional.** The obligation of Lessee to make Lease-Purchase Payments or any other payments required hereunder shall be absolute and unconditional in all events, except as expressly provided under this Lease. Notwithstanding any dispute between Lessee and Lessor or any other Person, Lessee shall make all Lease-Purchase Payments and other payments required hereunder when due and shall not withhold any Lease-Purchase Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Lease-Purchase Payments or other payments required under this Lease. Lessee's obligation to make Lease-Purchase Payments or other payments shall not be abated through accident or unforeseen circumstances. Except as provided in Section 12.7 hereof, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder, and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damage therefor.

Section 5.5 **Late Payments.** See Section 12.6.

## ARTICLE VI INSURANCE AND NEGLIGENCE

Section 6.1 **Liability Insurance.** Upon receipt of possession of the Equipment, Lessee shall take measures as may be necessary to ensure that any

liability for injuries to or death of any Person or damage to or loss of property arising out of or in any way relating to the condition or operation of the Equipment or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

- Section 6.2 **Property Insurance.** Upon receipt of possession of the Equipment, Lessee shall have and assume the risk of loss with respect thereto. Lessee shall procure and maintain continuously in effect during the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Equipment, or to the purchase of the Equipment, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.
- Section 6.3 **Worker's Compensation Insurance.** If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.
- Section 6.4 **Requirements for all Insurance.** All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (or riders) evidencing any such insurance procedure by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is not obtainable in which event Lessee shall notify Lessor of this fact.
- Section 6.5 **Lessee's Negligence.** Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any Person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses and damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fee) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit, or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.
- Section 6.6 **Damage to or Destruction of Equipment.** If after delivery of the Equipment to Lessee all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practical after such event, replace the same at Lessee's sole cost and expense with equipment of equal or greater value to the Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement, subject to the provisions of Section 12.7 hereof. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If Lessee fails or refuses to notify Lessor within the required period, Lessor may, at its option, exercise its remedies under Article XII hereof. The Net Proceeds of all insurance payable with respect to the Equipment shall be available to Lessee and shall be used to discharge Lessee's obligations under this Section.
- Section 6.7 **Cooperation of Lessor.** The Lessor shall cooperate fully with the Lessee at the sole expense of the Lessee, in filing any proof of loss with respect to any insurance policy covering the casualties described in this Section. To the extent it may lawfully do so, the Lessor will permit the Lessee to litigate in any proceeding resulting therefrom and the name of it and on behalf of the Lessor, provided that the Lessor has been indemnified from all costs and expenses therefor, including without limitation, reasonable counsel fees incurred by the Lessor in connection with any such litigation in its name. In no event will the Lessor voluntarily settle or consent to the settlement of any proceeding, arising out of any insurance claim with respect to the Equipment or any part thereof, without the written consent of the Lessee.

## ARTICLE VII OTHER OBLIGATIONS OF LESSEE

- Section 7.1 **Use; Permits.** Lessee shall exercise due care in the installation, use, operation and maintenance of the Equipment, and shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any State or Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses necessary of the installation, operation, possession and use of the Equipment. Lessee shall comply with all State and Federal Laws applicable to the installation, operation, possession and use of the Equipment, and if compliance with any such State or Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at its expense.

- Section 7.2 **Maintenance of Equipment by Lessee.** Lessee shall, at its own expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Equipment in such condition. Lessor shall have no responsibility for any of these repairs or replacements.
- Section 7.3 **Taxes, Other Governmental Charges and Utility Charges.** (a) Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind whatsoever which are at any time lawfully assessed or levied against or with respect to the Equipment, the Lease-Purchase Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien of the Equipment; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.
- (b) Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contest to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss for forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in the form satisfactory to Lessor.
- Section 7.4 **Advances.** If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 18.0 % per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.
- Section 7.5 **Disbursements.** (a) As payments are required for the Equipment under this Lease, the Lessee as the agent for the Lessor shall prepare and submit a Certificate of Acceptance of Lessee with a Request for Disbursement of Funds to the Lessor. (b) The Lessor shall permit the withdrawal of funds requested in the Request for Disbursement of Funds, and such funds shall be applied to the payment of the Cost of the Equipment.

## ARTICLE VIII TITLE

- Section 8.1 **Title.** During the Term of this Lease, legal title to the Equipment and any all repairs, replacements, substitutions and modifications to it shall be in Lessee's name subject to Lessor's interest. Upon termination of this Lease for any of the reasons specified in Section 4.2 (b), Lessor's interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security or other interest in the Equipment.
- Section 8.2 **Security Interest.** Lessor shall have and retain a security interest under the Uniform Commercial Code, Certificate of Title or other applicable State or Federal Law in the Equipment, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof pursuant to Section 8.5, in order to secure Lessee's payment of all Lease-Purchase Payments due during the Term of this Lease and the performance of all other obligations herein to be performed by Lessee. Lessee will join with Lessor in executing such financing statements or other documents and will perform such acts as Lessor may request to establish and maintain a valid security interest in the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags, and maintain such markings during the Term of this Lease, so as clearly to disclose Lessor's security interest in the Equipment.
- Section 8.3 **Liens.** During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.
- Section 8.4 **Installation of Lessee's Equipment.** Lessee may at any time and from time to time, in its sole discretion and at its own expense, install other items of equipment in or upon the Equipment, which items shall be identified by tags or other symbols affixed thereto as property of

Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Equipment resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease-purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Equipment.

Section 8.5 **Modification of Equipment.** Lessee shall at its own expense, have the right to make repairs to the Equipment, and to make repairs, replacements, substitutions and modifications to all or any part of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Equipment and be subject to the provisions of the Lease. Such work shall not in any way damage the Equipment or cause it to be used for purposes other than those authorized under the provisions of State or Federal Law or those contemplated by this Lease; and the Equipment, upon completion of any such work shall be of a value which is not less than the value of the Equipment immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Equipment for labor or materials furnished in connection with any repair, replacement, substitution or modification made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessee will cooperate fully with Lessee in any such contest.

Section 8.6 **Personal Property.** The Equipment is and shall at all times be and remain personal property notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanently rested upon real property or any building thereon or attached in any manner to what is permanent by means of cement, plaster, nails, bolts, screws or otherwise.

## ARTICLE IX WARRANTIES

Section 9.1 **Selection of Equipment.** The Equipment and the Contractor have been selected by Lessee, and Lessor shall have no responsibility in connection with the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Contractor or its sales representative of the order submitted, or any delay or failure by the Contractor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee. Lessee authorized Lessor to add the serial number of the Equipment to Exhibit A when available.

Section 9.2 **Installation and Maintenance of Equipment.** Lessor shall have no obligation to install, erect, test, inspect, service or maintain the Equipment under any circumstances, but such actions shall be the obligation of Lessee or the Contractor.

Section 9.3 **Contractor's Warranties.** Lessor hereby assigns to Lessee for and during the Term of the Lease, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Equipment, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.

Section 9.4 **Patent Infringement.** Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any Contractor with respect to the Equipment. Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Equipment furnished pursuant to this Lease.

Section 9.5 **Disclaimer of Warranties.** THE EQUIPMENT IS DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

## ARTICLE X PREPAYMENT

Section 10.1 **When Available.** Lessee shall have the option to prepay its obligations under this Lease on any Payment Date at an amount equal to the applicable Prepayment Price.

Section 10.2 **Release of Lessor's Interest.** Upon the prepayment of Lessee's obligations under this Lease in accordance with Section 10.1 hereof,



Lessee shall have no further obligations under this Lease and this Lease shall terminate in accordance with Section 4.2(b). Thereupon the Lessor shall relinquish title to the Equipment in accordance with Section 8.1.

## **ARTICLE XI ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

Section 11.1 **Assignment by Lessor.** Except as otherwise provided herein, Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Lease, the Lease-Purchase Payments or other amounts due hereunder and the Equipment may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. No such assignment shall be effective as against Lessee unless and until the assignor shall have filed with Lessee a copy or written notice thereof identifying the assignee. Lessee shall pay all Lease-Purchase Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment or notice of assignment filed with Lessee. During the Lease Term, Lessee shall keep a complete and accurate record of all such assignments. In the event Lessor assigns participation in its right, title and/or interest in and to this Lease, the Lease-Purchase Payments and other amounts due hereunder and the Equipment, such participants shall be considered to be Lessor with respect to their participated shares thereof.

Section 11.2 **Assignment and Subleasing by Lessee.** Neither this Lease nor Lessee's interest in the Equipment may be assigned by Lessee without the written consent of Lessor. However, the Equipment may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

- (a) This Lease and the obligation of Lessee to make Lease-Purchase Payments hereunder, shall remain obligations of Lessee.
- (b) The sublease shall assume the obligation of Lessee hereunder to the extent of the interest subleased.
- (c) Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.
- (d) No sublease by Lessee shall cause the Equipment to be used for a purpose other than an essential governmental function authorized under the provisions of the Constitution and the laws of the State.
- (e) No sublease shall cause the Interest component of the Lease-Purchase Payments due with respect to the Equipment to become includable in gross income of the recipient for federal income tax purposes.

Section 11.3 **Restriction on Mortgage or Sale of Equipment by Lessee.** Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Equipment or any portion thereof during the Term of this Lease, or remove the same from its boundaries, without the written consent of Lessor.

## **ARTICLE XII EVENTS OF DEFAULT AND REMEDIES**

Section 12.1 **Events of Default Defined.** (a) The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Equipment, any one or more the following events:

- (i) Except as permitted by Section 12.7 hereof, failure by Lessee to pay any Lease-Purchase Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.
- (ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.
- (iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental or proprietary function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar acts which may

hereafter be enacted.

- (b) The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to carry out its obligation under this Lease with respect to the Equipment, other than its obligation to pay Lease-Purchase Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of god, strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections, riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

**Section 12.2 Remedies of Default.** Whenever any event of default referred to in Section 12.1, clauses (i) to (iii) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

- (i) With or without terminating this Lease, re-enter and take possession of such Equipment and exclude Lessee from using it; provided, however, that if this Lease has not been terminated, Lessor shall return possession of such Equipment to Lessee when the event of default is cured; and provided further that Lessee shall continue to be responsible for the Lease-Purchase Payments due with respect to such Equipment during the Fiscal Year then in effect; or
- (ii) With or without terminating this Lease, re-enter and take possession of such Equipment, and sell, lease or sublease such Equipment or any part of it, holding Lessee liable for the difference between (a) the sales price, rent and other amounts paid by the purchaser, lessee or sublessee pursuant to such sales agreement, lease or sublease and (b) the balance of the Lease-Purchase Payments and other amounts owed by Lessee with respect to such Lease; provided, however, that nothing contained herein shall impose an obligation upon Lessor so to sell, lease or sublease such Equipment and provided that any excess proceeds from such disposition shall be retained by Lessor; or
- (iii) With or without terminating this Lease, declare all Lease-Purchase Payments during the Fiscal Year then in effect due or to become due with respect to such Lease in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Lease-Purchase Payments shall be immediately due and payable; or
- (iv) Take whatever action at law or in equity may appear necessary or desirable to collect the Lease-Purchase Payments then due and thereafter to become due during the then current Fiscal Year of Lessee with respect to such Lease, or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

**Section 12.3 Return of Equipment.** Upon termination of this Lease prior to the payment of all Lease-Purchase Payments, Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 7.2, in the following manner as may be specified by Lessor: (a) by delivering the Equipment at Lessee's cost and expense to such place within the State as Lessor shall specify; or (b) by loading such portions of the Equipment as are considered movable at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the place specified by Lessor. If Lessee refuses to return the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.

**Section 12.4 No Remedy Exclusive.** No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof by any such right and power. Each remedy may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

**Section 12.5 Agreement to Pay Attorney's Fees and Expenses.** In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys and/or incur other expenses for the collection of monies or for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fee of such attorneys and/or such other reasonable expenses so incurred by the nondefaulting party. In the event that legal proceedings relating to this Lease are commenced in any court or before any other tribunal of competent jurisdiction, the reasonable legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the nonprevailing party on demand of the prevailing party.

Section 12.6 **Late Charges.** Whenever any event of default referred to in Section 12.1, clause (i) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge equal five percent (5.0%) per month of the delinquent Rental Payment, and Lessee shall be obligated to pay the same immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section 12.6 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

Section 12.7 **Non-Appropriation of Funds.** (a) Notwithstanding any provision in the Lease to the contrary, in the event that no funds or insufficient funds are appropriated by Lessee's governing body for the next fiscal year for Lease-Purchase Payments due under this Lease, this Lease shall terminate the end of such fiscal year on the last day of the fiscal year for which appropriations were received and Lessee shall return the Equipment to Lessor (at Lessee's expense, to a destination Lessor directs, in good working condition less normal wear and tear), and cancel this Lease by notice to such effect served not less than thirty (30) days prior to the end of the Lessee's fiscal year. Lessee shall notify Lessor of nonappropriation within thirty (30) days of its occurrence.

(b) Lessee and Lessor acknowledge and agree that the Lease-Purchase Payments hereunder shall constitute currently budgeting expenditures of Lessee from its capital expenditure fund or successor fund thereto. Lessee's obligations under this Lease shall be subject to Lessee's annual right to terminate this Lease, and shall not constitute a mandatory charge of requirement in any ensuing fiscal year beyond the then current fiscal year. No provision of this Lease shall be construed or interpreted as creating a general obligation or other indebtedness of Lessee within the meaning of any constitutional or statutory debt limitation. This Lease shall not directly or indirectly obligate Lessee to make any payments beyond those budgeted and appropriated from its general fund for Lessee's then current fiscal year. Lessee shall be under no obligation whatsoever to exercise its option to purchase the Equipment. No provision of this Lease shall be construed to pledge or create a lien on any class or source of Lessee monies.

### ARTICLE XIII ADMINISTRATIVE PROVISIONS

Section 13.1 **Notices.** All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified below; provided, that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificate, legal opinion or other communication will be sent.

Lessor: Bell Bank Equipment Finance  
15490 101<sup>st</sup> Ave N, Suite 200  
Maple Grove, MN 55369

Lessee: City of St Johns  
100 E State St  
Saint Johns, MI 48879-1550

Section 13.2 **Financial Information.** During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue to pay Lease-Purchase Payments required under this Lease as may be requested by Lessor or its assignee.

Section 13.3 **Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.4 **Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.5 **Amendments, Changes and Modification.** This Lease may be amended or any of its terms modified only by written document duly authorized, executed, and delivered by Lessor and Lessee.

Section 13.6 **Captions.** The captions or headings in this Lease are for convenience only and in no way defend, limit or describe the scope or intent of any provisions, articles, sections or clauses of this Lease.

Section 13.7 **Further Assurances and Corrective Instruments.** Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, for carrying out the expressed intention of this Lease.

Section 13.8 **Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.9 **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State.

Section 13.10 **Anti-Discrimination.** Lessor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, sexual orientation or physical defect or disability with regard to but not limited to employment, upgrading, promotion or transfer, recruitment or recruitment advertising, layoffs or termination or selection for training.

Section 13.11 **Lessor and Lessee Representatives.** Whenever under the provisions of this Lease, the approval of the Lessor or the Lessee is required to take some action at the request of the other, such approval of such request shall be given by an Authorized Representative of the Lessor, for the Lessor, and by an Authorized Representative of the Lessee, for the Lessee. Any party hereto shall be authorized to rely on such approval of request.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officers; and Lessee has caused this Lease to be executed in its name by duly authorized officers, as of the date first above written.

BELL BANK EQUIPMENT FINANCE, a division of Bell Bank, as Lessor

\_\_\_\_\_  
Print or type full name

By \_\_\_\_\_  
Signature

Its \_\_\_\_\_

\_\_\_\_\_  
City of St Johns as Lessee

\_\_\_\_\_  
Print or type full name

By \_\_\_\_\_  
Signature

Its \_\_\_\_\_  
Title

**EXHIBIT A**  
**DESCRIPTION OF EQUIPMENT**

(1) 2018 Caterpillar 259D Track Loader w/489 Hours

Serial Number: FTL18022

**EXHIBIT B  
PAYMENT SCHEDULE**

Commencement Date: 9/27/2023

	<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Amount</u>	<u>Principal Amount</u>	<u>*Purchase Option Price</u>
Lease	09/27/2023				21,006.60
1	09/27/2023	4,055.85	0.00	4,055.85	16,950.75
<b>2023 Totals</b>		<b>4,055.85</b>	<b>0.00</b>	<b>4,055.85</b>	
2	09/27/2024	4,055.85	1,066.21	2,989.64	13,961.11
<b>2024 Totals</b>		<b>4,055.85</b>	<b>1,066.21</b>	<b>2,989.64</b>	
3	09/27/2025	4,055.85	878.16	3,177.69	10,783.42
<b>2025 Totals</b>		<b>4,055.85</b>	<b>878.16</b>	<b>3,177.69</b>	
4	09/27/2026	4,055.85	678.28	3,377.57	7,405.85
<b>2026 Totals</b>		<b>4,055.85</b>	<b>678.28</b>	<b>3,377.57</b>	
5	09/27/2027	4,055.85	465.83	3,590.02	3,815.83
<b>2027 Totals</b>		<b>4,055.85</b>	<b>465.83</b>	<b>3,590.02</b>	
6	09/27/2028	4,055.85	240.02	3,815.83	0.00
<b>2028 Totals</b>		<b>4,055.85</b>	<b>240.02</b>	<b>3,815.83</b>	
<b>Grand Totals</b>		<b>24,335.10</b>	<b>3,328.50</b>	<b>21,006.60</b>	

TOTAL: \$21,006.60

INTEREST RATE: 6.29%

\*Amount due after payment of Lease-Purchase Payment due on the same day.

All amounts received by Lessor shall be applied first to late payment charges and expenses, then to accrued interest, and then to principal payments in inverse order, as determined by lessor, as permitted by law.

**EXHIBIT C  
ACCEPTANCE CERTIFICATE**

The undersigned, being a duly appointed Lessee Representative, under the Lease Purchase Agreement dated as of 9/27/2023 (the ("Lease"), by and between Bell Bank Equipment Finance ("Lessor"), and the City of St Johns, ("Lessee"), hereby certifies on behalf of Lessee with respect to the Equipment to be acquired under Lease Exhibit A, that the portion of the Equipment described on the attachment to this Acceptance Certificate has been delivered and installed pursuant to and in accordance with said Lease and has been accepted by Lessee.

**Dated:** \_\_\_\_\_.

As Lessee: \_\_\_\_\_ City of St Johns \_\_\_\_\_

\_\_\_\_\_  
**Print or type full name**

**By** \_\_\_\_\_  
**Signature**

**Its** \_\_\_\_\_  
**Title**

**EXHIBIT C-1  
REQUEST FOR DISBURSEMENT OF FUNDS**

TO: **Bell Bank Equipment Finance ("Lessor")**  
15490 101<sup>st</sup> Ave N, Suite 200  
Maple Grove, MN 55369

FROM: City of St Johns (**"Lessee"**)  
100 E State St  
Saint Johns, MI 48879-1550

The Lessee hereby requests disbursement of funds pursuant to the Lease Purchase Agreement dated 9/27/2023 (the "Lease"), between the Lessor and Lessee, as follows:

1. Amount to be disbursed: \$21,006.60.
2. The payee(s) are Caterpillar Financial Services Corporation .
3. Purchase of the payment: Payment for property as described in the Lease and Exhibit C.
4. Bills, receipts, invoices or other documents evidencing the amount requested are attached hereto.
5. The Lessee hereby certifies that the amounts requested to be disbursed were properly incurred in connection with the acquisition of the Equipment as described in the Lease and were not subject of any previous request for disbursement.
6. This request is the final disbursement request.

**Dated:** \_\_\_\_\_

LESSEE: \_\_\_\_\_ City of St Johns

\_\_\_\_\_  
**Print or type full name**

**By** \_\_\_\_\_  
**Signature**

**Its** \_\_\_\_\_  
**Title**



**Lansing**  
313 S. Washington Square  
Lansing MI 48933

**Detroit**  
333 W. Fort Street – Suite 1400  
Detroit MI 48226

Walter S. Foster  
1878-1961  
Richard B. Foster  
1908-1996  
Theodore W. Swift  
1928-2000  
John L. Collins  
1926-2001

Webb A. Smith - *Retired*

Charles A. Janssen  
Charles E. Barbieri  
Scott L. Mandel  
Michael D. Sanders  
Brent A. Titus

Brian G. Goodenough  
Matt G. Hrebec  
Deanna Swisher  
Thomas R. Meagher  
Douglas A. Mielock  
Scott A. Chernich  
Paul J. Millenbach  
Dirk H. Beckwith  
Brian J. Renaud  
Lynwood P. VandenBosch  
Lawrence Korolewicz  
James B. Doezema  
Anne M. Seurnyck  
Michael D. Homier  
Scott H. Hogan  
Benjamin J. Price

**Southfield**  
28411 Northwestern Highway – Suite 500  
Southfield MI 48034

**Holland**  
151 Central Avenue – Suite 260  
Holland MI 49423

Michael R. Blum  
Jonathan J. David  
Andrew C. Vredenburg  
Julie I. Fershtman  
Todd W. Hoppe  
Jennifer B. Van Regenmorter  
Thomas R. TerMaat  
Frederick D. Dilley  
David R. Russell  
Joel C. Farrar  
Laura J. Genovich  
Karl W. Butterer, Jr.  
Mindi M. Johnson  
Ray H. Littleton, II  
Jack L. Van Coevering  
Anna K. Gibson

Nicholas M. Oertel  
Alicia W. Birach  
Adam A. Fadly  
Michael J. Liddane  
Ryan E. Lamb  
Clifford L. Hammond  
Matthew S. Fedor  
Andrea Badalucco  
Stefania Gismondi  
Leslie A. Abdoo  
Julie L. Hamlet  
Michael C. Zahrt  
Mark T. Koerner  
Warren H. Krueger, III  
Taylor A. Gast  
Rachel G. Olney

Thomas K. Dillon  
Robert A. Hamor  
Jacquelyn A. Dupler  
Dora A. Brantley  
Stephen W. Smith  
Amanda Afion Martin  
Steven J. Tjapkes  
Daniel S. Zick  
Alexander S. Rusek  
Benjamin R. Judd  
Erica E.L. Huddas  
Jennifer L. Montasir  
Bryan Cermak  
Mikhail Murshak  
Kevin J. Roragen  
Courtney G. Agrusa

**Grand Rapids**  
1700 E. Beltline NE – Suite 200  
Grand Rapids MI 49525

**St. Joseph**  
800 Ship Street – Suite 105  
St. Joseph MI 49085

Rachael Kuilema Klein  
Hilary J. McDaniel Stafford  
Amanda J. Dernovshek  
Brandon M. H. Schumacher  
Alaina M. Nelson  
Sydney T. Steele  
Anthony M. Dalimonte  
Jim W. Scales  
Benjamin C. Dilley  
Nicholas J. Stock, II  
Keith T. Brown  
Mallory E. Reader  
Reed K. Powers  
Dina D. Kashat

**Writer's Direct Phone:** 616.726.2207

**Fax:** 616.726.2299

**Reply To:** Grand Rapids

**Email:** SHogan@fosterswift.com

September \_\_\_, 2023

**Via UPS Next Day Air**

Bell Bank Equipment Finance  
15490 101<sup>st</sup> Ave. N., Suite 200  
Maple Grove, MN 55369

Re: Lease Purchase Agreement by and between Bell Bank Equipment Finance, a division of Bell Bank (“Lessor”) and the City of St. Johns (“Lessee”) dated as of 9/27/2023.

Ladies and Gentlemen:

As counsel to the City of St. Johns, Clinton County, Michigan (the “*Lessee*”), we have examined the Lease-Purchase Agreement described above (the “*Lease Agreement*”), between the Lessee and Bell Bank Equipment Finance, as lessor (“*Lessor*”), together with the Disbursement Request Form and Certificate of Acceptance, and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement. The Lease Agreement and related documents are collectively referred to as the “*Transaction Documents*.” Based upon the foregoing examination and upon an examination of such other documents (including a Resolution of the Governing Body of the Lessee) and matters of law as we have deemed necessary or appropriate, we are of the opinion that:

1. To the best of our knowledge, the execution of the Lease and the appropriation of moneys to pay the Lease-Purchase Payments coming due thereunder does not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

2. The Lessee is a Michigan municipal corporation, which is a body corporate and politic duly established and validly existing as a political subdivision of the State of Michigan under the Constitution and laws of the State of Michigan with full power and authority to enter into the Transaction Documents.

3. To the best of our knowledge, the Transaction Documents have each been duly authorized, executed, and delivered by the Lessee and are in full compliance with all local, state and federal laws. Assuming due authorization, execution and delivery thereof by the Lessor, the Transaction Documents

Bell Bank Equipment Finance

September \_\_\_, 2023.

Page 2

constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.

4. We are informed that the Lessee has complied with all applicable statutes, laws, rules, regulations, notice and public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. To the best of our knowledge, the resolution adopted by the Governing Body of the Lessee authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings. No approval, consent or withholding of objections is required from any State, federal or local governmental authority or instrumentality with respect to the entry into or performance by the Lessee of its obligations under the Transaction Documents, except as have already been obtained.

5. We are informed that no litigation or proceeding is pending or, to the best of our knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the governing body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. To the best of our knowledge, there is no litigation pending or, to the best of our knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement. To the best of our knowledge, the entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee or on the Equipment (as such term is defined in the Lease Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound.

All capitalized terms have the same meanings as in the Transaction Documents unless otherwise provided herein.

In forming the basis for our opinions set forth above, we have assumed:

- (A) The genuineness of all signatures and the authenticity of all documents submitted to us as originals;
- (B) The conformity to originals of all documents submitted to us as copies;
- (C) The legal capacity of natural persons;
- (D) The truthfulness, accuracy, and completeness of the information, representations, and warranties contained or made in any Transaction Document;
- (E) That each of the parties to the Transaction Documents, other than the Lessee, is duly organized, validly existing, and in good standing (or its equivalent, if applicable) under the laws of the jurisdiction of its organization and that each such party has the power and authority (corporate or otherwise) to execute and deliver each Transaction Document to which it is a party and to perform

Bell Bank Equipment Finance

September \_\_, 2023.

Page 3

its obligations thereunder;

- (F) Each Transaction Document is the legal, valid, and binding obligation of each party thereto, other than the Lessee, enforceable against such party in accordance with its terms;
- (G) As to questions of fact material to our opinion, we have relied upon representations of Lessee contained in the Resolution and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation;
- (H) the conduct of the parties to the Lease Agreement has complied with any requirement of good faith, fair dealing and conscionability and such parties will perform their obligations thereunder reasonably, in good faith and with fair dealing and such parties will act reasonably, in good faith and with fair dealing in taking action, exercising discretion or making determinations thereunder;
- (I) there has not been any mutual mistake of fact, fraud, duress or undue influence in connection with the execution and delivery of the Lease Agreement; and
- (J) each party to the Lease Agreement will act in accordance with, and will refrain from taking any action which is prohibited by, the terms and conditions of the Lease Agreement.

This opinion is subject to the following qualifications and limitations: (i) we are licensed to practice law in the State of Michigan and, in rendering the foregoing opinions, do not hold ourselves out to be qualified to express a legal opinion with respect to the laws of any jurisdiction other than the laws of the State of Michigan and the federal laws of the United States; and (ii) whenever the phrase “we are informed” appears in this opinion, it means that in the course of the inquiries and investigations described herein, we became aware of no facts which indicate that the opinion expressed is incorrect, and that except as otherwise expressly stated in this letter, we have not examined any public records (including without limitation, the plaintiff or defendant indices of state and federal courts), or the records of the Lessee generally (including but not limited to instruments, contracts, notes and agreements of all kinds), whether or not examination or investigation might otherwise be reasonable or prudent, and in giving this opinion we have relied solely on the representations and warranties of the officers and representatives of the Lessee and have not undertaken any independent investigation to determine the existence or nonexistence of any facts.

No opinion may be inferred or implied beyond the matters expressly stated herein. The opinions that are expressed herein are solely for the benefit of the Lessor, its assigns, successors and its counsel described below in connection with the transactions contemplated by the Agreement, and may not be relied upon in any manner by any other person or for any other purpose. This opinion is as of its date and we disclaim any undertaking or obligation to advise of changes that hereafter may be brought to our attention whether based on a change in law or a change in any fact relating to the Lessee or any other person.

FOSTER SWIFT COLLINS & SMITH PC

Scott H. Hogan

CITY OF ST. JOHNS  
RESOLUTION #29-2023



**Lessee's Authorization Resolution**

Whereas, City of St Johns, (the "Governmental Entity"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Michigan (the "State"), is authorized by the laws of the State to purchase, acquire and lease personal property for the benefit of the Governmental Entity and its inhabitants and to enter into contracts with respect thereto; and

Whereas, in order to acquire such equipment, the Governmental Entity proposes to enter into a lease-purchase transaction pursuant to that certain governmental Equipment Lease-Purchase Agreement (the "Lease") with Bell Bank Equipment Finance, a division of Bell Bank, the form of which has been presented to the governing body of the Governmental Entity at this meeting;

Section 1. Approval of Documents. The form, terms and provisions of the Lease and all other schedules and exhibits attached thereto are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by counsel of the Governmental Entity or other members of the governing body of the Governmental Entity executing the same, the execution of such documents being conclusive evidence of such approval; and the persons holding the titles listed below or any other officer of the Governmental Entity who shall have the power to execute contracts on its behalf are hereby authorized and directed to execute, acknowledge, countersign and deliver the Lease and all exhibits attached thereto, and the Secretary/Clerk of the Governmental Entity is hereby authorized to attest to the foregoing and affix the seal of the Governmental Entity to such documents.

Section 2. Other Actions Authorized. The officers and employees of the Governmental Entity shall take all action necessary as reasonably required by the parties to the Lease to carry out, give effect to and consummate the transactions contemplated thereby and to take all action necessary to conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Lease.

Section 3. No General Liability. Nothing contained in this Resolution, the Lease, or any other instrument shall be construed with respect to the Governmental Entity as incurring a pecuniary liability or charge upon the general credit of the Governmental Entity or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Lease, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Governmental Entity or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under the Lease are special limited obligations of the Governmental Entity as provided in the Lease.

Section 4. Authorized Signatories. Following are the true names, correct titles and specimen signatures of the incumbent officers referred to in the foregoing resolution.

Name (Print or Type)

Title (Print or Type)

Signature

Section 5. Effective Date. This Resolution shall be effective immediately upon its approval and adoption. This Resolution was adapted and approved on \_\_\_\_\_.

Signature: \_\_\_\_\_  
Secretary/Clerk

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

Date: \_\_\_\_\_

# INSURANCE REQUIREMENTS FORM

DATE: 9/12/2023

LEASE PURCHASE AGREEMENT NO. 110896-001

**TO:** \_\_\_\_\_ (Name of Insurance Agency/Broker)  
 \_\_\_\_\_ (Address)  
 \_\_\_\_\_ (Address)  
 \_\_\_\_\_ (City, State, Zip)

**ATTN:** \_\_\_\_\_ (Agent's Name)  
**TEL:** \_\_\_\_\_ (Telephone Number)

Please issue a Certificate of Insurance in the name of City of St Johns covering the Lease Purchase Agreement identified above (collectively, the "Lease") and mail within five (5) business days to:

ATTN: BELL BANK EQUIPMENT FINANCE  
A division of Bell Bank  
15490 101<sup>st</sup> Ave N, Suite #200  
Maple Grove, MN 55369

Bell Bank Equipment Finance Representative: Lynsey Alf  
Telephone Number: (952) 905-5166  
Fax Number: (833) 200-6043  
Email Address: lalf@bell.bank

The insurance requirements below are in connection with the Lease and cover the equipment identified on the Lease Purchase Agreement identified above, which are incorporated herein by reference (collectively, the "Equipment").

Equipment description:  
(1) 2018 Caterpillar 259D Track Loader w/489 Hours Serial Number: FTL18022

I. **PHYSICAL DAMAGE REQUIREMENTS:**

- A. All Risk coverage for not less than \$21,006.60. The amount of the deductible must be stated here and on the certificate of Insurance. Deductible amount: \$ \_\_\_\_\_.
- B. **Endorsement:** It is understood and agreed that Bell Bank and/or its assigns and/or its successors are included as Loss Payee.
- C. **Endorsement:** It is understood and agreed that this insurance is primary insurance insofar as it relates to any and all collateral financed from Bell Bank pursuant to the Lease.
- D. **Endorsement:** It is understood and agreed that this policy shall not be cancelled, nor any reduction or restriction of coverage be effected until at least thirty (30) days prior written notice has been given to at the above address by Certified Mail, Return Receipt Requested.
- E. **Endorsement:** It is understood and agreed that any loss shall be adjusted with the named insured above and proceeds made payable to Bell Bank and/or its assigns and/or its successors, as their interests may appear.

Per the Lease Purchase Agreement you are required to provide and maintain insurance coverage as summarized above. If you have questions, please reference the Lease or call Bell Bank Equipment Finance. **Satisfactory evidence of insurance must be provided before the lease purchase agreement can be completed.**

Lessee: City of St Johns

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

Title: \_\_\_\_\_



## INVOICE

City of St Johns  
100 E State St  
Saint Johns, MI 48879-1550

Contract # 110896-001

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Invoice Date: 9/12/2023

**Amount Due:** \$4,055.85

Payment Amount:	\$4,055.85
Documentation Fee:	Included in amount financed
Sales Tax:	N/A
<hr/>	
Total Amount Due:	\$4,055.85

Please remit payment with signed documents.



**Information Return for Small Tax-Exempt  
Governmental Bond Issues, Leases, and Installment Sales**

► Under Internal Revenue Code section 149(e)

OMB No. 1545-0720

**Caution:** If the issue price of the issue is \$100,000 or more, use Form 8038-G.

<b>Part I Reporting Authority</b>		Check box if Amended Return <input type="checkbox"/>	
1 Issuer's name <b>City of St Johns</b>		2 Issuer's employer identification number (EIN) 	
3 Number and street (or P.O. box if mail is not delivered to street address) <b>100 E State St</b>		Room/suite 	
4 City, town, or post office, state, and ZIP code <b>Saint Johns, MI 48879</b>		5 Report number (For IRS Use Only) 	
6 Name and title of officer or other employee of issuer or designated contact person whom the IRS may call for more information 		7 Telephone number of officer or legal representative 	

<b>Part II Description of Obligations</b> Check one: a single issue <input checked="" type="checkbox"/> or a consolidated return <input type="checkbox"/>	
8a Issue price of obligation(s) (see instructions) . . . . .	8a <b>21,006 60</b>
b Issue date (single issue) or calendar date (consolidated). Enter date in mm/dd/yyyy format (for example, 01/01/2009) (see instructions) ► <b>09/27/2023</b>	
9 Amount of the reported obligation(s) on line 8a that is:	
a For leases for vehicles . . . . .	9a
b For leases for office equipment . . . . .	9b
c For leases for real property . . . . .	9c
d For leases for other (see instructions) . . . . .	9d
e For bank loans for vehicles . . . . .	9e
f For bank loans for office equipment . . . . .	9f
g For bank loans for real property . . . . .	9g
h For bank loans for other (see instructions) . . . . .	9h
i Used to refund prior issue(s) . . . . .	9i
j Representing a loan from the proceeds of another tax-exempt obligation (for example, bond bank) . . . . .	9j
k Other . . . . .	9k
10 If the issuer has designated any issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check this box . . . . .	<input type="checkbox"/>
11 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check this box (see instructions) . . . . .	<input type="checkbox"/>
12 Vendor's or bank's name: _____	
13 Vendor's or bank's employer identification number: _____	

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above.				
	<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> </div> <div style="width: 40%;"> <div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="text-align: center; font-size: small;">Date</div> </div> </div>	<div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="text-align: center; font-size: small;">Type or print name and title</div>			
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ►	Firm's EIN ►			
	Firm's address ►	Phone no.			

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**What's New**

The IRS has created a page on IRS.gov for information about the Form 8038 series and its instructions, at [www.irs.gov/form8038](http://www.irs.gov/form8038). Information about any future developments affecting the Form 8038 series (such as legislation enacted after we release it) will be posted on that page.

**Purpose of Form**

Form 8038-GC is used by the issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

**Who Must File**

Issuers of tax-exempt governmental obligations with issue prices of less than \$100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of \$100,000 or more must file Form 8038-G, Information Return for Tax-Exempt Governmental Obligations.

**Filing a separate return for a single issue.** Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with an issue price of less than \$100,000.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to

pay a penalty in lieu of arbitrage rebate (see the line 11 instructions).

**Filing a consolidated return for multiple issues.** For all tax-exempt governmental obligations with issue prices of less than \$100,000 that are not reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, if the issue is a construction issue, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.



## When To File

To file a separate return for a single issue, file Form 8038-GC on or before the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued.

To file a consolidated return for multiple issues, file Form 8038-GC on or before February 15th of the calendar year following the year in which the issue is issued.

**Late filing.** An issuer may be granted an extension of time to file Form 8038-GC under section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, if it is determined that the failure to file on time is not due to willful neglect. Type or print at the top of the form, "Request for Relief under section 3 of Rev. Proc. 2002-48." Attach to the Form 8038-GC a letter briefly stating why the form was not submitted to the IRS on time. Also indicate whether the obligation in question is under examination by the IRS. Do not submit copies of any bond documents, leases, or installment sale documents. See *Where To File* next.

## Where To File

File Form 8038-GC, and any attachments, with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201.

**Private delivery services.** You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

## Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal Government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate. For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

For a tax-exempt governmental obligation with an issue price of \$100,000 or more, use Form 8038-G.

## Rounding to Whole Dollars

You may show the money items on this return as whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 to 99 cents to the next higher dollar.

## Definitions

**Obligations.** This refers to a single tax-exempt governmental obligation if Form 8038-GC is used for separate reporting or to

multiple tax-exempt governmental obligations if the form is used for consolidated reporting.

**Tax-exempt obligation.** This is any obligation including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

**Tax-exempt governmental obligation.** A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

**Private activity bond.** This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, and
- More than 10% of the payment of principal or interest of the issue is either (a) secured by an interest in property to be used for a private business use (or payments for such property) or (b) to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which (a) are to be used to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

**Issue.** Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year (a) under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or (b) with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

**Arbitrage rebate.** Generally, interest on a state or local bond is not tax-exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

**Construction issue.** This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds of the issue are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, and

2. All of the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1-1/2% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

## Specific Instructions

In general, a Form 8038-GC must be completed on the basis of available information and reasonable expectations as of the date of issue. However, forms that are filed on a consolidated basis may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

## Part I—Reporting Authority

**Amended return.** An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the "Amended Return" box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new corrected information. Attach an explanation of the reason for the amended return and write across the top "Amended Return Explanation."

**Line 1.** The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. In the case of a lease or installment sale, the issuer is the lessee or purchaser.

**Line 2.** An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. You can get this form on the IRS website at IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676). You may receive an EIN by telephone by following the instructions for Form SS-4.

**Lines 3 and 4.** Enter the issuer's address or the address of the designated contact person listed on line 6. If the issuer wishes to use its own address and the issuer receives its mail in care of a third party authorized representative (such as an accountant or attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box. Include the suite, room, or other unit number after the street address. If the post office does not deliver mail to the street address and the issuer has a P.O. box, show the box number instead of the



street address. If a change in address occurs after the return is filed, use Form 8822, Change of Address, to notify the IRS of the new address.

**Note.** The address entered on lines 3 and 4 is the address the IRS will use for all written communications regarding the processing of this return, including any notices. By authorizing a person other than an authorized officer or other employee of the issuer to communicate with the IRS and whom the IRS may contact about this return, the issuer authorizes the IRS to communicate directly with the individual listed on line 6, whose address is entered on lines 3 and 4 and consents to disclose the issuer's return information to that individual, as necessary, to process this return.

**Line 5.** This line is for IRS use only. Do not make any entries in this box.

## Part II—Description of Obligations

Check the appropriate box designating this as a return on a single issue basis or a consolidated return basis.

**Line 8a.** The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

**Line 8b.** For a single issue, enter the date of issue (for example, 03/15/2010 for a single issue issued on March 15, 2010), generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds; for a lease or installment sale, enter the date interest starts to accrue. For issues reported on a consolidated basis, enter the first day of the calendar year during which the obligations were issued (for example, for calendar year 2010, enter 01/01/2010).

**Lines 9a through 9h.** Complete this section if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also complete this section if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal.

Do not complete lines 9a through 9d if the proceeds of an obligation are received in the form of cash even if the term "lease" is used in the title of the issue. For lines 9a through 9d, enter the amount on the appropriate line that represents a lease or installment purchase. For line 9d, enter the type of item that is leased. For lines 9e through 9h, enter the amount on the appropriate line that represents a bank loan. For line 9h, enter the type of bank loan.

**Lines 9i and 9j.** For line 9i, enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds, including proceeds that will be used to fund an escrow account for this purpose. Several lines may apply to a particular obligation. For example, report on lines 9i and 9j obligations used to refund prior issues which represent loans from the proceeds of another tax-exempt obligation.

**Line 9k.** Enter on line 9k the amount on line 8a that does not represent an obligation described on lines 9a through 9j.

**Line 10.** Check this box if the issuer has designated any issue as a "small issuer exception" under section 265(b)(3)(B)(i)(III).

**Line 11.** Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of rebate with Form 8038-GC. See Rev. Proc. 92-22, 1992-1 C.B. 736, for rules regarding the "election document."

**Line 12.** Enter the name of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

**Line 13.** Enter the employer identification number of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

## Signature and Consent

An authorized representative of the issuer must sign Form 8038-GC and any applicable certification. Also print the name and title of the person signing Form 8038-GC. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that has been designated in this form.

**Note.** If the issuer authorizes in line 6 the IRS to communicate with a person other than an officer or other employee of the issuer, (such authorization shall include contact both in writing regardless of the address entered in lines 3 and 4, and by telephone) by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

## Paid Preparer

If an authorized representative of the issuer filled in its return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer Use Only* area of the return. A paid preparer cannot use a social security number in the *Paid Preparer Use Only* box. The paid preparer must use a preparer tax identification number (PTIN). If the paid preparer is self-employed, the preparer should enter his or her address in the box.

The paid preparer must:

- Sign the return in the space provided for the preparer's signature, and
- Give a copy of the return to the issuer.

## Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Learning about the law or the form** . . . . 4 hr., 46 min.

**Preparing the form** . . . . 2 hr., 22 min.

**Copying, assembling, and sending the form to the IRS** . . 2 hr., 34 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File*.



# Lease-Purchase Agreement

Lease Purchase Agreement Number: 110896-002

This Lease-Purchase Agreement dated the 27th day of September, 2023 (the "Lease"), by and between Bell Bank Equipment Finance, a division of Bell Bank, whose address is 15490 101<sup>st</sup> Ave N, Suite 200, Maple Grove, MN 55369, as agent for one or more persons (the "Lessor") and City of St Johns, located in Clinton County, as Lessee (the "Lessee"), whose address is 100 E State St, Saint Johns, MI 48879-1550.

## WITNESSETH:

WHEREAS, Lessee is authorized by State statutes to acquire (1) 2018 Caterpillar 305E2 Mini Excavator w/824 hours by entering into a lease-purchase agreement; and

WHEREAS, pursuant to a resolution duly adopted by the Lessee on see attached, the Lessee has determined that it is necessary to further the construction and maintenance purposes of the Lessee that it acquire (1) 2018 Caterpillar 305E2 Mini Excavator w/824 hours described herein as Equipment; and

WHEREAS, Lessor is willing to acquire the Equipment and to lease and sell it to Lessee pursuant to this Lease;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

## ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 **Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

**Authorized Representative:** Shall mean (a) with respect to the Lessee, the officer of the Lessee or any other Person or Persons at any time designated by resolution of Lessee's governing body or written certificate conferring authority upon such person to act on behalf of the Lessee with respect to this Lease; and (b) with respect to the Lessor, any authorized signatory of the Lessor authorized by their bylaws to act or to execute documents on behalf of the Lessor.

**Certificate of Acceptance:** The Certificate of Acceptance of Lessee the form of which is attached hereto as Exhibit C.

**Code:** The Internal Revenue Code of 1986, as amended and any regulations promulgated thereunder by the United States Department of the Treasury.

**Commencement Date:** The date upon which Lessee's obligations to make Lease-Purchase Payments accrues as evidenced by the issuance to Lessor of the Certificate of Acceptance attached hereto as Exhibit C.

**Contractor:** Each of the manufacturers or vendors from whom Lessee (or Lessor at Lessee's request) has ordered or will order or with whom Lessee (or Lessor at Lessee's request) has contracted or will contract for the manufacture, delivery and/or installation of the Equipment.

**Cost or Costs:** The costs of acquisition and installation of the Equipment and all other costs incidental and related thereto, including the costs of preparation, marketing and sale of this Lease.

**Equipment:** The (1) 2018 Caterpillar 305E2 Mini Excavator w/824 hours described in the attached Exhibit A which is being leased and purchased by Lessee pursuant to this Lease.

**Fiscal Year:** Each twelve (12) month fiscal period of Lessee commencing on the \_\_\_\_\_ of \_\_\_\_\_ and ending on the \_\_\_\_\_ of \_\_\_\_\_ the following year.

**Independent Counsel:** An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

**Interest:** The portion of any Lease-Purchase Payment designated as and comprising interest as shown in the attached Exhibit B.

**Lease:** This Lease-Purchase Agreement dated as of 9/27/2023, whereby the Lessor has leased the Equipment to Lessee, as the same may from time to time be amended or modified.

**Lease-Purchase Payment:** The payment due from Lessee to Lessor on each Payment Date, as shown on Exhibit B.

**Net Proceeds:** Any insurance proceeds, paid with respect to the Equipment, remaining after payment therefrom of all expenses incurred in the collection thereof.

**Payment Date:** The date upon which any Lease-Purchase Payment is due and payable as provided in Exhibit B.

**Permitted Encumbrances:** As of any particular time: (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to the provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and amendments hereto, (iii) Lessor's interest in the Equipment, and (iv) any mechanic's, laborers, material person's supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a Contractor or which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

**Person or Persons:** An individual, partnership, corporation, trust or unincorporated organization.

**Prepayment Price:** With respect to the Equipment, as of any Payment Date, the amount so designated and set forth opposite such date in the attached Exhibit B.

**Principal:** The portion of any Lease-Purchase Payment designated as principal in the attached Exhibit B.

**Request for Disbursement of Funds:** The Request for Disbursement of Funds of Lessee, the form of which is attached hereto as Exhibit C-1.

**Specifications:** The bid specifications and/or purchase order pursuant to which Lessee has ordered the Equipment from a Contractor.

**State:** The State of Michigan.

**State and Federal Law or Laws:** The Constitution and any law of the State and any charter, ordinance, rule or regulation or any agency or political subdivision of the State, and any law of the United States, and any rule or regulation of any federal agency.

**Term, Term of this Lease or Lease Term:** The period commencing on the execution of this Lease and ending on the date the last Lease-Purchase Payment is due and payable, as shown on Exhibit B.

Section 1.2 **Exhibits.** The following Exhibits are attached to and by reference made part of this Lease:

**Exhibit A:** A description of the Equipment including the serial number thereof which shall be inserted when available.

**Exhibit B:** A schedule to be completed by Lessor as provided in Section 4.1, indicating the date upon which the Term of this Lease shall end, the date and amount of each Lease-Purchase Payment coming due under the Lease Term and the amount of Principal and Interest comprising each Lease-Purchase Payment.

**Exhibits C and C-1:** A Certificate of Acceptance of Lessee with a Request for Disbursement of Funds attached indicating that the Equipment has been or will be delivered and installed in accordance with the Specifications, and has been accepted by Lessee, the date on which Lease-Payments shown in Exhibit B shall commence, and that certain other requirements have been met by Lessee.

**Exhibit D:** An opinion of counsel to Lessee as to the organization, nature and powers of Lessee, the validity, execution and delivery of this Lease and various related documents; the absence of litigation; and related matters.

**Exhibit E:** A form of resolution of the governing body of Lessee, relating to this Lease and, if applicable, certain federal tax matters.

## **ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES**

Section 2.1 **Representations, Covenants and Warranties of Lessee.** Lessee represents, covenants and warrants as follows:

- (a) Lessee is a political subdivision and municipal corporation, duly organized and existing under the Constitution and laws of the State.
- (b) Lessee is authorized under the Constitution and laws of the State to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.

- (c) The officer of Lessee executing this Lease has been duly authorized to execute and deliver this Lease under the terms and provisions of a resolution of Lessee's governing body, or by other appropriate official action.
- (d) In authorizing and executing this Lease, Lessee has complied with all open meeting laws, public bidding and other State and Federal laws applicable to this Lease and the acquisition of the Equipment by Lessee.
- (e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other Person, firm or corporation, except as provided under the terms of this Lease.
- (f) Lessee will use the Equipment during the Lease Term only to perform its essential governmental functions.
- (g) Lessee will take no action that would cause the interest portion of the Lease-Purchase Payments to become includable in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the "Code") and Treasury Regulations promulgated thereunder (the "Regulations"), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest portion of the Lease-Purchase Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations.
- (h) Upon execution of this Lease-Purchase Agreement, and upon each request for a disbursement of funds hereunder, Lessee will provide to Lessor a completed and executed copy of the Certificate of Acceptance attached hereto as Exhibit C.
- (i) Upon the execution of this Lease, Lessee will provide to Lessor an opinion of its legal counsel in the form attached hereto as Exhibit D.
- (j) Lessee will submit to the Internal Revenue Service an information reporting statement at the time and in the form required by the Code.
- (k) Lessee will cause a resolution substantially in the form attached hereto as Exhibit E to be adopted by its governing body.
- (l) Lessee does not reasonably anticipate that it will issue tax-exempt obligations (not including "private activity bonds" as defined in Section 141 of the Code) in an aggregate amount in excess of \$10,000,000 during the calendar year in which the Term commences, and this Lease is designated as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code relating to deductibility of interest by financial institutions.

Section 2.2 **Representations, Covenants and Warranties of Lessor.** Lessor represents, covenants and warrants as follows:

- (a) Lessor has the power to enter into this Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same.
- (b) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or agreement or instrument to which Lessor is now a party or by which Lessor is bound; constitutes a default under any of the foregoing; or results in the creation or imposition any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Equipment, except Permitted Encumbrances.

### ARTICLE III AGREEMENT TO LEASE

Section 3.1 **Lease.** Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon terms and conditions set forth in this Lease and subject to the option to purchase set forth in Section 4.3 hereof.

Section 3.2 **Possession and Enjoyment.** Lessor hereby covenants to provide Lessee during the Term with the quiet use and enjoyment of the Equipment, and Lessee intends to during the Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in the Lease. Lessor will, at the request of Lessee and at Lessee's cost, join any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so. All warranties extended upon the Equipment by the Contractors shall inure to the benefit of the Lessee during the term of this Lease.

Section 3.3 **Lessor Access to Equipment.** Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Equipment. Lessee further agrees that Lessor shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Lessee to perform its obligations hereunder.



Section 3.4 **Tax and Ownership and Lessee.** The Lessor warrants and represents that it shall not at any time during the term of the Lease claim depreciation, cost recovery deductions, or tax credit for federal income tax purposes with respect to the equipment, or portion thereof, and that it shall not take any position for federal income tax purposes that is inconsistent with the unequivocal title and ownership for any and all tax purposes of the Lessee.

## ARTICLE IV TERM OF LEASE

Section 4.1 **Lease Term.** This Lease shall be in effect for a Term commencing upon the execution hereof and ending as provided in Section 4.2.

Section 4.2 **Termination of Lease Term.** The Term of this Lease will terminate upon the occurrence of the first of the following events:

- (a) A default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII without payment of all Lease-Purchase Payments; or
- (b) The payment by Lessee of all Lease-Purchase Payments and all other amounts authorized or required to be paid by Lessee hereunder.
- (c) Nonappropriation of funds by Lessee pursuant to Section 12.7 hereof.

Section 4.3 **Option to Purchase.** Lessee has the option to purchase the Equipment by paying the applicable prepayment price in accordance with Section 10.1 hereof.

## ARTICLE V LEASE-PURCHASE PAYMENTS

Section 5.1 **Lease-Purchase Payments.** Lessee agrees to pay Lease-Purchase Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Lease-Purchase Payments shall be paid to Lessor at its offices at the address specified in Section 1.1 of this Lease, or to such other Person or entity to which Lessor has assigned such Lease-Purchase Payments as specified in Article XI, at such place as such assignee may from time to time designate in lawful money of the United States of America to Lessor or, in the event of assignment of the right to receive Lease-Purchase Payments by Lessor, to its assignee. Interest shall accrue from the date of the Certificate of Acceptance.

Section 5.2 **Source of Payment.** All Lease-Purchase Payments required to be paid Lessor pursuant to this Lease shall be paid from moneys duly budgeted, appropriated, obligated and otherwise provided and made available therefor by Lessee.

Section 5.3 **Interest Component.** A portion of each Lease-Purchase Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Lease-Purchase Payment.

Section 5.4 **Lease-Purchase Payments to be Unconditional.** The obligation of Lessee to make Lease-Purchase Payments or any other payments required hereunder shall be absolute and unconditional in all events, except as expressly provided under this Lease. Notwithstanding any dispute between Lessee and Lessor or any other Person, Lessee shall make all Lease-Purchase Payments and other payments required hereunder when due and shall not withhold any Lease-Purchase Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Lease-Purchase Payments or other payments required under this Lease. Lessee's obligation to make Lease-Purchase Payments or other payments shall not be abated through accident or unforeseen circumstances. Except as provided in Section 12.7 hereof, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder, and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damage therefor.

Section 5.5 **Late Payments.** See Section 12.6.

## ARTICLE VI INSURANCE AND NEGLIGENCE

Section 6.1 **Liability Insurance.** Upon receipt of possession of the Equipment, Lessee shall take measures as may be necessary to ensure that any liability for injuries to or death of any Person or damage to or loss of property arising out of or in any way relating to the condition or

operation of the Equipment or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

- Section 6.2 **Property Insurance.** Upon receipt of possession of the Equipment, Lessee shall have and assume the risk of loss with respect thereto. Lessee shall procure and maintain continuously in effect during the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Equipment, or to the purchase of the Equipment, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.
- Section 6.3 **Worker's Compensation Insurance.** If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.
- Section 6.4 **Requirements for all Insurance.** All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (or riders) evidencing any such insurance procedure by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is not obtainable in which event Lessee shall notify Lessor of this fact.
- Section 6.5 **Lessee's Negligence.** Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any Person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses and damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fee) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit, or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.
- Section 6.6 **Damage to or Destruction of Equipment.** If after delivery of the Equipment to Lessee all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practical after such event, replace the same at Lessee's sole cost and expense with equipment of equal or greater value to the Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement, subject to the provisions of Section 12.7 hereof. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If Lessee fails or refuses to notify Lessor within the required period, Lessor may, at its option, exercise its remedies under Article XII hereof. The Net Proceeds of all insurance payable with respect to the Equipment shall be available to Lessee and shall be used to discharge Lessee's obligations under this Section.
- Section 6.7 **Cooperation of Lessor.** The Lessor shall cooperate fully with the Lessee at the sole expense of the Lessee, in filing any proof of loss with respect to any insurance policy covering the casualties described in this Section. To the extent it may lawfully do so, the Lessor will permit the Lessee to litigate in any proceeding resulting therefrom and the name of it and on behalf of the Lessor, provided that the Lessor has been indemnified from all costs and expenses therefor, including without limitation, reasonable counsel fees incurred by the Lessor in connection with any such litigation in its name. In no event will the Lessor voluntarily settle or consent to the settlement of any proceeding, arising out of any insurance claim with respect to the Equipment or any part thereof, without the written consent of the Lessee.

## ARTICLE VII OTHER OBLIGATIONS OF LESSEE

- Section 7.1 **Use; Permits.** Lessee shall exercise due care in the installation, use, operation and maintenance of the Equipment, and shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any State or Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses necessary of the installation, operation, possession and use of the Equipment. Lessee shall comply with all State and Federal Laws applicable to the installation, operation, possession and use of the Equipment, and if compliance with any such State or Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at its expense.

- Section 7.2 **Maintenance of Equipment by Lessee.** Lessee shall, at its own expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Equipment in such condition. Lessor shall have no responsibility for any of these repairs or replacements.
- Section 7.3 **Taxes, Other Governmental Charges and Utility Charges.** (a) Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind whatsoever which are at any time lawfully assessed or levied against or with respect to the Equipment, the Lease-Purchase Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien of the Equipment; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.
- (b) Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contest to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss for forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in the form satisfactory to Lessor.
- Section 7.4 **Advances.** If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 18.0 % per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.
- Section 7.5 **Disbursements.** (a) As payments are required for the Equipment under this Lease, the Lessee as the agent for the Lessor shall prepare and submit a Certificate of Acceptance of Lessee with a Request for Disbursement of Funds to the Lessor. (b) The Lessor shall permit the withdrawal of funds requested in the Request for Disbursement of Funds, and such funds shall be applied to the payment of the Cost of the Equipment.

## ARTICLE VIII TITLE

- Section 8.1 **Title.** During the Term of this Lease, legal title to the Equipment and any all repairs, replacements, substitutions and modifications to it shall be in Lessee's name subject to Lessor's interest. Upon termination of this Lease for any of the reasons specified in Section 4.2 (b), Lessor's interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security or other interest in the Equipment.
- Section 8.2 **Security Interest.** Lessor shall have and retain a security interest under the Uniform Commercial Code, Certificate of Title or other applicable State or Federal Law in the Equipment, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof pursuant to Section 8.5, in order to secure Lessee's payment of all Lease-Purchase Payments due during the Term of this Lease and the performance of all other obligations herein to be performed by Lessee. Lessee will join with Lessor in executing such financing statements or other documents and will perform such acts as Lessor may request to establish and maintain a valid security interest in the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags, and maintain such markings during the Term of this Lease, so as clearly to disclose Lessor's security interest in the Equipment.
- Section 8.3 **Liens.** During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.
- Section 8.4 **Installation of Lessee's Equipment.** Lessee may at any time and from time to time, in its sole discretion and at its own expense, install other items of equipment in or upon the Equipment, which items shall be identified by tags or other symbols affixed thereto as property of Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be

modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Equipment resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease-purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Equipment.

Section 8.5 **Modification of Equipment.** Lessee shall at its own expense, have the right to make repairs to the Equipment, and to make repairs, replacements, substitutions and modifications to all or any part of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Equipment and be subject to the provisions of the Lease. Such work shall not in any way damage the Equipment or cause it to be used for purposes other than those authorized under the provisions of State or Federal Law or those contemplated by this Lease; and the Equipment, upon completion of any such work shall be of a value which is not less than the value of the Equipment immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Equipment for labor or materials furnished in connection with any repair, replacement, substitution or modification made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessee will cooperate fully with Lessee in any such contest.

Section 8.6 **Personal Property.** The Equipment is and shall at all times be and remain personal property notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanently rested upon real property or any building thereon or attached in any manner to what is permanent by means of cement, plaster, nails, bolts, screws or otherwise.

## ARTICLE IX WARRANTIES

Section 9.1 **Selection of Equipment.** The Equipment and the Contractor have been selected by Lessee, and Lessor shall have no responsibility in connection with the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Contractor or its sales representative of the order submitted, or any delay or failure by the Contractor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee. Lessee authorized Lessor to add the serial number of the Equipment to Exhibit A when available.

Section 9.2 **Installation and Maintenance of Equipment.** Lessor shall have no obligation to install, erect, test, inspect, service or maintain the Equipment under any circumstances, but such actions shall be the obligation of Lessee or the Contractor.

Section 9.3 **Contractor's Warranties.** Lessor hereby assigns to Lessee for and during the Term of the Lease, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Equipment, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.

Section 9.4 **Patent Infringement.** Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any Contractor with respect to the Equipment. Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Equipment furnished pursuant to this Lease.

Section 9.5 **Disclaimer of Warranties.** THE EQUIPMENT IS DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

## ARTICLE X PREPAYMENT

Section 10.1 **When Available.** Lessee shall have the option to prepay its obligations under this Lease on any Payment Date at an amount equal to the applicable Prepayment Price.

Section 10.2 **Release of Lessor's Interest.** Upon the prepayment of Lessee's obligations under this Lease in accordance with Section 10.1 hereof, Lessee shall have no further obligations under this Lease and this Lease shall terminate in accordance with Section 4.2(b). Thereupon



the Lessor shall relinquish title to the Equipment in accordance with Section 8.1.

## **ARTICLE XI ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

Section 11.1 **Assignment by Lessor.** Except as otherwise provided herein, Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Lease, the Lease-Purchase Payments or other amounts due hereunder and the Equipment may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. No such assignment shall be effective as against Lessee unless and until the assignor shall have filed with Lessee a copy or written notice thereof identifying the assignee. Lessee shall pay all Lease-Purchase Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment or notice of assignment filed with Lessee. During the Lease Term, Lessee shall keep a complete and accurate record of all such assignments. In the event Lessor assigns participation in its right, title and/or interest in and to this Lease, the Lease-Purchase Payments and other amounts due hereunder and the Equipment, such participants shall be considered to be Lessor with respect to their participated shares thereof.

Section 11.2 **Assignment and Subleasing by Lessee.** Neither this Lease nor Lessee's interest in the Equipment may be assigned by Lessee without the written consent of Lessor. However, the Equipment may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

- (a) This Lease and the obligation of Lessee to make Lease-Purchase Payments hereunder, shall remain obligations of Lessee.
- (b) The sublease shall assume the obligation of Lessee hereunder to the extent of the interest subleased.
- (c) Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.
- (d) No sublease by Lessee shall cause the Equipment to be used for a purpose other than an essential governmental function authorized under the provisions of the Constitution and the laws of the State.
- (e) No sublease shall cause the Interest component of the Lease-Purchase Payments due with respect to the Equipment to become includable in gross income of the recipient for federal income tax purposes.

Section 11.3 **Restriction on Mortgage or Sale of Equipment by Lessee.** Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Equipment or any portion thereof during the Term of this Lease, or remove the same from its boundaries, without the written consent of Lessor.

## **ARTICLE XII EVENTS OF DEFAULT AND REMEDIES**

Section 12.1 **Events of Default Defined.** (a) The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Equipment, any one or more the following events:

- (i) Except as permitted by Section 12.7 hereof, failure by Lessee to pay any Lease-Purchase Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.
- (ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.
- (iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental or proprietary function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar acts which may hereafter be enacted.

- (b) The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to carry out its obligation under this Lease with respect to the Equipment, other than its obligation to pay Lease-Purchase Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of god, strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections, riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

**Section 12.2 Remedies of Default.** Whenever any event of default referred to in Section 12.1, clauses (i) to (iii) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

- (i) With or without terminating this Lease, re-enter and take possession of such Equipment and exclude Lessee from using it; provided, however, that if this Lease has not been terminated, Lessor shall return possession of such Equipment to Lessee when the event of default is cured; and provided further that Lessee shall continue to be responsible for the Lease-Purchase Payments due with respect to such Equipment during the Fiscal Year then in effect; or
- (ii) With or without terminating this Lease, re-enter and take possession of such Equipment, and sell, lease or sublease such Equipment or any part of it, holding Lessee liable for the difference between (a) the sales price, rent and other amounts paid by the purchaser, lessee or sublessee pursuant to such sales agreement, lease or sublease and (b) the balance of the Lease-Purchase Payments and other amounts owed by Lessee with respect to such Lease; provided, however, that nothing contained herein shall impose an obligation upon Lessor so to sell, lease or sublease such Equipment and provided that any excess proceeds from such disposition shall be retained by Lessor; or
- (iii) With or without terminating this Lease, declare all Lease-Purchase Payments during the Fiscal Year then in effect due or to become due with respect to such Lease in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Lease-Purchase Payments shall be immediately due and payable; or
- (iv) Take whatever action at law or in equity may appear necessary or desirable to collect the Lease-Purchase Payments then due and thereafter to become due during the then current Fiscal Year of Lessee with respect to such Lease, or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

**Section 12.3 Return of Equipment.** Upon termination of this Lease prior to the payment of all Lease-Purchase Payments, Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 7.2, in the following manner as may be specified by Lessor: (a) by delivering the Equipment at Lessee's cost and expense to such place within the State as Lessor shall specify; or (b) by loading such portions of the Equipment as are considered movable at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the place specified by Lessor. If Lessee refuses to return the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.

**Section 12.4 No Remedy Exclusive.** No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof by any such right and power. Each remedy may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

**Section 12.5 Agreement to Pay Attorney's Fees and Expenses.** In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys and/or incur other expenses for the collection of monies or for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fee of such attorneys and/or such other reasonable expenses so incurred by the nondefaulting party. In the event that legal proceedings relating to this Lease are commenced in any court or before any other tribunal of competent jurisdiction, the reasonable legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the nonprevailing party on demand of the prevailing party.

**Section 12.6 Late Charges.** Whenever any event of default referred to in Section 12.1, clause (i) hereof shall have happened and be continuing with

respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge equal five percent (5.0%) per month of the delinquent Rental Payment, and Lessee shall be obligated to pay the same immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section 12.6 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

- Section 12.7 **Non-Appropriation of Funds.** (a) Notwithstanding any provision in the Lease to the contrary, in the event that no funds or insufficient funds are appropriated by Lessee's governing body for the next fiscal year for Lease-Purchase Payments due under this Lease, this Lease shall terminate the end of such fiscal year on the last day of the fiscal year for which appropriations were received and Lessee shall return the Equipment to Lessor (at Lessee's expense, to a destination Lessor directs, in good working condition less normal wear and tear), and cancel this Lease by notice to such effect served not less than thirty (30) days prior to the end of the Lessee's fiscal year. Lessee shall notify Lessor of nonappropriation within thirty (30) days of its occurrence.
- (b) Lessee and Lessor acknowledge and agree that the Lease-Purchase Payments hereunder shall constitute currently budgeting expenditures of Lessee from its capital expenditure fund or successor fund thereto. Lessee's obligations under this Lease shall be subject to Lessee's annual right to terminate this Lease, and shall not constitute a mandatory charge of requirement in any ensuing fiscal year beyond the then current fiscal year. No provision of this Lease shall be construed or interpreted as creating a general obligation or other indebtedness of Lessee within the meaning of any constitutional or statutory debt limitation. This Lease shall not directly or indirectly obligate Lessee to make any payments beyond those budgeted and appropriated from its general fund for Lessee's then current fiscal year. Lessee shall be under no obligation whatsoever to exercise its option to purchase the Equipment. No provision of this Lease shall be construed to pledge or create a lien on any class or source of Lessee monies.

## ARTICLE XIII ADMINISTRATIVE PROVISIONS

- Section 13.1 **Notices.** All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified below; provided, that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificate, legal opinion or other communication will be sent.

Lessor: Bell Bank Equipment Finance  
15490 101<sup>st</sup> Ave N, Suite 200  
Maple Grove, MN 55369

Lessee: City of St Johns  
100 E State St  
Saint Johns, MI 48879-1550

- Section 13.2 **Financial Information.** During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue to pay Lease-Purchase Payments required under this Lease as may be requested by Lessor or its assignee.
- Section 13.3 **Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.
- Section 13.4 **Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- Section 13.5 **Amendments, Changes and Modification.** This Lease may be amended or any of its terms modified only by written document duly authorized, executed, and delivered by Lessor and Lessee.
- Section 13.6 **Captions.** The captions or headings in this Lease are for convenience only and in no way defend, limit or describe the scope or intent of any provisions, articles, sections or clauses of this Lease.
- Section 13.7 **Further Assurances and Corrective Instruments.** Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, for carrying out the expressed intention of this Lease.
- Section 13.8 **Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.9 **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State.

Section 13.10 **Anti-Discrimination.** Lessor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, sexual orientation or physical defect or disability with regard to but not limited to employment, upgrading, promotion or transfer, recruitment or recruitment advertising, layoffs or termination or selection for training.

Section 13.11 **Lessor and Lessee Representatives.** Whenever under the provisions of this Lease, the approval of the Lessor or the Lessee is required to take some action at the request of the other, such approval of such request shall be given by an Authorized Representative of the Lessor, for the Lessor, and by an Authorized Representative of the Lessee, for the Lessee. Any party hereto shall be authorized to rely on such approval of request.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officers; and Lessee has caused this Lease to be executed in its name by duly authorized officers, as of the date first above written.

BELL BANK EQUIPMENT FINANCE, a division of Bell Bank, as Lessor

\_\_\_\_\_  
Print or type full name

By \_\_\_\_\_  
Signature

Its \_\_\_\_\_

\_\_\_\_\_  
City of St Johns as Lessee

\_\_\_\_\_  
Print or type full name

By \_\_\_\_\_  
Signature

Its \_\_\_\_\_  
Title

**EXHIBIT A**  
**DESCRIPTION OF EQUIPMENT**

(1) 2018 Caterpillar 305E2 Mini Excavator w/824 hours

Serial Number: H5M07279

**EXHIBIT B  
PAYMENT SCHEDULE**

Commencement Date: 9/27/2023

	<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Amount</u>	<u>Principal Amount</u>	<u>*Purchase Option Price</u>
Loan	09/27/2023				29,708.76
1	09/27/2023	5,736.02	0.00	5,736.02	23,972.74
<b>2023 Totals</b>		<b>5,736.02</b>	<b>0.00</b>	<b>5,736.02</b>	
2	09/27/2024	5,736.02	1,507.89	4,228.13	19,744.61
<b>2024 Totals</b>		<b>5,736.02</b>	<b>1,507.89</b>	<b>4,228.13</b>	
3	09/27/2025	5,736.02	1,241.94	4,494.08	15,250.53
<b>2025 Totals</b>		<b>5,736.02</b>	<b>1,241.94</b>	<b>4,494.08</b>	
4	09/27/2026	5,736.02	959.26	4,776.76	10,473.77
<b>2026 Totals</b>		<b>5,736.02</b>	<b>959.26</b>	<b>4,776.76</b>	
5	09/27/2027	5,736.02	658.80	5,077.22	5,396.55
<b>2027 Totals</b>		<b>5,736.02</b>	<b>658.80</b>	<b>5,077.22</b>	
6	09/27/2028	5,736.02	339.47	5,396.55	0.00
<b>2028 Totals</b>		<b>5,736.02</b>	<b>339.47</b>	<b>5,396.55</b>	
<b>Grand Totals</b>		<b>34,416.12</b>	<b>4,707.36</b>	<b>29,708.76</b>	

TOTAL: \$29,708.76

INTEREST RATE: 6.29%

\*Amount due after payment of Lease-Purchase Payment due on the same day.

All amounts received by Lessor shall be applied first to late payment charges and expenses, then to accrued interest, and then to principal payments in inverse order, as determined by lessor, as permitted by law.

**EXHIBIT C  
ACCEPTANCE CERTIFICATE**

The undersigned, being a duly appointed Lessee Representative, under the Lease Purchase Agreement dated as of 9/27/2023 (the ("Lease"), by and between Bell Bank Equipment Finance ("Lessor"), and the City of St Johns, ("Lessee"), hereby certifies on behalf of Lessee with respect to the Equipment to be acquired under Lease Exhibit A, that the portion of the Equipment described on the attachment to this Acceptance Certificate has been delivered and installed pursuant to and in accordance with said Lease and has been accepted by Lessee.

**Dated:** \_\_\_\_\_.

As Lessee: \_\_\_\_\_ City of St Johns \_\_\_\_\_

\_\_\_\_\_  
**Print or type full name**

**By** \_\_\_\_\_  
**Signature**

**Its** \_\_\_\_\_  
**Title**

**EXHIBIT C-1  
REQUEST FOR DISBURSEMENT OF FUNDS**

TO: **Bell Bank Equipment Finance ("Lessor")**  
15490 101<sup>st</sup> Ave N, Suite 200  
Maple Grove, MN 55369

FROM: City of St Johns (**"Lessee"**)  
100 E State St  
Saint Johns, MI 48879-1550

The Lessee hereby requests disbursement of funds pursuant to the Lease Purchase Agreement dated 9/27/2023 (the "Lease"), between the Lessor and Lessee, as follows:

1. Amount to be disbursed: \$29,708.76.
2. The payee(s) are Caterpillar Financial Services Corporation
3. Purchase of the payment: Payment for property as described in the Lease and Exhibit C.
4. Bills, receipts, invoices or other documents evidencing the amount requested are attached hereto.
5. The Lessee hereby certifies that the amounts requested to be disbursed were properly incurred in connection with the acquisition of the Equipment as described in the Lease and were not subject of any previous request for disbursement.
6. This request is the final disbursement request.

**Dated:** \_\_\_\_\_

LESSEE: \_\_\_\_\_ City of St Johns

\_\_\_\_\_  
**Print or type full name**

**By** \_\_\_\_\_  
**Signature**

**Its** \_\_\_\_\_  
**Title**



**Lansing**  
313 S. Washington Square  
Lansing MI 48933

**Detroit**  
333 W. Fort Street – Suite 1400  
Detroit MI 48226

Walter S. Foster  
1878-1961  
Richard B. Foster  
1908-1996  
Theodore W. Swift  
1928-2000  
John L. Collins  
1926-2001

Webb A. Smith - *Retired*

Charles A. Janssen  
Charles E. Barbieri  
Scott L. Mandel  
Michael D. Sanders  
Brent A. Titus

Brian G. Goodenough  
Matt G. Hrebec  
Deanna Swisher  
Thomas R. Meagher  
Douglas A. Mielock  
Scott A. Chernich  
Paul J. Millenbach  
Dirk H. Beckwith  
Brian J. Renaud  
Lynwood P. VandenBosch  
Lawrence Korolewicz  
James B. Doezema  
Anne M. Seurnyck  
Michael D. Homier  
Scott H. Hogan  
Benjamin J. Price

**Southfield**  
28411 Northwestern Highway – Suite 500  
Southfield MI 48034

**Holland**  
151 Central Avenue – Suite 260  
Holland MI 49423

Michael R. Blum  
Jonathan J. David  
Andrew C. Vredenburg  
Julie I. Fershtman  
Todd W. Hoppe  
Jennifer B. Van Regenmorter  
Thomas R. TerMaat  
Frederick D. Dilley  
David R. Russell  
Joel C. Farrar  
Laura J. Genovich  
Karl W. Butterer, Jr.  
Mindi M. Johnson  
Ray H. Littleton, II  
Jack L. Van Coevering  
Anna K. Gibson

Nicholas M. Oertel  
Alicia W. Birach  
Adam A. Fadly  
Michael J. Liddane  
Ryan E. Lamb  
Clifford L. Hammond  
Matthew S. Fedor  
Andrea Badalucco  
Stefania Gismondi  
Leslie A. Abdoo  
Julie L. Hamlet  
Michael C. Zahrt  
Mark T. Koerner  
Warren H. Krueger, III  
Taylor A. Gast  
Rachel G. Olney

Thomas K. Dillon  
Robert A. Hamor  
Jacquelyn A. Dupler  
Dora A. Brantley  
Stephen W. Smith  
Amanda Afion Martin  
Steven J. Tjapkes  
Daniel S. Zick  
Alexander S. Rusek  
Benjamin R. Judd  
Erica E.L. Huddas  
Jennifer L. Montasir  
Bryan Cermak  
Mikhail Murshak  
Kevin J. Roragen  
Courtney G. Agrusa

**Grand Rapids**  
1700 E. Beltline NE – Suite 200  
Grand Rapids MI 49525

**St. Joseph**  
800 Ship Street – Suite 105  
St. Joseph MI 49085

Rachael Kuilema Klein  
Hilary J. McDaniel Stafford  
Amanda J. Dernovshek  
Brandon M. H. Schumacher  
Alaina M. Nelson  
Sydney T. Steele  
Anthony M. Dalimonte  
Jim W. Scales  
Benjamin C. Dilley  
Nicholas J. Stock, II  
Keith T. Brown  
Mallory E. Reader  
Reed K. Powers  
Dina D. Kashat

**Writer's Direct Phone:** 616.726.2207

**Fax:** 616.726.2299

**Reply To:** Grand Rapids

**Email:** SHogan@fosterswift.com

September \_\_\_, 2023

**Via UPS Next Day Air**

Bell Bank Equipment Finance  
15490 101<sup>st</sup> Ave. N., Suite 200  
Maple Grove, MN 55369

Re: Lease Purchase Agreement by and between Bell Bank Equipment Finance, a division of Bell Bank (“Lessor”) and the City of St. Johns (“Lessee”) dated as of 9/27/2023.

Ladies and Gentlemen:

As counsel to the City of St. Johns, Clinton County, Michigan (the “*Lessee*”), we have examined the Lease-Purchase Agreement described above (the “*Lease Agreement*”), between the Lessee and Bell Bank Equipment Finance, as lessor (“*Lessor*”), together with the Disbursement Request Form and Certificate of Acceptance, and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement. The Lease Agreement and related documents are collectively referred to as the “*Transaction Documents*.” Based upon the foregoing examination and upon an examination of such other documents (including a Resolution of the Governing Body of the Lessee) and matters of law as we have deemed necessary or appropriate, we are of the opinion that:

1. To the best of our knowledge, the execution of the Lease and the appropriation of moneys to pay the Lease-Purchase Payments coming due thereunder does not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

2. The Lessee is a Michigan municipal corporation, which is a body corporate and politic duly established and validly existing as a political subdivision of the State of Michigan under the Constitution and laws of the State of Michigan with full power and authority to enter into the Transaction Documents.

3. To the best of our knowledge, the Transaction Documents have each been duly authorized, executed, and delivered by the Lessee and are in full compliance with all local, state and federal laws. Assuming due authorization, execution and delivery thereof by the Lessor, the Transaction Documents

Bell Bank Equipment Finance

September \_\_\_, 2023.

Page 2

constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.

4. We are informed that the Lessee has complied with all applicable statutes, laws, rules, regulations, notice and public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. To the best of our knowledge, the resolution adopted by the Governing Body of the Lessee authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings. No approval, consent or withholding of objections is required from any State, federal or local governmental authority or instrumentality with respect to the entry into or performance by the Lessee of its obligations under the Transaction Documents, except as have already been obtained.

5. We are informed that no litigation or proceeding is pending or, to the best of our knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the governing body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. To the best of our knowledge, there is no litigation pending or, to the best of our knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement. To the best of our knowledge, the entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee or on the Equipment (as such term is defined in the Lease Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound.

All capitalized terms have the same meanings as in the Transaction Documents unless otherwise provided herein.

In forming the basis for our opinions set forth above, we have assumed:

- (A) The genuineness of all signatures and the authenticity of all documents submitted to us as originals;
- (B) The conformity to originals of all documents submitted to us as copies;
- (C) The legal capacity of natural persons;
- (D) The truthfulness, accuracy, and completeness of the information, representations, and warranties contained or made in any Transaction Document;
- (E) That each of the parties to the Transaction Documents, other than the Lessee, is duly organized, validly existing, and in good standing (or its equivalent, if applicable) under the laws of the jurisdiction of its organization and that each such party has the power and authority (corporate or otherwise) to execute and deliver each Transaction Document to which it is a party and to perform

Bell Bank Equipment Finance

September \_\_, 2023.

Page 3

its obligations thereunder;

- (F) Each Transaction Document is the legal, valid, and binding obligation of each party thereto, other than the Lessee, enforceable against such party in accordance with its terms;
- (G) As to questions of fact material to our opinion, we have relied upon representations of Lessee contained in the Resolution and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation;
- (H) the conduct of the parties to the Lease Agreement has complied with any requirement of good faith, fair dealing and conscionability and such parties will perform their obligations thereunder reasonably, in good faith and with fair dealing and such parties will act reasonably, in good faith and with fair dealing in taking action, exercising discretion or making determinations thereunder;
- (I) there has not been any mutual mistake of fact, fraud, duress or undue influence in connection with the execution and delivery of the Lease Agreement; and
- (J) each party to the Lease Agreement will act in accordance with, and will refrain from taking any action which is prohibited by, the terms and conditions of the Lease Agreement.

This opinion is subject to the following qualifications and limitations: (i) we are licensed to practice law in the State of Michigan and, in rendering the foregoing opinions, do not hold ourselves out to be qualified to express a legal opinion with respect to the laws of any jurisdiction other than the laws of the State of Michigan and the federal laws of the United States; and (ii) whenever the phrase “we are informed” appears in this opinion, it means that in the course of the inquiries and investigations described herein, we became aware of no facts which indicate that the opinion expressed is incorrect, and that except as otherwise expressly stated in this letter, we have not examined any public records (including without limitation, the plaintiff or defendant indices of state and federal courts), or the records of the Lessee generally (including but not limited to instruments, contracts, notes and agreements of all kinds), whether or not examination or investigation might otherwise be reasonable or prudent, and in giving this opinion we have relied solely on the representations and warranties of the officers and representatives of the Lessee and have not undertaken any independent investigation to determine the existence or nonexistence of any facts.

No opinion may be inferred or implied beyond the matters expressly stated herein. The opinions that are expressed herein are solely for the benefit of the Lessor, its assigns, successors and its counsel described below in connection with the transactions contemplated by the Agreement, and may not be relied upon in any manner by any other person or for any other purpose. This opinion is as of its date and we disclaim any undertaking or obligation to advise of changes that hereafter may be brought to our attention whether based on a change in law or a change in any fact relating to the Lessee or any other person.

FOSTER SWIFT COLLINS & SMITH PC

Scott H. Hogan





## INVOICE

City of St Johns  
100 E State St  
Saint Johns, MI 48879-1550

Contract # 110896-002

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Invoice Date: 9/12/2023

**Amount Due:** \$5,736.02

Payment Amount:	\$5,736.02
Documentation Fee:	Included in amount financed
Sales Tax:	N/A
<hr/>	
Total Amount Due:	\$5,736.02

Please remit payment with signed documents.



**Information Return for Small Tax-Exempt  
Governmental Bond Issues, Leases, and Installment Sales**

► Under Internal Revenue Code section 149(e)

OMB No. 1545-0720

**Caution:** If the issue price of the issue is \$100,000 or more, use Form 8038-G.**Part I Reporting Authority**Check box if Amended Return ☐

1 Issuer's name <b>City of St Johns</b>		2 Issuer's employer identification number (EIN)	
3 Number and street (or P.O. box if mail is not delivered to street address) <b>100 E State St</b>		Room/suite	
4 City, town, or post office, state, and ZIP code <b>Saint Johns, MI 48879</b>		5 Report number (For IRS Use Only) <div style="border: 1px solid black; width: 100px; height: 20px;"></div>	
6 Name and title of officer or other employee of issuer or designated contact person whom the IRS may call for more information		7 Telephone number of officer or legal representative	

**Part II Description of Obligations** Check one: a single issue ☒ or a consolidated return ☐

8a Issue price of obligation(s) (see instructions)	8a	29,708	76
b Issue date (single issue) or calendar date (consolidated). Enter date in mm/dd/yyyy format (for example, 01/01/2009) (see instructions) ► <b>09/27/2023</b>			
9 Amount of the reported obligation(s) on line 8a that is:			
a For leases for vehicles	9a		
b For leases for office equipment	9b		
c For leases for real property	9c		
d For leases for other (see instructions)	9d		
e For bank loans for vehicles	9e		
f For bank loans for office equipment	9f		
g For bank loans for real property	9g		
h For bank loans for other (see instructions)	9h		
i Used to refund prior issue(s)	9i		
j Representing a loan from the proceeds of another tax-exempt obligation (for example, bond bank)	9j		
k Other	9k		
10 If the issuer has designated any issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check this box . . . . ► <input type="checkbox"/>			
11 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check this box (see instructions) . . . . ► <input type="checkbox"/>			
12 Vendor's or bank's name:			
13 Vendor's or bank's employer identification number:			

**Signature  
and  
Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above.

Signature of issuer's authorized representative

Date

Type or print name and title

**Paid  
Preparer  
Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name ►	Firm's EIN ►			
Firm's address ►	Phone no.			

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**What's New**

The IRS has created a page on IRS.gov for information about the Form 8038 series and its instructions, at [www.irs.gov/form8038](http://www.irs.gov/form8038). Information about any future developments affecting the Form 8038 series (such as legislation enacted after we release it) will be posted on that page.

**Purpose of Form**

Form 8038-GC is used by the issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

**Who Must File**

Issuers of tax-exempt governmental obligations with issue prices of less than \$100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of \$100,000 or more must file Form 8038-G, Information Return for Tax-Exempt Governmental Obligations.

**Filing a separate return for a single issue.**

Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with an issue price of less than \$100,000.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to

pay a penalty in lieu of arbitrage rebate (see the line 11 instructions).

**Filing a consolidated return for multiple issues.** For all tax-exempt governmental obligations with issue prices of less than \$100,000 that are not reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, if the issue is a construction issue, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.



## When To File

To file a separate return for a single issue, file Form 8038-GC on or before the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued.

To file a consolidated return for multiple issues, file Form 8038-GC on or before February 15th of the calendar year following the year in which the issue is issued.

**Late filing.** An issuer may be granted an extension of time to file Form 8038-GC under section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, if it is determined that the failure to file on time is not due to willful neglect. Type or print at the top of the form, "Request for Relief under section 3 of Rev. Proc. 2002-48." Attach to the Form 8038-GC a letter briefly stating why the form was not submitted to the IRS on time. Also indicate whether the obligation in question is under examination by the IRS. Do not submit copies of any bond documents, leases, or installment sale documents. See *Where To File* next.

## Where To File

File Form 8038-GC, and any attachments, with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201.

**Private delivery services.** You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

## Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal Government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate. For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

For a tax-exempt governmental obligation with an issue price of \$100,000 or more, use Form 8038-G.

## Rounding to Whole Dollars

You may show the money items on this return as whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 to 99 cents to the next higher dollar.

## Definitions

**Obligations.** This refers to a single tax-exempt governmental obligation if Form 8038-GC is used for separate reporting or to

multiple tax-exempt governmental obligations if the form is used for consolidated reporting.

**Tax-exempt obligation.** This is any obligation including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

**Tax-exempt governmental obligation.** A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

**Private activity bond.** This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, and
- More than 10% of the payment of principal or interest of the issue is either (a) secured by an interest in property to be used for a private business use (or payments for such property) or (b) to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which (a) are to be used to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

**Issue.** Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year (a) under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or (b) with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

**Arbitrage rebate.** Generally, interest on a state or local bond is not tax-exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

**Construction issue.** This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds of the issue are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, and

2. All of the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1-1/2% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

## Specific Instructions

In general, a Form 8038-GC must be completed on the basis of available information and reasonable expectations as of the date of issue. However, forms that are filed on a consolidated basis may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

## Part I—Reporting Authority

**Amended return.** An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the "Amended Return" box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new corrected information. Attach an explanation of the reason for the amended return and write across the top "Amended Return Explanation."

**Line 1.** The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. In the case of a lease or installment sale, the issuer is the lessee or purchaser.

**Line 2.** An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. You can get this form on the IRS website at IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676). You may receive an EIN by telephone by following the instructions for Form SS-4.

**Lines 3 and 4.** Enter the issuer's address or the address of the designated contact person listed on line 6. If the issuer wishes to use its own address and the issuer receives its mail in care of a third party authorized representative (such as an accountant or attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box. Include the suite, room, or other unit number after the street address. If the post office does not deliver mail to the street address and the issuer has a P.O. box, show the box number instead of the



street address. If a change in address occurs after the return is filed, use Form 8822, Change of Address, to notify the IRS of the new address.

**Note.** The address entered on lines 3 and 4 is the address the IRS will use for all written communications regarding the processing of this return, including any notices. By authorizing a person other than an authorized officer or other employee of the issuer to communicate with the IRS and whom the IRS may contact about this return, the issuer authorizes the IRS to communicate directly with the individual listed on line 6, whose address is entered on lines 3 and 4 and consents to disclose the issuer's return information to that individual, as necessary, to process this return.

**Line 5.** This line is for IRS use only. Do not make any entries in this box.

## Part II—Description of Obligations

Check the appropriate box designating this as a return on a single issue basis or a consolidated return basis.

**Line 8a.** The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

**Line 8b.** For a single issue, enter the date of issue (for example, 03/15/2010 for a single issue issued on March 15, 2010), generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds; for a lease or installment sale, enter the date interest starts to accrue. For issues reported on a consolidated basis, enter the first day of the calendar year during which the obligations were issued (for example, for calendar year 2010, enter 01/01/2010).

**Lines 9a through 9h.** Complete this section if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also complete this section if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal.

Do not complete lines 9a through 9d if the proceeds of an obligation are received in the form of cash even if the term "lease" is used in the title of the issue. For lines 9a through 9d, enter the amount on the appropriate line that represents a lease or installment purchase. For line 9d, enter the type of item that is leased. For lines 9e through 9h, enter the amount on the appropriate line that represents a bank loan. For line 9h, enter the type of bank loan.

**Lines 9i and 9j.** For line 9j, enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds, including proceeds that will be used to fund an escrow account for this purpose. Several lines may apply to a particular obligation. For example, report on lines 9i and 9j obligations used to refund prior issues which represent loans from the proceeds of another tax-exempt obligation.

**Line 9k.** Enter on line 9k the amount on line 8a that does not represent an obligation described on lines 9a through 9j.

**Line 10.** Check this box if the issuer has designated any issue as a "small issuer exception" under section 265(b)(3)(B)(i)(III).

**Line 11.** Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of rebate with Form 8038-GC. See Rev. Proc. 92-22, 1992-1 C.B. 736, for rules regarding the "election document."

**Line 12.** Enter the name of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

**Line 13.** Enter the employer identification number of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

## Signature and Consent

An authorized representative of the issuer must sign Form 8038-GC and any applicable certification. Also print the name and title of the person signing Form 8038-GC. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that has been designated in this form.

**Note.** If the issuer authorizes in line 6 the IRS to communicate with a person other than an officer or other employee of the issuer, (such authorization shall include contact both in writing regardless of the address entered in lines 3 and 4, and by telephone) by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

## Paid Preparer

If an authorized representative of the issuer filled in its return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer Use Only* area of the return. A paid preparer cannot use a social security number in the *Paid Preparer Use Only* box. The paid preparer must use a preparer tax identification number (PTIN). If the paid preparer is self-employed, the preparer should enter his or her address in the box.

The paid preparer must:

- Sign the return in the space provided for the preparer's signature, and
- Give a copy of the return to the issuer.

## Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

<b>Learning about the law or the form</b>	4 hr., 46 min.
<b>Preparing the form</b>	2 hr., 22 min.
<b>Copying, assembling, and sending the form to the IRS</b>	2 hr., 34 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File*.





# Lease-Purchase Agreement

Lease Purchase Agreement Number: 110896-003

This Lease-Purchase Agreement dated the 27<sup>th</sup> day of September, 2023 (the "Lease"), by and between Bell Bank Equipment Finance, a division of Bell Bank, whose address is 15490 101<sup>st</sup> Ave N, Suite 200, Maple Grove, MN 55369, as agent for one or more persons (the "Lessor") and City of St Johns, located in Clinton County, as Lessee (the "Lessee"), whose address is 100 E State St, Saint Johns, MI 48879-1550.

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

WHEREAS, Lessee is authorized by State statutes to acquire (1) 2018 Caterpillar 420F2IT Tractor Backhoe by entering into a lease-purchase agreement; and

WHEREAS, pursuant to a resolution duly adopted by the Lessee on see attached, the Lessee has determined that it is necessary to further the construction and maintenance purposes of the Lessee that it acquire (1) 2018 Caterpillar 420F2IT Tractor Backhoe described herein as Equipment; and

WHEREAS, Lessor is willing to acquire the Equipment and to lease and sell it to Lessee pursuant to this Lease;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

## ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 **Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

**Authorized Representative:** Shall mean (a) with respect to the Lessee, the officer of the Lessee or any other Person or Persons at any time designated by resolution of Lessee's governing body or written certificate conferring authority upon such person to act on behalf of the Lessee with respect to this Lease; and (b) with respect to the Lessor, any authorized signatory of the Lessor authorized by their bylaws to act or to execute documents on behalf of the Lessor.

**Certificate of Acceptance:** The Certificate of Acceptance of Lessee the form of which is attached hereto as Exhibit C.

**Code:** The Internal Revenue Code of 1986, as amended and any regulations promulgated thereunder by the United States Department of the Treasury.

**Commencement Date:** The date upon which Lessee's obligations to make Lease-Purchase Payments accrues as evidenced by the issuance to Lessor of the Certificate of Acceptance attached hereto as Exhibit C.

**Contractor:** Each of the manufacturers or vendors from whom Lessee (or Lessor at Lessee's request) has ordered or will order or with whom Lessee (or Lessor at Lessee's request) has contracted or will contract for the manufacture, delivery and/or installation of the Equipment.

**Cost or Costs:** The costs of acquisition and installation of the Equipment and all other costs incidental and related thereto, including the costs of preparation, marketing and sale of this Lease.

**Equipment:** The (1) 2018 Caterpillar 420F2IT Tractor Backhoe described in the attached Exhibit A which is being leased and purchased by Lessee pursuant to this Lease.

**Fiscal Year:** Each twelve (12) month fiscal period of Lessee commencing on the \_\_\_\_ of \_\_\_\_\_ and ending on the \_\_\_\_ of \_\_\_\_\_ the following year.

**Independent Counsel:** An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

**Interest:** The portion of any Lease-Purchase Payment designated as and comprising interest as shown in the attached Exhibit B.

**Lease:** This Lease-Purchase Agreement dated as of 9/27/2023, whereby the Lessor has leased the Equipment to Lessee, as the same may from time to time be amended or modified.

**Lease-Purchase Payment:** The payment due from Lessee to Lessor on each Payment Date, as shown on Exhibit B.

**Net Proceeds:** Any insurance proceeds, paid with respect to the Equipment, remaining after payment therefrom of all expenses incurred in the collection thereof.

**Payment Date:** The date upon which any Lease-Purchase Payment is due and payable as provided in Exhibit B.

**Permitted Encumbrances:** As of any particular time: (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to the provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and amendments hereto, (iii) Lessor's interest in the Equipment, and (iv) any mechanic's, laborers, material person's supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a Contractor or which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

**Person or Persons:** An individual, partnership, corporation, trust or unincorporated organization.

**Prepayment Price:** With respect to the Equipment, as of any Payment Date, the amount so designated and set forth opposite such date in the attached Exhibit B.

**Principal:** The portion of any Lease-Purchase Payment designated as principal in the attached Exhibit B.

**Request for Disbursement of Funds:** The Request for Disbursement of Funds of Lessee, the form of which is attached hereto as Exhibit C-1.

**Specifications:** The bid specifications and/or purchase order pursuant to which Lessee has ordered the Equipment from a Contractor.

**State:** The State of Michigan.

**State and Federal Law or Laws:** The Constitution and any law of the State and any charter, ordinance, rule or regulation or any agency or political subdivision of the State, and any law of the United States, and any rule or regulation of any federal agency.

**Term, Term of this Lease or Lease Term:** The period commencing on the execution of this Lease and ending on the date the last Lease-Purchase Payment is due and payable, as shown on Exhibit B.

Section 1.2 **Exhibits.** The following Exhibits are attached to and by reference made part of this Lease:

**Exhibit A:** A description of the Equipment including the serial number thereof which shall be inserted when available.

**Exhibit B:** A schedule to be completed by Lessor as provided in Section 4.1, indicating the date upon which the Term of this Lease shall end, the date and amount of each Lease-Purchase Payment coming due under the Lease Term and the amount of Principal and Interest comprising each Lease-Purchase Payment.

**Exhibits C and C-1:** A Certificate of Acceptance of Lessee with a Request for Disbursement of Funds attached indicating that the Equipment has been or will be delivered and installed in accordance with the Specifications, and has been accepted by Lessee, the date on which Lease-Payments shown in Exhibit B shall commence, and that certain other requirements have been met by Lessee.

**Exhibit D:** An opinion of counsel to Lessee as to the organization, nature and powers of Lessee, the validity, execution and delivery of this Lease and various related documents; the absence of litigation; and related matters.

**Exhibit E:** A form of resolution of the governing body of Lessee, relating to this Lease and, if applicable, certain federal tax matters.

## **ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES**

Section 2.1 **Representations, Covenants and Warranties of Lessee.** Lessee represents, covenants and warrants as follows:

- (a) Lessee is a political subdivision and municipal corporation, duly organized and existing under the Constitution and laws of the State.
- (b) Lessee is authorized under the Constitution and laws of the State to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.

- (c) The officer of Lessee executing this Lease has been duly authorized to execute and deliver this Lease under the terms and provisions of a resolution of Lessee's governing body, or by other appropriate official action.
- (d) In authorizing and executing this Lease, Lessee has complied with all open meeting laws, public bidding and other State and Federal laws applicable to this Lease and the acquisition of the Equipment by Lessee.
- (e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other Person, firm or corporation, except as provided under the terms of this Lease.
- (f) Lessee will use the Equipment during the Lease Term only to perform its essential governmental functions.
- (g) Lessee will take no action that would cause the interest portion of the Lease-Purchase Payments to become includable in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the "Code") and Treasury Regulations promulgated thereunder (the "Regulations"), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest portion of the Lease-Purchase Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations.
- (h) Upon execution of this Lease-Purchase Agreement, and upon each request for a disbursement of funds hereunder, Lessee will provide to Lessor a completed and executed copy of the Certificate of Acceptance attached hereto as Exhibit C.
- (i) Upon the execution of this Lease, Lessee will provide to Lessor an opinion of its legal counsel in the form attached hereto as Exhibit D.
- (j) Lessee will submit to the Internal Revenue Service an information reporting statement at the time and in the form required by the Code.
- (k) Lessee will cause a resolution substantially in the form attached hereto as Exhibit E to be adopted by its governing body.
- (l) Lessee does not reasonably anticipate that it will issue tax-exempt obligations (not including "private activity bonds" as defined in Section 141 of the Code) in an aggregate amount in excess of \$10,000,000 during the calendar year in which the Term commences, and this Lease is designated as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code relating to deductibility of interest by financial institutions.

Section 2.2 **Representations, Covenants and Warranties of Lessor.** Lessor represents, covenants and warrants as follows:

- (a) Lessor has the power to enter into this Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same.
- (b) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or agreement or instrument to which Lessor is now a party or by which Lessor is bound; constitutes a default under any of the foregoing; or results in the creation or imposition any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Equipment, except Permitted Encumbrances.

### ARTICLE III AGREEMENT TO LEASE

Section 3.1 **Lease.** Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon terms and conditions set forth in this Lease and subject to the option to purchase set forth in Section 4.3 hereof.

Section 3.2 **Possession and Enjoyment.** Lessor hereby covenants to provide Lessee during the Term with the quiet use and enjoyment of the Equipment, and Lessee intends to during the Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in the Lease. Lessor will, at the request of Lessee and at Lessee's cost, join any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so. All warranties extended upon the Equipment by the Contractors shall inure to the benefit of the Lessee during the term of this Lease.

Section 3.3 **Lessor Access to Equipment.** Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Equipment. Lessee further agrees that Lessor shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Lessee to perform its obligations hereunder.

Section 3.4 **Tax and Ownership and Lessee.** The Lessor warrants and represents that it shall not at any time during the term of the Lease claim depreciation, cost recovery deductions, or tax credit for federal income tax purposes with respect to the equipment, or portion thereof, and that it shall not take any position for federal income tax purposes that is inconsistent with the unequivocal title and ownership for any and all tax purposes of the Lessee.

## ARTICLE IV TERM OF LEASE

Section 4.1 **Lease Term.** This Lease shall be in effect for a Term commencing upon the execution hereof and ending as provided in Section 4.2.

Section 4.2 **Termination of Lease Term.** The Term of this Lease will terminate upon the occurrence of the first of the following events:

- (a) A default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII without payment of all Lease-Purchase Payments; or
- (b) The payment by Lessee of all Lease-Purchase Payments and all other amounts authorized or required to be paid by Lessee hereunder.
- (c) Nonappropriation of funds by Lessee pursuant to Section 12.7 hereof.

Section 4.3 **Option to Purchase.** Lessee has the option to purchase the Equipment by paying the applicable prepayment price in accordance with Section 10.1 hereof.

## ARTICLE V LEASE-PURCHASE PAYMENTS

Section 5.1 **Lease-Purchase Payments.** Lessee agrees to pay Lease-Purchase Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Lease-Purchase Payments shall be paid to Lessor at its offices at the address specified in Section 1.1 of this Lease, or to such other Person or entity to which Lessor has assigned such Lease-Purchase Payments as specified in Article XI, at such place as such assignee may from time to time designate in lawful money of the United States of America to Lessor or, in the event of assignment of the right to receive Lease-Purchase Payments by Lessor, to its assignee. Interest shall accrue from the date of the Certificate of Acceptance.

Section 5.2 **Source of Payment.** All Lease-Purchase Payments required to be paid Lessor pursuant to this Lease shall be paid from moneys duly budgeted, appropriated, obligated and otherwise provided and made available therefor by Lessee.

Section 5.3 **Interest Component.** A portion of each Lease-Purchase Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Lease-Purchase Payment.

Section 5.4 **Lease-Purchase Payments to be Unconditional.** The obligation of Lessee to make Lease-Purchase Payments or any other payments required hereunder shall be absolute and unconditional in all events, except as expressly provided under this Lease. Notwithstanding any dispute between Lessee and Lessor or any other Person, Lessee shall make all Lease-Purchase Payments and other payments required hereunder when due and shall not withhold any Lease-Purchase Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Lease-Purchase Payments or other payments required under this Lease. Lessee's obligation to make Lease-Purchase Payments or other payments shall not be abated through accident or unforeseen circumstances. Except as provided in Section 12.7 hereof, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder, and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damage therefor.

Section 5.5 **Late Payments.** See Section 12.6.

## ARTICLE VI INSURANCE AND NEGLIGENCE

Section 6.1 **Liability Insurance.** Upon receipt of possession of the Equipment, Lessee shall take measures as may be necessary to ensure that any liability for injuries to or death of any Person or damage to or loss of property arising out of or in any way relating to the condition or

operation of the Equipment or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

- Section 6.2 **Property Insurance.** Upon receipt of possession of the Equipment, Lessee shall have and assume the risk of loss with respect thereto. Lessee shall procure and maintain continuously in effect during the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Equipment, or to the purchase of the Equipment, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.
- Section 6.3 **Worker's Compensation Insurance.** If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.
- Section 6.4 **Requirements for all Insurance.** All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (or riders) evidencing any such insurance procedure by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is not obtainable in which event Lessee shall notify Lessor of this fact.
- Section 6.5 **Lessee's Negligence.** Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any Person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses and damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fee) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit, or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.
- Section 6.6 **Damage to or Destruction of Equipment.** If after delivery of the Equipment to Lessee all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practical after such event, replace the same at Lessee's sole cost and expense with equipment of equal or greater value to the Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement, subject to the provisions of Section 12.7 hereof. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If Lessee fails or refuses to notify Lessor within the required period, Lessor may, at its option, exercise its remedies under Article XII hereof. The Net Proceeds of all insurance payable with respect to the Equipment shall be available to Lessee and shall be used to discharge Lessee's obligations under this Section.
- Section 6.7 **Cooperation of Lessor.** The Lessor shall cooperate fully with the Lessee at the sole expense of the Lessee, in filing any proof of loss with respect to any insurance policy covering the casualties described in this Section. To the extent it may lawfully do so, the Lessor will permit the Lessee to litigate in any proceeding resulting therefrom and the name of it and on behalf of the Lessor, provided that the Lessor has been indemnified from all costs and expenses therefor, including without limitation, reasonable counsel fees incurred by the Lessor in connection with any such litigation in its name. In no event will the Lessor voluntarily settle or consent to the settlement of any proceeding, arising out of any insurance claim with respect to the Equipment or any part thereof, without the written consent of the Lessee.

## ARTICLE VII OTHER OBLIGATIONS OF LESSEE

- Section 7.1 **Use; Permits.** Lessee shall exercise due care in the installation, use, operation and maintenance of the Equipment, and shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any State or Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses necessary of the installation, operation, possession and use of the Equipment. Lessee shall comply with all State and Federal Laws applicable to the installation, operation, possession and use of the Equipment, and if compliance with any such State or Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at its expense.

- Section 7.2 **Maintenance of Equipment by Lessee.** Lessee shall, at its own expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Equipment in such condition. Lessor shall have no responsibility for any of these repairs or replacements.
- Section 7.3 **Taxes, Other Governmental Charges and Utility Charges.** (a) Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind whatsoever which are at any time lawfully assessed or levied against or with respect to the Equipment, the Lease-Purchase Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien of the Equipment; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.
- (b) Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contest to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss for forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in the form satisfactory to Lessor.
- Section 7.4 **Advances.** If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 18.0 % per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.
- Section 7.5 **Disbursements.** (a) As payments are required for the Equipment under this Lease, the Lessee as the agent for the Lessor shall prepare and submit a Certificate of Acceptance of Lessee with a Request for Disbursement of Funds to the Lessor. (b) The Lessor shall permit the withdrawal of funds requested in the Request for Disbursement of Funds, and such funds shall be applied to the payment of the Cost of the Equipment.

## ARTICLE VIII TITLE

- Section 8.1 **Title.** During the Term of this Lease, legal title to the Equipment and any all repairs, replacements, substitutions and modifications to it shall be in Lessee's name subject to Lessor's interest. Upon termination of this Lease for any of the reasons specified in Section 4.2 (b), Lessor's interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security or other interest in the Equipment.
- Section 8.2 **Security Interest.** Lessor shall have and retain a security interest under the Uniform Commercial Code, Certificate of Title or other applicable State or Federal Law in the Equipment, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof pursuant to Section 8.5, in order to secure Lessee's payment of all Lease-Purchase Payments due during the Term of this Lease and the performance of all other obligations herein to be performed by Lessee. Lessee will join with Lessor in executing such financing statements or other documents and will perform such acts as Lessor may request to establish and maintain a valid security interest in the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags, and maintain such markings during the Term of this Lease, so as clearly to disclose Lessor's security interest in the Equipment.
- Section 8.3 **Liens.** During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.
- Section 8.4 **Installation of Lessee's Equipment.** Lessee may at any time and from time to time, in its sole discretion and at its own expense, install other items of equipment in or upon the Equipment, which items shall be identified by tags or other symbols affixed thereto as property of Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be

modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Equipment resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease-purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Equipment.

Section 8.5 **Modification of Equipment.** Lessee shall at its own expense, have the right to make repairs to the Equipment, and to make repairs, replacements, substitutions and modifications to all or any part of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Equipment and be subject to the provisions of the Lease. Such work shall not in any way damage the Equipment or cause it to be used for purposes other than those authorized under the provisions of State or Federal Law or those contemplated by this Lease; and the Equipment, upon completion of any such work shall be of a value which is not less than the value of the Equipment immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Equipment for labor or materials furnished in connection with any repair, replacement, substitution or modification made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessee will cooperate fully with Lessee in any such contest.

Section 8.6 **Personal Property.** The Equipment is and shall at all times be and remain personal property notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanently rested upon real property or any building thereon or attached in any manner to what is permanent by means of cement, plaster, nails, bolts, screws or otherwise.

## ARTICLE IX WARRANTIES

Section 9.1 **Selection of Equipment.** The Equipment and the Contractor have been selected by Lessee, and Lessor shall have no responsibility in connection with the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Contractor or its sales representative of the order submitted, or any delay or failure by the Contractor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee. Lessee authorized Lessor to add the serial number of the Equipment to Exhibit A when available.

Section 9.2 **Installation and Maintenance of Equipment.** Lessor shall have no obligation to install, erect, test, inspect, service or maintain the Equipment under any circumstances, but such actions shall be the obligation of Lessee or the Contractor.

Section 9.3 **Contractor's Warranties.** Lessor hereby assigns to Lessee for and during the Term of the Lease, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Equipment, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.

Section 9.4 **Patent Infringement.** Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any Contractor with respect to the Equipment. Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Equipment furnished pursuant to this Lease.

Section 9.5 **Disclaimer of Warranties.** THE EQUIPMENT IS DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

## ARTICLE X PREPAYMENT

Section 10.1 **When Available.** Lessee shall have the option to prepay its obligations under this Lease on any Payment Date at an amount equal to the applicable Prepayment Price.

Section 10.2 **Release of Lessor's Interest.** Upon the prepayment of Lessee's obligations under this Lease in accordance with Section 10.1 hereof, Lessee shall have no further obligations under this Lease and this Lease shall terminate in accordance with Section 4.2(b). Thereupon

the Lessor shall relinquish title to the Equipment in accordance with Section 8.1.

## **ARTICLE XI ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

Section 11.1 **Assignment by Lessor.** Except as otherwise provided herein, Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Lease, the Lease-Purchase Payments or other amounts due hereunder and the Equipment may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. No such assignment shall be effective as against Lessee unless and until the assignor shall have filed with Lessee a copy or written notice thereof identifying the assignee. Lessee shall pay all Lease-Purchase Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment or notice of assignment filed with Lessee. During the Lease Term, Lessee shall keep a complete and accurate record of all such assignments. In the event Lessor assigns participation in its right, title and/or interest in and to this Lease, the Lease-Purchase Payments and other amounts due hereunder and the Equipment, such participants shall be considered to be Lessor with respect to their participated shares thereof.

Section 11.2 **Assignment and Subleasing by Lessee.** Neither this Lease nor Lessee's interest in the Equipment may be assigned by Lessee without the written consent of Lessor. However, the Equipment may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

- (a) This Lease and the obligation of Lessee to make Lease-Purchase Payments hereunder, shall remain obligations of Lessee.
- (b) The sublease shall assume the obligation of Lessee hereunder to the extent of the interest subleased.
- (c) Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.
- (d) No sublease by Lessee shall cause the Equipment to be used for a purpose other than an essential governmental function authorized under the provisions of the Constitution and the laws of the State.
- (e) No sublease shall cause the Interest component of the Lease-Purchase Payments due with respect to the Equipment to become includable in gross income of the recipient for federal income tax purposes.

Section 11.3 **Restriction on Mortgage or Sale of Equipment by Lessee.** Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Equipment or any portion thereof during the Term of this Lease, or remove the same from its boundaries, without the written consent of Lessor.

## **ARTICLE XII EVENTS OF DEFAULT AND REMEDIES**

Section 12.1 **Events of Default Defined.** (a) The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Equipment, any one or more the following events:

- (i) Except as permitted by Section 12.7 hereof, failure by Lessee to pay any Lease-Purchase Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.
- (ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.
- (iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental or proprietary function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar acts which may hereafter be enacted.



- (b) The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to carry out its obligation under this Lease with respect to the Equipment, other than its obligation to pay Lease-Purchase Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of god, strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections, riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

**Section 12.2 Remedies of Default.** Whenever any event of default referred to in Section 12.1, clauses (i) to (iii) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

- (i) With or without terminating this Lease, re-enter and take possession of such Equipment and exclude Lessee from using it; provided, however, that if this Lease has not been terminated, Lessor shall return possession of such Equipment to Lessee when the event of default is cured; and provided further that Lessee shall continue to be responsible for the Lease-Purchase Payments due with respect to such Equipment during the Fiscal Year then in effect; or
- (ii) With or without terminating this Lease, re-enter and take possession of such Equipment, and sell, lease or sublease such Equipment or any part of it, holding Lessee liable for the difference between (a) the sales price, rent and other amounts paid by the purchaser, lessee or sublessee pursuant to such sales agreement, lease or sublease and (b) the balance of the Lease-Purchase Payments and other amounts owed by Lessee with respect to such Lease; provided, however, that nothing contained herein shall impose an obligation upon Lessor so to sell, lease or sublease such Equipment and provided that any excess proceeds from such disposition shall be retained by Lessor; or
- (iii) With or without terminating this Lease, declare all Lease-Purchase Payments during the Fiscal Year then in effect due or to become due with respect to such Lease in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Lease-Purchase Payments shall be immediately due and payable; or
- (iv) Take whatever action at law or in equity may appear necessary or desirable to collect the Lease-Purchase Payments then due and thereafter to become due during the then current Fiscal Year of Lessee with respect to such Lease, or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

**Section 12.3 Return of Equipment.** Upon termination of this Lease prior to the payment of all Lease-Purchase Payments, Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 7.2, in the following manner as may be specified by Lessor: (a) by delivering the Equipment at Lessee's cost and expense to such place within the State as Lessor shall specify; or (b) by loading such portions of the Equipment as are considered movable at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the place specified by Lessor. If Lessee refuses to return the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.

**Section 12.4 No Remedy Exclusive.** No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof by any such right and power. Each remedy may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

**Section 12.5 Agreement to Pay Attorney's Fees and Expenses.** In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys and/or incur other expenses for the collection of monies or for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fee of such attorneys and/or such other reasonable expenses so incurred by the nondefaulting party. In the event that legal proceedings relating to this Lease are commenced in any court or before any other tribunal of competent jurisdiction, the reasonable legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the nonprevailing party on demand of the prevailing party.

**Section 12.6 Late Charges.** Whenever any event of default referred to in Section 12.1, clause (i) hereof shall have happened and be continuing with

respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge equal five percent (5.0%) per month of the delinquent Rental Payment, and Lessee shall be obligated to pay the same immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section 12.6 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

- Section 12.7 **Non-Appropriation of Funds.** (a) Notwithstanding any provision in the Lease to the contrary, in the event that no funds or insufficient funds are appropriated by Lessee's governing body for the next fiscal year for Lease-Purchase Payments due under this Lease, this Lease shall terminate the end of such fiscal year on the last day of the fiscal year for which appropriations were received and Lessee shall return the Equipment to Lessor (at Lessee's expense, to a destination Lessor directs, in good working condition less normal wear and tear), and cancel this Lease by notice to such effect served not less than thirty (30) days prior to the end of the Lessee's fiscal year. Lessee shall notify Lessor of nonappropriation within thirty (30) days of its occurrence.
- (b) Lessee and Lessor acknowledge and agree that the Lease-Purchase Payments hereunder shall constitute currently budgeting expenditures of Lessee from its capital expenditure fund or successor fund thereto. Lessee's obligations under this Lease shall be subject to Lessee's annual right to terminate this Lease, and shall not constitute a mandatory charge of requirement in any ensuing fiscal year beyond the then current fiscal year. No provision of this Lease shall be construed or interpreted as creating a general obligation or other indebtedness of Lessee within the meaning of any constitutional or statutory debt limitation. This Lease shall not directly or indirectly obligate Lessee to make any payments beyond those budgeted and appropriated from its general fund for Lessee's then current fiscal year. Lessee shall be under no obligation whatsoever to exercise its option to purchase the Equipment. No provision of this Lease shall be construed to pledge or create a lien on any class or source of Lessee monies.

## ARTICLE XIII ADMINISTRATIVE PROVISIONS

- Section 13.1 **Notices.** All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified below; provided, that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificate, legal opinion or other communication will be sent.

Lessor: Bell Bank Equipment Finance  
15490 101<sup>st</sup> Ave N, Suite 200  
Maple Grove, MN 55369

Lessee: City of St Johns  
100 E State St  
Saint Johns, MI 48879-1550

- Section 13.2 **Financial Information.** During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue to pay Lease-Purchase Payments required under this Lease as may be requested by Lessor or its assignee.
- Section 13.3 **Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.
- Section 13.4 **Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- Section 13.5 **Amendments, Changes and Modification.** This Lease may be amended or any of its terms modified only by written document duly authorized, executed, and delivered by Lessor and Lessee.
- Section 13.6 **Captions.** The captions or headings in this Lease are for convenience only and in no way defend, limit or describe the scope or intent of any provisions, articles, sections or clauses of this Lease.
- Section 13.7 **Further Assurances and Corrective Instruments.** Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, for carrying out the expressed intention of this Lease.
- Section 13.8 **Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.9 **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State.

Section 13.10 **Anti-Discrimination.** Lessor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, sexual orientation or physical defect or disability with regard to but not limited to employment, upgrading, promotion or transfer, recruitment or recruitment advertising, layoffs or termination or selection for training.

Section 13.11 **Lessor and Lessee Representatives.** Whenever under the provisions of this Lease, the approval of the Lessor or the Lessee is required to take some action at the request of the other, such approval of such request shall be given by an Authorized Representative of the Lessor, for the Lessor, and by an Authorized Representative of the Lessee, for the Lessee. Any party hereto shall be authorized to rely on such approval of request.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officers; and Lessee has caused this Lease to be executed in its name by duly authorized officers, as of the date first above written.

BELL BANK EQUIPMENT FINANCE, a division of Bell Bank, as Lessor

\_\_\_\_\_  
Print or type full name

By \_\_\_\_\_  
Signature

Its \_\_\_\_\_

\_\_\_\_\_  
City of St Johns as Lessee

\_\_\_\_\_  
Print or type full name

By \_\_\_\_\_  
Signature

Its \_\_\_\_\_  
Title

**EXHIBIT A**  
**DESCRIPTION OF EQUIPMENT**

(1) 2018 Caterpillar 420F2IT Tractor Backhoe

Serial Number: HWD02755

**EXHIBIT B  
PAYMENT SCHEDULE**

Commencement Date: 9/27/2023

	<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Amount</u>	<u>Principal Amount</u>	<u>*Purchase Option Price</u>
Lease	09/27/2023				56,310.78
1	09/27/2023	10,872.20	0.00	10,872.20	45,438.58
<b>2023 Totals</b>		<b>10,872.20</b>	<b>0.00</b>	<b>10,872.20</b>	
2	09/27/2024	10,872.20	2,858.10	8,014.10	37,424.48
<b>2024 Totals</b>		<b>10,872.20</b>	<b>2,858.10</b>	<b>8,014.10</b>	
3	09/27/2025	10,872.20	2,354.01	8,518.19	28,906.29
<b>2025 Totals</b>		<b>10,872.20</b>	<b>2,354.01</b>	<b>8,518.19</b>	
4	09/27/2026	10,872.20	1,818.21	9,053.99	19,852.30
<b>2026 Totals</b>		<b>10,872.20</b>	<b>1,818.21</b>	<b>9,053.99</b>	
5	09/27/2027	10,872.20	1,248.71	9,623.49	10,228.81
<b>2027 Totals</b>		<b>10,872.20</b>	<b>1,248.71</b>	<b>9,623.49</b>	
6	09/27/2028	10,872.20	643.39	10,228.81	0.00
<b>2028 Totals</b>		<b>10,872.20</b>	<b>643.39</b>	<b>10,228.81</b>	
<b>Grand Totals</b>		<b>65,233.20</b>	<b>8,922.42</b>	<b>56,310.78</b>	

TOTAL: \$56,310.78  
INTEREST RATE: 6.29%

\*Amount due after payment of Lease-Purchase Payment due on the same day.

All amounts received by Lessor shall be applied first to late payment charges and expenses, then to accrued interest, and then to principal payments in inverse order, as determined by lessor, as permitted by law.

**EXHIBIT C  
ACCEPTANCE CERTIFICATE**

The undersigned, being a duly appointed Lessee Representative, under the Lease Purchase Agreement dated as of 9/27/2023 (the ("Lease"), by and between Bell Bank Equipment Finance ("Lessor"), and the City of St Johns, ("Lessee"), hereby certifies on behalf of Lessee with respect to the Equipment to be acquired under Lease Exhibit A, that the portion of the Equipment described on the attachment to this Acceptance Certificate has been delivered and installed pursuant to and in accordance with said Lease and has been accepted by Lessee.

**Dated:** \_\_\_\_\_.

As Lessee: \_\_\_\_\_ City of St Johns \_\_\_\_\_

\_\_\_\_\_  
**Print or type full name**

**By** \_\_\_\_\_

**Signature**

**Its** \_\_\_\_\_

**Title**

**EXHIBIT C-1  
REQUEST FOR DISBURSEMENT OF FUNDS**

TO: **Bell Bank Equipment Finance ("Lessor")**  
15490 101<sup>st</sup> Ave N, Suite 200  
Maple Grove, MN 55369

FROM: City of St Johns (**"Lessee"**)  
100 E State St  
Saint Johns, MI 48879-1550

The Lessee hereby requests disbursement of funds pursuant to the Lease Purchase Agreement dated 9/27/2023 (the "Lease"), between the Lessor and Lessee, as follows:

1. Amount to be disbursed: \$56,310.78.
2. The payee(s) are Caterpillar Financial Service Corporation.
3. Purchase of the payment: Payment for property as described in the Lease and Exhibit C.
4. Bills, receipts, invoices or other documents evidencing the amount requested are attached hereto.
5. The Lessee hereby certifies that the amounts requested to be disbursed were properly incurred in connection with the acquisition of the Equipment as described in the Lease and were not subject of any previous request for disbursement.
6. This request is the final disbursement request.

**Dated:** \_\_\_\_\_

LESSEE: \_\_\_\_\_ City of St Johns

\_\_\_\_\_  
**Print or type full name**

**By** \_\_\_\_\_

**Signature**

**Its** \_\_\_\_\_

**Title**

**Lansing**  
313 S. Washington Square  
Lansing MI 48933

**Detroit**  
333 W. Fort Street – Suite 1400  
Detroit MI 48226

Walter S. Foster  
1878-1961  
Richard B. Foster  
1908-1996  
Theodore W. Swift  
1928-2000  
John L. Collins  
1926-2001

Webb A. Smith - *Retired*

Charles A. Janssen  
Charles E. Barbieri  
Scott L. Mandel  
Michael D. Sanders  
Brent A. Titus

Brian G. Goodenough  
Matt G. Hrebec  
Deanna Swisher  
Thomas R. Meagher  
Douglas A. Mielock  
Scott A. Chernich  
Paul J. Millenbach  
Dirk H. Beckwith  
Brian J. Renaud  
Lynwood P. VandenBosch  
Lawrence Korolewicz  
James B. Doezema  
Anne M. Seurnyck  
Michael D. Homier  
Scott H. Hogan  
Benjamin J. Price

**Southfield**  
28411 Northwestern Highway – Suite 500  
Southfield MI 48034

**Holland**  
151 Central Avenue – Suite 260  
Holland MI 49423

Michael R. Blum  
Jonathan J. David  
Andrew C. Vredenburg  
Julie I. Fershtman  
Todd W. Hoppe  
Jennifer B. Van Regenmorter  
Thomas R. TerMaat  
Frederick D. Dilley  
David R. Russell  
Joel C. Farrar  
Laura J. Genovich  
Karl W. Butterer, Jr.  
Mindi M. Johnson  
Ray H. Littleton, II  
Jack L. Van Coevering  
Anna K. Gibson

Nicholas M. Oertel  
Alicia W. Birach  
Adam A. Fadly  
Michael J. Liddane  
Ryan E. Lamb  
Clifford L. Hammond  
Matthew S. Fedor  
Andrea Badalucco  
Stefania Gismondi  
Leslie A. Abdoo  
Julie L. Hamlet  
Michael C. Zahrt  
Mark T. Koerner  
Warren H. Krueger, III  
Taylor A. Gast  
Rachel G. Olney

Thomas K. Dillon  
Robert A. Hamor  
Jacquelyn A. Dupler  
Dora A. Brantley  
Stephen W. Smith  
Amanda Afion Martin  
Steven J. Tjapkes  
Daniel S. Zick  
Alexander S. Rusek  
Benjamin R. Judd  
Erica E.L. Huddas  
Jennifer L. Montasir  
Bryan Cermak  
Mikhail Murshak  
Kevin J. Roragen  
Courtney G. Agrusa

**Grand Rapids**  
1700 E. Beltline NE – Suite 200  
Grand Rapids MI 49525

**St. Joseph**  
800 Ship Street – Suite 105  
St. Joseph MI 49085

Rachael Kuilema Klein  
Hilary J. McDaniel Stafford  
Amanda J. Dernovshek  
Brandon M. H. Schumacher  
Alaina M. Nelson  
Sydney T. Steele  
Anthony M. Dalimonte  
Jim W. Scales  
Benjamin C. Dilley  
Nicholas J. Stock, II  
Keith T. Brown  
Mallory E. Reader  
Reed K. Powers  
Dina D. Kashat

**Writer's Direct Phone:** 616.726.2207

**Fax:** 616.726.2299

**Reply To:** Grand Rapids

**Email:** SHogan@fosterswift.com

September \_\_\_, 2023

**Via UPS Next Day Air**

Bell Bank Equipment Finance  
15490 101<sup>st</sup> Ave. N., Suite 200  
Maple Grove, MN 55369

Re: Lease Purchase Agreement by and between Bell Bank Equipment Finance, a division of Bell Bank (“Lessor”) and the City of St. Johns (“Lessee”) dated as of 9/27/2023.

Ladies and Gentlemen:

As counsel to the City of St. Johns, Clinton County, Michigan (the “*Lessee*”), we have examined the Lease-Purchase Agreement described above (the “*Lease Agreement*”), between the Lessee and Bell Bank Equipment Finance, as lessor (“*Lessor*”), together with the Disbursement Request Form and Certificate of Acceptance, and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement. The Lease Agreement and related documents are collectively referred to as the “*Transaction Documents*.” Based upon the foregoing examination and upon an examination of such other documents (including a Resolution of the Governing Body of the Lessee) and matters of law as we have deemed necessary or appropriate, we are of the opinion that:

1. To the best of our knowledge, the execution of the Lease and the appropriation of moneys to pay the Lease-Purchase Payments coming due thereunder does not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

2. The Lessee is a Michigan municipal corporation, which is a body corporate and politic duly established and validly existing as a political subdivision of the State of Michigan under the Constitution and laws of the State of Michigan with full power and authority to enter into the Transaction Documents.

3. To the best of our knowledge, the Transaction Documents have each been duly authorized, executed, and delivered by the Lessee and are in full compliance with all local, state and federal laws. Assuming due authorization, execution and delivery thereof by the Lessor, the Transaction Documents



Bell Bank Equipment Finance

September \_\_, 2023.

Page 2

constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.

4. We are informed that the Lessee has complied with all applicable statutes, laws, rules, regulations, notice and public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. To the best of our knowledge, the resolution adopted by the Governing Body of the Lessee authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings. No approval, consent or withholding of objections is required from any State, federal or local governmental authority or instrumentality with respect to the entry into or performance by the Lessee of its obligations under the Transaction Documents, except as have already been obtained.

5. We are informed that no litigation or proceeding is pending or, to the best of our knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the governing body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. To the best of our knowledge, there is no litigation pending or, to the best of our knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement. To the best of our knowledge, the entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee or on the Equipment (as such term is defined in the Lease Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound.

All capitalized terms have the same meanings as in the Transaction Documents unless otherwise provided herein.

In forming the basis for our opinions set forth above, we have assumed:

- (A) The genuineness of all signatures and the authenticity of all documents submitted to us as originals;
- (B) The conformity to originals of all documents submitted to us as copies;
- (C) The legal capacity of natural persons;
- (D) The truthfulness, accuracy, and completeness of the information, representations, and warranties contained or made in any Transaction Document;
- (E) That each of the parties to the Transaction Documents, other than the Lessee, is duly organized, validly existing, and in good standing (or its equivalent, if applicable) under the laws of the jurisdiction of its organization and that each such party has the power and authority (corporate or otherwise) to execute and deliver each Transaction Document to which it is a party and to perform

Bell Bank Equipment Finance

September \_\_, 2023.

Page 3

its obligations thereunder;

- (F) Each Transaction Document is the legal, valid, and binding obligation of each party thereto, other than the Lessee, enforceable against such party in accordance with its terms;
- (G) As to questions of fact material to our opinion, we have relied upon representations of Lessee contained in the Resolution and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation;
- (H) the conduct of the parties to the Lease Agreement has complied with any requirement of good faith, fair dealing and conscionability and such parties will perform their obligations thereunder reasonably, in good faith and with fair dealing and such parties will act reasonably, in good faith and with fair dealing in taking action, exercising discretion or making determinations thereunder;
- (I) there has not been any mutual mistake of fact, fraud, duress or undue influence in connection with the execution and delivery of the Lease Agreement; and
- (J) each party to the Lease Agreement will act in accordance with, and will refrain from taking any action which is prohibited by, the terms and conditions of the Lease Agreement.

This opinion is subject to the following qualifications and limitations: (i) we are licensed to practice law in the State of Michigan and, in rendering the foregoing opinions, do not hold ourselves out to be qualified to express a legal opinion with respect to the laws of any jurisdiction other than the laws of the State of Michigan and the federal laws of the United States; and (ii) whenever the phrase “we are informed” appears in this opinion, it means that in the course of the inquiries and investigations described herein, we became aware of no facts which indicate that the opinion expressed is incorrect, and that except as otherwise expressly stated in this letter, we have not examined any public records (including without limitation, the plaintiff or defendant indices of state and federal courts), or the records of the Lessee generally (including but not limited to instruments, contracts, notes and agreements of all kinds), whether or not examination or investigation might otherwise be reasonable or prudent, and in giving this opinion we have relied solely on the representations and warranties of the officers and representatives of the Lessee and have not undertaken any independent investigation to determine the existence or nonexistence of any facts.

No opinion may be inferred or implied beyond the matters expressly stated herein. The opinions that are expressed herein are solely for the benefit of the Lessor, its assigns, successors and its counsel described below in connection with the transactions contemplated by the Agreement, and may not be relied upon in any manner by any other person or for any other purpose. This opinion is as of its date and we disclaim any undertaking or obligation to advise of changes that hereafter may be brought to our attention whether based on a change in law or a change in any fact relating to the Lessee or any other person.

FOSTER SWIFT COLLINS & SMITH PC

Scott H. Hogan

# INSURANCE REQUIREMENTS FORM

DATE: 9/12/2023

LEASE PURCHASE AGREEMENT NO. 110896-003

**TO:** \_\_\_\_\_ (Name of Insurance Agency/Broker)  
 \_\_\_\_\_ (Address)  
 \_\_\_\_\_ (Address)  
 \_\_\_\_\_ (City, State, Zip)

**ATTN:** \_\_\_\_\_ (Agent's Name)  
**TEL:** \_\_\_\_\_ (Telephone Number)

Please issue a Certificate of Insurance in the name of City of St Johns covering the Lease Purchase Agreement identified above (collectively, the "Lease") and mail within five (5) business days to:

ATTN:	BELL BANK EQUIPMENT FINANCE	Bell Bank Equipment Finance Representative: Lynsey Alf
	A division of Bell Bank	Telephone Number: (952) 905-5166
	15490 101 <sup>st</sup> Ave N, Suite #200	Fax Number: (833) 200-6043
	Maple Grove, MN 55369	Email Address: lalf@bell.bank

The insurance requirements below are in connection with the Lease and cover the equipment identified on the Lease Purchase Agreement identified above, which are incorporated herein by reference (collectively, the "Equipment").

Equipment description:  
(1) 2018 Caterpillar 420F2IT Tractor Backhoe

I. **PHYSICAL DAMAGE REQUIREMENTS:**

- A. All Risk coverage for not less than \$56,310.78. The amount of the deductible must be stated here and on the certificate of Insurance. Deductible amount: \$ \_\_\_\_\_.
- B. **Endorsement:** It is understood and agreed that Bell Bank and/or its assigns and/or its successors are included as Loss Payee.
- C. **Endorsement:** It is understood and agreed that this insurance is primary insurance insofar as it relates to any and all collateral financed from Bell Bank pursuant to the Lease.
- D. **Endorsement:** It is understood and agreed that this policy shall not be cancelled, nor any reduction or restriction of coverage be effected until at least thirty (30) days prior written notice has been given to at the above address by Certified Mail, Return Receipt Requested.
- E. **Endorsement:** It is understood and agreed that any loss shall be adjusted with the named insured above and proceeds made payable to Bell Bank and/or its assigns and/or its successors, as their interests may appear.

Per the Lease Purchase Agreement you are required to provide and maintain insurance coverage as summarized above. If you have questions, please reference the Lease or call Bell Bank Equipment Finance. **Satisfactory evidence of insurance must be provided before the lease purchase agreement can be completed.**

Lessee: City of St Johns

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

Title: \_\_\_\_\_



## INVOICE

City of St Johns  
100 E State St  
Saint Johns, MI 48879-1550

Contract # 110896-003

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Invoice Date: 9/12/2023

**Amount Due: \$10,872.20**

Payment Amount:	\$10,872.20
Documentation Fee:	Included in amount Financed
Sales Tax:	N/A

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Total Amount Due:	\$10,872.20
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**Please remit payment with signed documents.**



**Information Return for Small Tax-Exempt  
Governmental Bond Issues, Leases, and Installment Sales**

► Under Internal Revenue Code section 149(e)

OMB No. 1545-0720

**Caution:** If the issue price of the issue is \$100,000 or more, use Form 8038-G.

<b>Part I Reporting Authority</b>		Check box if Amended Return <input type="checkbox"/>	
1 Issuer's name <b>City of St Johns</b>		2 Issuer's employer identification number (EIN) 	
3 Number and street (or P.O. box if mail is not delivered to street address) <b>100 E State St</b>		Room/suite 	
4 City, town, or post office, state, and ZIP code <b>Saint Johns, MI 48879</b>		5 Report number (For IRS Use Only) 	
6 Name and title of officer or other employee of issuer or designated contact person whom the IRS may call for more information 		7 Telephone number of officer or legal representative 	

<b>Part II Description of Obligations</b> Check one: a single issue <input checked="" type="checkbox"/> or a consolidated return <input type="checkbox"/>	
8a Issue price of obligation(s) (see instructions) . . . . .	8a <b>56,310</b> <b>78</b>
b Issue date (single issue) or calendar date (consolidated). Enter date in mm/dd/yyyy format (for example, 01/01/2009) (see instructions) ► <b>09/27/2023</b>	
9 Amount of the reported obligation(s) on line 8a that is:	
a For leases for vehicles . . . . .	9a
b For leases for office equipment . . . . .	9b
c For leases for real property . . . . .	9c
d For leases for other (see instructions) . . . . .	9d
e For bank loans for vehicles . . . . .	9e
f For bank loans for office equipment . . . . .	9f
g For bank loans for real property . . . . .	9g
h For bank loans for other (see instructions) . . . . .	9h
i Used to refund prior issue(s) . . . . .	9i
j Representing a loan from the proceeds of another tax-exempt obligation (for example, bond bank) . . . . .	9j
k Other . . . . .	9k
10 If the issuer has designated any issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check this box . . . . .	<input type="checkbox"/>
11 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check this box (see instructions) . . . . .	<input type="checkbox"/>
12 Vendor's or bank's name: _____	
13 Vendor's or bank's employer identification number: _____	

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above.				
	<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> </div> <div style="width: 40%;"> <div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="text-align: center; font-size: small;">Date</div> </div> </div>	<div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="text-align: center; font-size: small;">Type or print name and title</div>			
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ►				Firm's EIN ►
	Firm's address ►				Phone no.

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**What's New**

The IRS has created a page on IRS.gov for information about the Form 8038 series and its instructions, at [www.irs.gov/form8038](http://www.irs.gov/form8038). Information about any future developments affecting the Form 8038 series (such as legislation enacted after we release it) will be posted on that page.

**Purpose of Form**

Form 8038-GC is used by the issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

**Who Must File**

Issuers of tax-exempt governmental obligations with issue prices of less than \$100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of \$100,000 or more must file Form 8038-G, Information Return for Tax-Exempt Governmental Obligations.

**Filing a separate return for a single issue.** Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with an issue price of less than \$100,000.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to

pay a penalty in lieu of arbitrage rebate (see the line 11 instructions).

**Filing a consolidated return for multiple issues.** For all tax-exempt governmental obligations with issue prices of less than \$100,000 that are not reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, if the issue is a construction issue, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.



## When To File

To file a separate return for a single issue, file Form 8038-GC on or before the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued.

To file a consolidated return for multiple issues, file Form 8038-GC on or before February 15th of the calendar year following the year in which the issue is issued.

**Late filing.** An issuer may be granted an extension of time to file Form 8038-GC under section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, if it is determined that the failure to file on time is not due to willful neglect. Type or print at the top of the form, "Request for Relief under section 3 of Rev. Proc. 2002-48." Attach to the Form 8038-GC a letter briefly stating why the form was not submitted to the IRS on time. Also indicate whether the obligation in question is under examination by the IRS. Do not submit copies of any bond documents, leases, or installment sale documents. See *Where To File* next.

## Where To File

File Form 8038-GC, and any attachments, with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201.

**Private delivery services.** You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

## Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal Government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate. For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

For a tax-exempt governmental obligation with an issue price of \$100,000 or more, use Form 8038-G.

## Rounding to Whole Dollars

You may show the money items on this return as whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 to 99 cents to the next higher dollar.

## Definitions

**Obligations.** This refers to a single tax-exempt governmental obligation if Form 8038-GC is used for separate reporting or to

multiple tax-exempt governmental obligations if the form is used for consolidated reporting.

**Tax-exempt obligation.** This is any obligation including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

**Tax-exempt governmental obligation.** A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

**Private activity bond.** This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, and
- More than 10% of the payment of principal or interest of the issue is either (a) secured by an interest in property to be used for a private business use (or payments for such property) or (b) to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which (a) are to be used to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

**Issue.** Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year (a) under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or (b) with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

**Arbitrage rebate.** Generally, interest on a state or local bond is not tax-exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

**Construction issue.** This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds of the issue are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, and

2. All of the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1-1/2% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

## Specific Instructions

In general, a Form 8038-GC must be completed on the basis of available information and reasonable expectations as of the date of issue. However, forms that are filed on a consolidated basis may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

## Part I—Reporting Authority

**Amended return.** An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the "Amended Return" box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new corrected information. Attach an explanation of the reason for the amended return and write across the top "Amended Return Explanation."

**Line 1.** The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. In the case of a lease or installment sale, the issuer is the lessee or purchaser.

**Line 2.** An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. You can get this form on the IRS website at IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676). You may receive an EIN by telephone by following the instructions for Form SS-4.

**Lines 3 and 4.** Enter the issuer's address or the address of the designated contact person listed on line 6. If the issuer wishes to use its own address and the issuer receives its mail in care of a third party authorized representative (such as an accountant or attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box. Include the suite, room, or other unit number after the street address. If the post office does not deliver mail to the street address and the issuer has a P.O. box, show the box number instead of the



street address. If a change in address occurs after the return is filed, use Form 8822, Change of Address, to notify the IRS of the new address.

**Note.** The address entered on lines 3 and 4 is the address the IRS will use for all written communications regarding the processing of this return, including any notices. By authorizing a person other than an authorized officer or other employee of the issuer to communicate with the IRS and whom the IRS may contact about this return, the issuer authorizes the IRS to communicate directly with the individual listed on line 6, whose address is entered on lines 3 and 4 and consents to disclose the issuer's return information to that individual, as necessary, to process this return.

**Line 5.** This line is for IRS use only. Do not make any entries in this box.

## Part II—Description of Obligations

Check the appropriate box designating this as a return on a single issue basis or a consolidated return basis.

**Line 8a.** The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

**Line 8b.** For a single issue, enter the date of issue (for example, 03/15/2010 for a single issue issued on March 15, 2010), generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds; for a lease or installment sale, enter the date interest starts to accrue. For issues reported on a consolidated basis, enter the first day of the calendar year during which the obligations were issued (for example, for calendar year 2010, enter 01/01/2010).

**Lines 9a through 9h.** Complete this section if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also complete this section if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal.

Do not complete lines 9a through 9d if the proceeds of an obligation are received in the form of cash even if the term "lease" is used in the title of the issue. For lines 9a through 9d, enter the amount on the appropriate line that represents a lease or installment purchase. For line 9d, enter the type of item that is leased. For lines 9e through 9h, enter the amount on the appropriate line that represents a bank loan. For line 9h, enter the type of bank loan.

**Lines 9i and 9j.** For line 9i, enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds, including proceeds that will be used to fund an escrow account for this purpose. Several lines may apply to a particular obligation. For example, report on lines 9i and 9j obligations used to refund prior issues which represent loans from the proceeds of another tax-exempt obligation.

**Line 9k.** Enter on line 9k the amount on line 8a that does not represent an obligation described on lines 9a through 9j.

**Line 10.** Check this box if the issuer has designated any issue as a "small issuer exception" under section 265(b)(3)(B)(i)(III).

**Line 11.** Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of rebate with Form 8038-GC. See Rev. Proc. 92-22, 1992-1 C.B. 736, for rules regarding the "election document."

**Line 12.** Enter the name of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

**Line 13.** Enter the employer identification number of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

## Signature and Consent

An authorized representative of the issuer must sign Form 8038-GC and any applicable certification. Also print the name and title of the person signing Form 8038-GC. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that has been designated in this form.

**Note.** If the issuer authorizes in line 6 the IRS to communicate with a person other than an officer or other employee of the issuer, (such authorization shall include contact both in writing regardless of the address entered in lines 3 and 4, and by telephone) by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

## Paid Preparer

If an authorized representative of the issuer filled in its return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer Use Only* area of the return. A paid preparer cannot use a social security number in the *Paid Preparer Use Only* box. The paid preparer must use a preparer tax identification number (PTIN). If the paid preparer is self-employed, the preparer should enter his or her address in the box.

The paid preparer must:

- Sign the return in the space provided for the preparer's signature, and
- Give a copy of the return to the issuer.

## Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Learning about the law or the form** . . . . 4 hr., 46 min.  
**Preparing the form** . . . . 2 hr., 22 min.  
**Copying, assembling, and sending the form to the IRS** . 2 hr., 34 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File*.

**CITY OF ST. JOHNS, MICHIGAN**  
**REQUEST FOR COMMISSION ACTION**  
**September 25, 2023**

<b>Department: Administration</b>	<b>Attachments:</b>
<b>Subject: <i>Logo design Options Review and Approval for the City of St. Johns</i></b>	<b>[X] (<i>King Logo Presentation of Design Options</i>)</b> [ ] [ ]
<b>Prepared by: Chad A. Gamble, P.E. City Manager</b>	<b>Approved by: Chad A. Gamble, P.E. City Manager</b>

**SUMMARY/HIGHLIGHT:** At the August 28, 2023 meeting of the City Commission approved a contract with King Media for design services of revamping the City's logo. King Media has designed several different logos that capture the historic and branding objectives of the City. This presentation will review the different options and possibly select a new official City Logo.

**BACKGROUND/DISCUSSION:** The City logo is the moniker and foundation towards the marketing and branding of a community. It can and should embody the history of a community and also the future of it. An official logo can also synthesize the color palette of signage and promotional items that link back to the City. Below is a list of important projects that may benefit from this process and invigorate activity in and marketing of this great city in the near future.

- Wayfinding Signage - downtown, at city limits ("Welcome to..." "Thanks for visiting..."), along CIS trail to encourage a stop in downtown St. Johns for users, inside City properties/buildings, etc.
- Downtown Parking Plan Signage
- MDOT M-21 Highway Reconstruction
- Incorporate into community murals to promote community pride
- Digital properties like the website and social media accounts
- Feature on all printed or electronically distributed materials - quick and easy to see that something is officially from the City rather than any other entity
- Gear and apparel for City employees (polos, hats, jackets, uniforms, etc.) to promote pride in their role
- Light pole banners or other special community banners
- Future marketing and advertising initiatives aimed at drawing visitors, residents, and businesses to St. Johns
- Paired with other organizations' logos to show partnership on various initiatives
- General collateral: letterhead, business cards, email signatures, ID badges, etc.

**STRATEGIC PLAN OBJECTIVE:** This is Goal #1: Intentionally Pursue Economic Development, Activity #1 develop a brand identity as part of the Draft Final Strategic Action Plan for the City. This Action Plan is set to be discussed and finalized at a meeting on September 19, 2023. In addition to this goal and action the City logo is one of the major points of linkage of what the city stands for and what defines it and thus an important facet of every strategic objective of the City.

**FISCAL IMPACT:** There is no cost to make the selection of a new logo for the City. However, if a new logo is approved, we will begin the formal changeover of all of the marketing, website



and digital and physical locations of this logo. Most of the costs of these changes will be incorporated in the FY 24-25 budget approval process.

**RECOMMENDATION:** It is recommended that the City Commission review and approve one of/or a modification of one of the logos presented at the Commission meeting. This will complete the first economic development action plan task of developing a brand identity.

## City of St. Johns Branding

### Our Objective

To create a fresh, new logo for the City of St. Johns that reflects the city's vision.



# We have a strong start.

Our current body of work has done a great job of creating a consistent, contemporary look for the City.





**What will  
we be  
reviewing  
today?**

5 logo options

Sample layouts

Option A

Option A





Option A







Option A

The City of  
**ST. JOHNS**  
  
City Park



Option A



Option A



Option B

Option B





Option B







Option B

THE CITY OF  
**ST. JOHNS**  
City Park





Option B



Option B



Option C

Option C





Option C







Option C

THE CITY OF  
**St. Johns**  
CITY PARK





Option C



Option C



Option D

Option D- Bold/Lower Case



Option D- Bold/Lower Case







Option D - Bold/Lower Case

THE CITY OF  
**St. Johns**  
CITY PARK



Option D - Bold/Lower Case





Option D - Bold/Lower Case



Option E

Option E- Bold/Small Caps





Option E- Bold/Small Caps







Option E - Bold/Small Caps

THE CITY OF  
**ST. JOHNS**  
CITY PARK





Option E - Bold/Small Caps





Option E - Bold/Small Caps



Summary





Option C - Original



Option D- Bold/Lower Case



Option E- Bold/Small Caps

**Thank you.**