



**CITY OF ST. JOHNS
MICHIGAN**

PACE PROGRAM

November 27, 2023

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Lean & Green Michigan™ PACE Program

Executive Summary

Public Act No. 270 of 2010 (“Act 270”), as amended, authorizes local units of government to adopt Property Assessed Clean Energy (“PACE”) programs to promote the installation of renewable energy systems, energy efficiency improvements, water usage improvements, and environmental hazard projects by owners of commercial, industrial or agricultural property within a district designated by the local unit of government. Act 270 allows private commercial lenders to finance projects; authorizes local units of government to issue bonds, notes and other indebtedness; and authorizes the assessment of properties for the cost of the 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 November 27, 2023, subsequent to a public hearing held on November 27, 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, as amended (“Act 270”) by joining Lean & Green Michigan™ (the “PACE Program” or “Program”). The PACE Program has identified specific sources of commercial funding to finance the implementation of renewable energy systems, energy efficiency improvements, water usage improvements, , and environmental hazard 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 October 23, 2023. The City Commission published its first version of this PACE Report thereafter, and held a public hearing on November 27, 2023. The City Commission passed a Final Resolution adopting this PACE Program and PACE district on November 27, 2023.

Any portion of the PACE Program Report and PACE Program which derives from Senate Bills 302 and 303 of 2023 will take effect when those bills are enacted on February 13, 2024. LAGM will coordinate with all parties until that date to ensure projects meet current statutory requirements.

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 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 renewable energy systems, energy efficiency, water usage improvements , and environmental hazard projects to be financed through the individual agreement, subject to the limitations set forth herein.

2. Authorized Official/PACE Administrator

The Mayor 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 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 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), ~~renewable energy system(s)~~ and/or environmental hazard project(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 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

Commented [A1]: Technically "water efficiency improvements" are contained in the definition of "energy efficiency improvements"

The statute lists water usage improvements in some other sections, but then contains them within the energy efficiency improvements section. Since this section is more operative than marketing - we are striking this back to what is defined under the statute.

owner-arranged financing from commercial lenders to finance qualified 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 project(s) and financing mechanism(s) involved. A copy of the current LAGM administration and program fees is published by LAGM in its PACE Program Manual available upon request and at LAGM’s website.

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 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, renewable energy systems, and/or environmental hazard project(s) 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.

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

Commented [A2]: We have yet to have a project use this approach, and the majority of lenders require an appraisal to substantiate the property value.

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.

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 Lean & Green Michigan™, 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; 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. Energy Audit or Energy Modeling Requirement

As set forth in the PACE Program Application, a baseline energy audit or energy modeling must be completed before a PACE 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 (Effective until Feb. 13, 2024)

As set forth in the PACE Special Assessment Agreement, 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. Savings-to-Investment Ratio and Savings Guarantee Requirements* (Effective Feb. 13, 2024)

Unless waived by the record owner, 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.

This requirement may be waived by the record owner, and is not applicable to a new construction energy project.

18. 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**

SPACE ABOVE FOR RECORDING PURPOSES

**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:

APPENDIX A:	PROGRAM ELIGIBILITY REQUIREMENTS
APPENDIX B:	SPECIAL ASSESSMENT PARCEL DESCRIPTION
APPENDIX C:	SPECIAL ASSESSMENT ROLL
APPENDIX D:	PAYMENT SCHEDULE
APPENDIX E:	DESCRIPTION OF IMPROVEMENTS
APPENDIX F:	LEAN & GREEN MICHIGAN PACE PROGRAM APPLICATION
APPENDIX G:	FORM OF CERTIFICATE OF ASSIGNMENT
APPENDIX H:	FORM OF LENDER CONSENT

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 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 Projects in order to secure and provide for the repayment of the Owner-Arranged Financing.

C. The Property Owner desires to undertake certain Projects on commercial, industrial or agricultural 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 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, as amended, 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 Mayor, 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.

(i) “**Environmental hazard project**” means the acquisition, installation, replacement, or modification of equipment, devices, or materials intended to address environmental hazards, including, but not limited to, measures to do any of the following:

City of St. Johns PACE Special Assessment Agreement

- (1) Mitigate lead, heavy metal, or PFAS contamination in potable water systems.
- (2) Mitigate the effects of floods or drought.
- (3) Increase the resistance of property against severe weather.
- (4) Mitigate lead paint contamination.

(j) “**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.

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

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

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

(n) “**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.

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

(p) “**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.

(q) “**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.

(r) “**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.

City of St. Johns PACE Special Assessment Agreement

(s) “**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, renewable energy projects, and environmental hazard projects in conformity with Act 270.

(t) “**PACE Program Report**” means the Lean & Green Michigan™ PACE Program Report approved by the City of St. Johns City Commission on November 27, 2023, including any amendments or changes thereto made before the date of this Agreement.

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

(v) “**Project**” means an environmental hazard project or energy project.

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

(w) “**Renewable Energy System**” 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.

(x) “**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.

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

(z) “**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**.

(aa) “**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

City of St. Johns PACE Special Assessment Agreement

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 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,

City of St. Johns PACE Special Assessment Agreement

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 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

City of St. Johns PACE Special Assessment Agreement

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 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

City of St. Johns PACE Special Assessment Agreement

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 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

City of St. Johns PACE Special Assessment Agreement

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 “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

City of St. Johns PACE Special Assessment Agreement

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 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

City of St. Johns PACE Special Assessment Agreement

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.

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

City of St. Johns PACE Special Assessment Agreement

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.

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:

City of St. Johns PACE Special Assessment Agreement

(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.

(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

City of St. Johns PACE Special Assessment Agreement

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 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

City of St. Johns PACE Special Assessment Agreement

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.

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,
1st Floor, Suite #1100, 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 Counterparts. 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, industrial or agricultural or multifamily residential, with 4 or more dwelling units, 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).

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 project paid for by the assessment or 30 years. Projects that consist of multiple energy projects, or environmental hazard projects 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 or energy modeling 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). The performance guarantee must meet the standards set by LAGM, and include financial and logistical arrangements for ongoing measurement and verification of energy savings. This requirement may be waived by the property owner and is not applicable to new construction energy project. 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.

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

City of St. Johns PACE Special Assessment Agreement

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)
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
Corporation
LLP
501(c)3
LLC
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.)

Table with 3 columns: Amount, Type, End Date. Includes rows for \$ and \$.

Total Dollar Amount of Liens Against Property: \$

7. Balance of Any Mortgage(s):

Table with 3 columns: Mortgage, Amount of Mortgage, Name of Mortgage Holder. Includes rows for Mortgage and 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

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 Project Cost: _____

3. Savings to Investment Ratio* (as provided in Savings Guarantee)

3a. Year 1: _____
3b. Overall: _____

4. Useful Life of 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

Project Cost: \$ _____
Energy Audit \$ _____
Engineering/Architect Plans \$ _____
Building Permit Fees \$ _____
Other (Please explain) \$ _____
Total Assessment Amount: \$ _____ (Total of all lines above)

Commented [A3]: May need to add to this to specifically address) an environmental hazard project.

3. Requested Assessment Repayment Period: _____ years

4. Interest Rate Offered by Lender: _____%

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 projects and/or environmental hazard projects.

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: