

*[Draft 2-11-2013]*



**CITY OF ROCHESTER HILLS, MICHIGAN  
PACE PROGRAM**

\_\_\_\_\_, 2013

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**MILLER  
CANFIELD**

## TABLE OF CONTENTS

	<u>Page</u>
Executive Summary .....	1
Lean & Green Michigan™ PACE Program Report.....	3
APPENDIX A – PACE Special Assessment Agreement .....	11
APPENDIX B – PACE Program Application .....	27
APPENDIX C – PACE Special Assessment Eligibility Checklist.....	32
APPENDIX D – Special Assessment Parcel .....	33
APPENDIX E – Special Assessment Roll.....	34
APPENDIX F – Payment Schedule .....	35
APPENDIX G – Lender Consent and Acknowledgement .....	36
APPENDIX H – Description of Improvements.....	37
APPENDIX I – Source of Private Financing.....	38

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

## **Executive Summary**

Public Act 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 government.

Act 270 authorizes the assessment of properties for the cost of the energy projects and allows private commercial lenders to finance energy projects. It further authorizes local units of government to issue bonds, notes and other indebtedness to finance energy projects and for repayment to lenders through a voluntary property assessment. The property assessment remains with the property and has the same priority as property tax liens and assessment liens in the event of foreclosure.

Lean & Green Michigan™ (“LAGM”) has developed a collaborative approach to initiating PACE programs for local units of government by standardizing the administrative and legal process under which PACE programs are created and administered. Several local units of government throughout the state have or are in the process of joining LAGM utilizing a “shared services” approach to eliminate upfront and ongoing program costs. Further, this approach allows property owners to utilize a standardized process for PACE financing as they pursue PACE support in multiple jurisdictions throughout the state.

The property eligibility requirements as outlined in Act 270 are as follows:

- Property is privately owned commercial or industrial real property within the City of Rochester Hills’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 taxes, special assessments, or water or sewer charges on the property. The Authorized Official, at his or her 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 must not exceed the useful life of the energy project paid for by the assessment. 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. The maximum allowed ratio will be determined on a project-by-project basis by LEP and shall not exceed 25% of the State Equalized Value without written approval of the Authorized Official. 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 LEP and the Authorized Official. Such approval may be granted retroactively if the audit meets the standards of LAGM. MCL 460.939(o).
- For projects financed with more than \$250,000 in assessments, a performance guarantee must be provided by the contractor(s) for achieving a savings to investment ratio greater than one (1). The performance guarantee must meet the standards set by LEP. MCL 460.939(p).
- For projects financed with more than \$250,000 in assessments, an agreement to conduct annual energy and financial audits demonstrating energy savings must be established with committed financial and logistical arrangements for ongoing verification and measurement of energy savings that meet standards set by LEP. MCL 460.939(p).
- Bonds or notes issued under Act 270 shall **not** be general obligations of the local unit of government, but shall be secured by the voluntary assessments and other security mechanism provided in the statutes. MCL 460.945(2).



lean & green  
**MICHIGAN**<sup>™</sup>

**CITY OF ROCHESTER HILLS, MICHIGAN**

**PACE PROGRAM REPORT**

Approved by the Rochester Hills City Council on \_\_\_\_\_, 201\_, subsequent to a public hearing held on \_\_\_\_\_, 201\_.

## 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 Rochester Hills, the City Council established the City of Rochester Hills Property Assessed Clean Energy Program pursuant to Act 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 Rochester Hills PACE District (which is coterminous with the City of Rochester Hills jurisdictional boundaries).

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 of Rochester Hills and the record owner; identification of an official authorized to enter into program contracts on behalf of the City of Rochester Hills; a maximum aggregate amount for financing 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.



**CITY OF ROCHESTER HILLS, 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 Rochester Hills.

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

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

## **2. Authorized Official/Pace Administrator/Legal Counsel**

The \_\_\_\_\_ or the \_\_\_\_\_ or their designees (the “Authorized Officials” and each an “Authorized Official”) are authorized to enter into PACE Program contracts on behalf of the City of Rochester Hills. The Authorized Official will consult with Levin Energy Partners, LLC (“LEP”), such agreement shall conform to the parameters set forth herein. The Authorized Official is further authorized to sign any agreement, documents or certificates necessary to facilitate the participation of property owners to facilitate the purposes hereunder, subject to adherence to the PACE Program requirements detailed in this report.

As part of Lean & Green Michigan™, LEP will act as PACE administrator to administer the City of Rochester Hills’s PACE Program. LEP is authorized to negotiate with credit providers and PACE project participants to facilitate the use of the PACE Program.

Miller, Canfield, Paddock & Stone, P.L.C. (“PACE Counsel”) will act as legal counsel to the City to coordinate with the Authorized Official and LEP in the review of each PACE project being considered for approval by the City of Rochester Hills to assure compliance with Act 270 and the PACE Program. If the City of Rochester Hills is represented by PACE Counsel in matters unrelated to the PACE project being considered, the Authorized Official is authorized to waive and consent to PACE Counsel’s continued representation of the City of Rochester Hills.

## **3. Financing Parameters**

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, subject to City Council approval. The maximum aggregate annual dollar amount for all financing to be provided by the City of Rochester Hills shall be established not less often than annually and may be adjusted and amended by City Council. The initial maximum aggregate annual dollar amount for all financing provided by the City under the program is \$10,000,000 for the fiscal year ending June 30, 2013, subject to approval by the City Council on a per-project basis.

Owner arranged and other financing from commercial lenders, as allowed under Act 270, section 9(1)(g)(iii), are separate sources of financing from the financing provided by the City of Rochester Hills. Owner arranged and other financing from commercial lenders is not included under the maximum aggregate annual dollar amount for all financing provided by the City of Rochester Hills under the Program. LEP and the Authorized Official are authorized to assist PACE project applicants in obtaining owner arranged financing.



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

##### **Application Process:**

The Application process for financing projects under the Program shall be those of LAGM. This form may be changed or amended as necessary by LEP. The current application form is attached as Appendix B.

##### **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 LEP. The current list of eligibility requirements is attached as Appendix C.

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

For funds supplied by the City of Rochester Hills, the interest rate on a property assessment shall be sufficient to pay principal and interest on the bonds as determined by the Authorized Official. Additional financing terms shall be negotiated between the property owner and bond purchasers/commercial lenders.

For funds supplied by commercial lenders, the interest rate for assessment installments will be negotiated by the parties based on current market conditions.

The maximum allowable repayment period of a PACE assessment must be included in the PACE Special Assessment Agreement (as contained in Appendix A), 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 assessment shall be negotiated on a project-specific basis between the City of Rochester Hills and THE PROPERTY OWNER based upon the specific energy efficiency improvement(s) and/or renewable energy system(s) included in the individual PACE Special Assessment Agreement.

#### **6. Assessment Collection Process**

Based upon the request of the Authorized Official, within the parameters set forth herein, he will determine to:

- i. Finance energy projects by the issuance of bonds and to defray all or part of the cost of the energy improvements by special assessment upon the Special Assessment Parcel, which the Authorized Official or his or her designee will find is especially benefited in proportion to the costs of the energy improvements; or
- ii. Will determine to authorize 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 or his or her designee will find is especially benefited in proportion to the costs of the energy improvements.

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

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

If the Project is financed with bonds, the Special Assessment Roll shall bear interest at a rate sufficient to pay principal and interest on the bonds. If funds are supplied by commercial lenders, the interest rate for PACE assessments will be negotiated by the parties based on current market conditions.

## **7. Financing Program**

LAGM is developing 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 of Rochester Hills helps its constituent property owners gain access to private capital made available through that statewide program. The City of Rochester Hills also authorizes the use of owner-arranged financing from commercial lenders to finance qualified energy projects under the Program.

The City of Rochester Hills may also raise capital to finance qualified energy projects from the sale of bonds or notes, or may finance qualified energy projects under the Program from funds available to it from any other source.

## **8. Reserve Fund**

In the event the City of Rochester Hills decides to issue bonds for financing PACE programs, the City of Rochester Hills can determine at that time to fund a Bond reserve account from any legally available funds, including funds from the proceeds of bonds.

By participating in LAGM, the City of Rochester Hills 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 sources. Such financing mechanism can similarly be used to finance a reserve fund.

## **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 useful life of the energy project paid for by the assessment and will be determined on a project specific basis by LEP. 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**

As set forth in the PACE Special Assessment Agreement attached as Appendix A, energy projects shall generally not exceed 25% of the State Equalized Value, in the year prior to completion of the application and; lien to value of property cannot exceed 70% of two times the State Equalized Value, in the year prior to completion of the application (does not include energy assessment amount). The Authorized Official may permit projects that exceed 25% of State Equalized Value for good cause on a case-by-case basis in consultation with LEP.

## **12. Mortgage Consent Requirement**

As set forth in the PACE Special Assessment Agreement attached as Appendix A, if a property is subject to a mortgage then the record owner must obtain written consent to participate in the Program from the mortgagee. The Lender Consent and Acknowledgement of Owner Participation in PACE Program, attached as Appendix G, must be signed by the mortgagee, and the form must be submitted with the PACE Program Application.

## **13. Marketing Program**

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

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

LAGM includes the following quality assurance and antifraud measures:

- i. Business integrity review;
- ii. Background check process; and
- iii. Other general due diligence as may be necessary or required.

## **15. Audit Requirement**

As set forth in the PACE Special Assessment Agreement attached as Appendix A, a baseline energy audit conducted by a third party approved by the Authorized Official and LEP 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, to be conducted by independent third parties and/or dedicated software, as determined appropriate by the Authorized Official and LEP for each project. LEP shall conduct an independent technical and financial review, of the audit at the property owners expense, as part of the application process for projects under the PACE Program.

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

As set forth in the PACE Special Assessment Agreement attached as Appendix A, 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 (1). The provisions to provide for ongoing measurement and the performance guarantee shall be included with the PACE Program Application, attached as Appendix B.

## **17. Amendments to the Plan**

A public hearing shall not be required to amend this plan except for paragraph 11. Paragraph 11 may be amended only after holding a public hearing on such amendments.

\_\_\_\_\_  
SPACE ABOVE FOR RECORDING PURPOSES  
\_\_\_\_\_

**PACE SPECIAL ASSESSMENT AGREEMENT**

*between*

**THE CITY OF ROCHESTER HILLS, MICHIGAN**

*and*

\_\_\_\_\_  
[Property Owner]  
\_\_\_\_\_

**Dated** \_\_\_\_\_, 20\_\_

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
ARTICLE I (Definitions).....	13
ARTICLE II (Description of Improvements) .....	15
ARTICLE III (Covenants of Property Owner) .....	15
ARTICLE IV (Covenants of the City of Rochester Hills).....	16
ARTICLE V (Special Assessment; Lien) .....	16
ARTICLE VI (Conditions Precedent) .....	19
ARTICLE VII (Representations and Warranties).....	20
ARTICLE VIII (Default, Termination) .....	21
ARTICLE IX (Miscellaneous).....	22

**SPECIAL ASSESSMENT AGREEMENT**

**THIS SPECIAL ASSESSMENT AGREEMENT** (the “Agreement”) is made this \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ (the “Property Owner”), a \_\_\_\_\_, whose address is \_\_\_\_\_, and the City of Rochester Hills whose address is 1000 Rochester Hills Dr., Rochester Hills, MI 48309.

**RECITALS:**

A. The City of Rochester Hills desires to encourage economic development, improve property valuation, increase employment, reduce energy costs, reduce greenhouse gas emissions and contribute to the public health and welfare.

B. The Home Rule Charter of the City of Rochester Hills, under Chapter 15.1, provides that the City of Rochester Hills shall have the power to make special assessments for public improvements and other purposes in accordance with law.

C. Act 270 provides that a local unit of government may impose an assessment under a property assessed clean energy program only pursuant to a written contract with the record owner of the property to be assessed, and subject to certain other conditions.

D. Based upon the authority set forth in the Lean & Green Michigan™ PACE Program Report approved by Resolution of the City Council adopted on \_\_\_\_\_, 201\_\_\_\_, the parties have determined that it is necessary and appropriate to enter into this Agreement.

In consideration of the foregoing and the mutual covenants contained in this Agreement, Property Owner and the City of Rochester Hills hereby enter into this Agreement and covenant and agree as follows:

**ARTICLE I**

**DEFINITIONS**

**Section 1.01      Definitions**

(a) The capitalized terms used in this Agreement shall have the following meanings, except to the extent the context in which they are used requires otherwise:

(b) “**Act 270**” means Act 270 of the Michigan Public Acts of 2010, as amended, and the rules and regulations promulgated thereunder, commonly referred to as the PACE Act.

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

(d) “**Authorized Official**” means the \_\_\_\_\_ or the \_\_\_\_\_, or his or her designee, who are authorized to enter into this agreement under the Lean & Green Michigan™ PACE Program.

(e) “**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 increases 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 Council.

(f) “**Energy Project**” means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system.

(g) “**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.

(h) “**Lean & Green Michigan™**” shall mean a consortium of local units of government and private entities involved in facilitating PACE-financed transactions.

(i) “**LEP**” shall mean Levin Energy Partners, LLC, a Michigan Limited Liability Company.

(j) “**Municipality**” means the City of Rochester Hills, its coordinate agencies and political subdivisions and their respective successors and assigns.

(k) “**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 or supported by the Municipality.

(l) “**PACE**” shall mean Property Assessed Clean Energy as defined in Act 270.



(k) **“PACE Program”** shall mean a program implemented by a municipality to stimulate energy efficiency and renewable energy projects in conformity with Act 270.

(l) **“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. Renewable energy includes a biomass stove but does not include an incinerator or digester.

(m) **“Special Assessment”** means the money obligation created pursuant to this Agreement, payable to the City of Rochester Hills with respect to the Special Assessment Parcel, used to defray the cost of the Improvements and which shall, until paid, be a lien upon the Special Assessment Parcel (as defined below) of the same priority and status as other property tax and assessment liens as provided in Act 270.

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

(o) **“Special Assessment Parcel”** means the Property to which one hundred percent (100%) of the Special Assessment Roll has been spread by the City of Rochester Hills and which is more particularly described on the attached **Appendix D**.

(p) **“Special Assessment Roll”** means order set forth by the Authorized Official and is attached as **Appendix E** to this Agreement.

## ARTICLE II

### DESCRIPTION OF IMPROVEMENTS

#### **Section 1.02      Description of Improvements**

(a) The Improvements to be constructed, installed and financed under the LAGM™ PACE Program are described in **Appendix H** attached hereto. If after project approval, the NAME OF ENTITY seeks to undertake additional Improvements, Appendix H may be amended or supplemented from time to time. Such additional Improvement must meet all the eligibility criteria of the LAGM™ PACE Program and may be added to the original application as a modification; or submitted as a new project at the discretion of LEP and the Authorized Official.

## ARTICLE III

### COVENANTS OF NAME OF ENTITY

#### **Section 1.03      Acquisition, Construction and Installation of the Project.**

(a) NAME OF ENTITY, shall acquire, construct and install the Improvements as described in Appendix H.

#### **ARTICLE IV**

#### **COVENANTS OF THE CITY OF ROCHESTER HILLS**

**Section 1.04** [Provisions related to collection of special assessments, such provisions may include a requirement to turn over delinquent special assessments to the County Treasurer for collection as determined by the Authorized Official and LEP].

#### **ARTICLE V**

#### **SPECIAL ASSESSMENT**

##### **Section 1.05      Special Assessment Created**

(a) The City Council has determined to establish a PACE Program and allow the financing of Improvements by special assessment upon the Special Assessment Parcel, which the Authorized Official under the PACE Program finds is especially benefited in proportion to the costs of the Improvements. The Special Assessment Roll has been spread by the Authorized Official and this Agreement without objection by NAME OF ENTITY to allocate one hundred percent (100%) of the Special Assessment levy created hereby to the Special Assessment Parcel.

(b) The Special Assessment, as allocated by the Authorized Official without objection by NAME OF ENTITY, is hereby finally established against the property and improvements now located or to be constructed on the Special Assessment Parcel as described on the attached **Appendix D** in an amount of: AMOUNT OF FINANCING Dollars (\$\_\_\_\_\_) as stated on the Special Assessment Roll attached hereto as **Appendix E**. The Special Assessment is effective immediately upon the execution and delivery of this Agreement by NAME OF ENTITY. The amount of the Special Assessment set forth in the Special Assessment Roll may be reduced as agreed between the NAME OF ENTITY and the City of Rochester Hills [include any security provisions required by owner arranged financing]. The Special Assessment shall be paid in semi-annual installments pursuant to the property tax collection mechanism of the City of Rochester Hills. Delinquent Special Assessment payments [shall/shall not] be turned over to the County Treasurer pursuant to the general property tax act, 1893 PA 206, MCL 211.1 to 211.155. The Authorized Official hereby confirms the Special Assessment Roll attached hereto as **Appendix E** and a payment schedule for the semi-annual assessment payments due attached hereto as **Appendix F** (the "Payment Schedule").

(c) NAME OF ENTITY represents and warrants that it 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.

**Section 1.06      Agreement to Special Assessment; Waiver**

(a) NAME OF ENTITY, hereby irrevocably agrees and confirms the creation of the Special Assessment Roll established pursuant to this Agreement and EXPRESSLY WAIVES ANY AND ALL CLAIMS CHALLENGING THE LEGALITY, VALIDITY OR COLLECTIBILITY OF THE SPECIAL ASSESSMENT, including, but not limited to, claims arising from or 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 of Rochester Hills's right to place the special assessment lien on the Special Assessment Parcel, the collectibility and due dates of the Special Assessment installments, or any other theory or claim. NAME OF ENTITY further waives notice of hearing and the right to file objections under the City Charter.

(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 any Special Assessment, and NAME OF ENTITY, 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) NAME OF ENTITY 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 made a copy as part of any purchase contract, sale contract, lease agreement, deed or any other conveyancing instrument by which NAME OF ENTITY purports to assign all or any part of its interest in the Special Assessment Parcel to any successors in interest, lessees, purchasers, and assigns. This Agreement shall be recorded against the real property constituting the Special Assessment Parcel by the City of Rochester Hills with the Oakland County Register of Deeds.

(d) The City of Rochester Hills agrees that following payment to the City of Rochester Hills in full of the Special Assessment, as same may be expanded and/or amended, to promptly execute and deliver documentation discharging the City's interest with respect to the property. 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 on a timely basis, when due, until the remaining balance and interest on said Special Assessment has been paid in full; and (iii) acknowledging that the title insurance policy will state that the Special Assessment has not been paid at time of closing thereon.

(e) NAME OF ENTITY 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 Project in semi-annual payments when due and NAME OF ENTITY 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 of Rochester Hills.

**Section 1.07      Lien**

(a) The Special Assessment is an obligation with respect to the Special Assessment Parcel, and shall, until paid, be and continue to be a lien upon all such property assessed for the amount of the Special Assessment and all interest and charges apportioned to such property which may accrue thereon. Such lien shall be of the same character and effect as liens created pursuant to the general property tax act, and shall be treated as such with respect to procedures for collection as set forth in the City Charter, including accrued interest and penalties. The Special Assessment confirmed hereby is a debt to the City of Rochester Hills that has been assigned to NAME OF ENTITY and its successors in interest, lessees, purchasers and assigns. The transfer of title to all or any part of the Special Assessment Parcel shall not, in and of itself, trigger an acceleration of the Special Assessment. No judgment or decree shall destroy or impair any lien of the City upon the premises assessed for such amount of the assessment as may have been equitably or lawfully charged and assessed thereon. Failure of NAME OF ENTITY or any subsequent property owner to receive any notice required to be sent under the provisions of the City Charter and ordinances shall not invalidate any Special Assessment or the Special Assessment Roll and shall not be a jurisdictional requirement.

**Section 1.08      Installment Payments**

(a) Payments shall be made in accordance with attached **Appendix F**.

**Section 1.09      Delinquent Payments**

(a) In the event the payment by NAME OF ENTITY of a Special Assessment installment shall be due and unpaid for more than NUMBER OF DAYS (\_\_) days, then such installment shall be deemed delinquent and NAME OF ENTITY shall pay thereon, in addition to the interest described above, an administrative fee in an amount equal to the product of unpaid balance due multiplied by an annual rate equal to \_\_% over the annual rate of interest borne by the bonds, multiplied by the number of days that the same remains unpaid and then divided by 365, together with the costs of collection, including actual attorneys' fees. All such amounts shall constitute a lien against the Special Assessment Parcel. [To be modified depending on terms of owner arranged financing].

**Section 1.10      Use of Assessment**

(a) [To be determined based on owner arranged financing; provided, however, the Authorized Official shall ensure that such uses include payment of any application, administration or legal fees associated with the PACE Project.] If the project was financed by a source other than by bonds, the Assessment, as collected, shall be forwarded by the City of Rochester Hills to said financing source as identified in **Appendix I** attached hereto to be credited towards principal and interest owed by NAME OF ENTITY to said financing source in accordance with a specific agreement entered into between NAME OF ENTITY and said financing source. [Authorized Official is permitted to allow payment be made directly to the financing

source and not through this collection process, if such change is made, conforming changes shall be made throughout the agreement.]

**Section 1.11      Invalidity; Cure**

(a) In the event of any invalidity of the Special Assessment because of irregularity in the proceedings, or the adjudgment of the Special Assessment as illegal by a court of competent jurisdiction, the Authorized Official may cause a new special assessment to be made for the Improvements, and NAME OF ENTITY, on behalf of itself and its successors in interest, lessees, purchasers, and assigns with respect to all or any part of the Improvements as reasonably determined by the City, hereby waives any objections to and agrees to the imposition of such new special assessment. [Authorized Official to make modifications for owner arranged financing to limit discretion to change special assessment roll and to obligate itself to revise the role to ensure owner arranged financial institution is made whole.]

**ARTICLE VI**

**CONDITIONS PRECEDENT**

**Section 1.12      Conditions Precedent to the City of Rochester Hills's**  
**Obligations**

(a) The obligations of the City of Rochester Hills to issue and/or sell the bonds under this Agreement and/or to approve owner arranged financing between NAME OF ENTITY and a third party financing source are subject to the following conditions precedent as required herein, or waived in writing by the City of Rochester Hills, except as specifically hereinafter provided:

(b) The City and NAME OF ENTITY shall have authorized, executed and delivered this Agreement and all approvals required hereby shall have been secured.

(c) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which NAME OF ENTITY or the City of Rochester Hills is a party, or threatened in writing against NAME OF ENTITY or the City of Rochester Hills, contesting the validity or binding effect of this Agreement, the Special Assessment or the bonds or which could result in an adverse decision which would have a material adverse effect upon the ability of NAME OF ENTITY to pay or the City of Rochester Hills to levy and collect the Special Assessments to pay the bonds or a third party financing source, including, without limitation, any determination by any agency or official as to the ability to levy the Special Assessments, or which would have a material adverse effect on NAME OF ENTITY or the City of Rochester Hills's ability to comply with any of the obligations and terms of this Agreement or the bonds.

(d) There shall be no ongoing breach of any of the covenants and agreements of NAME OF ENTITY required to have been observed or performed by NAME OF ENTITY under the terms of this Agreement and no Event of Default by NAME OF ENTITY or no event which with notice or the

passage of time could become an Event of Default by NAME OF ENTITY under this Agreement shall have occurred.

(e) 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 NAME OF ENTITY to the City of Rochester Hills's reasonable satisfaction and shall have been appended hereto.

(f) No objection shall have been made by NAME OF ENTITY or any other party claiming an interest in the Special Assessment Parcel at the City of Rochester Hills's City Council meeting at the time the City has spread the roll.

(g) NAME OF ENTITY shall meet all eligibility requirements as set forth in **Appendix C**.

(h) NAME OF ENTITY shall not have filed bankruptcy or sought the protections of any state and federal law insolvency statutes providing protections to debtors.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES

#### **Section 1.13      Representations and Warranties of the City of Rochester Hills**

(a) The City of Rochester Hills represents and warrants to NAME OF ENTITY that:

(i) The execution and delivery of this Agreement has been duly authorized by the City of Rochester Hills, and this Agreement constitutes a valid and binding agreement of the City enforceable 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.

(ii) 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 regulations, order or decree of any court or governmental entity, or any agreement to which the City of Rochester Hills is a party or by which the City is bound.

(iii) The City of Rochester Hills has taken all preliminary action necessary to empower the City to adopt the Bond Resolution [For Bond transactions only] authorizing the issuance and sale of the bonds and/or to permit owner-arranged financing.

#### **Section 1.14      Representations and Warranties of NAME OF ENTITY**

(a) NAME OF ENTITY represents and warrants to the City of Rochester Hills that:

(i) NAME OF ENTITY is duly organized and validly existing as a TYPE OF ENTITY in good standing under the laws of the State of Michigan, with power under the laws of this state to carry on its business as now being conducted, and is duly qualified to do business in the State of Michigan; and NAME OF ENTITY has the power and authority to own the property and carry out the obligations to complete the Improvements.

(ii) The execution and delivery of this Agreement will not result in a violation or default by NAME OF ENTITY 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 of 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.

(iii) 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 constitutes a valid and binding agreement enforceable 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.

## ARTICLE VIII

### DEFAULT, TERMINATION

#### Section 1.15 NAME OF ENTITY **Default.**

(a) If NAME OF ENTITY breaches any covenant of this Agreement or any other agreement related to this Agreement and fails to pursue a cure of such breach within NUMBER OF DAYS (\_\_\_) days after the written notice thereof has been received, NAME OF ENTITY shall be deemed to have committed an event of default ("Event of Default").

#### Section 1.16 **Remedies**

(a) If NAME OF ENTITY commits an Event of Default under this Agreement, the City of Rochester Hills, after giving written notice as required, without further notice of any kind, shall be entitled to seek and obtain a decree of specific performance of this Agreement and the from a court of competent jurisdiction; or the right to recover from NAME OF ENTITY any damages incurred by the City of Rochester Hills 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.

**Section 1.17      Waiver**

(a) Failure to act upon discovery of a Default or to act upon the existence of an Event of Default, shall not constitute a waiver or right to pursue the remedies provided.

**ARTICLE IX**

**MISCELLANEOUS**

**Section 1.18      Term**

(a) Except as otherwise provided in this Agreement, the terms of this Agreement shall commence on the date first written above and shall expire upon the payment in full of the Special Assessment created herein.

**Section 1.19      Assignment of this Agreement**

(a) Except as provided herein, 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 party hereto excepting as otherwise expressly provided herein.



**Section 1.20      Notices**

(a) 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:

If to the City:                      City of Rochester Hills  
                                                 1000 Rochester Hills Dr.  
                                                 Rochester Hills, MI 48309  
                                                 Attn: \_\_\_\_\_

With a copy to:                      City of Rochester Hills  
                                                 1000 Rochester Hills Dr.  
                                                 Rochester Hills, MI 48309  
                                                 Attn: City Attorney

If to NAME OF ENTITY:                      \_\_\_\_\_  
                                                 \_\_\_\_\_  
                                                 \_\_\_\_\_, MI \_\_\_\_\_  
                                                 Attn: \_\_\_\_\_

With a copy to:                      \_\_\_\_\_  
                                                 \_\_\_\_\_  
                                                 \_\_\_\_\_, MI \_\_\_\_\_  
                                                 Attn: \_\_\_\_\_

or to such other address as such party may specify by written notice. To the extent the City is advised in writing by NAME OF ENTITY of the name, address and contact person for any lender, the City shall provide written notice to said Lender of any default hereunder by NAME OF ENTITY simultaneously with providing such written notice to NAME OF ENTITY.

**Section 1.21      Amendment and Waiver**

(a) 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 party hereto.

**Section 1.22      Entire Agreement**

(a) This Agreement and the agreements and documents specifically referenced herein, contain all agreements between the parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement.

**Section 1.23      Execution in Counterparts**

(a) This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

**Section 1.24      Captions**

(a) 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 1.25      Applicable Law**

(a) 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 1.26      Mutual Cooperation**

(a) 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 party 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 party to this Agreement in the discharge of its obligations hereunder and to assure that all conditions precedent to the issuance of the bonds and/or other financing arrangements are satisfied.

**Section 1.27      Binding Effect**

(a) This Agreement, being for the benefit of the property, shall be binding upon the parties hereto and upon their respective successors and assigns.

**Section 1.28      Force Majeure**

(a) 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 NUMBER OF DAYS (\_\_) business days after the occurrence of said event.

[SIGNATURES ON THE FOLLOWING PAGE]

**Draft PACE Special Assessment Agreement  
APPENDIX A**

**IN WITNESS WHEREOF**, the City of Rochester Hills and NAME OF ENTITY have caused this Special Assessment Agreement to be duly executed and delivered as of the date first written above.

Witnessed:

By: \_\_\_\_\_, a Michigan  
\_\_\_\_\_, its \_\_\_\_\_

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

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

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

\_\_\_\_\_  
Its: Authorized Signatory

Witnessed as to both  
signatures by:

**City of Rochester Hills, Michigan**  
Municipal corporation

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

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

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

\_\_\_\_\_  
Its: \_\_\_\_\_

State of Michigan     )  
                                  ) ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ the Authorized Signatory of \_\_\_\_\_ on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Michigan  
My commission expires \_\_\_\_\_

State of Michigan     )  
                                  ) ss  
County of Oakland    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Rochester Hills, Michigan and \_\_\_\_\_, the \_\_\_\_\_ of Rochester Hills, Michigan on behalf of the City of Rochester Hills.

**Draft PACE Special Assessment Agreement**  
**APPENDIX A**

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_County, Michigan  
My commission expires \_\_\_\_\_

WHEN RECORDED RETURN TO:

Michael P. McGee, Esq.  
Miller, Canfield, Paddock and Stone, P.L.C.  
150 West Jefferson, Suite 2500  
Detroit, Michigan 48226

**APPENDIX B**

**Lean & Green Michigan™ PACE Program**

**PROGRAM APPLICATION**

Public Act 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 City of Rochester Hills. Act 270 allows private commercial lenders to finance energy projects and 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 local governments 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.

LAGM™ has developed a PACE program that provides voluntary special assessments for certain energy efficiency improvements and renewable energy systems that are associated with real property.

The property eligibility requirements are as follows:

- Property is privately owned commercial or industrial real property within the City of Rochester Hills’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 taxes, special assessments, or water or sewer charges on the property. The Authorized Official at his or her 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 must not exceed the useful life of the energy project paid for by the assessment. 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. The maximum allowed ratio will be determined on a project-by-project basis by LEP and shall not exceed 25% of the State Equalized Value without written approval of the Authorized Official. 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 LEP and the Authorized Official. Such approval may be granted retroactively if the audit meets the standards of LAGM. MCL 460.939(o).

**PACE Program Application**  
**APPENDIX B**

- For projects financed with more than \$250,000 in assessments, a performance guarantee must be provided by the contractor(s) for achieving a savings to investment ratio greater than one (1). The performance guarantee must meet the standards set by LEP. MCL 460.939(p).
- For projects financed with more than \$250,000 in assessments, an agreement to conduct annual energy and financial audits demonstrating energy savings must be established with committed financial and logistical arrangements for ongoing verification and measurement of energy savings that meet standards set by LEP. MCL 460.939(p).
- Bonds or notes issued under Act 270 shall **not** be general obligations of the local unit of government, but shall be secured by the voluntary assessments and other security mechanism provided in the statutes. MCL 460.945(2).
- The applicant assumes all risk with respect to the implementation of a PACE Program in respect of the applicant's property. The City of Rochester Hills is an accommodation party only, and is providing access to the PACE Program so as to enable property owners to make decisions regarding energy improvements to the property owner's property in a manner which allows the property owner to make the improvements in a cost-effective manner and for the property owner's benefit.

Energy projects that may be eligible for PACE assessments include, but are not limited to: 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 increases the efficiency of water usage; any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the City Council; and 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, but does not include an incinerator or digester.

For further information on eligibility requirements or operation of the LAGM™ PACE program, contact the Program Administrator at [www.levinenergypartners.com](http://www.levinenergypartners.com) or (248) 808.1420.

**Application Instructions**

**Questions?** You may contact the Program Administrator at any time during this process to answer questions, schedule a training seminar or seek guidance with the energy audit or application process. Mail or deliver your application and attachments to:

Attention:  
Program Administrator for LAGM™ PACE Program  
c/o Levin Energy Partners, LLC  
6895 Telegraph Road  
Bloomfield Hills, MI 48301

Applications and attachments may also be emailed to the Program Administrator through the webpage [www.levinenergypartners.com](http://www.levinenergypartners.com). For questions regarding the status of your application please contact the Program Administrator at 248.808.1420.

**Applicant Information  
(Use attachments as necessary)**

**1. Property Owner(s) Legal Name(s) (as they appear on property tax records)**

	NAME	PARCEL #
Owner 1	_____	_____
Owner 2	_____	_____
Owner 3	_____	_____

**2. Property Owner(s) Type**

Individual                       LLP                                       LLC  
 Corporation                       Other (please specify)

**3. Property Owner(s) Contact Information**

Name	Address	E-mail Address	Telephone No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**4. Physical Property Address and Assessor’s Parcel Number (site of improvements)**

Street Address	City	State	Zip
_____	_____	_____	_____

Assessor’s Parcel Number for Subject Property

\_\_\_\_\_

**5. Mailing Address (if different)**

Street Address	City	State	Zip
_____	_____	_____	_____

**6. Property Type** (Check all that apply)

- Commercial**
  - Multi family-unit (3 or more)
  - Office
  - Retail
  - Mixed use
  - Restaurant
  - Grocery/convenience store
  - Recreational
  - Health care/clinic
  - Warehouse
  - Other - Please describe \_\_\_\_\_
  
- Industrial**
  - Please describe \_\_\_\_\_

**7. Balance of Any Mortgage(s):**

	Amount of Mortgage	Name of Mortgage Holder
First Mortgage	\$ _____	_____
Second Mortgage	\$ _____	_____
State Equalized Value (SEV):	\$ _____	
Requested financing amount	\$ _____	

The Lien to value ratio (*including* the mortgage, if any, and *excluding* the Requested Financing Amount) cannot exceed 70% of 2 times the State Equalized Value.

- Consent by mortgage holder obtained

**8. Liens Against Property**

Amount	Type	End Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
<b>Total:</b> _____		



**9. Requested Assessment Amount**

Energy Project	\$ _____
Energy Analysis Cost	\$ _____
Engineering/Architect Plans	\$ _____
Building Permit Fees	\$ _____
Other (Please Explain)	\$ _____
<b>Total</b>	\$ _____

**10. Requested Assessment Repayment Period** (Term may not exceed the useful life of the equipment installed.)

Term: \_\_\_\_\_ years

**APPENDIX C**

**PROGRAM ELIGIBILITY CHECKLIST**

- Property is privately owned commercial or industrial real property within the City of Rochester Hills'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 taxes, special assessments, or water or sewer charges on the property. The Authorized Official at his or her 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 must not exceed the useful life of the energy project paid for by the assessment. 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. The maximum allowed ratio will be determined on a project-by-project basis by LEP and shall not exceed 25% of the State Equalized Value without written approval of the Authorized Official. 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 LEP and the Authorized Official. 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) for achieving a savings to investment ratio greater than one (1). The performance guarantee must meet the standards set by LEP. MCL 460.939(p).
- For projects financed for more than \$250,000, an agreement to conduct annual energy and financial audits must be established with committed financial and logistical arrangements for ongoing verification and measurement of energy savings that meet standards set by LEP. MCL 460.939(p).

**APPENDIX D**

**SPECIAL ASSESSMENT PARCEL WHICH IS ENCUMBERED  
BY THE SPECIAL ASSESSMENT ROLL**

[PROJECT SPECIFIC]

Parcel

Tax Parcel I.D. No.: \_\_\_\_\_.

**APPENDIX E**

**SPECIAL ASSESSMENT ROLL**

[PROJECT SPECIFIC]

**APPENDIX F**

**PAYMENT SCHEDULE**

[PROJECT SPECIFIC]

**Lender Consent and Acknowledgement  
APPENDIX G**

**APPENDIX G**

Lender Consent and Acknowledgement of Owner Participation in  
the City of Rochester Hills, Michigan PACE Program<sup>1</sup>

This acknowledgement is granted DATE, by NAME OF MORTGAGE HOLDER (the "Lender"), and for the benefit of Property Owner, NAME OF ENTITY, and the City of Rochester Hills in the State of Michigan.

**Recitals**

- A. Pursuant to P.A. 270 of 2010, the City of Rochester Hills established the City of Rochester Hills Property Assessed Clean Energy Program on \_\_\_\_\_, 201\_, by RESOLUTION # to promote installation of energy efficiency improvements and/or renewable energy systems.
- B. Owner has applied to the Program to finance the amount of \$ AMOUNT OF FINANCING, to be paid back as an assessment on Owner's real property, described in Appendix D attached hereto ("Property"), over a period of NUMBER OF YEARS years.
- C. Owner has previously executed a mortgage, deed of trust, dated DATE, to Lender, covering the Property, to secure a promissory note in the sum of \$ AMOUNT OF LOAN, and recorded on DATE at Liber \_\_\_\_, Page \_\_\_\_, Oakland County Register of Deeds.
- D. Repayment by Owner under the Assessment Contract will be a statutory assessment levied against the Property (the "Assessment") notice of which shall be recorded against the Property in the Office of the Register of Deeds for Oakland County, Michigan, and which Assessment, together with interest and any penalties, shall constitute a lien (the "Lien") on the Property, and shall be collected in installments twice annually on DATES.

**Consent and Acknowledgement**

Lender acknowledges that it has been informed of Owner's participation in the Program, and agrees that Owner's execution of the Special Assessment Agreement will not constitute a default under Lender's Deed of Trust.

Execution of this Acknowledgement by Lender's representative shall constitute full and complete consent to Owner's participation in the City of Rochester Hills's PACE Program.

Name of Lender: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, on behalf of \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, State of \_\_\_\_\_  
Acting in \_\_\_\_\_ County  
My Commission Expires: \_\_\_\_\_

<sup>1</sup> If property being improved has no mortgage (owned free and clear, please submit documentation demonstrating such instead of this form.

**APPENDIX H**

**DESCRIPTION OF IMPROVEMENTS**

[PROJECT SPECIFIC]

**APPENDIX I**

**SOURCE OF PRIVATE FINANCING**

[PROJECT SPECIFIC]