

RESOLUTION NO. 036-19

**A RESOLUTION AUTHORIZING THE CITY OF NAPOLEON TO
EXECUTE A LOAN AGREEMENT WITH THE HENRY COUNTY
COMMISSIONERS FOR FUNDS TO PURCHASE THE CITY
SHARE OF THE COUNTYWIDE COMMUNICATIONS SYSTEM;
AND DECLARING AN EMERGENCY**

WHEREAS, the Henry County Commissioners have purchased mobile and portable radios for use on the countywide communications system; and,

WHEREAS, the Henry County Commissioners have agreed to split the cost of these radios with various cities, townships, and villages of Henry County, Ohio, including the City of Napoleon; and,

WHEREAS, the City has requested four (4) mobile and/or twenty-eight (28) portable radios for use on the countywide communications system; and,

WHEREAS, the City has been qualified as eligible for a zero percent interest loan from the Henry County Commissioners in the amount of sixty thousand five hundred fifty-four dollars and sixty-eight cents (\$60,554.68) to be utilized to purchase the City share of the Countywide Communications System; **Now Therefore**,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON,
OHIO:**

Section 1. That, the City Manager is authorized and directed to execute a loan agreement with the Henry County Commissioners for funds to purchase the City share of the Countywide Communications System, said Agreement and Loan currently on file in the office of the City Finance Director.

Section 2. That, the City Manager is authorized to execute the necessary documents associated with the Loan Agreement with the Henry County Commissioners.

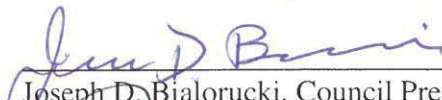
Section 3. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.

Section 4. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

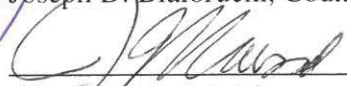
Section 5. That, this Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, and for the further reason that this legislation must be in effect at the earliest possible time to qualify for the zero percent interest loan that will be used to expedite the countywide communications system, a project associated with public peace, health or safety; therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law.

Further, the Emergency Clause is necessary to enter into the stated agreement in a timely manner which affects the public peace, health, and safety accessible to our citizens, and for further reasons as stated in the Preamble hereof.

Passed: June 17, 2019


Joseph D. Bialorucki, Council President

Approved: June 17, 2019



Jason P. Maassel, Mayor

VOTE ON PASSAGE 6 Yea 0 Nay 0 Abstain

Attest:


Roxanne Dietrich, interim Clerk of Council

I, Roxanne Dietrich, interim Clerk of Council for the City of Napoleon, do hereby certify that the foregoing Resolution No. 036-19 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the 20th day of June, 2019; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances Of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.


Roxanne Dietrich, interim Clerk of Council

LOAN AGREEMENT

THIS AGREEMENT is entered into by and between the Henry County Commissioners, Henry County, Ohio, (hereinafter referred to as "Lender") and the City of Napoleon (hereinafter referred to as "Borrower"). The Lender is prepared to offer a loan to the Borrower in the amount of sixty thousand five hundred fifty-four and 68/100 dollars (\$60,554.68). The effective date of this commitment is ____, 2019.

WITNESSETH:

WHEREAS, the Lender has purchased mobile and portable radios for use on the county-wide communications system and has agreed to split the price of the radios with the various cities, townships, and villages, of Henry County, Ohio; and,

WHEREAS, the Borrower requests four (4) mobile and/or twenty-eight (28) portable radios, as well as a loan in the amount of sixty thousand five hundred fifty-four and 68/100 dollars (\$60,554.68) from the Lender for the purpose of purchasing its share of the price of the radios; and,

WHEREAS, the Lender desires to loan to the Borrower the amount of sixty thousand five hundred fifty-four and 68/100 dollars (\$60,554.68) on the terms and conditions contained herein.

STATEMENT OF THE AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein contained, the parties hereto agree as follows:

1. Loan Amount. The Lender agrees to loan the Borrower the principal amount of sixty thousand five hundred fifty-four and 68/100 dollars (\$60,554.68), (hereinafter referred to as the "Loan"), for payment of its share of the price of the radios.
2. Evidence of the Loan. The Loan shall be evidenced by the cognovit promissory note of even date, (hereinafter the "Note") a copy of which is attached hereto, and incorporated herein as **Exhibit "A"**, bearing interest at the rate of zero percent (0%) per annum for the term of the Loan. The term of the Loan shall be no longer than ten (10) years. The Loan may all be paid up front or spread out over the course of no more than ten (10) years, payable annually or biennially.
3. Repayment of the Loan. The terms of repayment of the Loan shall be as set forth in the Note, and the Borrower shall make all payments required to be made under the Note as and when due. The sale or transfer of the radios will cause the payment of the entire principal balance of the Loan to be immediately due and payable.

4. Representations of the Borrower. The Borrower hereby represents and warrants that:

a) It has full power and authority to execute, deliver and perform this Loan Agreement and Note, and to enter into and carry out the transactions contemplated thereby. Such execution, delivery and performance do not, and will not, violate any provision of law applicable to the Borrower and will not, conflict with or result in a default under any agreement or instrument to which the Borrower is a party or by which it or any of its property or assets is or may be bound. All of the documents necessary to document this transaction have by proper action, been duly authorized, executed and delivered and all necessary actions have been taken to constitute the documents valid and binding obligations of the Borrower.

b) There are no actions, suits, or proceedings pending or threatened against or affecting the Borrower which, if adversely determined, would materially impair the ability of the Borrower to perform any of its obligations under the Loan Agreement or Note or adversely affect the financial condition of the Borrower.

c) The Borrower is not in default under any of the Loan Agreement or the Note or in the payment of any indebtedness for borrowed money or under any agreement or instrument evidencing any such indebtedness, and in no event has occurred which by notice, the passage of time or otherwise would constitute any such event of default.

d) The Borrower acknowledges and agrees that nothing contained in this Loan Agreement or the Note, nor any act of the Lender, shall be deemed or construed by the Borrower, or any of the parties or by the third person, to create the relationship of third-party beneficiary, or of principal and agent, or of a joint venture, or of any association or relationship involving the Lender.

e) All proceeds of the Loan shall be used for the payment of costs relating to the payment of Borrower's share of the price of the radios. No part of any such proceeds shall be knowingly paid to or retained by the Borrower or any officer or employee of the Borrower as a fee, kick-back or consideration of any type.

5. Events of Default. Each of the following shall be an "Event of Default":

a) The Borrower shall fail to pay any amount payable pursuant to this Loan Agreement or under the Note on the date on which such payment is due and payable; or,

b) The Borrower shall fail to observe and perform any agreement, term or condition contained in this Loan Agreement other than as required pursuant to subsection (a) above, and such failure continues for a period of thirty (30) days after notice of such failure is given to the Borrower by the Lender, or for such longer period as the Lender may agree to in writing; provided, that if the failure is

of such nature that it can be corrected but not within the applicable period, such failure shall not constitute an Event of Default so long as the Borrower institutes curative action within the applicable period and diligently pursues such action to completion; or,

c) Any representation or warranty made by the Borrower herein or in the Note or in connection herewith shall prove to have been incorrect in any material respect when made; or,

d) The Borrower shall fail to pay any indebtedness of the Borrower, when due and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such indebtedness; or,

e) The Borrower commences a voluntary case concerning it under titles of the United States Code entitled "Bankruptcy" as now or hereafter in effect, (the "Bankruptcy Code"), or any successor thereto or an involuntary case is commenced against the Borrower under the Bankruptcy Code and relief is ordered against the Borrower; or the Borrower is not paying its debts as such debts become due.

6. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

a) The Lender may declare all payments under the Note to be immediately due and payable, whereupon the same shall become immediately due and payable; or

b) The Lender may have access to, inspect, examine and make copies of the books and records accounts and financial data of the Borrower; or

c) The Lender may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement or the Note.

7. No Remedy Exclusive. No remedy conferred upon or reserved to the Lender by this Agreement is intended to be exclusive of any other remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, each other loan document, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this section, it shall not be necessary to give any notice, other than such notice as may be expressly provided for herein or required by law.

8. Uses of Loan Amount. It is further agreed that the funds loaned by the Lender

hereunder will be used by the Borrower to pay for its share of the price of the radios.

9. Notification. The Borrower shall immediately notify the Lender of any change in its financial position, which would relate to the ability of the Borrower to fulfill its responsibilities under this Loan Agreement or the Note.
10. Indemnification. To the extent allowable by law, the Borrower shall defend, indemnify and hold the Lender and any officials of the State of Ohio harmless against any and all cost, expense, claims or actions arising out of or connected with the execution and delivery of this Loan Agreement or the Note. The provisions related to this section shall survive the termination of this Loan Agreement.
11. Other Agreements. The Borrower shall not enter into any agreement containing any provision which would be violated hereunder or under any instrument or document delivered or to be delivered by it hereunder or in connection herewith.
12. Miscellaneous.
 - a) Term of Agreement. This Agreement shall be and remain in full force and effect from the date of its delivery until (a) the termination of this Agreement pursuant to section 6 hereof or (b) such time as the Loan shall have been fully repaid and all other sums payable by the Borrower under this Agreement and the Note have been satisfied, but not to exceed the period of ten (10) years.
 - b) Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate address. The Borrower or the Lender may, by notice given hereunder, designate any further or different addresses to which subsequent notice, certificates, requests or other communications shall be sent.
 - c) Extent of Covenants of the Lender. All covenants, obligations and agreements of the Lender contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future Henry County Commissioners in other than his/her official capacity.
 - d) Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Lender, the Borrower and their respective successors and assigns.
 - e) Amendments and Supplements. This Agreement may not be amended or supplemented except by an instrument in writing executed by the Lender and the

Borrower.

f) Severability. If any provision of this Agreement, or any covenant, obligation, or agreement contained herein is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable portion were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

g) Captions. The captions and headings in this Agreement shall be solely for convenience or reference and shall in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

h) Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

HENRY COUNTY COMMISSIONERS:

CITY OF NAPOLEON, OHIO:

Glenn Miller, President
Henry County, Ohio

Joel Mazur, City Manager
City of Napoleon, Ohio

Thomas H. VonDeylen, Vice Chairman
Henry County, Ohio

Robert E. Hastedt, Commissioner
Henry County, Ohio

ATTEST:

Kristi Schultheis, Clerk

Date: _____

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

Katie Nelson
Assistant Henry County Prosecutor

Billy D. Harmon, Law Director
City of Napoleon, Ohio

EXECUTED this ____ day of _____, 2019

CERTIFICATION OF FUNDS:

The undersigned, being the Finance Director of the City of Napoleon, Ohio, hereby certifies that in the case of this continuing contract to be performed in whole or in part in the current and ensuing fiscal year(s), the amount required to meet the obligation in the current fiscal year in which the contract is made has currently been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances; and, in future years is subject to appropriation by the legislative authority.

Kent Seemann, Finance Director
City of Napoleon, Ohio

COGNOVIT PROMISSORY NOTE

(Loan Only)

\$60,554.68

_____, 2019

For value received, the City of Napoleon (the "Borrower") promises to pay to the order of the Henry County Commissioners (the "Lender"), located at 1853 Oakwood Avenue, Napoleon, Ohio 43545, or at such other address as may be designated in writing by the Lender, the principal sum of sixty thousand five hundred fifty-four and 68/100 Dollars (\$60,554.68), or such lesser amount as is the Loan Amount, as defined in the Loan Agreement by and between the Lender and the Borrower, of even date (the "Loan Agreement") with interest on the amount of principal from time to time outstanding from the Disbursement Date as defined in the Loan Agreement at the rate of zero percent (0.0%) per annum until paid. The principal of this Note may all be paid up front or spread out over the course of no more than ten (10) years, payable annually or biennially.

The covenants, conditions and agreements contained in the Loan Agreement are hereby made a part of this Note.

If a default shall occur in the payment of any installment of principal, under this Note, in either case continuing for a period of ten (10) days after written notice of the failure to make any such payment when due and payable, or if an Event of Default (as defined in any of the Loan Agreement) shall have occurred and be continuing, then, at the option of the Lender, the entire principal sum accrued hereon shall become due and payable at once, without demand or notice.

If any provision hereof is in conflict with any statute or rule of law of the State of Ohio or is otherwise unenforceable for any reason whatsoever, then such provision shall be deemed separable from and shall not invalidate any other provision of this Note.

If this Note is placed in an attorney's hands for collection or collected by suit or through the bankruptcy or probate, or any other court, either before or after maturity, there shall be paid to the holder of this Note reasonable attorney fees, costs and other expenses incurred by the holder in enforcing the terms of this Note.

The undersigned hereby authorizes any attorney-at-law to appear in any court of record situated in Henry County in the State of Ohio, or elsewhere, where the undersigned resides or has its principal place of business, signed this Note, or can be found, after the obligation evidenced hereby, or any part thereof becomes due and is

unpaid, and waives the issuance and service of process and confesses judgment against the undersigned in favor of the holder of this Note for the amount then appearing due, together with the costs of the suit, and thereupon to release all errors and waive all right to appeal and stay of execution.

This Note is executed in Napoleon, Ohio, and shall be construed in accordance with the laws of the State of Ohio.

WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME, A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE, AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT OR ANY OTHER CAUSE (Section 2323.13, Ohio Revised Code).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

HENRY COUNTY COMMISSIONERS: CITY OF NAPOLEON, OHIO:

Glenn Miller, President
Henry County, Ohio

Joel Mazur, City Manager
City of Napoleon, Ohio

Thomas H. VonDeylen, Vice Chairman
Henry County, Ohio

Robert E. Hastedt, Commissioner
Henry County, Ohio

ATTEST:

Kristi Schultheis, Clerk

Date: _____

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

Katie Nelson
Assistant Henry County Prosecutor

Billy D. Harmon, Law Director
City of Napoleon, Ohio

EXECUTED this ____ day of _____, 2019

CERTIFICATION OF FUNDS:

The undersigned, being the Finance Director of the City of Napoleon, Ohio, hereby certifies that in the case of this continuing contract to be performed in whole or in part in the current and ensuing fiscal year(s), the amount required to meet the obligation in the current fiscal year in which the contract is made has currently been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances; and, in future years is subject to appropriation by the legislative authority.

Kent Seemann, Finance Director
City of Napoleon, Ohio

STATE OF OHIO)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, Finance Director the City of Napoleon, Ohio, who acknowledged that he did sign the foregoing instrument as authorized representative of the City of Napoleon, herein and that such signing is the free act and deed of said _____, Financial Director of the City of Napoleon, for the uses and purposes therein mentioned.

Notary Public


My commission expires:

STATE OF OHIO
COUNTY OF HENRY

Sally Heaston, being first duly sworn, states that she is the General Manager of The Bryan Publishing Company, owner of The Northwest Signal, a daily newspaper, published and of general circulation in the county of Henry aforesaid, and that the annexed notice was published in one issue in said paper, on the 20th day of June, 2019.


Sally Heaston

Subscribed and sworn to before me this
20th day of June, 2019


Beverly Griteman
Notary Public,
State of Ohio
My Commission Expires
February 13, 2021

Printer's Fee: \$247.80
Notary Fee: \$2.00

**Summary of Ordinance No.(s) 034-19, 035-19, 039-19 and
Resolution No.(s) 036-19, 040-19, 041-19, 042-19**

(PURSUANT TO ARTICLE II, SECTION 2.15 OF THE CITY CHARTER, CHAPTER 121 OF THE CODE OF ORDINANCES AND COUNCIL RULE 8.2.4.1, AS WELL AS APPLICABLE PROVISIONS OF ORC CHAPTER 731)

NOTICE

A copy of the complete text of the above named Ordinance(s) and Resolution(s) are on file in the office of the City Finance Director and may be viewed or obtained during business hours of 7:30 AM to 4:00 PM, Monday through Friday, at the office of the Finance Director, the location being 255 West Riverview Avenue, Napoleon, Ohio. A copy of all or part of the above named Ordinances and Resolutions, or any item mentioned in this notice, may be obtained from the City Finance Director upon the payment of a reasonable fee therefore.

Ordinance No. 034-19

AN ORDINANCE AMENDING SECTION 143.01 OF THE CITY OF NAPOLEON'S CODIFIED ORDINANCES, "COMPOSITION AND CONTROL OF THE CITY FIRE/RESCUE DEPARTMENT," AND REPEALING ORDINANCE NO. 012-11

In this legislation, the City amended Section 143.01 of the City Codified Code, and repealed Ordinance No. 012-11.

Ordinance No. 035-19

AN ORDINANCE CREATING THE NON-BARGAINING POSITIONS OF ADJUNCT EMS INSTRUCTOR AND ADJUNCT FIRE INSTRUCTOR FOR THE FIRE DEPARTMENT OF THE CITY OF NAPOLEON, OHIO, AND AMENDING ORDINANCE NO. 075-18; AND DECLARING AN EMERGENCY

In this legislation, the City created the positions of Adjunct EMS and Fire Instructors for the City Fire Department, and amended Ordinance No. 075-18.

Ordinance No. 039-19

AN ORDINANCE SUPPLEMENTING THE ANNUAL APPROPRIATION MEASURE (SUPPLEMENT NO. 3) FOR THE YEAR 2019; AND DECLARING AN EMERGENCY

In this legislation, the City supplemented the annual appropriation measure.

Resolution 036-19

A RESOLUTION AUTHORIZING THE CITY OF NAPOLEON TO EXECUTE A LOAN AGREEMENT WITH THE HENRY COUNTY COMMISSIONERS FOR FUNDS TO PURCHASE THE CITY SHARE OF THE COUNTYWIDE COMMUNICATIONS SYSTEM; AND DECLARING AN EMERGENCY

In this legislation, the City executed a loan agreement for the Countywide communications system with the Henry County Commissioners.

Resolution 040-19

A RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO TRANSFER CERTAIN FUND BALANCES (TRANSFER NO. 2) FROM RESPECTIVE FUNDS TO OTHER FUNDS PER SECTION 5705.14 ORC ON AN AS NEEDED BASIS IN FISCAL YEAR 2019, LISTED IN EXHIBIT "A"; AND DECLARING AN EMERGENCY

In this legislation, the City authorized the Finance Director to transfer certain fund balances, as listed in Exhibit A of the Resolution.

Resolution 041-19

A RESOLUTION STRONGLY OPPOSING THE STATE OF OHIO HOUSE BILL 6, REPLACING THE OHIO RENEWABLE PORTFOLIO STANDARD CREATING THE OHIO CLEAN AIR PROGRAM; AND DECLARING AN EMERGENCY

In this legislation, the City strongly opposed Ohio House Bill 6.

Resolution 042-19

A RESOLUTION STRONGLY OPPOSING THE STATE OF OHIO HOUSE BILL 163, REGARDING MUNICIPAL WATER AND SEWER PRACTICES; AND DECLARING AN EMERGENCY

In this legislation, the City strongly opposed Ohio House Bill 163.

All of the above summaries are approved as to form and correctness by Billy D. Harmon, City Law Director