

**RESOLUTION NO. 011-23**

**A RESOLUTION APPROVING THE PETITION FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS UNDER OHIO REVISED CODE CHAPTER 1710; APPROVING THE NECESSITY OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF NAPOLEON, OHIO IN COOPERATION WITH THE NORTHWEST OHIO ADVANCED ENERGY IMPROVEMENT DISTRICT; AND DECLARING AN EMERGENCY**

**WHEREAS**, as set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to include their properties within energy special improvement districts (“ESIDs”) upon a petition to a municipal corporation or township, which ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessments; and,

**WHEREAS**, the Northwest Ohio Advanced Energy Improvement District (the “District”) was created under Ohio Revised Code Chapters 1702 and 1710 as an energy special improvement district and established pursuant to Resolution No. 207-11 of the Council of the City of Toledo, Ohio approved on May 18, 2011 (the “Creation Resolution”); and,

**WHEREAS**, pursuant to the Creation Resolution, the Initial Plan For the Improvements, Services, and Operation of the Toledo Ohio Advanced Energy Improvement District (as amended and supplemented from time to time, “the Program Plan”) was adopted as a plan for public improvements and public services under Ohio Revised Code Section 1710.02(F), which plan allows for additional properties within the City of Toledo, Ohio, any other municipal corporation or township in which a portion of the District’s territory is located, and any municipal corporation or township which is adjacent to any other municipal corporation or township in which a portion of the District’s territory is located to be added to the territory of the District (each a “Participating Political Subdivision”); and,

**WHEREAS**, Oakwood Partners, LLC (together with its affiliates or controlled entities, the “Owner”), as the owner of 100% of the real property affected hereby (as further described in Exhibit A to the Petition, the “Property”), has determined to submit, a *Petition for Special Assessments for Special Energy Improvement Projects* (the “Petition”), together with a *Supplemental Plan* (the “Supplemental Plan”) and Articles of Incorporation for the District, as amended (the “Amended Articles of Incorporation”), all in accordance with Ohio Revised Code Section 1710.02; and,

**WHEREAS**, the Petition and Supplemental Plan request that the Project Site be added to the District and that the City of Napoleon, Ohio (the “City”) levy special assessments on the Project Site to pay the costs of a special energy improvement project to be provided on the Project Site, all as described more particularly in the Petition and the Supplemental Plan (the “Project”); and,

**WHEREAS**, the Petition is for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 2o of Article VIII

of the Ohio Constitution, including, without limitation, the Project, and further, the Petition identifies the amount and length of the special assessments to be imposed with respect to the Project; and,

**WHEREAS**, this City Council of the City (the “Council”), as mandated by Ohio Revised Code Section 1710.06, must approve or disapprove the Petition within 60 days of the submission of the Petition; and,

**WHEREAS**, this Council has received, reviewed, and determined to approve the Petition, together with the Supplemental Plan and the Amended Articles of Incorporation; and,

**WHEREAS**, by the Petition, the Owner requests that the Project be paid for by special assessments assessed upon the Property (the “Special Assessments”) in an amount sufficient to pay the costs of the Project, which is estimated to be \$1,180,723.93, including the costs identified in Section 5 of this Resolution, and requests that the Project be undertaken cooperatively by the City, the District, and such other parties as the City may deem necessary or appropriate; and,

**WHEREAS**, this Council, pursuant to Ohio Revised Code Section 1710.02(G)(4), has determined that the energy special improvement project to be constructed and implemented on the Project Site is not required to be owned exclusively by the City for its purposes, for uses determined by this Council, as the legislative authority of the City as those that will promote the welfare of the people of the City; to improve the quality of life and the general and economic well-being of the people of City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources; and,

**WHEREAS**, Ohio Revised Code Section 1710.06(C) provides that a political subdivision which has approved a petition for special assessments for public improvements in an energy special improvement district and a plan pursuant to Ohio Revised Code Sections 1710.02(F) and 1710.06 shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; **Now Therefore**,

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

Section 1. Approval. That, This Council approves the Petition, the Supplemental Plan, and the amended Articles of Incorporation now on file with the Clerk of the Council.

Section 2. Definitions. That, each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the Petition.

Section 3. Transfer of Energy Special Improvement Project. That, pursuant to Ohio Revised Code Section 1710.02(G)(4), this Council determines that the Project is not required to be owned exclusively by the City for its purposes, for uses determined by this Council, as the legislative authority of the City, as those that will promote the welfare of the people of such participating political subdivision; to improve the quality of life and the general and economic well-being of the people of the City; to better ensure the public health, safety, and welfare; to

protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources. This Council accordingly authorizes the Board of Directors of the District (the "Board") to act as its agent to sell, transfer, lease, or convey the Project. The consideration the Board must obtain from any sale, transfer, lease, or conveyance of the special energy improvement project on the Project Site is any consideration greater than or equal to One Dollar and Zero Cents (\$1.00).

Section 4. Consent to Addition. That, his Council hereby approves and consents to (i) any addition of real property to the territory of the District within the boundaries of any municipal corporation or any township which is contiguous to a Participating Political Subdivision of the District; (ii) the addition of the municipal corporation or township in which such real property is located as a Participating Political Subdivision of the District; and (iii) any amendment to the Amended Articles of Incorporation necessary to recognize or effect such addition.

Section 5. Public Necessity of Special Assessments. That, this Council declares necessary, and a vital and essential public purpose of the City, to improve the Property, which is located at 1851 Oakwood Ave., Napoleon, Ohio 43545 in the City, by providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Petition and the Supplemental Plan, and providing for the payment of the costs of the Project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Project and the interest on such damages; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to the Owner or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued or incurred, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the Project for which the Special Assessments are made at an interest rate which shall be determined by the District or the Toledo-Lucas County Port Authority as its conduit financing entity to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District, the Toledo-Lucas County Port Authority, or another issuer of notes or bonds to pay the costs of the Project; together with all other necessary expenditures, all as more fully described in the Petition, the Supplemental Plan, and profiles, specifications, and estimates of cost of the Project, all of which are on file with the fiscal officer and open to the inspection of all persons interested.

Section 6. One Project. That, this Council determines that the Project's elements are so situated in relation to each other that in order to complete the acquisition and improvement of

the Project's elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of materials, and in the same manner; and that the Project's elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the Project's elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the District pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

Section 7. Approval of Plans. That, the plans and specifications and total cost of the Project now on file in the office of the Clerk of Council are approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Project shall be made in accordance with the plans, specifications, profiles, and estimate of costs for the Project.

Section 8. Public Necessity of Project. That, this Council determines and declares that the Project is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project, as defined in Ohio Revised Code Section 1710.01(I); and that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the District, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Petition and the Supplemental Plan. This Council determines and declares that the Project is conducive to the public peace, health, safety and welfare of the City and the inhabitants of the City.

Section 9. Allocation of Costs of Project. That, pursuant to and subject to the provisions of a valid Petition signed by the owners of one hundred percent (100%) of the Property, the entire cost of the Project shall be paid by the Special Assessments levied against the Property, which is the benefited property. The provisions of the Petition and the Supplemental Plan are ratified, adopted, approved and incorporated into this Resolution as if set forth in full in this Resolution. The portion of the costs of the Project allocable to the City will be zero percent (0%). The City does not intend to issue securities in anticipation of the levy or the collection of the Special Assessments.

Section 10. Assessment Method. That, the method of levying the Special Assessments shall be in proportion to the benefits received, allocated among the parcels constituting the Property as set forth in the Petition and the Supplemental Plan.

Section 11. Property. That, the lots or parcels of land to be assessed for the Project shall be the Property, described in Exhibit A to the Petition, all of which lots and lands are determined to be specially benefited by the Project.

Section 12. Assessment Schedule. That, the Special Assessments shall be levied and paid in 30 semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition and the Supplemental Plan (which list is incorporated herein by reference), and the Owner has waived its option to pay the Special Assessment in cash within 30 days after the first publication of the notice of the assessing ordinance.

The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project is \$1,180,723.93. Each semi-annual Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued or incurred to pay the costs of the Project and of administrative expenses. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, shall be treated as part of the cost of the Project for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds had notes or bonds been issued by the City or another issuer of notes or bonds to pay the costs of the Project. In addition to the Special Assessments, the County Auditor of Henry County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Special Assessments by the County Auditor of Henry County, Ohio.

Section 13. Fiscal Officer to File Estimate of Special Assessments. That, the fiscal officer's or the fiscal officer's designee is authorized and directed to prepare and file in the office of the Clerk of Council the estimated Special Assessments for the cost of the Project in accordance with the method of assessment set forth in the Petition, the Supplemental Plan, and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

Section 14. Notice to Property Owner. That, the fiscal officer or the fiscal officer's designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

Section 15. Collection of Special Assessments. That, the Special Assessments will be used by the City to pay the costs of the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

Section 16. Appropriation of Special Assessments. That, the Special Assessments will be used by the City to pay the cost of the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

Section 17. Acceptance of Waiver of Process. That, this Council accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and the Charter of the City, and consents to the immediate imposition of the Special Assessments upon the Property. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

- (i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- (ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
- (iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- (v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- (vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;
- (vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing Resolution under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

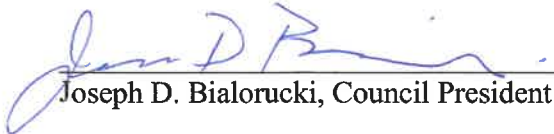
Section 18. Compliance with Open Meetings Requirements. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any 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 19. 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 20. Effective Date. 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 allow for the project to be rendered in a timely manner; 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, it is necessary that this project be in force in a timely manner, and for further reasons as stated in the Preamble hereof.

Passed: \_\_\_\_\_

4-17-23

  
Joseph D. Bialorucki, Council President

Approved: 4-17-23

  
Jason P. Maassel, Mayor

VOTE ON PASSAGE 7 Yea 0 Nay 0 Abstain

Attest:   
Marrison Flogaus, Clerk of Council

*I, Marrison Flogaus, Clerk of Council for the City of Napoleon, do hereby certify that the foregoing Resolution No. 011-23 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023; & 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.*

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*Marrison Flogaus, Clerk of Council*