

RESOLUTION 2023 – 19

A RESOLUTION APPROVING THE PETITION AND SUPPLEMENTAL PLAN 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 MASON, OHIO IN COOPERATION WITH THE I-75 ENERGY SPECIAL IMPROVEMENT DISTRICT.

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 undertaking special energy improvement projects for their properties and financing such special energy improvement projects by way of voluntary special assessments; and

WHEREAS, the Fairfield, Liberty Township, Mason, Monroe, West Chester Township Energy Special Improvement District, Inc. d/b/a I-75 Energy Special Improvement District, Inc. (the “District”) was created under Ohio Revised Code Chapters 1702 and 1710 as an ESID and established pursuant to Resolution No. 53-2019 of the City Council of the City of Monroe, Ohio, approved on January 14, 2020 (the “Creation Resolution”); and

WHEREAS, pursuant to the Creation Resolution, the Fairfield, Liberty Township, Mason, Monroe, West Chester Township Energy Special Improvement District Plan (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 Monroe, Ohio and within 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 duly added to the territory of the District; and

WHEREAS, additional territory existing within the boundaries of Liberty Township, Butler County, Ohio was added to the boundaries of the District after passage of the Creation Resolution, pursuant to Resolution No. 2020-024 of the Board of Trustees of Liberty Township, approved on January 21, 2020, and additional territory existing within the boundaries of the City of Fairfield, Ohio was added to the boundaries of the District after passage of the Creation Resolution, pursuant to Resolution No. 2-22 of the City Council of the City of Fairfield, Ohio, approved on January 24, 2022, and additional territory existing within the boundaries of West Chester Township, Butler County, Ohio was added to the boundaries of the District after passage of the Creation Resolution, pursuant to Resolution No. 32-2022 of the Board of Trustees of West Chester Township, approved on November 15, 2022; and

WHEREAS, The C.M. Paula Company (together with its successors and assigns as owner of the Property, as defined below, the “Owner”), as the Owner of certain real property located within the City of Mason, Ohio (the “City”), has identified real property located at 6049 Hi Tek Ct., Mason, Ohio 45040 and having Warren County Auditor Parcel ID Number 1505477012 (the “Property”), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, the Owner has submitted to the City Council of the City (the “City Council”) a *Petition To the City of Mason, Ohio Requesting The Addition of Property to the I-75 Energy Special Improvement District* (the “First Petition”) in accordance with Ohio Revised Code Section 1710.02, requesting that the Property be added to the District; and

WHEREAS, the City Council of the City approved the First Petition by its Resolution No. 2023-8 adopted on February 13, 2023 within sixty (60) days of its submission by the Owner, all in order to add the Property to the District in accordance with Ohio Revised Code Section 1710.02; and

WHEREAS, the District, through the Board of Directors of the I-75 Energy Special Improvement District, Inc. (the “Board”), as the governing body of the District in accordance with Ohio Revised Code Chapter 1710, approved the First Petition and adopted the Program Plan, together with subsequent amendments comprising the Supplemental Plan (as defined herein) with respect to the Property, by its Resolution No. 2023-19 adopted on June 12, 2023; and

WHEREAS, the District, through its Board, submitted the Supplemental Plan in the form of a Project Petition (as defined herein) to the Owner of the Property which may be assessed under the Supplemental Plan and one hundred percent (100%) of the Owners of the Property have signed the Project Petition; and

WHEREAS, the Owner has further submitted to the City Council of the City a *Petition for Special Assessments for Special Energy Improvement Projects* (the “Project Petition”) and a *Supplement to Plan for 6049 Hi Tek Ct., Mason, Ohio Project* (the “Supplemental Plan”), which Project Petition and Supplemental Plan (copies of which are on file in the offices of the Clerk of Council) request that the City levy special assessments on the Property to pay the costs of a special energy improvement project to be provided on the Property, all as described more particularly in the Project Petition and the Supplemental Plan and in accordance with Ohio Revised Code Sections 1710.06 (the “Project”); and

WHEREAS, the Project Petition and the Supplemental Plan propose the necessity of the acquisition, construction, installation, improvement, and equipping of energy efficiency improvements, including, without limitation, a building envelope designed to increase thermal performance, LED lighting designed to improve the efficiency of electrical usage, HVAC designed to reduce energy consumption, and a solar photovoltaic project, and related improvements associated with an approximately 36,000 square foot expansion of the Owner’s existing facility located at the Property, and other soft costs and contingency costs (the “Project”) and financing the Project through the cooperation of the ESID; and

WHEREAS, in the Project Petition and the Supplemental Plan, the Owner requests that the Project be paid for by special assessments to be assessed upon the Property (the “Special Assessments”) in a maximum amount sufficient to pay the costs of the Project, which is estimated to be Two Million One Hundred Forty Three Thousand Nine Hundred and Seventy Nine Dollars and Zero Cents (\$2,143,979.00) and other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and ESID administrative fees and expenses, and requests that the Project be undertaken cooperatively by the City, the ESID, and such other parties as the City may deem necessary or appropriate; and

WHEREAS, this Council, as mandated by Ohio Revised Code Section 1710.06, must approve or disapprove the Project Petition and Supplemental Plan within sixty (60) days of the submission of the Project Petition and Supplemental Plan; and

WHEREAS, this Council has determined to approve the Project Petition and Supplemental Plan; 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 Property 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.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mason, Ohio, six members elected thereto concurring:

Section 1. That this Council approves the Project Petition and further approves the Supplemental Plan in substantially the forms now on file with the Clerk of Council.

Section 2. 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 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 Property is any consideration greater than or equal to One Dollar and Zero Cents (\$1.00).

Section 3. 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 Project Petition.

Section 4. That this Council declares necessary, and a vital and essential public purpose of the City, to improve the Property, which is located within the City and has Warren County Auditor Parcel ID Number 1505477012, by providing for the implementation of various special energy improvement projects on the Property including, without limitation, the Project, as set forth in the Project 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 Authorized Improvements 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; and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan 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, including any credit enhancement fees, trustee fees, and ESID administrative fees and expenses; together with all other necessary expenditures, all as more fully described in the Project Petition and the Supplemental Plan, profiles, specifications, and estimates of costs of the Project, all of which are on file with the Director of the Department of Finance and open to the inspection of all persons interested.

Section 5. 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 ESID pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

Section 6. 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 estimates for the Project.

Section 7. That this Council has previously determined and by this Resolution ratifies 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 ESID, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Project 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 8. 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 Project Petition 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 collection of the Special Assessments.

Section 9. That the method of levying the Special Assessments shall be in proportion to the benefits received from the financing of the Project, allocated among the parcels constituting the Property as set forth in the Project Petition and Supplemental Plan.

Section 10. That the lots or parcels of land to be assessed for the Project shall be the Property, described in Exhibit A to the Project Petition, all of which lots and lands are determined to be specially benefited by the financing of the Project.

Section 11. That the Special Assessments shall be levied and paid in fifty-eight (58) semi-annual installments pursuant to the list of maximum Special Assessments set forth in the Project Petition, and the Owner has waived its option to pay the Special Assessment in cash within thirty (30) days after the passage of the assessing ordinance.

The maximum aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project is Two Million One Hundred Forty Three Thousand Nine Hundred and Seventy Nine Dollars and Zero Cents (\$2,143,979.00). Each annual Special Assessment payment represents payment of a portion of the principal of and an assumed maximum rate of interest on obligations issued to pay the costs of the Project and of administrative expenses. As requested in the Project Petition and the Supplemental Plan, the final aggregate amount of the Special Assessments may be in an amount less than the aggregate amount of Two Million One Hundred Forty Three Thousand Nine Hundred and Seventy Nine Dollars and Zero Cents (\$2,143,979.00) if the final rate of interest for the financing for the Project is less than the assumed maximum rate of interest. If the rate of interest is less than the assumed maximum rate of interest such that the aggregate amount of Special Assessments necessary to repay the financing for the Project is less than the aggregate amount of Two Million One Hundred Forty Three Thousand Nine Hundred and Seventy Nine Dollars and Zero Cents (\$2,143,979.00), the Owner and the provider of the financing shall certify a final schedule of Special Assessments to the City, which final schedule shall be certified to the County Auditor of Warren County, Ohio for collection. The maximum interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in

anticipation of the collection of the Special Assessments if such securities had been issued by the City. In addition to the Special Assessments, the Auditor of Warren County, Ohio may impose a special assessment collection fee with respect to each annual payment, which amount will be added to the Special Assessments by the Auditor of Warren County, Ohio.

Section 12. That the Director of the Department of Finance or the Director of the Department of Finance'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 Project Petition, the Supplemental Plan, and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

Section 13. That upon the filing of the estimated Special Assessments with the Clerk of Council, notice of the adoption of this Resolution, and the filing of the estimated Special Assessments shall be served upon the Owner of the Assessed Property, as provided in Ohio Revised Code Section 727.13. The appropriate officials of the City shall also comply with the applicable procedural requirements of Ohio Revised Code Chapter 727.

Section 14. That the Director of the Department of Finance or the Director of the Department of Finance'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. That the Special Assessments will be used by the City to provide the Authorized Improvements in cooperation with the ESID in any manner, including assigning the Special Assessments actually received by the City to the ESID or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

Section 16. 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 of Mason, Ohio, 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 or ordinance under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

Section 17. That the City is authorized to enter into agreements by and among the City, the ESID, and such other parties as the City may deem necessary or appropriate in order to provide the Authorized Improvements, and that the City Manager or the City Manager's designee, is authorized to execute, on the City's behalf, such agreements.

Section 18. That this Council finds and determines that all formal actions of this Council concerning and relating to the passage of this legislative resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

Section 19. Pursuant to Ohio Revised Code Section 1710.06(B), the Project Petition and Supplemental Plan shall be effective at the earliest date on which a nonemergency resolution of the City with the latest effective date may become effective and pursuant to Section 4.08 of the Charter of the City, each ordinance or resolution such as this Resolution providing for improvements petitioned by the owners of the requisite majority of the front footage or of the area of the property benefitted and to be especially assessed therefor, shall take effect immediately.

[SIGNATURE PAGE FOLLOWS]

Passed this 12th day of June, 2023.

Mayor

Attest:

Clerk of Council

CERTIFICATE

The undersigned, Clerk of Council of the City of Mason, Ohio hereby certifies this to be a true and exact copy of Resolution No. 2023-[____], adopted by the City Council of the City of Mason on June 12, 2023.

Clerk of Council