

**RESOLUTION NO. 20-18**

A RESOLUTION TO APPROVE THE PETITION FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS UNDER OHIO REVISED CODE CHAPTER 1710 AND APPROVE THE NECESSITY OF ACQUIRING, INSTALLING, EQUIPPING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF EAST CLEVELAND, OHIO IN COOPERATION WITH THE NORTHEAST OHIO ADVANCED ENERGY DISTRICT (14101 EUCLID AVENUE PROJECT)

Requested By: Mayor Brandon L. King

Sponsored By: Timothy R. Austin & Nathaniel Martin, Councilors at-Large

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**WHEREAS**, Ohio Revised Code Section 1710.02(F) 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; and

**WHEREAS**, the Board of Trustees of the East Cleveland Public Library (the "Owner"), as the owner of certain real property located within the City of East Cleveland, Ohio (the "City"), has identified certain real property located at 14101 Euclid Avenue, East Cleveland, Ohio (the "Project Site"), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and

**WHEREAS**, the Northeast Ohio Advanced Energy District (the "District") was created under Ohio Revised Code Chapters 1702 and 1710 as an energy special improvement district and is governed by the Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Project Plan and the Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Services Plan (together, and 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 Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of South Euclid, Ohio, and City of University Heights, 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 added to the territory of the District; and

**WHEREAS**, the Owner has determined to submit to the Mayor and the City Council of the City (the “Council”), a *Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project* (the “Petition”) and the *Articles of Incorporation of the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc.* (the “Articles of Incorporation”), all in accordance with Ohio Revised Code Section 1710.02, each of which are now on file with the Clerk of this Council; and

**WHEREAS**, the Petition, which is on file with the Clerk of Council, has been signed by the Owner, as the owner of one hundred percent (100%) of the real property affected by the Petition (as further described in Exhibit A to the Petition, the “Property”), and proposes the necessity of the Project and financing the Project through the cooperation of the District; and

**WHEREAS**, the Petition requests that the Project Site be added to the District and that 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 (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 20 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**, 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 \$295,155.00, including the costs identified in Section 2 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**, in furtherance of the future addition of any real property in any municipal corporation or township contiguous to the municipal corporations or townships in which a portion of the territory of the District is located, it is necessary, and this Council has determined, to approve the addition of such real property to the territory of the District, all in accordance with Ohio Revised Code Chapter 1710; 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**, this Council, as mandated by Ohio Revised Code Chapter 1710, must approve or disapprove the Petition within 60 days of the submission of the Petition; and

**WHEREAS**, this Council has determined to approve the Petition, the Program Plan, and the Articles of Incorporation; and

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of East Cleveland, Ohio, four-fifths (4/5) concurring:

**SECTION 1.** 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 2.** That this Council approves the Petition, the Program Plan, and the Articles of Incorporation now on file with the Clerk of Council. This Council hereby appoints the person holding the equivalent functional position to that of the director of economic development or planning as identified by the Mayor to serve on the Board of Directors of the District as provided in Ohio Revised Code Section 1710.04(A).

**SECTION 3.** That this Council hereby approves and consents to (i) any addition of real property to the territory of the District within the boundaries any municipal corporation or township in which a portion of the territory of the District is located or any municipal corporation or township which is contiguous to the municipal corporations or townships in which a portion of the territory of the District is located; (ii) the addition of the municipal corporation or township in which such real property is located as a “participating political subdivision,” as defined in Ohio Revised Code Section 1710.01(E), of the District; and (iii) any amendment to the Articles of Incorporation necessary to recognize or effect such addition.

**SECTION 4.** 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 5.** That this Council declares necessary, and a vital and essential public purpose of the City, to improve the Property, which is located at 14101 Euclid Avenue in the City, by providing for the acquisition, installation, equipment, and improvement of the Project by the Owner, as set forth in the Petition, 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 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 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, and profiles, specifications, and estimates of cost of the Project, all of which are on file with the Finance Director and open to the inspection of all persons interested.

**SECTION 6.** That this Council determines that the Project's elements are so situated in relation to each other that in order to complete the Project's elements in the most practical and economical manner, they should be acquired, installed, equipped, 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.** 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.** 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, installation, equipment, and improvement of the Project in the manner contemplated by the Petition. 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.** 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 Program 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.** 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 Program Plan.

**SECTION 11.** 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.** That the Special Assessments shall be levied and paid in 20 semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition (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 resolution or ordinance.

The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project is \$295,155.00. 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 Fiscal Officer of Cuyahoga 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 Fiscal Officer of Cuyahoga County, Ohio.

**SECTION 13.** That the Finance Director or the Finance Director'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 and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

**SECTION 14.** That the Owner has waived the requirement that notice of the adoption of this Resolution and the filing of the estimated Special Assessments upon the Owner of the Property to be assessed as provided in Ohio Revised Code Section 727.13 be delivered promptly following adoption of this Resolution.

**SECTION 15.** That the Finance Director or the Finance Director'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 Project.

**SECTION 16.** 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 17.** 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 Solon, 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 18.** That the City is authorized to enter into agreements by and among the City, the District, and such other parties as the City may deem necessary or appropriate in order to carry out the Project, and that the Mayor or the Mayor's designee is authorized to execute, on the City's behalf, such agreements.

**SECTION 19.** That this legislative authority hereby finds and determines that all formal actions taken relative to the passage of this Resolution were taken in an open meeting of this legislative authority, and that all deliberations of this legislative authority and of its committees, if any, which resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, included Section 121.22 of the Ohio Revised Code.

**SECTION 20.** That this Resolution is hereby declared to be an emergency measure necessary for the health, safety and welfare of the residents of the City and provided it receives the affirmative vote of four-fifths (4/5) of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

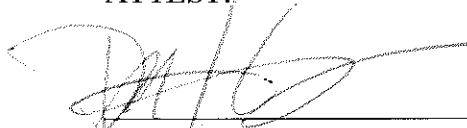
**Passed: August 21, 2018**



\_\_\_\_\_  
**JOIE N. GRAHAM  
PRESIDENT OF COUNCIL**

8/22/18  
Date of Signature

ATTEST:



\_\_\_\_\_  
**DR. KHADIJAH F. GUY  
CLERK OF COUNCIL**

8/22/18  
Date of Signature

**APPROVED:**

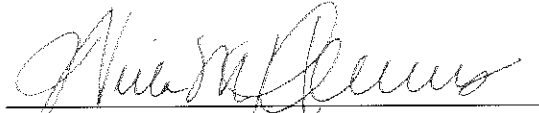


\_\_\_\_\_  
**BRANDON L. KING, MAYOR**

\_\_\_\_\_  
Date of Signature

**VETO:**  
**YES** \_\_\_ **NO** \_\_\_

APPROVED AS TO FORM:



**WILLA M. HEMMONS**  
**DIRECTOR OF LAW**

8/24/18  
Date of Signature

Emergency  First Read n/a Second Read n/a

	Yea	Nay
<b>Councilor Joie N. Graham</b>	<b>excused</b>	
<b>Councilor Ernest L. Smith</b>	<b>x</b>	
<b>Councilor Barbara J. Thomas</b>	<b>x</b>	
<b>Councilor Nathaniel Martin</b>	<b>x</b>	
<b>Councilor Timothy R. Austin</b>	<b>x</b>	



## OHIO REVISED CODES

### **1710.02 Creation and organization.**

(F) Persons proposing creation and operation of the district may propose an initial plan for public services or public improvements that benefit all or any part of the district. Any initial plan shall be submitted as part of the petition proposing creation of the district or, in the case of a district created by an existing qualified nonprofit corporation, shall be submitted with the articles of incorporation or amendments thereto.

An initial plan may include provisions for the following:

- (1) Creation and operation of the district and of the nonprofit corporation to govern the district under this chapter;
- (2) Hiring employees and professional services;
- (3) Contracting for insurance;
- (4) Purchasing or leasing office space and office equipment;
- (5) Other actions necessary initially to form, operate, or organize the district and the nonprofit corporation to govern the district;
- (6) A plan for public improvements or public services that benefit all or part of the district, which plan shall comply with the requirements of division (A) of section 1710.06 of the Revised Code and may include, but is not limited to, any of the permissive provisions described in the fourth sentence of that division or listed in divisions (A)(1) to (7) of that section;
- (7) If the special improvement district is being created under this chapter for the purpose of developing and implementing plans for special energy improvement projects, provision for the addition of territory to the special improvement district.

After the initial plan is approved by all municipal corporations and townships to which it is submitted for approval and the district is created, each participating subdivision shall levy a special assessment within its boundaries to pay for the costs of the initial plan. The levy shall be for no more than ten years from the date of the approval of the initial plan; except that if the proceeds of the levy are to be used to pay the costs of a special energy improvement project, the levy of a special assessment shall be for no more than thirty years from the date of approval of the initial plan. In the event that additional territory is added to a special improvement district, the special assessment to be levied with respect to such additional territory shall commence not earlier than the date such territory is added and shall be for no more than thirty years from such date. For purposes of levying an assessment for this initial plan, the services or improvements included in the initial plan shall be deemed a special benefit to property owners within the district.

### **1710.06 Plans for public improvements or public services.**

(A) The board of directors of a special improvement district may develop and adopt one or more written plans for public improvements or public services that benefit all or any part of the district. Each plan shall set forth the specific public improvements or public services that are to be provided, identify the area in which they will be provided, and specify the method of assessment to be used. Each plan for public improvements or public services shall indicate the period of time the assessments are to be levied for the improvements and services and, if public services are included in the plan, the period of time the services are to remain in effect. Plans for public improvements may include the planning, design, construction, reconstruction, enlargement, or alteration of any public improvements and the acquisition of land for the improvements. Plans for public improvements or public services may also include, but are not limited to, provisions for the following:

- (1) Creating and operating the district and the nonprofit corporation under this chapter, including hiring employees and professional services, contracting for insurance, and purchasing or leasing office space and office equipment and other requirements of the district;
- (2) Planning, designing, and implementing a public improvements or public services plan, including hiring architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning services, and, for public services, managing, protecting, and maintaining public and private facilities, including public improvements;
- (3) Conducting court proceedings to carry out this chapter;
- (4) Paying damages resulting from the provision of public improvements or public services and implementing the plans;

OHIO REVISED CODES

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

# THE CITY OF EAST CLEVELAND LEGISLATION REQUEST FORM

Department submitting the request: \_\_\_\_\_ Date: \_\_\_\_\_

For more detailed information contact \_\_\_\_\_ 216-\_\_\_\_\_  
Name Phone number

**A. State the request and describe any associated costs.**

The Board of Trustees of the East Cleveland Public Library, in connection with the Northeast Ohio Advanced Energy District and the Northeast Ohio Public Energy Council, is looking to undertake certain energy efficiency improvements at the East Cleveland Public Library, which are to be financed through property assessed clean energy (PACE) financing. PACE financings is a mechanism under Ohio law that allows a private lender (in this case NOPEC) to make a loan to a property owner (the Library) for that property owner to construct and install certain energy efficiency or energy generating improvements to its property. With PACE financing, the loan is repaid from and secured by special assessments that are levied on the property by the City. The Library will request that the City pass three pieces of legislation to add its property to the Northeast Ohio Advanced Energy District and to levy the necessary assessments on the property.

Provide a copy of supportive documentation.

**B. State why the legislation is needed.**

Special assessments, including by request and petition of the property owner, require legislative action of the City.

**C. If this is emergency legislation, state the nature of the urgency.**

The financing is available to the library for a limited time, so we need the legislation to go into effect to allow for the financing to close.

Has a request been made to draft a contract to carry out the intent of this Legislation?  Proposed contracts are already drafted and included.

**D. If the subject matter of the legislation requires review by a City board, commission, or committee, name the entity and indicate when the matter was reviewed and the result.**

\_\_\_\_\_  
Board, Committee, Commission Date(s) Presented

\_\_\_\_\_  
 Department Director's Signature/ Date

\_\_\_\_\_  
 Finance Director's Signature/ Date

\_\_\_\_\_  
 Mayor of East Cleveland/ Date

*Approved*  *Denied*

*For the use of the Law Department .....*

- Received on \_\_\_\_\_
- Draft sent to assistant for typing on \_\_\_\_\_
- Draft sent to Director Johnson for approval as to form \_\_\_\_\_
- Draft sent for revision and review \_\_\_\_\_
- Date Legislation was delivered to Council via e-mail \_\_\_\_\_
- Draft incomplete, Law dept. has requested additional information.

Department Notes regarding relevant upcoming council meetings: